

IRF NUMBER

Gateway determination report – PP-2024-928

Rezone and Reclassify Land at Winbourne Road Brookvale

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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.

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Table 1 Reports and plans supporting the proposal

Relevant reports and plans

Gateway Determination

Gateway Determination - Letter to Council

Attachment A: Planning Proposal Council Version

Attachment B: Planning Proposal – Independent Assessment (June 2024)

Attachment C: Planning Proposal Proponent Version

Attachment D: Council Meeting Minutes (30 July 2024)

Attachment E: Local Planning Panel Meeting Minutes (17 July 2024)

Attachment F: Infrastructure Assessment (25 March 2024)

Attachment G: Flooding Impact Risk Assessment (25 March 2024)

Attachment H: Contamination Assessment Report (2 May 2024)

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Northern Beaches
РРА	Northern Beaches Council
NAME	Rezone and Reclassify Land at Winbourne Road, Brookvale
NUMBER	PP-2024-928
LEP TO BE AMENDED	Warringah Local Environmental Plan 2011
ADDRESS	Land Between 39 & 41 Winbourne Road Brookvale
DESCRIPTION	Lot 2, DP 1174201
RECEIVED	9/08/2024
FILE NO.	IRF24/2065
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

1.2 Objectives of planning proposal

The planning proposal (Attachment A) contains objectives and intended outcomes that adequately explain the intent of the proposal.

The objectives of the planning proposal are to:

- To reclassify Lot 2 DP 1174201 in the Warringah Local Environmental Plan (LEP) 2011 from Community Land to Operational Land.
- To rezone Lot 2 DP 1174201 in the Warringah LEP from RE1 Public Recreation to E4 General Industrial.
- To introduce a minimum lot size of 4000 sqm for Lot 2 DP 1174201.
- To introduce a maximum building height of 11m for Lot 2 DP 1174201 .

The objectives of this planning proposal are clear and adequate.

1.3 Explanation of provisions

1.3.1 General Amendments

The planning proposal (**Attachment A**) seeks to amend the Warringah LEP 2011 by identifying the site under Schedule 4 Part 2 Land classified, or reclassified, as operational land—interests changed as (reclassifying land from community to operational):

Table 3 Proposed amendment to Schedule 4 Part 2

Column 1	Column 2	Column 3
Locality	Description	Any trusts etc not discharged
Brookvale	Lot 2, DP 1174201	Nil

1.3.2 Mapping Amendments

The table below summarises the mapping changes to Lot 2, DP 1174201 as per the planning proposal (**Attachment A**). Further information on the mapping changes proposed, can be found within Section 1.5 of this report.

Table 4 Current and proposed controls

Map/Provision	Current	Proposed
Zone	RE1 Public Recreation	E4 General Industrial
Maximum height of the building	nil	11m
Minimum lot size	nil	4,000sqm

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

1.4 Site description and surrounding area

The subject site is legally referred to as Lot 2, DP 1174201. The site is owned by Northern Beaches Council and zoned RE1 Public Recreation and is classified as Community Land. The site is located between 39 and 41 Winbourne Road Brookvale, and measures approximately 1.82m in width, 50.25m in depth, and 92sqm in area. Despite the zoning and classification of the land, the site is not currently utilised for recreational activities. Taking into consideration the dimensions of the land parcel, there is limited scope for the site to be actively used for recreational purposes. The site is bordered by E4 General Industrial zoning from all directions and is located within Brookvale's Industrial East sub-precinct as identified within the Brookvale Structure Plan.

The location of the subject site is shown in Figure 1.

Council have retained ownership of the land since the early 1900s. The original intended land use for the site was to serve as a drainage reserve. The site does not contain any drainage infrastructure with the exception of a drainage easement that intersects with the northwestern

corner of the site. The lot consists of concrete hardstand, storage, and vegetation. An overhead electricity line traverses along the northern portion of the site, connecting 39 Winbourne Road to the local electricity network.



Figure 1 Subject site (Source: SIX Maps)

1.5 Mapping

The planning proposal (**Attachment A**) includes proposed mapping changes which are suitable for community consultation and shown in the table below.



Table 4 Current and proposed map extracts

1.6 Background

In November 2023, Northern Beaches Council published the Brookvale Structure Plan. The plan identified a mapping anomaly between 39 and 41 Winbourne Road Brookvale (the subject site). The land parcel was initially set aside by Council in the early twentieth century, with the intention of being used as a drainage reserve. Despite the initial plans of Council, the lot has never been used as a drainage reserve. Council no longer has the intention to use the land for this purpose.

The site is zoned RE1 Public Recreation and is classified as Community Land. The lot is not utilised by the public, nor does it have proper public access.

The Brookvale Structure Plan identified the land parcel for reclassification and rezoning to E4 General Industrial land use, to match the zoning of the properties adjoining the lot.

In response to the release of the Brookvale Structure Plan, an adjoining business owner has initiated a proponent-led planning proposal (**Attachment C**), with the intention to expedite the reclassification and rezoning process. The reclassification and rezone will enable the adjoining business owner to approach Council to purchase the property and amalgamate the property into the adjoining lot. As Council is the land owner, an independent planning proposal has also been prepared (**Attachment B**).

2 Need for the planning proposal

Is the planning proposal a result of an assured local strategic planning statement, or Department approved local housing strategy, employment strategy or strategic study or report?

The planning proposal (**Attachment A**) is the result of the Brookvale Structure Plan (BSP) which was endorsed by Northern Beaches Council in November 2023. The BSP identifies Lot 2 DP 1174201 as a drainage reserve which is does not serve any recreational use. The plan states Council's intention to rezone the lot from RE1 to E4 zoning. The proposal has been initiated by a neighbouring landowner (**Attachment C**) who seeks to expedite the rezoning process in order to acquire the land once it has been rezoned and reclassified.

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

Yes. The Department notes that the subject land is neither used as a drainage reserve, nor a public recreation area. Additionally, it is noted that Council does not intend for the lot to be utilised for recreational or drainage purposes in the future. To provide consistency between the mapped land use and the realised land use, the land is required to be rezoned and reclassified. The planning proposal is the only option to rezone and reclassify the land.

3 Strategic assessment

3.1 District Plan

The site is within the Northern District. The Greater Sydney Commission released the North 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 (**Attachment A**) 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 *Environmental Planning and Assessment Act 1979*. The following table includes an assessment of the planning proposal against relevant directions and actions.

Table 5 District strategic planning assessment

District Plan Priorities	Justification
N10 – Growing investment, business opportunities and	The Department notes the intention of the proponent to purchase the subject site from Council once the land has been reclassified and rezoned. The Department also notes that the reason for the purchase would be to amalgamate the subject lot and the adjoining business premises.
jobs in strategic centres.	Under this Priority, the aim of Action 38 is to <i>Prioritise strategic land use and infrastructure plans for growing centres, particularly those with capacity for additional retail floor space</i> . The Department considers the planning proposal to be consistent with the objective, noting the intention established under the Brookvale Structure Plan to rezone and reclassify the lot.
	The aim of Action 40 is to <i>Review the current planning controls and create capacity to achieve the job targets for each of the District's strategic centres.</i> The Department recognises the proponent's intention in relation to the subject land and considers that reclassifying and rezoning the land would result in a greater likelihood of job creation compared to a do-nothing approach.
	The Department is satisfied that the planning proposal is consistent with Priority 10.
N11 – Retaining and managing	Under this Priority, Objective 23 includes the aim that <i>Industrial and urban services land is planned, retained and managed.</i>
industrial and urban services land.	The Department notes that the Brookvale Structure Plan was informed by a review of local zoning which concluded that Lot 2 DP 1174201 should be rezoned and reclassified to better align with the landscape character of the street and the existing use of the site. An employment zone is proposed which provides for a number of employment generating land uses and is aligned to the priority.
	The Department is satisfied that the planning proposal is consistent with Priority 11.
N12 – Delivering integrated land use	Under this Priority, Objective 14 aims to promote walkability and the concept of the 30-minute city.
and transport planning a 30- minute city.	The Department notes that the site is within 30-minutes of residential development via the local transport network. Rezoning of the site may allow for intensification of job uses in amalgamation with an adjoining lot/s.
	The Department is satisfied that the planning proposal is consistent with Priority 12.
N15 – Protecting	Under this Priority, Objective 25 aims to protect the health of waterways.
and improving the health and enjoyment of Sydney Harbour	The Department notes that while there are no naturally occurring waterways on the subject site, there is a stormwater easement which intersects with the north-western corner of the site and flows into Greendale Creek.
and the District's waterways.	The Department is satisfied that the planning proposal is consistent with Priority 15, however any future development proposed for the site should provide consideration of potential stormwater impacts.

District Plan Priorities	Justification
N20 – Delivering high quality open	Under this Priority, Object 31 aims to make public open space accessible, protected and enhanced.
space.	The Department notes the use of this site in accordance with its current zoning would not be consistent with this priority, as the site is not easily accessible to the public. Reclassifying and rezoning the land would provide opportunity for the functionality of the site to be optimised.
	The Department is satisfied that the planning proposal is consistent with Priority 20.
N22 – Adapting to the impacts of	This Priority aims to create an environment which is adaptable to the impacts of urban and natural hazards and climate change.
urban and natural hazards and climate change.	The Department notes that a Flood Impact Risk Assessment (FIRA) has been provided as part of the planning proposal (Attachment G).
	The Department has reviewed the FIRA and has determined that further information is required to demonstrate that the planning proposal is consistent with this priority (see Table 7).

3.2 Local

The planning proposal (**Attachment A**) 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 I	Local	strategic	planning	assessment
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Local Strategies	Justification
Northern Beaches Local Strategic Planning Statement	Priorities 5 and 6 of the LSPS relate to sustainability and the availability of green recreational space. The Department notes that the proposed reclassification and rezoning enables redevelopment of the site, including clearance of vegetation in the southern portion of the lot. Due to the size and inaccessibility of the vegetated area, the Department considers these inconsistencies to be insignificant.
	Priorities 17, 24, and 28 of the LSPS relate to maintaining character and creating jobs within local centres. The Department notes that the subject site is surrounded by industrial zoned land and would provide an opportunity for the expansion of a local employment opportunities.
	The Department considers the planning proposal to be consistent with the Northern Beaches LSPS.
Northern Beaches Community Strategic Plan	Goals 7, 13, 14, and 15 of the Community Strategic Plan promote economic growth and job creation. As noted above, the proposal will facilitate an opportunity for the expansion of local employment opportunities.
	The Department considers the planning proposal to be consistent with the Northern Beaches Community Strategic Plan.
Brookvale Structure Plan	The Brookvale Structure Plan (BSP) identifies Lot 2 DP 1174201 as one of two drainage reserves that would benefit from rezoning from RE1 to E4 land (Figure 2).
	Specifically, the BSP states that:
	Two drainage reserves are proposed to be rezoned from RE1 Public Recreation to E4 General Industrial. This land is not recreational and never was intended to be. Rezoning to an E4 zone will match the adjoining industrial zoning and rectifies a zoning anomaly when the planning controls were translated into the Standard Instrument format
	The Department considers the planning proposal to be consistent with the Brookvale Structure Plan.



Figure 2 Brookvale Structure Plan (Source: Planning Proposal)

3.3 Local planning panel (LPP) recommendation

The planning proposal was considered at the Northern Beaches LPP's meeting on 17 July 2024 (**Attachment E**). The LPP provided the following response to the planning proposal:

The Northern Beaches Local Planning Panel recommends that Council **endorse** the Planning Proposal for Lot 2 Winbourne Road, Brookvale to be forwarded to the Department of Planning, Housing and Infrastructure for a Gateway Determination.

3.4 Section 9.1 Ministerial Directions

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

Directions	Consistent	Reasons for Consistency or Inconsistency
		The objective of this Direction is to protect bushland in urban areas, including rehabilitated areas, and ensure the ecological viability of the bushland.
		The Department notes that while vegetation is present on the subject site, no significant ecological values have been identified and the vegetation is isolated.
		Any potential ecological impacts can be sufficiently assessed as part of any future development application for the site.

Table 7 9.1 Ministerial Direction assessment

Directions	Consistent	Reasons for Consistency or Inconsistency
4.1 Flooding	Justifiable inconsistent	The objectives of this Direction are to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005, and to ensure that the provisions of an LEP that apply to flood prone land are commensurate with flood behaviour and includes consideration of the potential flood impacts both on and off the subject land.
		The Department notes that Lot 2 DP 1174201 is classified as having a medium flood risk, in accordance with the Northern Beaches Council Flood Hazard Map (See Figure 3).
		Both the Council-led and independent planning reports state that the flood risk posed is of minor significance, due to the size, shape, and surrounds of the lot (See Attachments B & C).
		Although under this Direction, the proposal is inconsistent as it seeks to rezone land from recreation to employment/industrial in a medium flood risk area, the Department notes that the subject site is 92sqm and surrounded by industrial land use and considers the nature of the proposed changes to be of minor significance under 5(d) of the Direction. Consequently, the planning proposal is justifiably inconsistent with this Direction.
4.4 Remediation of Contaminated Land	Yes	The objective of this Direction is to reduce the risk of harm to human health and the environment by ensuring that contamination and remediation are considered by planning proposal authorities.
		The planning proposal includes a preliminary contamination report (Attachment H) and was endorsed by Northern Beaches Council (the planning proposal authority, Attachment D).
		The Department is satisfied consistency with the Direction has been addressed and any issues can be managed through a future development assessment process.
5.2 Reserving Land for Public Purposes	Yes	The objective of this Direction is to facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition.
		As the planning proposal seeks to reclassify land from Community Land to Operational Land, and rezone land from RE1 Public Recreation to E4 General Industrial in accordance with the Brookvale Structure Plan, the planning proposal is consistent with this Direction.

Directions	Consistent	Reasons for Consistency or Inconsistency
7.1 Employment Zones	Yes	The objectives of this Direction are to encourage employment growth in suitable locations and support the viability of identified centres.
		The planning proposal would increase the amount of employment zoning within Brookvale's Industrial East sub-precinct and enable potential redevelopment of adjoining sites.

3.5 State environmental planning policies (SEPPs)

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

SEPP	Consistent	Assessment
Biodiversity and		This SEPP aims to protect the biodiversity values of trees and other vegetation and preserve amenity of non-rural areas in the State.
Conservation 2021		The Department notes that the site includes some vegetation and any removal of this would be considered in a future development assessment process.
Resilience and Hazards 2021		This SEPP aims to ensure that planning proposals adequately assess and manage any potential hazards which could result from the development.
		The Department notes that Chapter 2 of the SEPP does not apply to the planning proposal as it is not within a coastal zone.
		The Department acknowledges the context of the site in addition to the supporting technical studies provided and considers the planning proposal to be generally consistent with the SEPP.

Table 8 Assessment of planning proposal against relevant SEPPs

4 Site-specific assessment

4.1 Environmental

The following table provides an assessment of the potential environmental impacts associated with the proposal.

Environmental Impact	Assessment
Flooding	The Department notes that the subject site is located within a medium risk flooding precinct, as identified within the flood mapping published by Northern Beaches Council (See Figure 3) .
	The Department acknowledges that a flooding impact risk assessment (FIRA) has been provided as supporting documentation for the planning proposal (Attachment G) . The Department is satisfied that the FIRA adequately considers potential flooding resulting from the proposal.
Hazards	The planning proposal seeks to increase the height of building mapping of Lot 2 DP 1174201 from Nil to 11m.
	The Department has reviewed the Infrastructure Assessment (Attachment F) provided in support of the proposal and notes the presence of an Ausgrid electrical line traversing the northern portion of the site. The line connects the adjoining 39 Winbourne Road to the local electricity network. The height of the electrical line has not been provided within the planning proposal or any supporting documentation.
	Prior to exhibition, it is recommended the planning proposal be updated to provide the height measurements of the electrical line and to consult Ausgrid as a condition of Gateway (see Gateway Determination), to ensure that any potential electrical hazards associated with increasing height controls have been adequately mitigated.
Ecology	The Department notes that the southern portion of the site contains vegetation. A preliminary analysis of the site has not found any significant biodiversity values on the site. The Department acknowledges that the planning proposal (Attachment A) and independent assessment of the planning proposal (Attachment B) both conclude that the proposal does not seek to clear any vegetation, and that assessment of any ecological values on site can be sufficiently addressed as part of any future development application.

Table 9 Environmental impact assessment



Figure 3 Flood Hazard Map of Lot 2 DP 1174201 (Highlighted)

4.2 Social, economic and infrastructure

The following table provides an assessment of the potential social, economic and infrastructure impacts associated with the proposal.

Table 10 Social and economic impact assessment
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Impact	Assessment
Social – Loss of Recreational Space	The Department notes that the reclassification and rezoning of the subject site will result in the loss of public recreational space.
	The Department considers the current functionality of the site and notes that the site is not actively utilised and is largely inaccessible, as such any adverse social impacts of the planning proposal are negligible.
Social – Landscape Character	The Department notes that the subject site is located within Brookvale's Industrial East sub-precinct. The lot is bound by industrial land to the south, east, and west. The Department considers that the reclassification and rezoning of land would be consistent with surrounding land uses.
Economic	The Department notes the intention of the proponent to acquire and amalgamate the subject site into an adjoining business. Pending further assessment, and negotiations with Council, the redevelopment of the site has the potential to generate additional revenue for the business and to generate new employment opportunities for the local workforce.
Infrastructure	The Department notes that the area of the subject site totals 92 sqm. Consequently, the Department considers the development potential of the site to be limited beyond the scope of small-scale redevelopment.
	The Department is satisfied that no additional infrastructure is required in order to support the needs of the planning proposal.

4.3 Reclassification

LEP Practice note PN16-001 *Classification and reclassification of public land through a local environmental plan* provides guidance on preparing planning proposals seeking to reclassify public land through an LEP. The practice note also provides an accompanying information checklist of considerations to be discussed within reclassification proposals. The table below assesses the potential impacts associated with reclassifying the subject site.

Table 11 Reclassification Assessment Checklist

Checklist	Assessment
The current and proposed classification of the land;	The planning proposal would reclassify the lot from Community Land to Operational Land.
The strategic and site-specific merits of the reclassification and evidence to support this;	As noted in Table 10, any potentially adverse impacts resulting from the reclassification of the site are not likely to be significant given the site context.

Checklist	Assessment
Whether the planning proposal is the result of a strategic study or report;	As explained in Section 2 of the report, the planning proposal is the result of the Brookvale Structure Plan.
Whether the planning proposal is consistent with council's community plan or other local strategic plan;	As discussed in Section 3.2, the planning proposal is generally consistent with the relevant local strategic planning documents.
A summary of Council's interests in the land.	Council is the landowner. The planning proposal notes the site's Certificate of Title shows no encumbrances on the title and there are no trusts associated with the land.
Whether an interest in land is proposed to be discharged, and if so, an explanation of the reasons why;	All interests are to be discharged, including drainage reserve status. The site has no historic, existing, or intended future use as either a drainage reserve or as a public recreation space.
The effect of the reclassification	All interests are to be discharged, including drainage reserve status. Any potentially adverse impacts resulting from the reclassification of the site are not likely to be significant given the site context.
Evidence of public reserve status or relevant interests, or lack thereof applying to the land	An electronic title search is provided in Appendix A of Attachment A .
Current use(s) of the land, and whether uses are authorised or unauthorised;	The land has no current use with the exception of informal small-scale storage usage for adjoining businesses.
Current or proposed lease or agreements applying to the land, together with their duration, terms and controls;	Nil
Current or proposed business dealings (e.g. Agreement for the sale or lease of the land, the basic details of any such agreement and if relevant, when council intends to realise its asset, either immediately after rezoning/reclassification or at a later time);	The proponent who initiated the planning proposal intends to purchase and amalgamate the site into an adjoining business once the site is reclassified and rezoned.
Any rezoning associated with the reclassification	The site is proposed to be rezoned from RE1 Public Recreation to E4 General Industrial, in alignment with the Brookvale Structure Plan.
How Council may or will benefit financially, and how these funds will be used;	Council would receive proceeds for the sale of the site. Use of these funds is to be determined at a later date.

Checklist	Assessment
How council will ensure funds remain available to fund proposed open space sites or improvements referred to in justifying the reclassification, if relevant to the proposal	Funds will be distributed into Council's general pool of assets and income which is allocated to various future projects.

5 Consultation

5.1 Community

A community consultation period of 20 working days is recommended and this forms part of the conditions to the Gateway determination (see **Gateway Determination**). A public hearing would be required in accordance with the *Local Government Act 1993* and *Environmental Planning and Assessment Act 1979*.

5.2 Agencies

As a condition of gateway (see **Gateway Determination**), it is required that the following agencies be consulted on the planning proposal and given 30 working days to comment:

Ausgrid

6 Timeframe

The Department recommends an LEP completion date of 9 May 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 does not request delegation to be the Local Plan-Making authority.

As a condition of gateway (see **Gateway Determination**) the Department recommends that Council not be authorised to be the local plan-making authority for this proposal for the following reasons:

- The subject site is owned by Council; and
- The reclassification will require approval from the Governor of NSW.

8 Assessment summary

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

- The planning proposal is consistent with the strategic planning framework.
- The planning proposal will encourage local economic growth.
- The planning proposal will optimise underutilised land within the Brookvale Industrial East sub-precinct.

Based on the assessment outlined in this report, the proposal must be updated before consultation to:

• Provide details of the height of the electrical line which traverses the site.

• Provide an updated timeframe in alignment with the finalisation date established by the Department.

9 Recommendation

It is recommended that the delegate of the Secretary:

1. Agree that any inconsistencies with section 9.1 Direction 4.1 Flooding are minor or justified

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. Prior to public exhibition, the planning proposal is to be updated to:
 - Provide details of the height of the electrical line which traverses the site.
 - Provide an updated timeframe in alignment with the finalisation date recommended by the Department.
- 2. Consultation is required with the following public authorities:
 - Ausgrid
- 3. The planning proposal should be made available for community consultation for a minimum of 20 working days.
- 4. A public hearing is required to be held into the matter by any person or body under section 3.34(2)(e) of the EP&A Act. After the public exhibition period has ended, at least 21 days public notice is to be given before the hearing is held.
- 5. Given the planning proposal seeks to reclassify Council land, Council should not be authorised to be the local plan-making authority to make this plan.
- 6. The timeframe for the LEP to be completed is on or before 9 May 2025.

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Hon Dee

30 August 2024

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