

## REZONING REVIEW – Briefing Report

<b>Date of Referral:</b>	9 February 2018	
<b>Department Ref. No:</b>	RR_2018_NBEAC_001_00	
<b>LGA:</b>	Northern Beaches	
<b>LEP to be amended</b>	Pittwater Local Environmental Plan 2014	
<b>Address:</b>	2 and 4 Nooal Street and 66 Bardo Road, Newport	
<b>Reason for review:</b>	<input checked="" type="checkbox"/> Council notified the proponent that it will not support proposed amendment	<input type="checkbox"/> Council failed to indicate support for proposal within 90 days, or failed to submit the proposal after indicating its support
<b>Is a disclosure statement relating to reportable political donations under s10.4 of the Act required and provided?</b>	<input type="checkbox"/> Provided <input checked="" type="checkbox"/> Not required Comment: The application states that there are no reportable political donations or gifts to disclose.	

## SUMMARY OF THE PROPOSAL

### Background

- When the standard instrument was created in NSW in 2006, Northern Beaches Council (formally Pittwater Council) began transitioning current land uses into a standardised system of land use zoning under the Standard Instrument (Local Environmental Plans) Order 2006.
- Prior to exhibition of Council's standard local environmental plan (Pittwater LEP 2014), the subject properties were purchased by the current landowner (Crystal Apartment Pty Ltd) with a view to developing a seniors independent living complex.
- Pittwater LEP 2014 was made on 27 June 2014. This rezoned the site to E4 Environmental Living, prohibiting seniors housing and dual occupancy developments.
- On 4 September 2017, Boston Blyth Fleming Town Planners, on behalf of Crystal Apartments Pty Ltd, lodged a request to amend schedule 1 of Pittwater LEP 2014 to allow seniors housing as an additional permitted use at 2 and 4 Nooal Street and 66 Bardo Road, Newport.
- A concept design for the proposed development has been submitted with the request, which comprises eight seniors independent living units with a total site area of 2927.2m<sup>2</sup>, 0.5:1 floor space ratio (FSR) and up to 8.5m RL.
- At its meeting of 28 November 2017, Council resolved not to support the planning proposal.

- On 7 December 2017, the proponent was notified of Council's decision.
- On 30 January 2018, the proponent submitted a rezoning review request (**Attachment C**).
- On 7 February 2018, a resubmitted planning proposal was accepted by the Department (**Attachment B**).
- On 8 February 2018, the Department's Director, Sydney Region East wrote to the proponent stating the proposal is eligible and accepted for a rezoning review (**Attachment D**).
- On 8 March 2018, the Department notified Council it sent the incorrect cover letter to Council, and sent the correct letter. On 23 March, Council provided final comments (**Attachment K**).
- The timeline for the rezoning review application is at **Attachment N**.

### Locality and context

- The site is in Newport, approximately 35km from Sydney's CBD. It is on the foreshore of Crystal Bay, which is part of the Pittwater Waterway.
- The site is:
  - approximately 400m walking distance by an accessible path to the nearest bus stop providing north-bound and south-bound services;
  - approximately 1km walking distance to the Newport Village centre and Kalinya Street Neighbourhood Centre;
  - approximately 4km to Mona Vale and Avalon shopping centres; and
  - approximately 20km from the new Northern Beaches Hospital.
- To the north and east of the site on Nooal Street are residential dwellings zoned E4 Environmental Living. To the east of the site, residential dwellings are zoned R2 Low Density Residential (**Attachment F**).
- To the west of the site is Crystal Bay, which has a foreshore boundary with a stone seawall delineating the land/water interface.
- To the south of the site is Bardo Road, which is a single narrow lane used to provide vehicular access to neighbouring properties. It also hosts an electrical substation and sewer pumping station.
- An aerial photo of the site and its context is at **Attachment E**.

### Site description

- The site is made up of three allotments known as 2 Nooal Street (Lot 1 DP 540092), 4 Nooal Street (Lot 1 DP 315279) and 66 Bardo Road, Newport (Lot 2 DP 540092) (**Attachment E**).
- Each site contains a two-storey single dwelling with a pool and/or a garden or shed facility.
- The development site is irregular in shape with three frontages. The site's frontage to Nooal Street is approximately 51.15m and the secondary street frontage to Bardo Road

is approximately 78.04m. The site has foreshore frontage to Crystal Bay to the west of approximately 27m.

- The site has a total area of approximately 2927m<sup>2</sup>.

### **Current planning provisions**

- Under the Pittwater LEP 2014, the site:
  - is zoned E4 Environmental Living;
  - has a maximum building height of 8.5m;
  - is not subject to a maximum FSR; and
  - has a foreshore building line (**Attachment M**) along the western boundary.
- The zoning and maximum building height maps are provided at **Attachment F**.

### **Proposed planning provisions**

- To achieve the intended outcome, the proposal seeks to amend the Pittwater LEP 2014 by:
  - amending schedule 1 to allow seniors housing as an additional permitted use; and
  - amending the additional permitted uses map to reflect this change.

### **INFORMATION ASSESSMENT**

*Does the proposal seek to amend a zone or planning control that is less than 5 years old?*

- Yes. The proposal seeks to amend Pittwater LEP 2014, which was gazetted on 27 June 2014.

### **STRATEGIC MERIT TEST**

*Consistency with the relevant regional plan outside of the Greater Sydney Region, district plan within the Greater Sydney Region, or corridor/precinct plans applying to the site, including any draft regional, district or corridor/precinct plans released for public comment.*

*Proponents will not be able to depend on a draft regional, district or corridor/precinct plan when the Minister for Planning, Greater Sydney Commission or Department of Planning and Environment have announced that such a plan will be updated before being able to be relied upon.*

#### **Greater Sydney Region Plan**

- The Greater Sydney Region Plan was released by the Greater Sydney Commission in March 2018. The plan is guided by 10 overarching directions, which provide interconnected infrastructure, productivity, liveability and sustainability to all residents. The plan was not considered in the proposal, which predated the plan.

#### **North District Plan**

- The North District Plan (March 2018) is relevant to the site. The planning proposal only references the Revised Draft North District Plan as it predated the plan.

#### **Revised Draft North District Plan**

- The Revised Draft North District Plan was released by the Greater Sydney Commission for exhibition in October 2017.
- The proposal states that it is consistent with the three liveability priorities of the plan as it will:
  - provide seniors living opportunities for the 54% increase in people aged 65 and older in the area, allowing residents and the community to age in place in an area that is well connected to public transport, services and facilities;
  - provide housing supply, choice and affordability while maintaining local character and amenity through the provision of medium-density local infill development; and
  - protect and enhance scenic and cultural landscapes and increase urban tree canopy cover and delivery of Green Grid connections by retaining significant trees and vegetation.

*Consistency with a relevant local strategy that has been endorsed by the Department.*

- No relevant local strategies that have been endorsed by the Department apply to the site.

*Responding to a change in circumstances, such as the investment in new infrastructure or changing demographic trends that have not been recognised by existing planning controls.*

- The proposal states that the Revised Draft North District Plan indicates there will be a demographic change in the area with a 54% increase in the number of people aged 65 years and older in the next 20 years and that the proposal provides a housing typology to meet the needs of this demographic.

## **SITE-SPECIFIC MERIT TEST**

*The natural environment (including known significant environmental values, resources or hazards).*

- The site is not identified by Council as geotechnical hazard land, bush-fire prone land or of heritage significance. It is identified on Council's biodiversity map.
- The site has only been used for residential purposes and therefore site contamination would be unlikely.
- The proposed built form will not encroach into the foreshore building line.
- The submitted proposal states the subsequent development would not include the removal of any significant trees, vegetation or natural features such as exposed rock.
- The proposal notes the land is subject to estuarine wave action and tidal inundation. The proposal also states that flood affection on the land does not serve as an impediment to the development for the site for the purposes of seniors housing but does not specify the level of flood affection.

*The existing uses, approved uses and likely future uses of land in the vicinity of the proposal.*

- The site was previously zoned No 2 (a) (Residential A) under the Pittwater Local Environmental Plan 1993 prior to the finalisation of Council's Standard Instrument (Pittwater LEP 2014). Under the LEP 1993, seniors housing was permissible with consent.
- The properties on the eastern side of Nooal Street directly opposite the sites are zoned R2 Low Density Residential under the Pittwater LEP 2014.

- The proposal notes that development within the site's visual catchment is characterised by a mix of multistorey detached dwelling houses, multistorey residential flat buildings, a marina development and associated club facilities and parking areas, making the proposal consistent in its current form to neighbouring sites.
- The proposal states that the concept design has been prepared to demonstrate that a low-impact seniors housing development adopting a maximum FSR of 0.5:1 and a building height of 8.5m would not have any adverse effects on the neighbouring amenity or any special ecological, scientific or aesthetic values of the land and surrounding areas.
- The proposal states that the bulk and scale of the seniors housing development will appear compatible with other local developments when viewed from the Pittwater waterway.
- Public access along the foreshore will be maintained for residents and visitors.

*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.*

- The site is accessible to existing and future public transport infrastructure services.
- The development site is connected to a reticulated water system and sewer services.

### **COUNCIL VIEWS**

On 23 March 2018, Council provided the Department with comments (**Attachment K**).

Council notes that the proponent completed a rezoning review request on 29 January 2018, being 60 days after the written confirmation of Council's refusal on 7 December 2017.

Council state that the 60 day period between the proponent submitting a rezoning review request and Council's written notice of refusal is excessive.

*A guide to preparing local environmental plans* states that the proponent has 42 days from notification to request a review of the council's decision. However, periods can be extended over the Christmas and New Year Periods. A time frame for such extensions is not specified.

Council notified the Department that two additional documents had been provided to the Department by the proponent that did not form part of the original development application package submitted to Council. These were:

- an estuarine risk management report by Horton Coastal Engineering dated 28 December 2017; and
- a pre-development site inspection letter by Arborsaw dated January 2018.

These documents have been omitted from the rezoning review.

Council states that the planning proposal is contrary to several objectives and actions under the relevant regional and district plans applying to the land in that it does not:

- provide housing supply close to jobs and services;
- help Council reach its dwelling targets for housing supply as Council is on track to meet its targets, and therefore additional rezoning to increase housing supply is not needed;
- protect and enhance the cultural and scenic landscape of the area;
- increase tree canopy or landscaping;
- consider that the placing of a vulnerable group such as seniors in an area subject to estuarine hazard would be inappropriate; and

- demonstrate that the site is unique and has features that would differentiate it from other adjoining sites within the E4 Environmental-zoned land, which would be cause for a precedent.

Council state the planning proposal is inconsistent with the objectives and requirements of SEPP 71 – Coastal Protection and the draft Coastal Management SEPP as it will increase the density on the site, resulting in an intensification of the coastal risk. Council also contend the coastal risk is exacerbated by locating a vulnerable group of people in an area of known hazard.

Council also state that the size and bulk of the proposal is considered out of character with surrounding low density development and is inconstant with the intended outcomes of surrounding land zoned E4 Environmental Living and R2 Low Density Residential. Council note the proposed design is not compliant with E4 Environmental Living zone and the Seniors SEPP height requirements of 8.5m, being 9.6m in height in some areas.

Council states that a subdivision on the combined site area of 2927m<sup>2</sup> into four lots would allow the developer to increase the dwelling numbers and maintain Council's minimum lot size of 700m<sup>2</sup> without increasing the density.

Council contends that there are no special or unique features of this site that differentiate it from adjoining and nearby sites or other sites in the E4 Environmental Living zone. Council therefore consider the rezoning of this site will set an unwanted precedent.

## **ATTACHMENTS**

- Attachment A – Rezoning review briefing report
- Attachment B – Planning proposal
- Attachment C – Cover letter and rezoning review request
- Attachment D – Department acceptance of rezoning review
- Attachment E – Site location and context
- Attachment F – Zoning and height maps
- Attachment G - Letter from Council to proponent 7.12.17
- Attachment H - Council meeting minutes 28.11.17
- Attachment I – Concept design
- Attachment J - Rezoning review application form and cheque
- Attachment K – Council comments
- Attachment L - Site accessibility report
- Attachment M – Site survey
- Attachment N – Rezoning review timeline

Contact Officer Ellen Jones  
Planning Officer, Sydney Region East  
Contact: 9274 6470