



IRF24/444

## Gateway determination report – PP-2024-270

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78 Port Hacking Road, Sylvania

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# Acknowledgment of Country

The Department of Planning, Housing and Infrastructure acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

## Contents

<b>1</b>	<b>Planning proposal.....</b>	<b>1</b>
1.1	Overview.....	1
1.2	Planning Proposal.....	<b>Error! Bookmark not defined.</b>
1.3	Objectives of planning proposal .....	1
1.4	Explanation of provisions .....	1
1.5	Site description and surrounding area.....	2
1.6	. Mapping.....	3
1.7	Background .....	9
<b>2</b>	<b>Need for the planning proposal .....</b>	<b>9</b>
<b>3</b>	<b>Strategic assessment .....</b>	<b>9</b>
3.1	District Plan .....	9
3.2	Local Strategic Planning Statement .....	10
3.3	Local planning panel (LPP) recommendation.....	10
3.4	Section 9.1 Ministerial Directions .....	11
3.5	State environmental planning policies (SEPPs) .....	15
<b>4</b>	<b>Site-specific assessment .....</b>	<b>16</b>
4.1	Environmental.....	16
4.2	Social and economic.....	16
4.3	Infrastructure .....	16
<b>5</b>	<b>Consultation.....</b>	<b>16</b>
5.1	Community .....	16
5.2	Agencies.....	16
<b>6</b>	<b>Timeframe .....</b>	<b>17</b>
<b>7</b>	<b>Local plan-making authority .....</b>	<b>17</b>
<b>8</b>	<b>Assessment summary .....</b>	<b>17</b>
<b>9</b>	<b>Recommendation.....</b>	<b>17</b>

**Table 1 Reports and plans supporting the proposal**

Relevant reports and plans
Local Planning Panel Minutes
Planning and Growth Committee Minutes

# 1 Planning proposal

## 1.1 Overview

**Table 2 Planning proposal details**

<b>LGA</b>	Sutherland
<b>PPA</b>	Sutherland Shire Council
<b>NAME</b>	78 Port Hacking Road, Sylvania
<b>NUMBER</b>	PP-2024-270
<b>LEP TO BE AMENDED</b>	Sutherland Shire LEP 2015
<b>ADDRESS</b>	78 Port Hacking Road, Sylvania
<b>DESCRIPTION</b>	Lot 1 DP 1284163
<b>RECEIVED</b>	13/02/2024
<b>FILE NO.</b>	IRF24/444
<b>POLITICAL DONATIONS</b>	There are no donations or gifts to disclose and a political donation disclosure is not required
<b>LOBBYIST CODE OF CONDUCT</b>	There have been no meetings or communications with registered lobbyists with respect to this proposal

## 1.2 Objectives of planning proposal

The planning proposal applies to Lot 1 DP 1284163 which was formerly part of the road reserve for Port Hacking Road, Sylvania. Council advises that this part of the road reserve is occupied by landscaping, footpath and asphalt and has been informally utilised as a car park for the adjacent church and previously by a plant nursery.

The intended outcome of this planning proposal is to enable the future landowner formal use of the land that is currently road reserve. Council advises that it intends to sell the land to the adjacent landowner, the Coptic Church, for use as ancillary parking for the existing adjacent church.

The planning proposal contains objectives and intended outcomes that adequately explain the intent of the proposal.

## 1.3 Explanation of provisions

The planning proposal seeks to amend Sutherland Shire Local Environmental Plan (LEP) 2015 to rezone the site from SP2 Infrastructure (Classified Road) to R2 Low Density Residential and apply corresponding development standards as outlined in **Table 3** below.

**Table 3 Current and proposed controls**

Control	Current	Proposed
Zone	SP2 Infrastructure (Classified Road)	R2 Low Density Residential
Maximum height of the building	N/A	8.5m
Floor space ratio	N/A	0.55:1
Minimum lot size	N/A	700m <sup>2</sup>
Landscape Area	N/A	35%

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved.

It is noted that, although a *carpark* is prohibited in the R2 Low Density zone, the land could still be used for ancillary parking for the adjacent church, subject to development approval. The proposed R2 Low Density zoning is suitable under the circumstances as it is consistent with surrounding planning controls and land uses.

## 1.4 Site description and surrounding area

The site is legally described as Lot 1, DP 1284163 and is an irregularly shaped triangular lot, encompassing a total site area of approximately 926m<sup>2</sup>. The site forms part of the road reserve to the east of Port Hacking Road, Sylvania and is adjoined by 76-86 Port Hacking Road (Lot 2 DP 534574) and 88 Port Hacking Road (Lot 2, DP 613140). A site map is provided at **Figure 1**.

The site contains landscaping and asphalt and has traditionally been utilised as a car park for a former plant nursery and now the adjoining Coptic Orthodox Church.

The surrounding area is characterised by low density residential development.



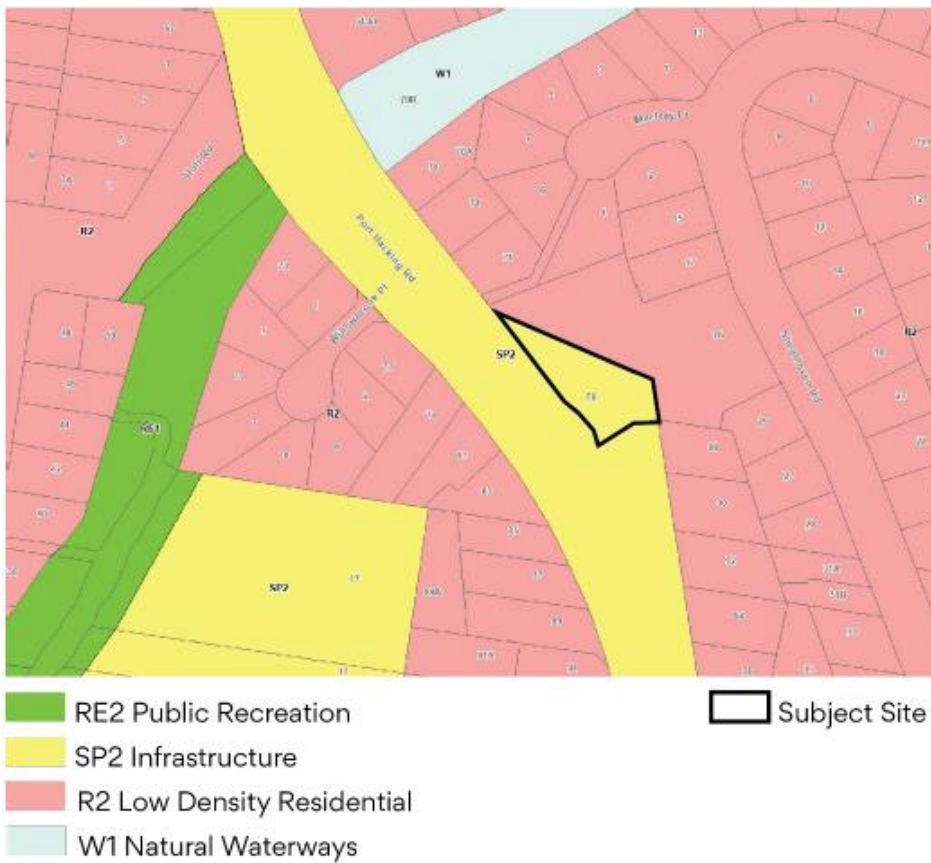
**Figure 1: Subject site (source: Mecone Mosaic/Nearmap 2023)**

## 1.5 . Mapping

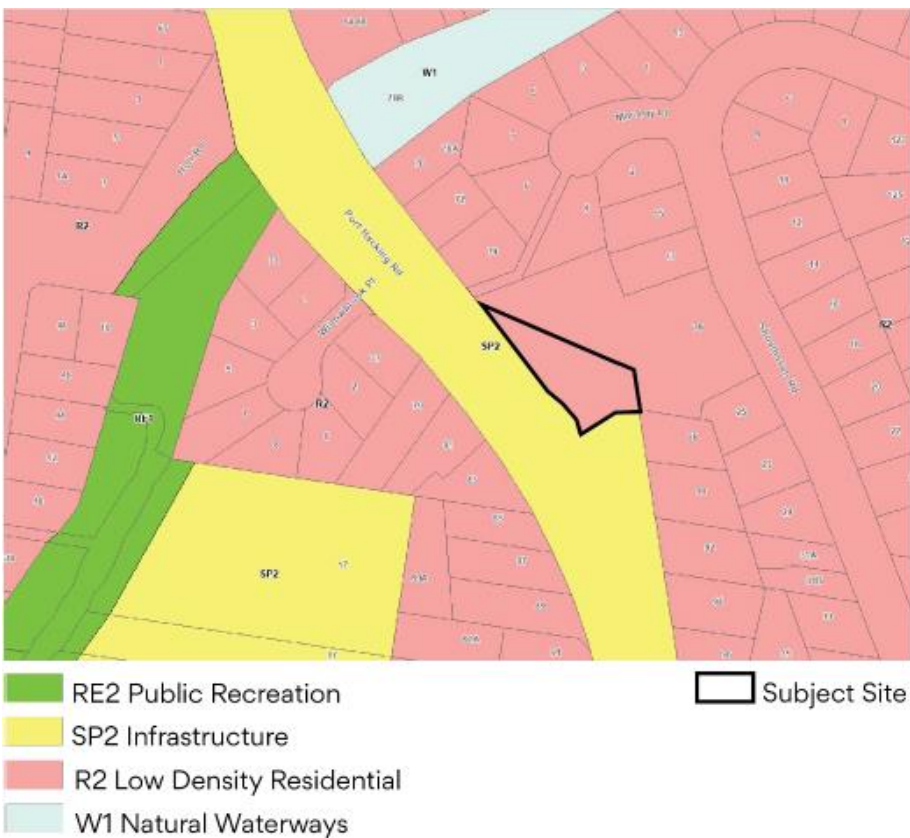
The planning proposal includes mapping (**Figures 2-11**) showing the proposed changes to the following maps of the Sutherland LEP 2015, which are suitable for community consultation:

- Land Zoning
- Height of Buildings
- Floor Space Ratio
- Landscape Area
- Minimum Lot Size.

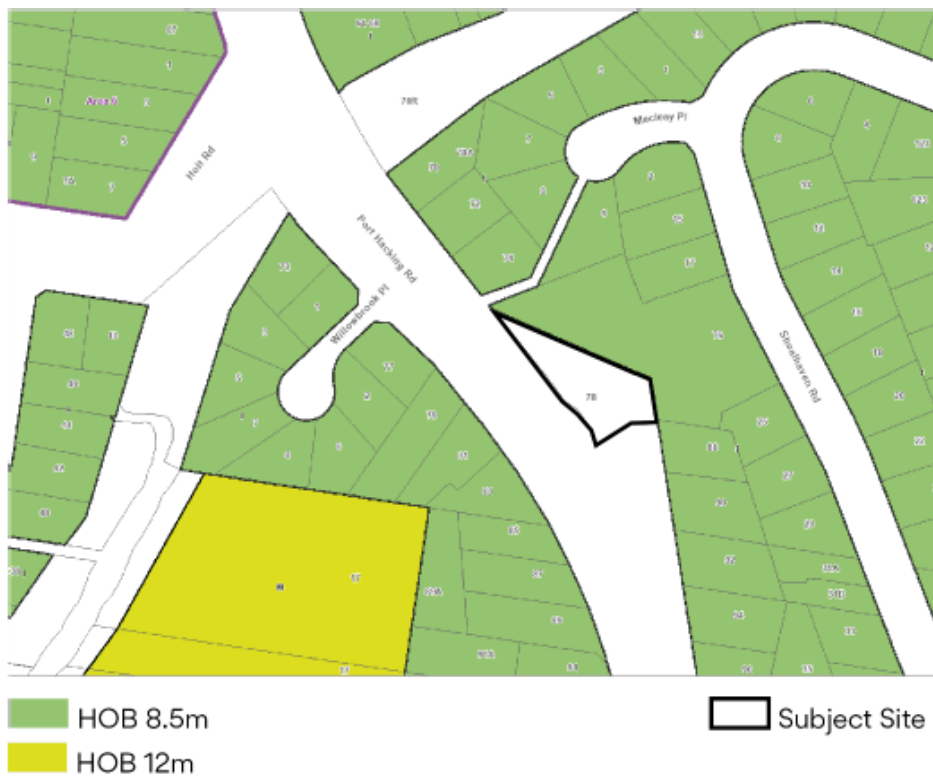




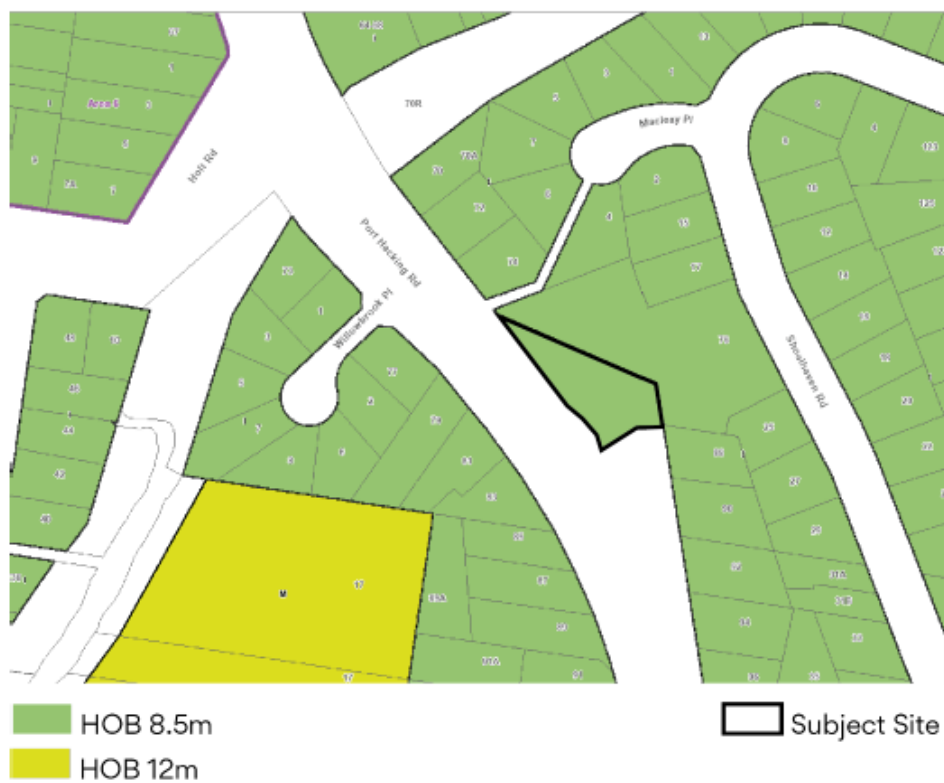
**Figure 2 Current zoning map (2023)**



**Figure 3 Proposed Zoning Map (Source: Planning Proposal 2023)**



**Figure 4 Current Height of building map (2023)**



**Figure 5 Proposed Height of Building Map (Source: Planning Proposal 2023)**





**Figure 6 Current Floor Space Ratio Map (2023)**



**Figure 7 Proposed floor space ratio map (Source: Planning Proposal 2023)**



**Figure 8 Existing Lot Size Map (2023)**



**Figure 9 Proposed Minimum Lot Size Map (Source: Planning Proposal 2023)**



**Figure 10 Existing Landscaped Area Map (2023)**



**Figure 11 Proposed Landscape Area Map (Source: Planning Proposal 2023)**

## 1.6 Background

Whilst Port Hacking Road is classified as a State road. In accordance with the *Roads Act 1993* Transport for NSW (TfNSW) is the authority responsible for the road infrastructure curb to curb whilst Council retains ownership and responsibility for the road reserve.

At its meeting of 16 November 2020, Council resolved that upon closure of the road reserve to prepare a planning proposal to rezone the land to R2 Low Density Residential and reclassify it as operational land to enable its sale to the adjacent Coptic Orthodox Church.

Whilst it is noted that Council's resolution indicated its intent to reclassify the site, this is not required as the site is already classified as operational land for the purposes of the *Local Government Act 1993*. Section 43 of the *Roads Act 1993* states that a public road that was formerly vested in the Council, on closing remains vested in the Council as operational land.

The planning proposal was reported to the Sutherland Local Planning Panel for advice on 12 December 2023

The planning proposal was considered by Council's Planning and Growth Committee on 5 February 2024, where it resolved under delegation to submit the planning proposal for Gateway determination.

## 2 Need for the planning proposal

The planning proposal is not the result of a strategy or report. The planning proposal states that it is the result of a Council resolution on 16 November 2020 relating to the road closer which has made the SP2 Infrastructure (Classified Road) zoning of the site redundant.

The rezoning of the land will allow the future owner (Coptic Orthodox Church) to purchase the site to use to support the adjacent church.

The Department is advised that the adjoining Orthodox Church has written to Council requesting to purchase the portion of the road reserve fronting its two properties in order to provide a more consistent street boundary and provide formal car parking for church patrons. Condition 3 of DA19/0343 for the Church limits attendees on Sundays to 112 people due to parking constraints. The condition also notes that this restriction will be reviewed should formalised car parking eventuate.

The proposed R2 Low Density Residential zoning and corresponding development standards is consistent with the land zoning of the surrounding land and considered the most orderly planning outcome. Whilst a car park is not a permissible land use in the proposed R2 Low Density Residential zone, it would be permissible as an ancillary use to the church. The specific details and impacts of any future car park would be assessed as part of a future development application.

Rezoning of land requires an amendment to the Sutherland Shire LEP 2025 which can be achieved through the planning proposal process. The planning proposal is considered to be the best means of achieving the intended outcomes, as the existing SP2 Infrastructure zoning is redundant and the proposed zone and development standards reflect its surrounding context and will enable the more efficient use of the adjoining church site.

## 3 Strategic assessment

### 3.1 Region plan

The Greater Sydney Region Plan – A Metropolis of Three Cities (the Region Plan), released by the NSW Government in 2018, integrates land use, transport and infrastructure planning and sets a 40-year vision for Greater Sydney as a metropolis of three cities. The Region Plan contains

objectives, strategies and actions which provide the strategic direction to manage growth and change across Greater Sydney over the next 20 years.

Under section 3.8 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) a planning proposal is to give effect to the relevant District Plan. By giving effect to the District Plan, the proposal is also consistent with the Regional Plan. Consistency with the District Plan is assessed in section 3.2 below.

## 3.2 District Plan

The site is within the South District and the Greater Sydney Commission released the South District Plan on 18 March 2018. The plan contains planning priorities and actions to guide the growth of the district while improving its social, economic and environmental assets.

The planning proposal is consistent with the priorities for infrastructure and collaboration, liveability, productivity, and sustainability in the plan as outlined below.

The Department is satisfied the planning proposal gives effect to the District Plan in accordance with section 3.8 of the EP&A Act. In particular the planning proposal is consistent with the following priorities and actions:

- Planning Priority S3: Providing services and social infrastructure to meet people's changing needs
- Planning Priority S4: Fostering healthy, creative, culturally rich and socially connected communities

The planning proposal states, that with the closure of this part of the road reserve, there is no public benefit to it remaining zoned SP2 (Classified Road). The planning proposal will facilitate economic and orderly use of the land and formalise its use as additional parking for the adjacent Coptic Orthodox Church.

## 3.3 Local Strategic Planning Statement

The proposal states that it is consistent with the following local plans and endorsed strategies. It is also consistent with the strategic direction and objectives, as stated in the table below:

**Table 6 Local strategic planning assessment**

Local Strategies	Justification
Planning Priority 2: Managing traffic congestion and parking	Council states in the planning proposal that increased parking provision deriving from the planning proposal will assist members of the public who are reliant on private vehicular transport with access to off street parking when visiting the Church. Council also notes that there is access to public transport in proximity to the site.
Planning Priority 20: Urban Tree Canopy	Under the existing provisions of the Sutherland LEP 2015, there is no minimum landscaped area applying to the site. The planning proposal introduces a minimum landscaped area requirement of 35% which will increase protection to existing mature trees at the site.

## 3.4 Local planning panel (LPP) recommendation

At its meeting of 12 December 2023, the Sutherland LPP recommended that the planning proposal should progress to Gateway determination as it demonstrates strategic merit.

In its determination the Panel provided the following advice:

- Council undertake an assessment of onsite vegetation and determine an acceptable level of tree loss/retention.
- the proposal be supported by a preliminary concept of the proposed future use.
- highlighted the need for a preliminary site assessment given the proposed rezoning of SP2 Infrastructure to R2 Low Density Residential.

Council considered the LPP recommendation in its resolution on 16 November 2020.

## 3.5 Section 9.1 Ministerial Directions

The planning proposal's consistency with relevant section 9.1 Directions is discussed below:

**Table 7 9.1 Ministerial Direction assessment**

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.1 Implementation of Regional Plans	Consistent	<p>The objective of this direction is to give legal effect to the vision, land use strategy, goals, directions and actions contained in Regional Plans.</p> <p>The planning proposal is broadly consistent with the Region Plan, Eastern City District Plan and LSPS. Refer to section 3.2 for further assessment.</p>
3.2 Heritage Conservation	Consistent	<p>The objective of the direction is to conserve items, areas, objects and places of environmental and indigenous heritage significance.</p> <p>The site is not a heritage item or within a heritage conservation area under Schedule 5 of the Sutherland LEP 2015 nor in close proximity to an item. However, the planning proposal notes that the site is identified in the Sutherland Shire DCP 2015 as being of high archaeology sensitivity site for Aboriginal Heritage.</p> <p>The planning proposal states that any impacts can be managed through detail design and assessment as part of a future development application.</p> <p>The Department considers that the proposal has adequately considered its surrounding heritage context and the proposal does not reduce or affect the ongoing application of existing LEP provisions for heritage conservation. Clause 5.10 of the LEP applies to the site to ensure heritage impacts are considered as part of any future development application.</p> <p>The proposal is consistent with this Direction.</p>



Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
4.1 Flooding	Unresolved – Gateway conditions recommended	<p>This Direction seeks to ensure development of flood prone land is consistent with the Flood Risk Management Manual and ensure LEP provisions are commensurate with the flood behaviour and consider the potential impacts on and off the land.</p> <p>The direction applies as the site is mapped as partially flood prone and partially affected by in the PMF flood event (see <b>Figure 12</b>).</p> <p>The planning proposal is inconsistent with this direction as the site is partially identified as including flood prone land and seeks to rezone SP2 Infrastructure land to a residential zone.</p> <p>The direction provides that a planning proposal may be inconsistent if the Planning Secretary is satisfied the planning proposal is in accordance with a floodplain risk management study or plan. The planning proposal states that flood risk can be managed in accordance with the <i>Gwawley Bay Catchment Floodplain Risk Management Study and Plan 2015</i>. However, Council has provided no further detail to explain the flood risk and how it will be managed.</p> <p>Although the planning proposal is largely administrative in nature, it would still permit the potential for intensification of the site and apply a residential zoning. Accordingly, the requirements of this Direction need to be addressed in detail in the planning proposal prior to community consultation. The Flood Risk Management Manual (2023) and 2022 Flood Inquiry should also be addressed. A condition is recommended to this effect.</p> <p>Should Council's assessment identify an increase in flood risk, consultation should be undertaken by Council with the Environment and Heritage at the Department of Climate Change, Energy, the Environment and Water and the NSW State Emergency Service.</p> <p>Consistency with this direction remains unresolved until the planning proposal is updated to address the terms of the direction.</p>

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
4.4 Remediation of Contaminated Land	Unresolved – Gateway conditions recommended	<p>The planning proposal states that the direction is not applicable. Although the proposed future use is for a car park, the rezoning of the site to R2 Low Density Residential will permit a range of residential uses on land that is currently zoned SP2 Infrastructure.</p> <p>The direction requires that the planning proposal authority consider whether the land is contaminated and if so, that it be satisfied the land is suitable or can be made suitable for the purposes permitted within the proposed zone.</p> <p>As highlighted in the Sutherland LPP's advice, a preliminary site investigation should be undertaken and the planning proposal be updated to address the direction. A Gateway condition is recommended to this effect.</p> <p>Consistency with the direction is considered to be unresolved until further investigation is completed.</p>
4.5 Acid Sulfate Soils	Justified – minor inconsistency	<p>The objective of the direction is to avoid significant environmental impacts from the use of land that contains acid sulfate soils.</p> <p>The site is identified in the Sutherland Shire LEP 2025 as being affected by Class 3 and Class 5 on the Acid Sulfate Soils. An acid sulfates soil study has not been provided.</p> <p>Clause 6.1 of the LEP contains suitable provisions to ensure that acid sulfate soils can be appropriately considered and addressed as part of any future development application involving any excavation of the site. This includes a requirement for an Acid Sulfate Management Plan.</p> <p>The proposal is justifiably inconsistent with this direction.</p>

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
5.2 Reserving Land for Public Purposes	Unresolved	<p>The direction seeks to facilitate the provision of public services through reserving land for public purposes and also facilitates the removal of these reservations where no longer required.</p> <p>The planning proposal states that the direction is not applicable. However, the direction applies as the proposals seeks to rezone land that is zoned SP2 Infrastructure (Classified Road) and is under Council ownership.</p> <p>The terms of the direction state that a planning proposal must not alter or reduce existing zonings of land for public purposes without the approval of the public authority and Planning Secretary.</p> <p>As the planning proposal is Council initiated and formed on the basis of a Council resolution to progress the closure of the road reserve and subsequent sale of the land, it is considered that approval of the relevant public authority has been obtained.</p> <p>In order to obtain the agreement of the Secretary, the planning proposal will be required to be updated to include evidence of the closure of the road reserve in accordance with the <i>Roads Act 1993</i>.</p> <p>The Gateway determination includes a condition requiring Council to update the proposal to address consistency with the direction and evidence of the closure of the road reserve.</p>
6.1 Residential Zones	Consistent	<p>The direction seeks to encourage a variety and choice of housing types to provide for existing and future housing needs in a manner which efficiently utilises infrastructure and minimises the impact of residential development on the environment.</p> <p>Although the intent of the planning proposal is not to facilitate the development of the site for housing, the direction applies as it will permit a range of housing typologies through the rezoning of land to R2 Low Density Residential.</p> <p>The planning proposal is consistent with the direction as it encourages the provision of housing in an existing urban area which will allow for the efficient use of existing infrastructure.</p>

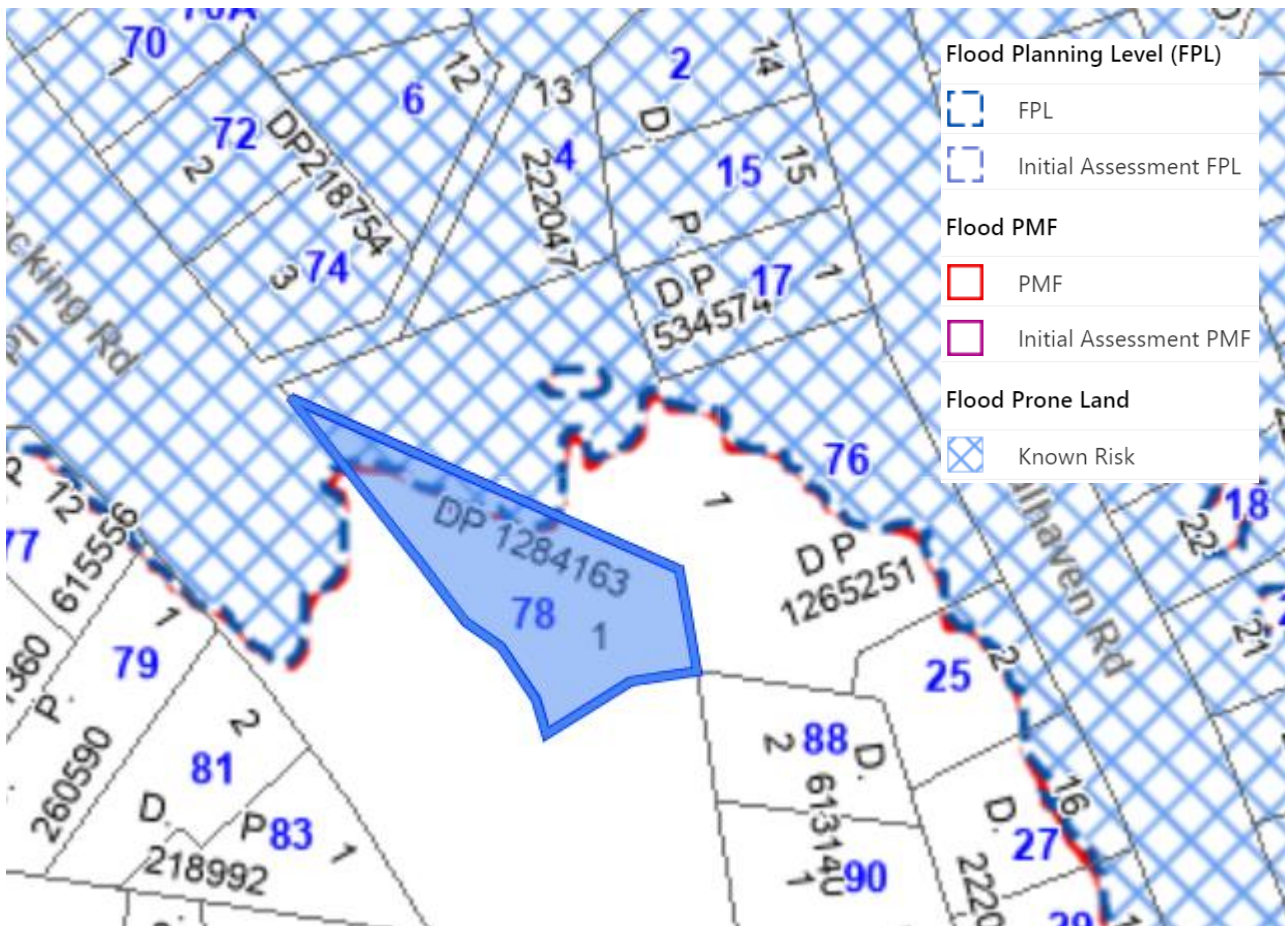


Figure 12: Sutherland Shire Council Flood Prone Land Map (Source: Sutherland Shire Council April 2024)

### 3.6 State environmental planning policies (SEPPs)

The planning proposal is consistent with all relevant SEPPs as discussed in the table below.

Table 8 Assessment of planning proposal against relevant SEPPs

SEPPs	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
SEPP (Transport and Infrastructure 2021)	Consistent	The site is zoned SP2 (Classified road) and has a frontage to Port Hacking Road. Whilst the proposed rezoning is not considered to hinder the application of the SEPP, it is recommended that consultation be undertaken with TfNSW.
SEPP (Housing) 2021	Consistent	The rezoning of the site to R2 Low Density Residential will result in the SEPP applying to the site. There are no inconsistencies anticipated to arise from the proposed rezoning.

SEPPs	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
SEPP (Resilience and Hazards) 2021	Consistent	The site is partially mapped on the Coastal Use Area and Coastal Environment Area Maps. The planning proposal does not introduce provisions which would hinder the application of the SEPP and the relevant matters will be considered as part of any future development application.

## 4 Site-specific assessment

### 4.1 Environmental

The site is not mapped as environmentally sensitive land and does not include any trees that are identified as endangered ecological communities. However, it is noted that the site contains a series of mature trees. At present there is no minimum landscaping requirement applying to the site.

The proposed provisions include the introduction of a minimum landscaped area requirement of 35% under clause 6.14 of the Sutherland LEP 2015. The introduction of a minimum landscaped provision is considered to provide adequate protection for vegetation contained within the site.

The proposal is unlikely to have any significant adverse environmental impacts.

### 4.2 Social and economic

The planning proposal will not result in significant adverse social or economic impacts. It will encourage the orderly economic use of the land.

### 4.3 Infrastructure

There is no significant infrastructure demand that will result from the planning proposal. There is existing access to public infrastructure such as water, sewer, electricity, and telephone services.

## 5 Consultation

### 5.1 Community

Council proposes a community consultation period of 28 days.

The planning proposal is categorised as standard under the LEP Making Guidelines (August 2023). Accordingly, a community consultation period of 20 working days is recommended and this forms part of the conditions of the Gateway determination.

### 5.2 Agencies

The proposal does not specifically identify which agencies will be consulted.

It is recommended that Transport for NSW be consulted on the planning proposal and given 30 working days to comment.

## 6 Timeframe

Council proposes a 6 month time frame to complete the LEP.

The LEP Plan Making Guidelines (August 2023) establishes maximum benchmark timeframes for planning proposal by category. This planning proposal is categorised as a standard proposal.

The Department recommends an LEP completion date of 28 February 2025 in line with its commitment to reducing processing times and with regard to the benchmark timeframes. A condition to the above effect is recommended in the Gateway determination.

## 7 Local plan-making authority

Council has advised that it would like to exercise its functions as a Local Plan-Making authority (LPMA).

The Department's LEP Making Guidelines recommend that Council be authorised as LPMA for planning proposals categorised as standard. However, given that Council has an interest in the sale of the land which will be facilitated by the planning proposal, to ensure that there is probity in the process it is recommended that Council is not authorised to be the LPMA for this proposal.

## 8 Assessment summary

The planning proposal is supported to proceed with conditions for the following reasons:

- The proposal is generally consistent with the strategic planning framework including the Eastern City District Plan and Council's Local Strategic Planning Statement.
- It will enable the orderly economic development of the land.
- It will enable the formalisation of the existing use of the site.
- The proposal does not contravene or hinder the application of any strategic planning policies.

As discussed in the previous sections 4 and 5, the proposal should be updated to address the relevant Section 9.1 Directions, including:

- 4.1 Flooding – Provide further detail and justification to address the terms of the Direction in the planning proposal prior to community consultation. The Flood Risk Management Manual (2023) and 2022 Flood Inquiry should also be addressed. Should this assessment identify an increase in flood risk, Council should consult with Environment and Heritage at the DCCEEW and with the NSW SES.
- 4.4 Remediation of Contaminated Land - Provide a preliminary site investigation and update the planning proposal to reflect its findings.
- 5.2 Reserving Land for Public Purposes - Provide documentation of the closure of the road reserve in accordance with the *Roads Act 1993* and update the planning proposal to address consistency with this Direction.

## 9 Recommendation

It is recommended the delegate of the Secretary:

- Agree that any inconsistency with section 9.1 Direction 4.5 Acid Sulfate Soils is justified.



- Note that the consistency with section 9.1 Directions 4.2 Flood, 4.4 Remediation of Contaminated Land and 5.2 Reserving Land for Public Purposes is unresolved until additional information is provided.

It is recommended the delegate of the Minister determine that the planning proposal should proceed subject to conditions.

The following conditions are recommended to be included on the Gateway determination:

1. The planning proposal is to be updated prior to consultation to:
  - Include a Preliminary Site Investigation undertaken by a suitably qualified professional to determine whether the site is suitable for residential zoning and update discussion of consistency with Section 9.1 Direction 4.4 Remediation of Contaminated Land.
  - Provide additional information on the closure of the road reserve in accordance with the *Roads Act 1993* and address consistency with section 9.1 Direction 5.2 Reserving Land for Public Purposes.
  - Provide further explanation to justify consistency with Direction 4.1 Flooding. The Flood Risk Management Manual (2023) and 2022 Flood Inquiry should also be addressed.
2. Consultation is required with the following public authorities:
  - Transport for NSW
3. The planning proposal should be made available for community consultation for a minimum of 20 working days.

Given the nature of the planning proposal, it is recommended that the Gateway not authorise council to be the local plan-making authority and that an LEP completion date of 28 February 2025 be included on the Gateway



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