ITEM 10.8	**PLANNING PROPOSAL (PP0003/17) 2-4 NOOAL STREET AND 66 BARDO ROAD, NEWPORT**
REPORTING MANAGER	**EXECUTIVE MANAGER STRATEGIC & PLACE PLANNING**
TRIM FILE REF	**2017/445529**
ATTACHMENTS	**1 Summary of Submissons (Included In Attachments Booklet)** **2 External Referral Comments (Included In Attachments Booklet)** **3 Internal Referral Comments (Included In Attachments Booklet)**

EXECUTIVE SUMMARY

PURPOSE

To report upon the assessment of a Planning Proposal lodged for 2-4 Nooal Street and 66 Bardo Road and to seek Council's approval to reject the Planning Proposal.

SUMMARY

In September 2017, Council received a Planning Proposal seeking to amend the Pittwater Local Environmental Plan 2014 (PELP 2014) to add Seniors Living as an additional permitted use at 2-4 Nooal Street and 66 Bardo Road, Newport.

Council has undertaken an assessment of the Planning Proposal in accordance with the NSW Planning & Environment's *Planning Proposal; A guide to preparing planning proposal* (2016), and concluded that the Proposal does not have sufficient merit to be progressed to a Gateway Determination.

The Proposal does not represent orderly and economic planning. The Proposal seeks to permit the introduction of a vulnerable group into an area affected by coastal inundation hazard.

The proposed use is contrary to the objectives of the E4 Environmental Living zone and would set a precedent for further medium density development in this zone.

The Proposal fails to provide any associated public benefit or improvement. There is no physical contribution to local affordable housing proposed nor is there a payment in lieu, contrary to Council and the Greater Sydney Commission's policies on affordable housing in rezoning applications.

It is recommended that Council does not submit the Planning Proposal for a Gateway Determination.

RECOMMENDATION OF GENERAL MANAGER PLANNING, PLACE & COMMUNITY

That:

A. Council does not submit the Planning Proposal lodged for 2-4 Nooal Street and 66 Bardo Road, Newport for a Gateway Determination for the following reasons:

   a. It is inconsistent with the *Pittwater Local Planning Strategy* (2011).

   b. It does not have strategic merit or site specific merit when assessed in accordance with the NSW Planning & Environment's *Planning Proposal: A guide to preparing planning proposal* (2016).

   c. It does not align with the goals and targets of the *Revised Draft North District Plan.*

   d. It is inconsistent with the following State Environmental Planning Policies;

      i. Housing for Seniors or People with a Disability

      ii. Coastal Protection

      iii. Draft Coastal Management.

   e. Is inconsistent with the following Local Planning Directions;

      i. 2.1 – Environmental Protection Zones

      ii. 4.3 – Flood Prone Land

      iii. 7.1 – Implementation of the Metropolitan Strategy

      iv. Draft Coastal Management Local Planning Direction.

   f. It is inconsistent with the objectives of the E4 Environmental Living zone in Pittwater LEP 2014.

   g. It seeks to permit medium density residential development that is inconsistent with the established low density character of the area.

   h. It would set an unacceptable precedent.

B. The proponent and interested parties who made a submission be advised of Council's decision.

REPORT

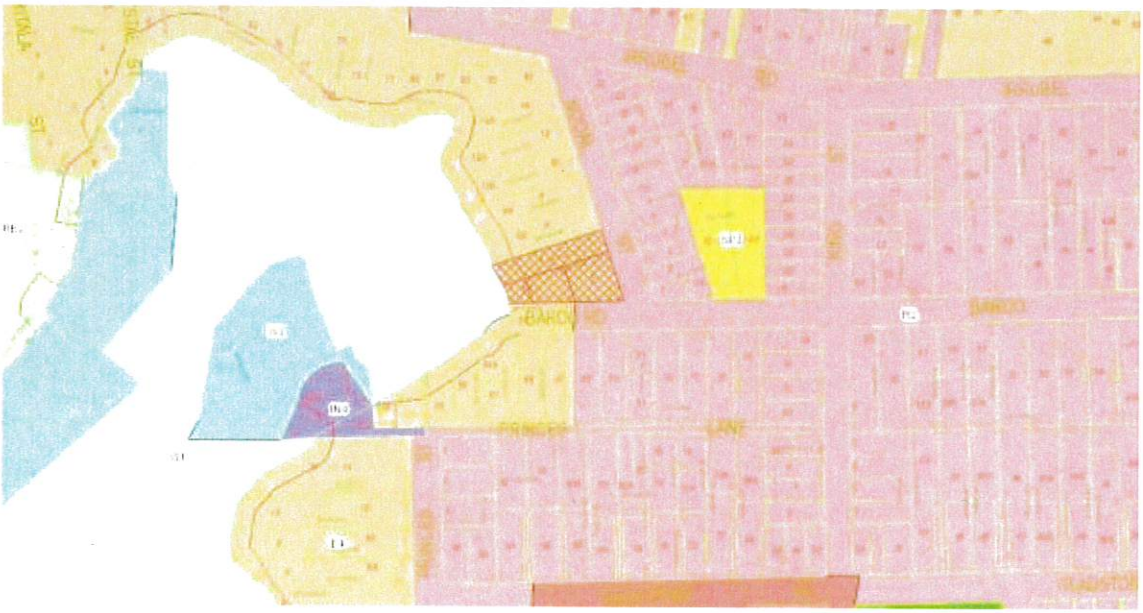
BACKGROUND

Site and Locality

The sites subject to the Planning Proposal are known as 2 Nooal Street, Newport (Lot 1 DP 540092), 4 Nooal Street, Newport (Lot 1 DP 315279) and 66 Bardo Road, Newport (Lot 2 DP 540092). Each property currently contains a single dwelling.

This area of Newport is characterised by single dwellings and secondary dwellings, with a number of larger lots throughout the area. The area retains significant vegetation and slopes down towards Crystal Bay. To west of the site is Crystal Bay, while to the north, east and west is predominantly characterised by low density residential development.

Aerial Image of site – with subject properties crosshatched.



Current PLEP 2014 Land Zoning map with properties crosshatched.

Pittwater Local Environmental Plan 2014

2-4 Nooal Street and 66 Bardo Road, Newport are currently zoned E4 Environmental Living with a permissible building height of 8.5m. The E4 Environmental Living zone does not permit seniors housing. The objectives of the E4 Environmental Living zone are as follows:

- To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.
- To ensure that residential development does not have an adverse effect on those values.
- To provide for residential development of a low density and scale integrated with the landform and landscape.
- To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.

6 and 6A Nooal Street to the North of the property, and 87-91A Princess Lane to the south are similarly zoned. 81-85 Princess Lane, and properties to the east across Nooal Street are zoned R2 Low Density Residential.

To the west of the site is Crystal Bay, a bay on Pittwater, which is zoned W1 Natural Waterways.

Planning Proposal (PP0003/17)

Council received a Planning Proposal on 4 September 2017 to amend the PLEP 2014 for land at 2-4 Nooal Street and 66 Bardo Road, Newport. The Planning Proposal seeks to add an additional permitted use to Schedule 1 of the PLEP 2014 to permit seniors housing. Seniors Housing is defined under PLEP 2014 as:

> ***seniors housing*** *means a building or place that is:*
>
> *(a) a residential care facility, or*
>
> *(b) a hostel within the meaning of clause 12 of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, or*
>
> *(c) a group of self-contained dwellings, or*
>
> *(d) a combination of any of the buildings or places referred to in paragraphs (a)–(c),*
>
> *and that is, or is intended to be, used permanently for:*
>
> *(e) seniors or people who have a disability, or*
>
> *(f) people who live in the same household with seniors or people who have a disability, or*
>
> *(g) staff employed to assist in the administration of the building or place or in the provision of services to persons living in the building or place, but does not include a hospital.*
>
> ***Note.***
> *Seniors housing is a type of* ***residential accommodation****—see the definition of that term in this Dictionary.*

The following supporting documents were submitted with the Planning Proposal:

- Owner's consent
- Architectural Concept Plans
- Correspondence from the Department of Planning and Environment

- Extract from Pittwater Council Community Engagement Outcomes Report
- Correspondence from Minister for Planning
- Northern Beaches Council prelodgement meeting minutes
- Site Survey
- Site Accessibility Report by Accessibility Solutions (NSW)
- 13 surrounding property engagement responses.

In summary, the Proponent argues that the Planning Proposal should be supported due to the following reasons:

- 2 and 4 Nooal Street were purchased before the gazettal of the PLEP 2014 with the intention of developing seniors housing.
- The change in zoning between the 1993 and 2014 LEP removed the ability to develop seniors housing.
- The change in permissibility of seniors housing was not indicated during the preparation and exhibition of the draft PLEP 2014.
- The site is well located with regards to access to transport and services.
- The site is relatively free from hazards and constraints, and
- The proposed development is consistent with the character and environment of the area.

It is noted that Seniors Housing has never been permitted on this site as a consequence of Council policy by either Pittwater LEP 1993 or Pittwater LEP 2014. It was only ever permitted by virtue of the SEPP (HSPD) that overrides local Council policy. The introduction of Pittwater LEP 2014 removed the ability for the SEPP (HSPD) to override local Council policy.

The process to introduce Pittwater LEP involved two public exhibition periods and extensive community consultation including:

- written correspondence to all landowners in the local government area explaining their current and future zone
- notices in the Manly Daily
- information on Council's website
- community drop in sessions
- pop up stalls.

Indeed a nearby objector to this Proposal confirmed that they were aware of the changes proposed as a consequence of the proposed introduction of the new Pittwater LEP as they took "appropriate steps to acquaint ourselves as part of our purchase process with the zonings around us and the implications for further development".

The introduction of the new Pittwater LEP was intended as a like for like translation of the Pittwater LEP 1993, where possible and appropriate. Having regard for the location of this site near the foreshore of Pittwater and being subject to coastal hazard, the appropriate zone is E4 Environmental Living. Further, at the time of the introduction of the new Pittwater LEP, it was made clear that the new LEP did not intend to translate the application of State Environmental Planning Policies, over which Council has no control. The Pittwater LEP 2014 was validly made and the

proposition that the site should now be rezoned to allow Seniors Housing because the owner was not aware of the permissibility change is not accepted as a legitimate planning or legal argument.

Assessment of Planning Proposal

The assessment of the subject Planning Proposal has been undertaken in accordance with the NSW Planning & Environment's *Planning Proposal; A guide to preparing planning proposal* (2016).

Part 1 Objectives of intended outcomes

To amend the PLEP 2014 to enable a seniors living development.

Part 2 Explanation of Provision

The Planning Proposal seeks to:

A. Amend the Pittwater Local Environmental Plan 2014 – Schedule 1 Additional Permitted Uses by inserting the following clause:

Use of certain land at 2 and 4 Nooal Street and 66 Bardo Road, Newport

*(1) This clause applies to the following land identified as "Area ***" on the Additional Permitted Uses Map:*

I. 2 and 4 Nooal Street, Newport, being Lot 1 DP 540092 and Lot 1 DP 315279

II. 66 Bardo Road, Newport, being Lot 2 DP 540092

B. *Development for the purpose of seniors housing is permitted with development consent on the consolidated allotment.*
Amend the Additional Permitted Uses Map – Sheet APU_017.

No draft mapping has been provided with the Planning Proposal.

Part 3 Justification

Section A – Need for the Planning Proposal

1. Is the Planning Proposal the result of any strategic study or report?

No. The relevant strategic strategy is the *Pittwater Local Planning Strategy* (2011), with which the Planning Proposal is inconsistent.

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 is the best, and only, means of achieving the objectives of intended outcomes.

The applicant has provided a 'Net Community Benefit Test' under the Draft Centres Policy. However the NSW Planning & Environment's *Planning Proposal; A guide to preparing planning proposal* (2016) provides no indication that such a test is required.

Section B – Relationship to Strategic Planning Framework

3. Is the Planning Proposal consistent with the objectives and actions of the applicable regional, sub-regional or district plan or strategy (including any exhibited draft plans or strategies)?

The revised Draft North District Plan (November 2017) is the applicable Draft District Plan. An assessment of the strategic and site specific merit of the Proposal against this draft Plan appears below:

a) Does the proposal have strategic merit? Is it:

Consistent with the relevant regional plan outside of the Greater Sydney Region, the relevant 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;	<u>A Productive City</u> Yes. The Planning Proposal is consistent. The Proposal would contribute to some job creation in the short term during construction. However the site is not located within an existing centre. <u>A Liveable City</u> The Proposal is considered not to relate to Liveability Priority 5 – Providing housing supply, choice and affordability, with access to jobs and services or Priority 6 –Creating and renewing great places and local centres. Northern Beaches Council has sufficient land and future development to reach its dwellings target. Council is on track to achieve our housing target. Additional rezoning to facilitate increase housing supply is not required. The proposed form provides some additional housing; however, the site is in a low density residential setting. The Proposal results in medium density housing that would be inconsistent with the existing character of its surrounds, particularly as the site (zoned E4 Environmental Living) is not in an existing centre or within walking distance of one. The Proposal also does not address the need for affordable housing or social housing identified. The location and proximity to water, as well as the large dwelling size and facilities indicated, show the development is aimed at upper levels of the housing market already able to acquire appropriate accommodation. No affordable or social housing is identified by the applicant, and the low number of dwellings indicates that the proposal will not provide additional affordable housing under Northern Beaches Council's policies. Local Housing Strategy – Northern Beaches Council was recently amalgamated and has not yet adopted a Local Housing Strategy. However previous investigations have identified the need for small housing types in well located areas close to centres, which is also replicated in the Draft District Plan. This Proposal runs contrary to those aims. <u>A Sustainable City</u> The Proposal is inconsistent with Priority 17 – Protecting and enhancing scenic and cultural landscapes. The area is well regarded by the community for its scenic value where by vegetation and bushland dominate over houses in a waterway setting. This proposal is for a large and bulky development on the water which will detract from these scenic and aesthetic values. The Proposal is inconsistent with Priority 19 – Increasing urban tree canopy. It will see the removal of existing large trees without replacement. Further it will see an overall reduction in the tree canopy and the ability to increase it.
Consistent with a relevant	No. The Department has not formally endorsed the *Pittwater*

local council strategy that has been endorsed by the Department;	*Local Planning Strategy (2011)*; however, it has been used to inform the Pittwater LEP 2014 which was gazetted on 30 May 2014 and came into effect on 27 June 2014.
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 Planning Proposal does not respond to a change in circumstances.

b) Does the Proposal have site-specific merit, having regard to the following:

The natural environment (including known significant environmental values, resources or hazards).	The site is affected by a coastal inundation risk. As such it is generally not suited for a change to permit seniors housing or housing for people with a disability.
The existing uses, approved uses, and likely future uses of land in the vicinity of the proposal.	The subject site is surrounded by detached dwelling houses to the east, south and north. To the west sits Crystal Bay and Pittwater. Council's plans and policies do not propose any changes to the current uses in the locality. The introduction of medium density housing on this site would be inconsistent with the established character of the area.
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 Proposal seeks to allow medium density style residential development to be occupied by seniors or people with a disability. However the site is located 800m from the Newport Village Centre outside a walkable radius. While it is acknowledged the site is just within 400m walking distance of a bus stop located on Gladstone Street, it is not located within a centre or along a transport corridor with access to high frequency public transport which is considered essential for any increases in dwelling densities. The Proposal is significantly at odds with Council's strategic planning framework. From a traffic generation and demand perspective, it is reasonable to assume the Planning Proposal will have a minimum impact on existing traffic flows which is unlikely to significantly increase the anticipated peak hour traffic in the road network. However there will to be upgrades to the shared driveway through Bardo Road and extensive upgrades to pedestrian facilities to ensure compliance with accessibility standards. Council's engineers have recommended the following. Currently the western end of Bardo Road has a small and narrow shared driveway servicing a small number of dwellings. The attached concept plans indicate that the basement level of the carpark will be accessed from a new ramp from Bardo Road. The applicant will be required to remove all existing driveways and garages from their site and upgrade this vehicular access point. This would require realignment and widening to provide two way access as well as upgrades to the Bardo and Nooal intersection to improve its safety. Detailed plans showing this

	work would be required. Upgrades required to the pedestrian access are as follows: • Kerb ramp south side of pedestrian crossing to be modified to meet accessibility standards • Extension of footpath on south side of Gladstone St to provide all weather access to boarding point • Provision of appropriately sized and positioned shelter at 62 Gladstone St bus stop • Provision of 1.5m wide footpath on Bardo Road from the property to existing ramps at King Street • Pedestrian refuge compliance works at the roundabout on King and Bardo including ramps to comply (accessibility audit to confirm) • Extend footpath to Gladstone St boarding point (Westbound stop) including kerb adjustment to suit low floored buses • Kerb adjustment to suit low floored buses Eastbound stop • All ramps to be compliant between subject site and transport stops • Accessibility requirements at all crossing and transport collection points – ie tactiles at ramps and bus stops. These works will be required to be provided by the applicant.

4. Is the Planning Proposal consistent with a Council's local strategy or other local strategic plan?

No. The relevant strategic report is with the *Pittwater Local Planning Strategy (2011)* with which the Planning Proposal is inconsistent. It is recognised that this strategy has not been formally endorsed by the Department of Planning and Environment. The *Pittwater Local Planning Strategy (2011)* was adopted by the former Pittwater Council on 15 August 2011.

Centre Based Development

Actions contained within the *Pittwater Local Planning Strategy (2011)* seek to intensify land uses within close proximity to existing centres while continuing the same land uses for land located away from services or impacted by constraints. The motivations for these actions are to contain dense development in areas that are well serviced and located close to existing centres. This Proposal is clearly inconsistent with that strategy by locating a denser development outcome more than 800m away from the Newport centre.

Dwelling Targets

The Northern Beaches has been assigned a target for 3,400 dwellings within the next five years. Northern Beaches Council has a number of projects and rezonings underway that will meet the new 5 year dwelling target.

Affordable and Appropriate Housing

Key workers are an important contributor to the local economy and community; however they are increasing locked out of accommodation on the Northern Beaches. To overcome this issue, a target of 10% of all new dwellings in a rezoning was developed in the strategy. While Northern Beaches Council has not yet developed a new housing strategy, it has however adopted an Affordable Housing Policy. This Policy commits Council to a 10% affordable housing target for all

rezonings proposing new dwellings. Dedicated dwellings would then be awarded to a community housing provider. This application has made no provisions of a dedication, nor has it proposed a contribution in lieu.

Pittwater Local Environmental Plan 2014

Under the terms of the PLEP 2014, the site is zoned E4 Environmental Living. The Proposal seeks an additional permitted use for the site and of a scale that will be inconsistent with the objectives and intent of the zone. The site locality is well regarded by the community for its aesthetic values and this development will have an adverse impact on those values. It is not considered orderly planning to allow an additional permitted use on a site when it clearly conflicts with the intent and objectives of the land zone. Further the development will not enhance foreshore vegetation.

If this Planning Proposal is approved it is likely to set a precedent that derogates from the objectives of the E4 Environmental Living zone. This would potentially open an argument for other similarly zoned sites with similar characteristics to have their zoning and planning controls amended.

Ownership and Property Transfer
The Planning Proposal states that the owners of 2 and 4 Nooal Street were unaware in the change of permissibility brought about by the change in the local environmental plans. Furthermore it states that both 2 and 4 Nooal were bought with the intention of developing seniors housing and were bought before the gazettal of the Pittwater Local Environmental Plan 2014. While this is not a matter of consideration with respect to the Planning Proposal, it is important to note that there was ample opportunity for the owners to familiarize themselves with the terms of the PLEP 2014.

In regards to 2 Nooal Street, it can be clearly shown that the property was purchased after the Pittwater Local Environmental Plan 2014 came into effect. The following chronology is considered important to explain the issue:

- 149 Certificate issued on 2 April 2014 (2/4/14) – Indicates Draft LEP and sites future E4 zoning
- Draft LEP gazetted 30 May 2014 (30/5/14), in force 27 June 2014 (27/6/14)
- Contract for sale of 2 Nooal Street entered into on 1 August 2014 (1/8/14)
- Settlement of contact on 12 September 2014 (12/9/14).
- 149 Certificate issued 2 October 2015 (2/10/15).

The timing outlined above would have provided the owners plenty of opportunity to ascertain the potential of the property including independent professional advice on how the draft LEP would impact upon the property. The 149 Certificate indicating the Draft LEP and future E4 zones was issued approximately 5 month prior to the settlement of contract.

Additionally, during the preparation and implementation of the draft LEP, the former Pittwater Council undertook extensive community consultation, including two public exhibitions. The first exhibition of the draft LEP occurred in 2013. During this exhibition Council sent letters to all land owners explaining their current and future land zone and land use permissibility. Residents and concerned individuals were also given the ability to attend a range of information and drop in sessions to raise their concerns. A further public exhibition took place in early 2014 giving concerned individuals an extra chance to raise their issues.

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

Title of State Environmental Planning Policy (SEPP)	Applicable	Consistent
SEPP No 1 – Development Standards	YES	YES
SEPP No 14 – Coastal Wetlands	N/A	N/A
SEPP No 19 – Bushland in Urban Areas	N/A	N/A
SEPP No 21 – Caravan Parks	N/A	N/A
SEPP No 26 – Littoral Rainforests	N/A	N/A
SEPP No 30 – Intensive Agriculture	N/A	N/A
SEPP No 33 – Hazardous and Offensive Development	N/A	N/A
SEPP No 36 – Manufactured Home Estates	N/A	N/A
SEPP No 44 – Koala Habitat Protection	N/A	N/A
SEPP No 47 – Moore Park Showground	N/A	N/A
SEPP No 50 – Canal Estate Development	N/A	N/A
SEPP No 52 – Farm Dams and Other Works in Land and Water Management Plan Areas	N/A	N/A
SEPP No 55 – Remediation of Land	YES	YES
SEPP No 62 – Sustainable Aquaculture	N/A	N/A
SEPP No 64 – Advertising and Signage	YES	YES
SEPP No 65 – Design Quality of Residential Flat Development	YES	YES
SEPP No 70 – Affordable Housing (Revised Schemes)	N/A	N/A
SEPP 71 – Coastal Protection	YES	NO
SEPP (Affordable Rental Housing) 2009	N/A	N/A
SEPP (Building Sustainability Index: BASIX) 2004	YES	YES
SEPP (Education Establishments and Child Care Facilities) 2017	N/A	N/A
SEPP (Exempt and Complying Development Codes) 2008	YES	YES
SEPP (Housing for Seniors or People with a Disability) 2004	YES	**NO**
SEPP (Infrastructure) 2007	N/A	N/A
SEPP (Integration and Repeals) 2016	N/A	N/A
SEPP (Kosciuszko National Park—Alpine Resorts) 2007	N/A	N/A
SEPP (Kurnell Peninsula) 1989	N/A	N/A
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	N/A	N/A
SEPP (Miscellaneous Consent Provisions) 2007	N/A	N/A

SEPP (Penrith Lakes Scheme) 1989	N/A	N/A
SEPP (Rural Lands) 2008	N/A	N/A
SEPP (State and Regional Development) 2011	N/A	N/A
SEPP (State Significant Precincts) 2005	N/A	N/A
SEPP (Sydney Drinking Water Catchment) 2011	N/A	N/A
SEPP (Sydney Region Growth Centres) 2006	N/A	N/A
SEPP (Three Ports) 2013	N/A	N/A
SEPP (Urban Renewal) 2010	N/A	N/A
SEPP (Western Sydney Employment Area) 2009	N/A	N/A
SEPP (Western Sydney Parklands) 2009	N/A	N/A

Coastal Protection

The Proposal is also inconsistent with the aims and objectives of the Coastal Protection SEPP. The relevant aims of that policy include;

a) to protect and manage the natural, cultural, recreational and economic attributes of the New South Wales coast, and

(e) to ensure that the visual amenity of the coast is protected, and

(k) to ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area, and

(l) to encourage a strategic approach to coastal management.

The Proposal is clearly inconsistent as it does not protect and manage the natural and cultural value of the site or its amenity by locating a bulky development in the foreshore area against the community's wishes. The development appears as a large three storey development without screening vegetation in an area of two storey single dwellings which are dominated by vegetation. This Proposal also runs contrary to the intent of the policy to encourage a strategic approach to coastal management by locating vulnerable uses in an area subject to coastal inundation.

Housing for Seniors or People with a Disability

While the Proposal is for a Seniors Living development, the applicant has instead stated their intention to rely on the provisions of the Pittwater Local Environmental Plan 2014 and the Pittwater 21 Development Control Plan for permissibility and development controls. It is noted that the SEPP (HSPD) excludes land identified as environmentally sensitive from the application of the policy.

Advice from the NSW Department of Planning and Environment provided to the applicant indicates that the subject sites are excluded from the application of the policy through their E4 Environmental Living zoning. This occurs by excluding it from the SEPP under the provisions of Clause 4(6) Land to which Policy does not applies and (a) land described in Schedule 1 (Environmentally Sensitive Land). Under Schedule 1 the relevant clause reads as:

> *Land identified in another environmental planning instrument by any of the following descriptions or by like descriptions or by descriptions that incorporate any of the following words or expressions:*
>
> *(d) environmental protection,*

Under the Standard Instrument, the 'E' zones are regarded as environmental protection zones.

In this regard the site is considered to meet the Schedule 1 criteria for zones describe as (d) environmental protection. It is clear from the intention of the Policy to not allow such development on environmentally sensitive land. Allowing the rezoning to proceed would not be in keeping with the intent of the Policy and would render the Planning Proposal inconsistent with the objectives of the SEPP.

Title of deemed SEPP	Applicable	Consistent
SREP No 20 – Hawkesbury-Nepean River (No 2 - 1997)	YES	YES

Draft SEPP	Applicable	Consistent
Draft SEPP (Coastal Management) 2016	YES	NO

The Proposal is inconsistent with the Draft Coastal Management SEPP has it fails to meet the aims of the Policy to (a) properly manage development in the coastal zone and protect the environmental assets of the coast and (b) establish a framework for land use planning to guide decisions making. The site is located within the 'Coastal Use' zone mapping under the SEPP. The provisions of the policy say a consent authority must not grant consent unless it satisfied the development will not increase the risk of coastal hazards. The Proposal will increase the risk by increasing the potential density of the site by locating more vulnerable people in area at risk from coastal inundation.

6. Is the Planning Proposal consistent with applicable Ministerial Directions (Section 117 Directions)?

1	**Employment and Resources**		
	Direction	**Applicable**	**Consistent**
1.1	Business and Industrial Zones	N/A	N/A
1.2	Rural Zones	N/A	N/A
1.3	Mining, Petroleum Production and Extractive Industries	N/A	N/A
1.4	Oyster Aquaculture	N/A	N/A
1.5	Rural Lands	N/A	N/A

2	**Environment and Heritage**		
	Direction	**Applicable**	**Consistent**
2.1	Environment Protection Zones	YES	**NO**
2.2	Coastal Protection	YES	YES
2.3	Heritage Conservation	N/A	N/A
2.4	Recreation Vehicle Areas	N/A	N/A
2.5	Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	N/A	N/A

The Planning Proposal is inconsistent with direction 2.1 Environmental Protection Zones. The Planning Proposal seeks to amend the PLEP by increasing the density allowable on the site. It is

clearly inconsistent with 2.1 (5) by which *'A planning proposal that applies to land within an environmental protection zone or otherwise identified for environmental protection purposes in a LEP must not reduce the environmental standards that apply to the land (including modifying development standards that apply to the land)'.*

Under direction 2.1(6) a planning proposal may be inconsistent if the relevant planning authority can justify an inconsistency through a strategy or study. However no such strategy or study has been included with the Planning Proposal and it does not explain how it can possibly warrant such a justification. Further, the Planning Proposal is inconsistent with the *Pittwater Local Planning Strategy (2011)* which identified the site as only allowing limited low impact residential development of dwelling houses and secondary dwellings due to the sites environmental characteristics. The proposed seniors living development is more akin to a medium density development outcome which is not consistent. Such a development is better suited to a R3 Medium Density Residential zone.

3	**Housing, Infrastructure and Urban Development**		
	Direction	**Applicable**	**Consistent**
3.1	Residential Zones	N/A	N/A
3.2	Caravan Parks and Manufactured Home Estates	N/A	N/A
3.3	Home Occupations	YES	YES
3.4	Integrating Land Use and Transport	YES	**NO**
3.5	Development Near Licensed Aerodromes	N/A	N/A
3.6	Shooting Ranges	N/A	N/A

The proposed sites are zoned as E4 Environmental Living and do not come under the guise of Residential Zones. The S117 Direction is therefore not considered applicable to the sites or the Planning Proposal.

The Planning Proposal is inconsistent with Direction 3.4 Integrating Land Use and Transport as it does not comply with the objectives of this direction. It does not align land uses, transport, services and facilities. Additionally the Proposal does not comply with the 10 principles set out in the document *Improving Transport Choice – Guidelines for planning and development (DUAP 2001).* The Proposal does not meet Principle 1 – Concentrate in Centres, Principle 2 – Mix uses in centres, Principle 3 – Align centres within corridors and Principle 4 – Link public transport with land use strategies.

4	**Hazard and Risk**		
	Direction	**Applicable**	**Consistent**
4.1	Acid Sulfate Soils	YES	YES
4.2	Mine Subsidence and Unstable Land	N/A	N/A
4.3	Flood Prone Land	YES	**NO**
4.4	Planning For Bushfire Protection	N/A	N/A

The site is identified as Class 5 under the Acid Sulfate Soils mapping of the Pittwater Local Environmental Plan 2014. The attached basement carpark would require extension excavation of the site which could potentially disturb the acid sulfate soils. However it is believe that this matter

can be addressed through the development application stage if the Planning Proposal was to proceed.

The site is also subject to a costal inundation risk. As outlined above it is not appropriate to change planning controls to permit a development form that introduces vulnerable people into a site that is identified as hazardous.

5	Regional Planning		
	Direction	**Applicable**	**Consistent**
5.1	Implementation of Regional Strategies	N/A	N/A
5.2	Sydney Drinking Water Catchments	N/A	N/A
5.3	Farmland of State and Regional Significance on NSW Far North Coast	N/A	N/A
5.4	Commercial and Retail Development along the Pacific Hwy, North Coast	N/A	N/A
5.5	Development in the vicinity of Ellalong, Paxton and Millfield (revoked)	N/A	N/A
5.6	Sydney to Canberra Corridor (revoked)	N/A	N/A
5.7	Central Coast (revoked)	N/A	N/A
5.8	Second Sydney Airport: Badgerys Creek	N/A	N/A
5.9	North West Rail Link Corridor Strategy	N/A	N/A
5.10	Implementation of Regional Plans	N/A	N/A

6	Local Plan Making		
	Direction	**Applicable**	**Consistent**
6.1	Approval and Referral Requirements	YES	YES
6.2	Reserving Land for Public Purposes	N/A	N/A
6.3	Site Specific Provisions	YES	YES

7	Metropolitan Planning		
	Direction	**Applicable**	**Consistent**
7.1	Implementation of the Metropolitan Strategy	YES	**NO**
7.2	Implementation of Greater Macarthur Land Release Investigation	N/A	N/A
7.3	Parramatta Road Corridor Urban Transformation Strategy	N/A	N/A
7.4	Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	N/A	N/A
7.5	Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	N/A	N/A

7.6	Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	N/A	N/A

The Proposal is inconsistent with Direction 7.1 Implementation of the Metropolitan Strategy

The Planning Proposal is inconsistent with Objective 6 – Services and infrastructure meet communities' changing needs. The site is not located within close distance of the necessary services and transport to justify a rezoning.

The Planning Proposal is inconsistent with Objective 11 – Housing is more diverse and affordable. The Proposal is aimed at the higher end of the housing market and does not make a contribution to affordable housing or a monetary contribution in lieu. This is in contrast to the stated goal of providing affordable rental housing at a rate of 5-10% on rezoning proposals.

The Planning Proposal is inconsistent with Objective 28 – Scenic and cultural landscapes are protected. The site is well regarded by the community for its scenic and aesthetic values of having waterway foreshores dominated by vegetation. The Proposal will locate a large and bulky development on the foreshore which will dominate the vegetation and impact the site's scenic values.

Draft 117 Direction			
	Direction	**Applicable**	**Consistent**
	Coastal Management	YES	**NO**

The Proposal is inconsistent with the intent of the draft Local Planning Direction for Coastal Management. The relevant section of the direction states:

> *(4) A planning proposal must not rezone land which would enable increased development or more intensive land-use on land:*
>
> *(a) within a coastal vulnerability area identified by the State Environmental Planning Policy (Coastal Management) 2016; or*
>
> *(b) identified as land affected by a coastal hazard as per (1) (b) above.*

The site is identified as being subject to a coastal hazard identified in (1) (b). The site is subject to coastal inundation. Therefore the Proposal is inconsistent by rezoning land to increase development potential by allowing for a more intensive land use on the site.

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?

The site is not identified as containing critical habitat, threatened species, populations or ecological communities, or their habitats. A submitter raised the potential for there to be protected endangered species in the vicinity of the development such as possums and bandicoots. This issue can be assessed at the development application state if the Planning Proposal was to proceed.

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

The Planning Proposal is not considered to have other environmental impacts asides from those during construction if the Proposal was to proceed through Gateway. These matters are likely to be restricted to building noise, dust, smells and temporary parking shortfalls. These impacts could be managed through conditions of consent on a development application or by the certifying authority.

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

The Planning Proposal indicates that the seniors housing will generate permanent employment opportunities through ongoing maintenance and management of the site. However the expected benefits are considered to be marginal and there is no attached economic study to indicate as such. The Planning Proposal also states the development of the site for seniors housing will have no adverse environment or social affects. However the development of seniors housing on the site will run contrary to the community's wish to retain foreshores areas as low density areas where vegetation is the dominant feature. A number of submissions from the public have raised this matter, as well as the development being for private benefit with no positive social impact on the community.

Section D – State and Commonwealth interests

10. Is there adequate public infrastructure for the Planning Proposal?

The Planning Proposal was sent to a number of state authorities as part of the preliminary (non-statutory) exhibition. Commentary was received from three state agencies. Transport for NSW responded with no comment while Roads and Maritime Services raised no objection. Sydney Water advised that due to the sites location to their assets that building plan approvals and a Section 73 Certificate be obtained from them prior to construction. These conditions can be imposed at the development application stage.

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

No applicable at this stage as the subject Planning Proposal has not progressed to the Gateway for a determination.

CONSULTATION

Preliminary (non-statutory) notification of the Planning Proposal was undertaken between 16 September and 16 October 2017 (30 days).

The Planning Proposal and its documents were made available on Council's website on the 'Your Say Northern Beaches' page and via the 'ePlanning Portal', and in hard copy at Council Customer service centres at Avalon, Mona Vale, Dee Why and Manly.

798 notification letters were sent to property owners within a 500m radius from the site. A notification was also sent by email to registered community groups within the area, including the Newport Resident's Association. The Planning Proposal was exhibited in the Manly Daily during the exhibition period.

The applicant attached 13 surrounding neighbour responses with their application. These responses were either neutral or supportive of the Proposal. One of these neighbours provided the same submission during the exhibition period. Two of these submitters have since provided a submission during the exhibition period stating they were unaware the Proposal was for a rezoning and not a development application. They have subsequently wished to state their objection.

During the exhibition period, 28 submissions were received from the general public. Of these submissions, one was from Newport Resident's Association while the remainder were mostly local residents.

Four submissions supported the Proposal. One of these submissions was from the owner of 66 Bardo Road. One submission gave qualified support, subject to satisfactory resolution of a number of issues. One submission did not object to the Proposal, but asked that access around the Crystal Bay foreshore be retained as the area is a locally popular walking track. The remaining 23 submission objected to the Proposal.

The issues raised by the objectors include:

- Flooding
- Coastal inundation
- Environmentally sensitive site
- Stormwater and run-off into Crystal Bay
- The bulk/scale/design of the Proposal
- The density of the Proposal
- Traffic/parking issues
- The Bardo/Nooal blind corner is dangerous with narrow lanes and high speed traffic
- Vegetation removal
- Permissibility of the zones
- Foreshore access and walking along Crystal Bay
- Seniors living not being occupied by seniors
- Noise
- Character of area
- Owners would have been aware of change in zoning and permissibility
- Property transfer history
- Spot rezoning
- Precedent for further rezonings in Crystal Bay
- Western end of Bardo Road is narrow and unformed
- Lack of footpaths
- Site not meeting HSPD SEPP requirements
- Endangered/threatened flora and fauna
- Local Infrastructure demand and capacity
- Zoning reflects Council and communities intended land uses for single dwellings and secondary dwellings
- E4 Environmentally Living zone should be considered holistically not piecemeal
- Construction impacts (noise, traffic, parking, delivery trucks).

A summary of these submissions and Council's response can be seen at **Attachment 1.**

AGENCY REFERRALS

The following agencies were notified of the Planning Proposal:

- Transport for New South Wales
- Road and Maritime Services
- Ausgrid
- DPI – Office of Water
- DPI - Fisheries
- Sydney Water
- Telstra.

Responses and Council's response can be seen at **Attachment 2.**

INTERNAL REFERRALS

- Transport and Civil Infrastructure
- Natural Environment and Climate Change.

The comments received from internal technical experts advise a number of conditions that would have to be imposed on the development for them to comply with Council's policies and standards. A summary of these comments are at **Attachment 3**.

FINANCIAL CONSIDERATIONS

Should the Planning Proposal proceed and subsequently be finalised, it would have the following financial impact:

a) Short term jobs would be created during the construction phase with limited financial benefits.

b) Any future development consent would require a contribution in accordance with the *Pittwater Section 94 Contributions Plan for Residential Development* (2015) to contribute to the provision of infrastructure and services required to support the development.

SOCIAL CONSIDERATIONS

Should the Planning Proposal proceed and subsequently be finalised, it would have the following social impact:

a) The low density nature of the area including its aesthetic values appears to have a strong significance to the community demonstrated by the many submissions received. The social significance of the character of the area has not been taken into consideration in this Proposal.

b) The Proposal represents a private benefit rather than a public benefit and this Proposal is not considered in the public interest.

ENVIRONMENTAL CONSIDERATIONS

Should the Planning Proposal proceed and subsequently be finalised, it would have the following social impact:

a) Construction of a large and bulky development in an area well regarding for its environmental characteristics and aesthetic values

b) Increased hard space cover, tree loss and their associated impacts.