

**Planning proposal to amend Warringah Local Environmental Plan 2011 to allow up to 14
Torrens titled, attached dwellings with basement carpark at 184 Wyndora Avenue,
Freshwater**

Proposal Title :	Planning proposal to amend Warringah Local Environmental Plan 2011 to allow up to 14 Torrens titled, attached dwellings with basement carpark at 184 Wyndora Avenue, Freshwater		
Proposal Summary :	Planning proposal to amend Warringah Local Environmental Plan 2011 to allow up to 14 Torrens titles, attached dwellings with basement carpark at 184 Wyndora Avenue, Freshwater.		
PP Number :	PP_2015_WARRI_005_00	Dop File No :	15/14161

Proposal Details

Date Planning Proposal Received :	11-Nov-2015	LGA covered :	Warringah
Region :	Metro(CBD)	RPA :	Warringah Council
State Electorate :	MANLY	Section of the Act :	55 - Planning Proposal
LEP Type :	Spot Rezoning		

Location Details

Street :	184 Wyndora Avenue		
Suburb :	Freshwater	City :	Sydney
Postcode :	2096		
Land Parcel :	Lots 1, 2, 33, 34 and 35 of DP 7912		

DoP Planning Officer Contact Details

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RPA Contact Details

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DoP Project Manager Contact Details

Contact Name :	Tim Archer
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Land Release Data

Growth Centre :	N/A	Release Area Name :	N/A
Regional / Sub Regional Strategy :	Metro North East subregion	Consistent with Strategy :	Yes

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MDP Number :

Date of Release :

Area of Release (Ha)

Type of Release (eg

:

Residential /

Employment land) :

No. of Lots : 0

No. of Dwellings 14

(where relevant) :

Gross Floor Area : 0

No of Jobs Created : 0

The NSW Government Yes

Lobbyists Code of

Conduct has been

complied with :

If No, comment :

Have there been No

meetings or

communications with

registered lobbyists? :

If Yes, comment :

The Department of Planning and Environment's Code of Practice in relation to communication and meetings with lobbyists has been complied with. Metropolitan (CBD) has not met any lobbyist in relation to this proposal, nor has the Director been advised of any meetings between other Department officers and lobbyists concerning this proposal.

Supporting notes

Internal Supporting

Notes :

External Supporting

Notes :

THE SITE

The site is located 350m from a neighbourhood centre and approx. 250m from bus stops on Harbord Road. The existing building was originally constructed to accommodate the Peninsula Private hospital, and was typically used for general surgery and rehabilitation. With the hospital no longer in operation, the building is currently used as accommodation for approx. 18 disabled residents. The existing building is split levels, and presents to surrounding streets as a single storey up to a three storey building with 6 access driveways. The site is generally surrounded by 1-2 storey residential development.

THE PROPOSAL

The proposal involves demolition of the existing structures and construction of a new 2 level residential development containing 14 attached dwellings with an additional subterranean level of basement car parking beneath, with one driveway access off Wyndora Avenue. Concept plans act to illustrate the intended development outcome for the site, and are intended to form the basis of a Voluntary Planning Agreement between the applicant and Council. Key features of the proposal include:

- 14 attached dwellings, each with its own:
 - direct pedestrian access to the street;
 - direct pedestrian access to a private garage within the basement level; and
 - landscaped gardens to the front and rear of each dwelling
- Each dwelling will comprise 2 storeys above the basement car parking level, and will have direct private access to its own basement garage with accommodation for 2 cars (28 Car spaces in total)
- A single vehicular access off Wyndora Avenue
- No common property (the basement level is intended to operate using multiple rights of way).

LAND USE PERMISSIBILITY

Under Warringah LEP 2011 (WLEP2011), the site and surrounding area is currently zoned

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R2 Low Density Residential with a minimum lot size of 450m². Attached dwellings are not permitted in the zone. Council have proposed an amendment to Schedule 1 (Additional Permitted Uses) of WLEP2011, combined with an amendment to the 'Additional Permitted Uses Map' to:

- allow attached dwellings on the subject site, as shown on the 'Additional Permitted Uses Map';
- allow a maximum of 14 attached dwellings with car parking provided within a basement level; and
- allow the Torrens title subdivision of these attached dwellings, despite the provisions of Clause 4.1 Minimum subdivision lot size and the accompanying 'Lot Size Map', but only after the practical completion of the dwellings on the site (including the basement car park level).

DELEGATION OF PLAN MAKING FUNCTIONS

Warringah Council is seeking delegation to carry out the Minister's functions under section 59 of the EP&A Act to progress this planning proposal. Council has provided Attachment 4 - Evaluation criteria for the delegation of plan making functions. Delegation is considered appropriate.

Warringah Council originally submitted the planning proposal on 22 September 2015. The Department requested further information from Warringah Council in order to finalise the assessment, and this was received on 11 November 2015.

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment : **The statement of objectives adequately describes the intention of the planning proposal to amend the Warringah Local Environmental Plan 2011, being:**

- to facilitate the redevelopment of the 5 allotments for residential use;
- to provide housing to meet the needs of the growing population and increase the range of housing type within Warringah;
- to permit a compatible form of small scale, medium density housing on the land (housing other than Residential Flat Building development);
- to ensure that any medium density development of the site includes a basement car parking level to service the whole development, accessed via a shared driveway;
- to achieve a residential redevelopment on the land that is harmonious with the style and character of development on the adjoining and nearby land; and
- to achieve a residential redevelopment on the land that provides an appropriate level of amenity in relation to its impacts on adjoining residential land.

The intended outcomes of the proposed amendment to Warringah Local Environmental Plan 2011 are stated as:

- to allow attached dwellings on this contiguous (5 allotment) land holding in order to facilitate the development of the land in the manner proposed by the development concept plan;
- to provide provisions within Warringah LEP 2011 that make this form of housing permissible; and
- to limit the maximum number of dwellings to 14 and to also allow the Torrens title subdivision of these dwellings, despite the provisions of Clause 4.1 Minimum subdivision lot size and the accompanying 'Lot Size Map', provided subdivision cannot occur before the development is substantially completed.

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Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment : The explanation of provisions adequately addresses the intended changes to the Warringah LEP 2011.

The proposed amendments include an amendment to Schedule 1 (Additional Permitted Uses) of Warringah Local Environmental Plan 2011, combined with an amendment to the 'Additional Permitted Uses Map'.

The Schedule 1 amendment will correctly identify the subject site, via property description and mapping, and will detail what additional uses will be permissible with consent on the subject land.

In the case of Attached Dwellings, the planning proposal states the Schedule 1 amendment would need to:

- allow Attached Dwellings on the subject site, as shown on the 'Additional Permitted Uses Map';
- allow a maximum of 14 attached dwellings with car parking provided within a basement level; and
- allow the Torrens title subdivision of these attached dwellings, despite the provisions of Clause 4.1 Minimum Subdivision lot size and the accompanying 'Lot Size Map', but only after the practical completion of the dwellings on the site (including the basement car park level).

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **No**

b) S.117 directions identified by RPA :

2.3 Heritage Conservation

* May need the Director General's agreement

3.1 Residential Zones

3.4 Integrating Land Use and Transport

5.1 Implementation of Regional Strategies

6.1 Approval and Referral Requirements

6.3 Site Specific Provisions

7.1 Implementation of A Plan for Growing Sydney

Is the Director General's agreement required? **Yes**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

SEPP No 32—Urban Consolidation (Redevelopment of Urban Land)

SEPP No 55—Remediation of Land

e) List any other matters that need to be considered :

SEPP No 55 REMEDIATION OF LAND

The planning proposal document states the applicant is to prepare a Stage 1 Preliminary Contamination Assessment and, if required, a Stage 2 Detailed Contamination Assessment post Gateway, to assess the potential risk to human health and the environment and to determine the site's suitability for residential uses. This requirement recognises a change of use for the site from hospital to residential.

It is recommended that this work occur prior to exhibition of the planning proposal.

Have inconsistencies with items a), b) and d) being adequately justified?

If No, explain :

s117 DIRECTION 6.3 SITE SPECIFIC PROVISIONS

The objective of this direction is to discourage unnecessarily restrictive site specific planning controls, and applies when a relevant planning authority prepares a planning proposal that will allow a particular development to be carried out. The direction states that a planning proposal that will amend another environmental planning instrument in

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order to allow a particular development proposal to be carried out must either:

- (a) allow that land use to be carried out in the zone the land is situated on, or
- (b) rezone the site to an existing zone already applying in the environmental planning instrument that allows that land use without imposing any development standards or requirements in addition to those already contained in that zone, or
- (c) allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended.

The planning proposal seeks to amend the Warringah LEP 2011 by amending Schedule 1 to:

- allowing the form of housing sought (attached dwellings) to be permissible on this site;
- specify a maximum density of 14 attached dwellings with car parking provided within a basement level; and
- allow the Torrens title subdivision of these attached dwellings (despite the provisions of Clause 4.1 Minimum Subdivision lot size and the accompanying 'Lot Size Map'), but only after the practical completion of the dwellings on the site (including the basement car park level).

Council has stated reasons in this particular instance for either not rezoning the site to R3 (as this would allow residential flat buildings, whose scale and impact on the surrounding low-density residential area could be considered incompatible) and not allowing attached dwellings in the R2 zone in the Warringah LGA (as attached dwellings are not considered appropriate in other low density residential areas).

However, the detailed stipulations proposed in Schedule 1 regarding the number of dwellings allowed and timing of subdivision are inconsistent with this direction.

A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are of minor significance.

Following consideration of the existing clauses within the Warringah LEP 2011, it appears Clause 6.8 currently includes similar stipulations on certain land, and thus the detailed proposed provisions would be better suited to this clause.

As such, it is considered the inconsistency with this direction is of minor significance.

Mapping Provided - s55(2)(d)

Is mapping provided? **No**

Comment : **Whilst mapping is not provided, a description of the Warringah Local Environmental Plan 2011 map to be amended is described in the planning proposal as:**

- Schedule 1 Additional Permitted Uses Map - to identify the site being Lots 1, 2, 33, 34 and 35 of DP 7912.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : **A minimum 28 day exhibition period is proposed.**

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

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Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment :

Proposal Assessment

Principal LEP:

Due Date : **December 2011**

Comments in relation to Principal LEP : **Warringah Local Environmental Plan was notified on the 9 December 2011.**

Assessment Criteria

Need for planning proposal : **The planning proposal is not the result of any strategic study or report, rather it was initiated by an application to Warringah Council on behalf of the landowner.**

A planning proposal is deemed to be an appropriate mechanism to allow consideration of planning controls outside those currently prescribed under Warringah LEP 2011.

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Consistency with strategic planning framework :

The proposal demonstrates strategic merit and is consistent with the current metropolitan, regional and local planning frameworks.

The proposal is consistent with 'A Plan for Growing Sydney' (2014), as it supports the growth of Sydney, delivers housing and increased housing choice in an appropriate location.

The proposal is also consistent with the overall intent of the draft North east Subregional Strategy (2007) and supported by the Northern Beaches Regional Action Plan which seeks to improve land supply for housing in the Northern Beaches region.

Overall, the proposal is considered appropriate as it will broaden the range of housing choice, is capable of being connected to existing infrastructure and provides an appropriate density of development within an established urban area within close proximity to jobs, shops, services, public transport and open space.

The proposal seeks to permit attached dwellings, but theoretically either attached dwellings or multi dwelling housing could be used to define the proposed housing development. The distinguishing difference is the manner in which they are able to be subdivided, as attached dwellings permit Torrens Title subdivision, whereas multi dwelling housing permits Strata subdivision. Strata subdivision of a multi dwelling housing development is contingent upon its construction, whereas Torres Title Subdivision of land where attached dwellings are permissible could take place prior to construction.

It is understood the applicant has requested attached dwellings to be permissible to enable subdivision under Torrens Title. It is Council's view that the success of the development is contingent upon the dwellings being substantially constructed as a single development (in the manner illustrated in the Site Development Plans) PRIOR to subdivision, to ensure lots cannot be sold and individually developed in a less orderly manner which could result in a reduced ability to coordinate the delivery of the consolidated basement car park.

The Department supports the intent of providing a consolidated design and building outcome and it is understood Council and the proponent have agreed to develop a Voluntary Planning Agreement in relation to resolving this issue. Council also requests that the LEP amendment reflect this intent.

OPTIONS TO ACHIEVE END RESULT:

Council has proposed an amendment to Schedule 1 (Additional Permitted Uses) of WLEP2011, combined with an amendment to the 'Additional Permitted Uses Map' to:

- allow attached dwellings on the subject site, as shown on the 'Additional Permitted Uses Map';
- allow a maximum of 14 attached dwellings with car parking provided within a basement level; and
- allow the Torrens title subdivision of these attached dwellings, despite the provisions of Clause 4.1 Minimum subdivision lot size and the accompanying 'Lot Size Map', but only after the practical completion of the dwellings on the site (including the basement car park level).

The following mechanisms could be utilised to enable the specific use of attached dwellings to be permissible on the site:

- rezone the site to a suitable zone that allows attached dwellings (such as R3 Medium Density Residential);
- permit attached dwellings as a permissible use in the R2 Low Density Residential zone;
- permit attached dwellings on this particular site, by including in Schedule 1 of WLEP2011 as an additional permitted use.

Council has provided justification for including attached dwellings as an additional

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permitted use in Schedule 1, as rezoning the site to R3 Medium Density Residential would permit other more intense development on the site. Including attached dwellings as a permissible use across the R2 Low Density Residential zone may not be appropriate in other areas of the Warringah LGA, however it is recommended Council investigate this in the future. Therefore the Department supports Council's proposal to include attached dwellings as an additional permitted use under Schedule 1.

Council's proposal also includes site specific provisions: a maximum of 14 attached dwellings with basement car parking; and allowing Torrens title subdivision only after practical completion of development. These provisions create a minor inconsistency with Section 117 Direction 6.3 Site Specific Provisions, as discussed above.

However, the Department does not consider that is appropriate for WLEP 2011 to attempt to control the timing of the subdivision in relation to the proposed development. This matter should be addressed as a condition of development consent. As such, it is recommended that Council remove any reference to the required timing of subdivision as part of the proposed amendment.

Environmental social
economic impacts :

The site is not known to be adversely affected by environmental issues such as riparian land, wetlands, wildlife corridors, flooding, acid sulphate soils, bushfire hazard, European or Aboriginal heritage. The land is located in 'Landslip Area B' (Flanking slopes from 5 to 25 degrees), however this issue could be managed at the development application stage.

Records indicate that the site does not contain critical habitat, threatened species populations, ecological communities or their habitats.

The planning proposal document states the proceeds of the sale of the site/dwellings will be used to develop a specialised facility for existing disabled residents in a more appropriate location.

Assessment Process

Proposal type : **Routine** Community Consultation Period : **28 Days**

Timeframe to make LEP : **12 months** Delegation : **RPA**

Public Authority
Consultation - 56(2)(d)
:

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons :

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

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Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
Covering Letter to DPE - Request for Gateway.pdf	Proposal Covering Letter	Yes
Report to Council 10 February 2015 and Resolution - Planning Proposal for 184 Wyndora Ave, Freshwater.pdf	Proposal	Yes
Report to WDAP Meeting, 10 December 2014.pdf	Proposal	Yes
Concept Site Development Plans.pdf	Proposal	Yes
Planning Proposal Report - 184 Wyndora Ave, Freshwater.pdf	Proposal	Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions:

- 2.3 Heritage Conservation**
- 3.1 Residential Zones**
- 3.4 Integrating Land Use and Transport**
- 5.1 Implementation of Regional Strategies**
- 6.1 Approval and Referral Requirements**
- 6.3 Site Specific Provisions**
- 7.1 Implementation of A Plan for Growing Sydney**

Additional Information :

- 1. Prior to public exhibition, the planning proposal is to be updated to:**
 - amend Clause 6.8 Subdivision of certain land to include provisions relating to maximum dwelling numbers and subdivision requirements; and
 - remove any reference to the required timing of subdivision for the proposed development as part of this proposal.

- 2. Prior to public exhibition, the planning proposal is to clearly identify the site on Warringah LEP 2011 Additional Permitted Uses Map - APU_10.**

Note: Maps should be prepared to the standards identified in Standard Technical Requirements for LEP Maps (Department of Planning & Infrastructure 2013).

- 3. Prior to public exhibition, the planning proposal is to be updated to include the outcomes of a Stage 1 Preliminary Contamination Assessment and, if required, a Stage 2 Detailed Contamination Assessment, to satisfy the requirements of State Environmental Planning Policy 55 - Remediation of Land.**

- 4. Community consultation is required under sections 56(2)(c) and 57 of the EP&A Act as follows:**
 - a) the planning proposal is classified as routine as described in A Guide to Preparing LEPs (Department of Planning and Environment 2013) and must be made publicly available for a minimum of 28 days; and**
 - b) the relevant planning 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 LEPs (Department of Planning and Environment 2013).**

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5. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A 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).

6. The timeframe for completing the LEP is to be 12 months from the week following the date of the Gateway determination.

Supporting Reasons :

The proposal demonstrates consistency with the current metropolitan, regional and local planning frameworks.

The Department supports the planning proposal proceeding because:

- it will broaden the range of housing choice;
- is capable of being connected to existing infrastructure; and
- provides an appropriate density of development within an established urban area within close proximity to jobs, shops, services, public transport and open space.

Signature:



Printed Name:

Tim ARCHER

Date:

24.11.15