



northern
beaches
council

PLANNING PROPOSAL

Amendments to Manly Local Environmental Plan 2013

**Amendments to rezone the Rear of 88 Bower St,
Manly from RE1 Public Recreation to C4
Environmental Living and apply associated map
amendments**

October 2020

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Background

Site Description and Existing Use



Figure 1. Site location

The subject site of this Planning Proposal is located at the rear of 88 Bower St, Manly (the site) and is legally described as Lot 1 in DP 1244511 with an area of 56.8m². It is currently used as private open space and associated landscaping for the two/three storey house at 88 Bower St.

The site has a frontage to Marine Parade to the north and east, and adjoins 92 Bower St to the west which contains a three storey residential flat building. 88 Bower St is located immediately south of the site and contains a two/three storey house. The site is currently used as private open space for the property at 88 Bower St and provides pedestrian access from Marine Parade to 88 Bower St.



Figure 2. The site from Marine Parade (left) and the site and North façade of the house at 88 Bower St, Manly (right).

Site History and Ownership

The site is currently owned by the proponent who purchased the site from the Department of Industry - Lands (DoI – Lands) on 28 August 2018. The proponent also owns the adjoining property at 88 Bower St.

The proponent currently leases the site to the occupants of 88 Bower St. Prior to the disposal of the site, the Crown leased the site to various occupants of 88 Bower St under a Permissive Occupancy Licence for the purposes of lawn area, footpath, rockery and beautification since 1964. The site is reclaimed foreshore land and was originally below the mean high water mark before associated works on surrounding residential development and public foreshore improvements.

In 2011, the Archdiocese Trustees approached DoI – Lands to purchase the site with the intention to consolidate the subject site with 88 Bower St, Manly. DoI – Lands agreed to investigate a potential direct private sale.

DoI - Lands wrote to Manly Council in January 2016 to seek Council's view to establish 'whether Council may have any interests and/or objections to the sale of the subject area'. No objection to the sale was received by DoI – Lands from Manly Council and DoI – Lands agreed to the direct sale of the site and waived the need for a land assessment for the following reasons:

- The site is considered surplus to public and government requirements.
- The site as a standalone lot is severely constrained due to its small size and location and is only considered of value to the landowner of the adjoining property at 88 Bower St.
- The site has no significant public recreation or environmental attributes.
- There are no Aboriginal Land Claims registered
- The sale of the site would not restrict public access to the remainder of the Crown Land contained within Reserve 31732 for Public Recreation and Reserve 1028748 for surfing recreation.
- The site has been used as private open space and fenced in backyard lawn since 1964 and is unlikely to be perceived as public land use.
- Even if ungated the land being a small area mostly enclosed within adjoining private uses, does not offer much public amenity or value.
- The sale of the land would not impact on the public use of adjoining Crown Land and reserves and is not required for access to waterways, recreation scenic protection, re-vegetation or soil conservation purposes.

The subject site previously formed parts of two larger lots (Lot 7338 DP 1154560 and Lot 7336 DP 1153371) and two land reservations (Shelley Beach Reserve and Manly Freshwater National Surfing Reserve). A new lot was registered to reflect the boundaries of the site on 13 July 2018 and the land reservations were revoked after the sale of the site was approved on 29 June 2018.

Part 1 – Objectives or Intended Outcomes

The Planning Proposal seeks to amend the Manly Local Environmental Plan 2013 to enable the orderly and economic use of the site for residential purposes, consistent with the site's private ownership and adjoining uses.

Part 2 – Explanation of Provisions

The proposed outcome will be achieved by:

1. Amending the Manly Local Environmental Plan 2013 land zoning map (LZN_006) from RE1 Public Recreation to C4 Environmental Living in accordance with the proposed land zoning map in Part 4 of this report.
2. Amending the Manly Local Environmental Plan 2013 lot size map (LSZ_006) to apply a minimum lot size of 500m² in accordance with the proposed lot size map in Part 4 of this report.
3. Amending the Manly Local Environmental Plan 2013 height of buildings map (HOB_006) to apply a maximum height of 8.5m in accordance with the proposed height of buildings map in Part 4 of this report.
4. Amending the floor space ratio map (FSR_006) to apply a maximum floor space ratio of 0.45:1 in accordance with the proposed floor space ratio map in Part 4 of this report.

Part 3 – Justification

Section A – Need for the Planning Proposal

1. Is the Planning Proposal a result of an endorsed Local Strategic Planning Statement, strategic study or report?

NO

The Planning proposal is not the result of any endorsed Local Strategic Planning Statement, strategic study or report. The planning proposal responds to:

- the disposal of the site into private ownership in 2018
- the landowner's intention to consolidate the site and align the sites zoning with the adjoining property at 88 Bower St
- its status as surplus to government and public needs.

2. Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

YES

The planning proposal will allow the orderly and economic use and development of the land in conjunction with the adjoining principal residential property (88 Bower St, Manly) and is the most appropriate recourse for achieving the objectives of the proposal.

Section B – Relationship to Strategic Planning Framework

3. Will the Planning Proposal give effect to the objectives and actions of the applicable regional, or district plan or strategy (including any exhibited draft plans or strategies)?

YES

Greater Sydney Region Plan – A Metropolis of Three Cities

The proposal supports the following objectives outlined in the *Greater Sydney Region Plan*:

Table 1. Consistency with relevant priorities in the *Greater Sydney Region Plan*:

Relevant Planning Priorities	Consistency
<i>Objective 10 – Greater housing supply</i>	The proposal will support residential uses on the site.
<i>Objective 11 – Housing is more diverse and affordable</i>	The proposal will support residential uses on the site.
<i>Objective 14 – Integrated land use and transport creates walkable and 30-minute cities</i>	The proposal will support residential uses on a site close to public transport, jobs, public services and open space.

<i>Objective 31 – Public open space is accessible, protected and enhanced</i>	The proposed amendments would not impact access to surrounding open space and reserves.
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North District Plan

The proposal supports the following priorities outlined in the *North District Plan*:

Table 2. Consistency with relevant priorities in the *North District Plan*:

Relevant Planning Priorities	Consistency
<i>Planning Priority N1 – Planning for a city supported by infrastructure (a 30-minute city)</i>	The proposal would provide for residential accommodation in an accessible and well-serviced location to support a 30-minute city
<i>Planning Priority N5 – Providing housing supply, choice and affordability, with access to jobs, services and public transport</i>	The proposal would provide for residential accommodation close to jobs, services and public transport.

a) Does the proposal have site-specific merit, having regard to the following?

Table 3. Commentary on site-specific merit

<i>The natural environment (including known significant environmental values, resources or hazards).</i>	The site has been identified as generally affected by potential coastal inundation. The planning proposal is supported by coastal engineering advice (see Attachment A) which found that potential impacts of coastal inundation could be managed through various mitigation measures e.g. elevated floor levels, setbacks and/or wave rump trip barriers and that future development at the site could be designed to have an acceptably low risk of damage by coastal processes and hazards over an acceptably long life.
<i>The existing uses, approved uses, and likely future uses of land in the vicinity of the proposal.</i>	The proposed amendments will enable the site to continue to be used as private open space and support and align with surrounding residential uses.
<i>The services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision.</i>	The site is already supported by adequate services and infrastructure serving the surrounding area.

4. Will the Planning Proposal give effect to a Council's endorsed Local Strategic Planning Statement, or another endorsed local strategy or strategic plan?

The planning proposal will give effect to *Towards 2040*, the Northern Beaches Local Strategic Planning Statement (LSPS) as outlined in the table below.

Table 4. Consistency with the LSPS

Relevant Planning Priorities	Comment
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<u>Landscape</u> <i>Priority 1 – Healthy and valued coast and waterways</i> <i>Priority 3 – Protected scenic and cultural landscapes</i> <i>Priority 6 – High quality open space for recreation</i>	<p>Due to the relatively enclosed position of the irregularly shaped site, the proposed amendments will not affect access to surrounding recreation areas, reserves and foreshore. The site has not been used for public access to surrounding open space and recreation areas.</p> <p>The proposed amendments will have minimal impact on the adjacent coastline and waterway, surrounding scenic and cultural landscapes and open space for recreation.</p>
<u>Resilience</u> <i>Priority 8 – Adapted to the impacts of natural and urban hazards and climate change</i>	<p>The proposed amendments are supported by coastal engineering advice see (Attachment A) which found that future development on the site as consolidated with the adjoining 88 Bower St could be designed to have an acceptably low risk of damage from impacts of climate change including coastal inundation and sea level rise.</p>
<u>Housing</u> <i>Priority 15 – Housing supply, choice and affordability in the right locations</i>	<p>The planning proposal provides for the provision of additional land for residential purposes. The site is located in a well-serviced and accessible location.</p>
<u>Great Places</u> <i>Priority 18 – Protected, conserved and celebrated heritage</i>	<p>The proposed amendments will have minimal impact on surrounding heritage items. The site is not listed as a heritage item and is not located within a heritage conservation area. There are also no Aboriginal land claims registered on the site.</p>

5. Is the Planning Proposal consistent with applicable State Environmental Planning Policies?

State Environmental Planning Policy No. 55 – Remediation of Land

The site is reclaimed land and has historically been used for landscaping works and open space adjacent to residential properties and is therefore unlikely to be affected by contamination.

State Environmental Planning Policy (Coastal Management) 2018 (SEPP Coastal)

The site is located within a “coastal environment area” and “coastal use area” as mapped in SEPP Coastal where the consent authority must consider whether a proposed development is likely to cause adverse impacts as outlined in the SEPP. Coastal engineering advice (**Attachment A**) prepared by Horton Coastal Engineering reviewed the Planning Proposal against the provisions in SEPP Coastal and found that any future development on the site consolidated with 88 Bower St, under the proposed amendments could be designed and sited to satisfy the requirements of the SEPP.

Table 5: Compliance with State Environmental Planning Policies (SEPPs)

SEPPs (as at October 2020)		Applicable	Consistent
19	Bushland in Urban Areas	No	N/A

SEPPs (as at October 2020)		Applicable	Consistent
33	Hazardous and Offensive Development	No	N/A
44	Koala Habitat Protection	No	N/A
47	Moore Park Showground	No	N/A
50	Canal Estate Development	No	N/A
64	Advertising and Signage	No	N/A
65	Design Quality of Residential Apartment Development	No	N/A
	(Aboriginal Land) 2019	No	N/A
	(Building Sustainability Index: BASIX) 2004	No	N/A
	(Resilience and Hazards) 2021	Yes	Yes
	(Concurrences) 2018	No	N/A
	(Education Establishments and Child Care Facilities) 2017	No	N/A
	(Exempt and Complying Development Codes) 2008	No	N/A
	(Gosford City Centre) 2018	No	N/A
	(Housing) 2021	No	N/A
	(Infrastructure) 2007	No	N/A
	(Kosciuszko National Park – Alpine Resorts) 2007	No	N/A
	(Kurnell Peninsula) 1989	No	N/A
	(Mining, Petroleum Production and Extractive Industries) 2007	No	N/A
	(Miscellaneous Consent Provisions) 2007	No	N/A
	(Penrith Lakes Scheme) 1989	No	N/A
	(Primary Production and Rural Development) 2019	No	N/A
	(State and Regional Development) 2011	No	N/A
	(State Significant Precincts) 2005	No	N/A
	(Sydney Drinking Water Catchment) 2011	No	N/A
	(Sydney Region Growth Centres) 2006	No	N/A
	(Three Ports) 2013	No	N/A
	(Urban Renewal) 2010	No	N/A
	(Vegetation in Non-Rural Areas) 2017	No	N/A
	(Western Sydney Employment Area) 2009	No	N/A
	(Western Sydney Parklands) 2009	No	N/A
Sydney Regional Environmental Plans (Deemed SEPPs):			
8	(Central Coast Plateau Areas)	No	N/A
9	Extractive Industry (No 2 -1995)	No	N/A
16	Walsh Bay	No	N/A
20	Hawkesbury – Nepean River (No 2 – 1997)	No	N/A
24	Homebush Bay Area	No	N/A
26	City West	No	N/A
30	St Marys	No	N/A
33	Cooks Cove	No	N/A
	(Sydney Harbour Catchment) 2005	No	N/A

Direction 2.1: Environment Protection Zones

The site does not contain any threatened/endangered species populations or ecological communities or their habitats.

Direction 2.2: Coastal Management

The site has been identified as being generally affected by coastal inundation by the *Manly Ocean Beach and Cabbage Tree Bay Coastline Hazard Definition Study 2003*. Therefore the

planning proposal is inconsistent with item 5 of Direction 2.2 – Coastal Management which states that a planning proposal must not rezone land which would enable increased development or more intensive land-use on land that has been identified as land affected by current or future coastal hazard in a Local Environmental Plan, development control plan, study or assessment by or on behalf of the relevant planning proposal authority.

Direction 2.2 does allow for planning proposals to be inconsistent with the Direction if it can be satisfied that the provisions of the planning proposal that are inconsistent are of minor significance. The proposed rezoning is considered of minor significance since the site would be subject to planning controls for example, setbacks and foreshore scenic protection area provisions, which would preclude any significant intensification on the site.

Coastal engineering advice (**Attachment A**) prepared by Horton Coastal Engineering reviewed the Planning Proposal against the provisions in SEPP Coastal and found that future development at the site could be designed to have an acceptably low risk of being damaged by coastal processes and hazards, such that the planning proposal should not be precluded from a coastal engineering perspective.

Direction 2.3: Heritage Conservation

The site is not identified as a heritage item and is not located within a heritage conservation area. The proposed amendments would have minimal impact on nearby heritage items of the site including Heritage Item No. I167 (Fairy Bower Pool) and Landscape Item No. I168 (Ocean Foreshores), as they are not in the immediate vicinity.

Direction 2.4: Recreation Vehicle Areas

The planning proposal does not enable land to be developed for the purpose of a recreation vehicle area.

Direction 3.1: Residential Zones

The proposed amendments support the provision of housing on the site and are consistent with the objectives of Direction 3.1.

Direction 3.2: Caravan Parks and Manufactured Home Estates

The planning proposal does not include provisions for caravan parks and manufactured home estates.

Direction 3.4: Integrating Land Use and Transport

The proposed amendments are consistent with Direction 3.4 as they support the provision of residential accommodation in an accessible location within a walkable distance to services, jobs and public transport.

Direction 6.1: Approval and Referral Requirements

The planning proposal does not include any provisions that require unnecessary requirements for concurrence, consultation or referrals.

Direction 6.2: Reserving Land for Public Purposes

As part of the site's disposal into private ownership, the reservations applying to the site were revoked as they were no longer required for acquisition and were considered surplus to government and public requirements.

Direction 6.3: Site Specific Provisions

The proposed amendments are consistent with the adjoining lot at 88 Bower St and do not include any unnecessarily restrictive site specific planning controls.

Table 6: Compliance with Ministerial Directions

Directions (as at October 2020)		Applicable	Consistency
1	Employment and Resources		
1.1	Business and Industrial Zones	No	N/A
1.2	Rural Zones	No	N/A
1.3	Mining, Petroleum Production and Extractive Industries	No	N/A
1.4	Oyster Aquaculture	No	N/A
1.5	Rural Lands	No	N/A
2	Environment and Heritage		
2.1	Environment Protection Zones	Yes	N/A
2.2	Coastal Management	Yes	No
2.3	Heritage Conservation	Yes	Yes
2.4	Recreation Vehicle Areas	Yes	Yes
2.5	Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEP's	No	N/A
2.6	Remediation of Contaminated Land	No	N/A
3	Housing, Infrastructure and Urban Development		
3.1	Residential Zones	Yes	Yes
3.2	Caravan Parks and Manufactured Home Estates	Yes	Yes
3.4	Integrating Land Use and Transport	Yes	Yes
3.5	Development Near Licensed Aerodromes	No	N/A
3.6	Shooting Ranges	No	N/A
3.7	Reduction in non-hosted short term rental accommodation period	No	N/A
4	Hazard and Risk		
4.1	Acid Sulfate Soils	No	N/A
4.2	Mine Subsidence and Unstable Land	No	N/A
4.3	Flood Prone Land	No	N/A
4.4	Planning for Bushfire Protection	No	N/A
5	Regional Planning		
5.2	Sydney Drinking Water Catchments	No	N/A
5.3	Farmland of State and Regional Significance on the NSW Far North Coast	No	N/A
5.4	Commercial and Retail Development along the Pacific Highway, North Coast	No	N/A
5.9	North West Rail Link Corridor Strategy	No	N/A
5.10	Implementation of Regional Plans	No	N/A
5.11	Development of Aboriginal Land Council land	No	N/A
6	Local Plan Making		

Directions (as at October 2020)		Applicable	Consistency
6.1	Approval and Referral Requirements	Yes	Yes
6.2	Reserving Land for Public Purposes	Yes	Yes
6.3	Site Specific Provisions	Yes	Yes
7	Metropolitan Planning		
7.2	Implementation of Greater Macarthur Land Release Investigation	No	N/A
7.3	Parramatta Road Corridor Urban Transformation Strategy	No	N/A
7.4	Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	No	N/A
7.5	Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	No	N/A
7.6	Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	No	N/A
7.7	Implementation of Glenfield to Macarthur Urban Renewal Corridor	No	N/A
7.8	Implementation of Western Sydney Aerotropolis Interim Land Use and Infrastructure Implementation Plan	No	N/A
7.9	Implementation of Bayside West Precincts 2036 Plan	No	N/A
7.10	Implementation of Planning Principles for the Cooks Cove Precinct	No	N/A

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?**

NO

The site is urbanised containing a lawn, path, rockery and fencing and is unlikely to contain critical habitats or accommodated threatened species, populations or ecological communities.

- 8. Are there any other likely environmental effects as a result of the Planning Proposal and how are they proposed to be managed?**

Risks associated with potential coastal inundation have been explored in coastal engineering advice (**Attachment A**) prepared by Horton Coastal Engineering. The advice finds that these risks can be mitigated through design measures for example floor levels and wave run-up trip barriers.

9. Has the Planning Proposal adequately addressed any social and economic effects?

YES

The proposed amendments will not have any adverse social or economic effects on the surrounding area. The site is considered to only be of value to the occupants and owner of the adjoining property at 88 Bower St, Manly.

Section D – State and Commonwealth Interests

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

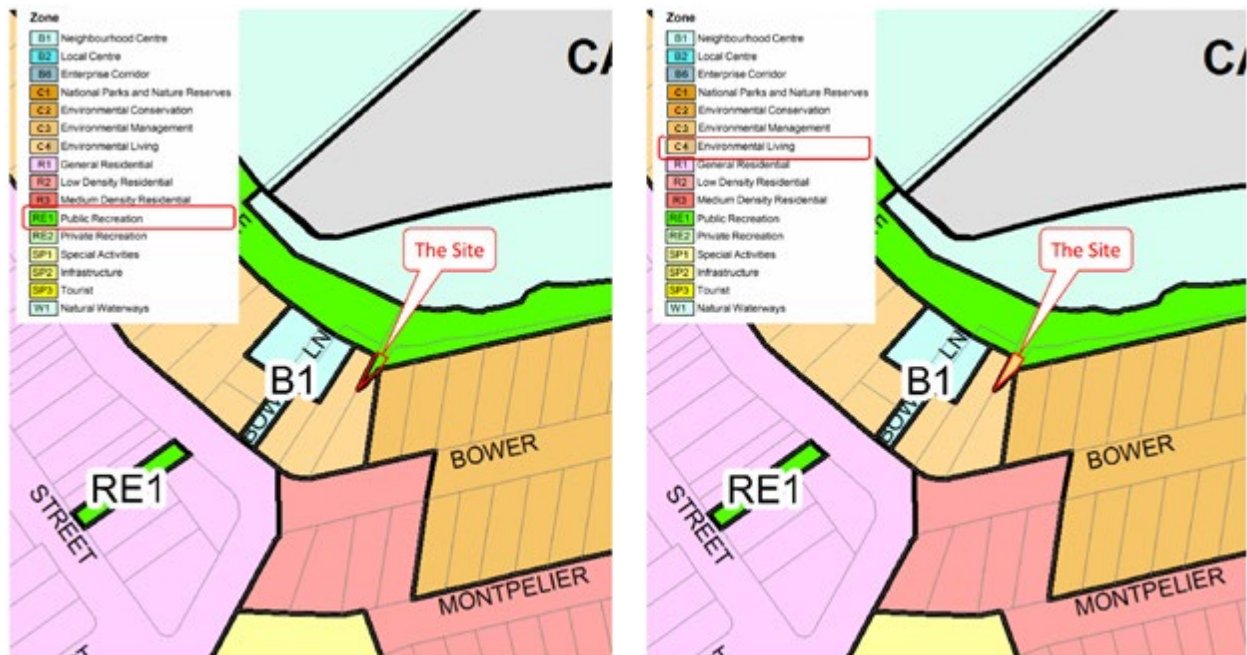
YES

It is unlikely that the proposed amendments will require any new additional services to support the site as it is located within an established residential area with access to existing public infrastructure and services.

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

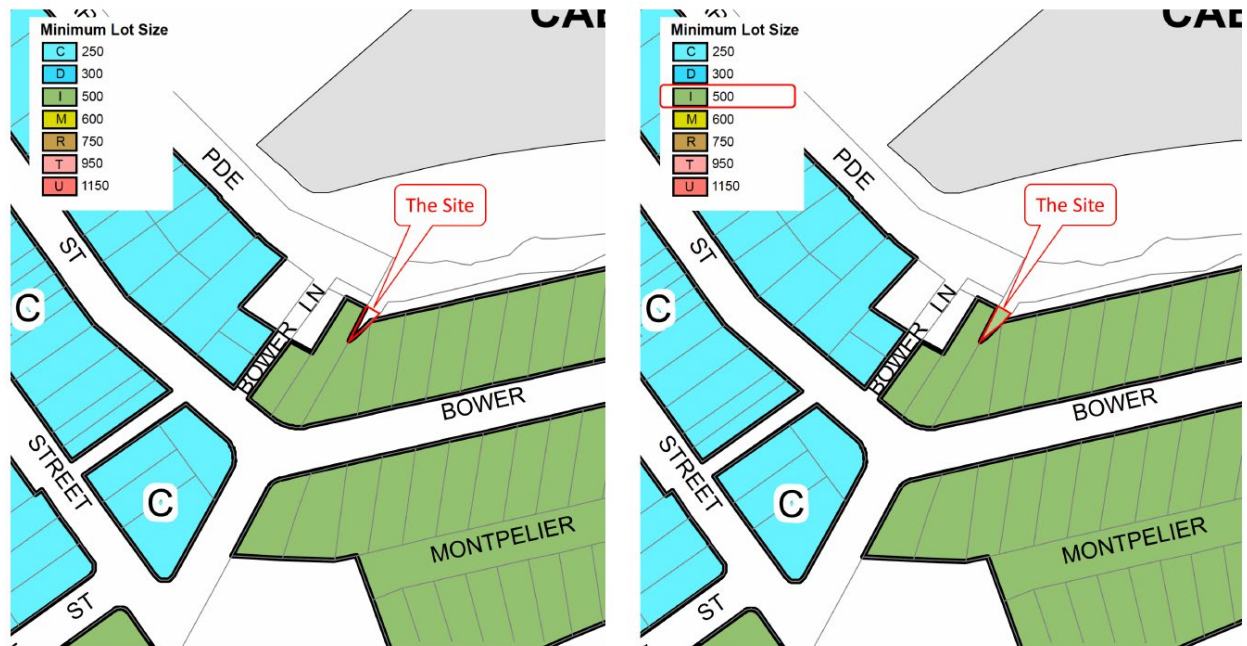
The Planning Proposal is being prepared in accordance with consultation guidelines and provisions prepared by the Department of Planning, Industry and Environment and all statutory consultation will occur in accordance with the requirements of any future Gateway Determination, including any State or Commonwealth authorities.

Part 4 – Maps

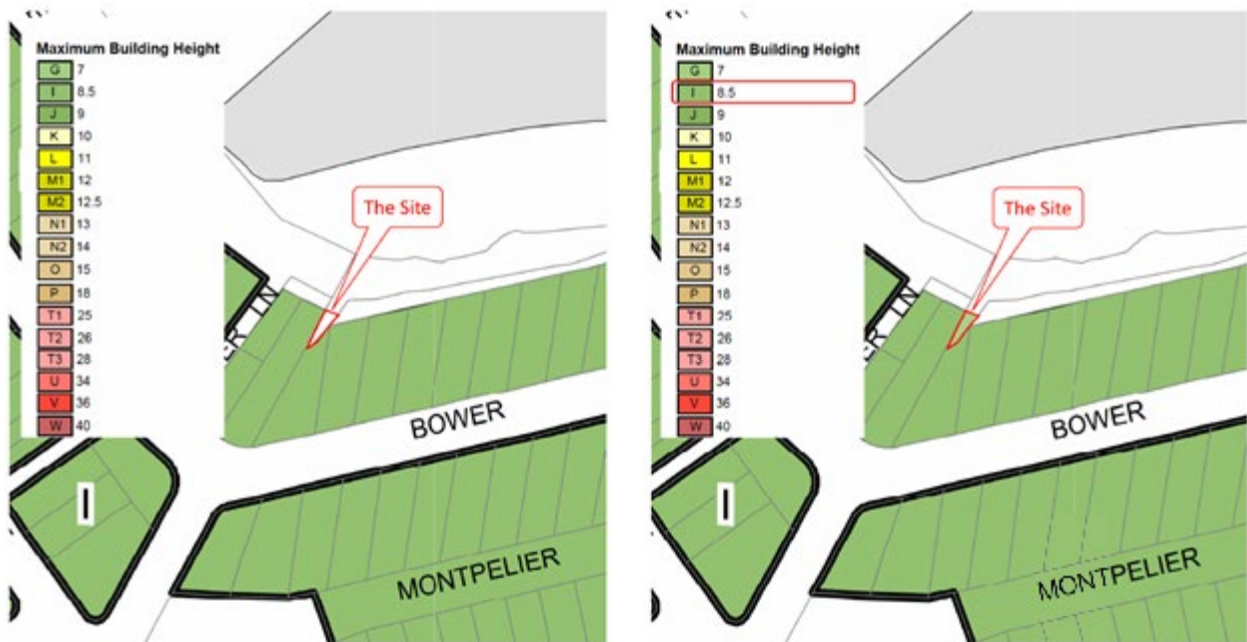


Map 1. Existing site zoning (left) and proposed zoning (right)

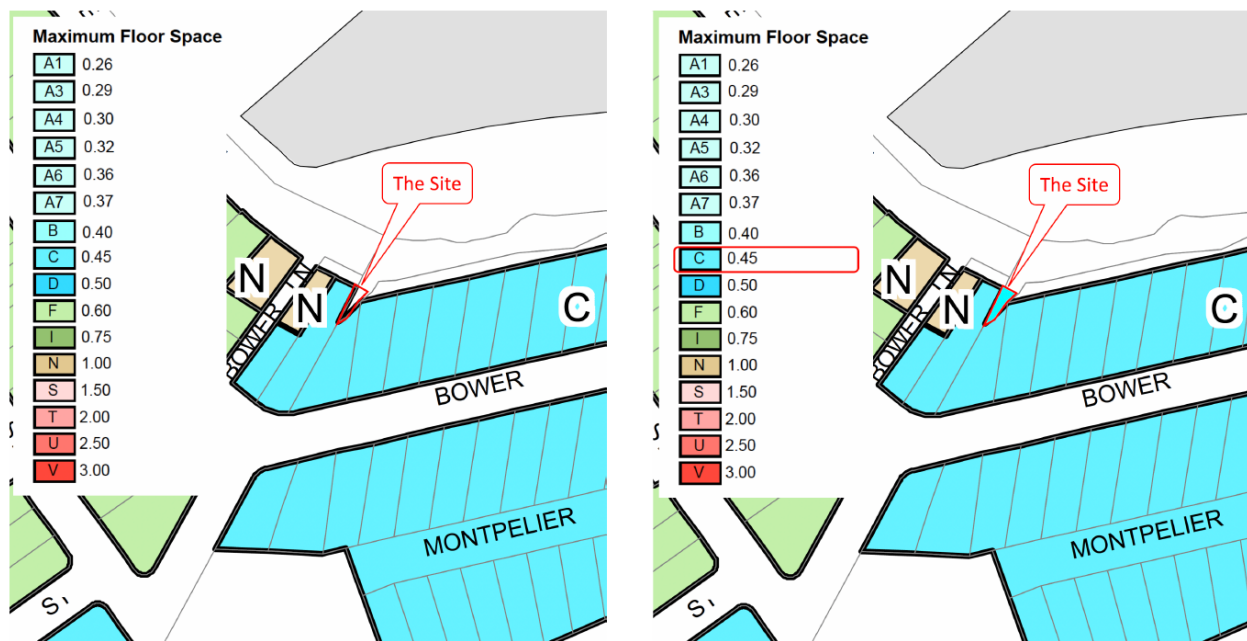
Note: On the 1st December 2021 the NSW government renamed Environmental Zones to Conservation Zones under clause 2.1 Land use zones of the Standard Instrument – Principal Local Environmental Plans.



Map 2. Existing minimum lot size (left) and proposed minimum lot size (right)



Map 3. Existing maximum building height (left) and proposed maximum building height (right)



Map 4. Existing maximum floor space ratio (left) and proposed maximum floor space ratio (right)

Part 5 – Community Consultation

Non Statutory Exhibition

Council placed the Applicant's Planning Proposal on non-statutory public exhibition in accordance with the Northern Beaches Community Participation Plan from 31 August 2020 – 14 September 2020] (2 weeks). Notification included:

- Letters to land owners and occupiers within the vicinity of the subject site including:
 - Properties at 7-9 Marine Parade, Manly
 - 3 Bower Lane, Manly
 - 1 Bower Lane, Manly
 - 95 Bower St, Manly
 - Properties at 94 Bower St, Manly
 - 5 Marine Pde, Manly
 - Properties at 92 Bower St, Manly
 - 88 Bower St, Manly
 - 86 Bower St, Manly
 - Properties at 82-84 Bower St, Manly
 - 80 Bower St, Manly
- Electronic copies of the exhibition material on Council's website
- Emails to registered community members who have listed their interest on Council's Community Engagement Register

3 submissions were received in response to the public exhibition period (see **Attachment B**).

Key issues raised included:

- scarcity of public recreation land
- loss of amenity caused by proposed rezoning
- potential for land to be used for public uses in the future
- opposition to historical and potential future use of land for private purposes.

There have been no matters raised of such significance that should prevent the proposal proceeding to Gateway determination.

Post Gateway Determination Statutory Exhibition

Council placed the Applicant's Planning Proposal on statutory public exhibition in accordance with the Northern Beaches Community Participation Plan from 17 January 2022 to 20 February 2022 (28 days, requirement of a minimum of 14 days). During this time property owners and occupiers in adjacent properties were notified via post, a project page on Council's YourSay webpage, and a notification sign was placed on the main frontage of the site.

Notification included:

- Letters to land owners and occupiers within the vicinity of the subject site including:
 - Properties at 7-9 Marine Parade, Manly
 - 3 Bower Lane, Manly
 - 1 Bower Lane, Manly
 - 95 Bower St, Manly
 - Properties at 94 Bower St, Manly
 - 5 Marine Pde, Manly

- Properties at 92 Bower St, Manly
 - 88 Bower St, Manly
 - 86 Bower St, Manly
 - Properties at 82-84 Bower St, Manly
 - 80 Bower St, Manly
- Notification of exhibition letters were sent to the original submitters
 - Electronic copies of the exhibition material on Council's website
 - Emails to registered community members who have listed their interest on Council's Community Engagement Register

2 submissions were received in response to the public exhibition period.

Key issues raised included:

- Identifying the site does not have potential for development
- Requesting the sites planning status should not be modified
- Request that any areas zoned recreation should remain recreation
- The potential for rezoning to increase pressure on existing resources.

The issues raised are not supported by evidence, the submissions stating only that the current zoning should remain public recreation due to pressure on the surrounding lands for recreational space.

The submissions do not acknowledge current private ownership of the site, and that the proposal is for a change in zoning, not for a change from public to private ownership. One submission acknowledges the site has no further potential for development under the proposed C4 Environmental Living zone.

There have been no matters raised of such significance that should prevent the proposal proceeding to Gateway determination.

A public hearing was not required.

Part 6 – Project Timeline

Task	Anticipated timeframe
Commencement date (Amended Gateway Determination)	December 2021
Timeframe for the completion of required technical information	N/A
Timeframe for government agency consultation (pre and post exhibition as required by Gateway determination)	N/A
Commencement and completion dates for public exhibition period	January 17 to February 20 2022
Dates for public hearing (if required)	N/A
Timeframe for consideration of submissions	February-March 2022
Timeframe for the consideration of a proposal post exhibition	February-March 2022
Date of submission to the Department to finalise the LEP	April 2022
Anticipated date the local plan-making authority will make the plan (if authorised)	N/A
Anticipated date the local plan-making authority will forward to the PCO for publication	May 2022