

RANDWICK CITY COUNCIL

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# Gateway Review Submission Comprehensive Planning Proposal

05 November 2021

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## Executive Summary

This submission supports Randwick City Council's request for a Gateway Review of the Gateway Determination dated 12 September 2021 for the Comprehensive Planning Proposal.

The Comprehensive Planning Proposal (the Planning Proposal) has been prepared to update the Randwick Local Environmental Plan 2012 in accordance with the policy approach of the State Government's Standard Instrument LEP, which encourages Councils to undertake a comprehensive update of planning instruments to ensure they are in line with the strategic directions and planning priorities of the Greater Sydney Region Plan (A Metropolis for Three Cities), Eastern City District Plan and Randwick Local Strategic Planning Statement (LSPS).

Council is requesting that the Gateway Determination be reconsidered, amended and re-issued. We contend that certain conditions outlined in this submission imposed have not been adequately substantiated and will have consequences on the local character, liveability and affordability of Randwick City.

Council requests removal or amendment of the following Gateway Conditions for the reasons summarised below:

- Condition 1.b) relating to the removal of the proposed exempt development provision for non-hosted short-term rental accommodation. This condition would reduce residential amenity and impact on the available rental stock and increased rents in the long term in the coastal and inner-eastern city areas of Randwick City.
- Condition 1.c) relating to the removal of the proposed local character provision, mapping and local character statements. The LEP is the appropriate statutory mechanism to include local character and the condition is inconsistent with the Department's own policy development since 2018 and is also inconsistent with Council's endorsed LSPS and Housing Strategy.
- Condition 1.d) relating to the removal of the proposed rezoning of the land at 1903R Botany Road, Matraville. The rezoning of the site to RE2 would continue to support the recreational needs of the community and appropriately reflects the private ownership of the site.

This submission justifies our request to review the Gateway Determination to ensure that the Planning Proposal provides for the protection of local character, residential amenity and housing affordability of Randwick City.

A separate Gateway Alteration has been submitted concurrently with this Gateway Review. The Gateway Alteration requests the amendment of Condition 8 relating to the commencement of public exhibition within in 2 months of the Gateway Determination and Condition 9 relating to reporting back to Council for a final recommendation no later than 9 months of the Gateway Determination.

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## Introduction

On 12 September 2021, the Department of Planning, Industry and Environment issued a Gateway Determination for the Randwick Comprehensive Planning Proposal (Department Ref: PP\_2021\_4267).

The Planning Proposal seeks to amend the the Randwick Local Environmental Plan (LEP) 2012 to align with the strategic directions of the Eastern City District Plan and Randwick LSPS, implement the findings and recommendations of other local strategies and studies, and consider landowner rezoning requests and miscellaneous amendments.

Council received a copy of the Gateway Determination on 13 September 2021. On 26 October 2021, Council endorsed the submission of the Gateway Review at its Ordinary Council meeting.

The Gateway Determination Review is in response to the following conditions:

- Condition 1.b) Short term rental accommodation
- Condition 1.c) Local character provision
- Condition 1.d) 1903R Botany Road, Matraville

A separate Gateway Alteration has been submitted concurrently for Conditions 8 and 9 relating to the timing of public exhibition and final reporting to Council. Discussions with the Department have indicated that this administrative amendment process could be utilised to amend Conditions 8 and 9, provided adequate timeframes for review by Parliamentary Counsel is allowed for and the final LEP completion date of 12 September 2022 can be met. The concurrent Gateway Alteration submission requests that public exhibition commence in February 2022 to allow appropriate time for the preparation of exhibition materials and additional consultant studies, and to prevent exhibition coinciding with the end of year holiday period and other major Council activities. The Alteration also requests Condition 9 be amended to allow reporting to Council at the end of June 2022 to align with the scheduled Council meeting dates.

Except for the conditions listed above, the remaining conditions of the Gateway Determination are noted and accepted by Council.

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# Gateway Conditions Requested to be Removed

## Short-term rental accommodation

### ***Condition 1.b) Remove the proposed exempt development provision for non-hosted short-term rental accommodation***

In line with the LSPS and Housing Strategy, Council proposed a new exempt development provision to limit the number of days non-hosted short-term rental accommodation (STRA) can operate in a calendar year to 90 days. The objective of this provision is to minimise impacts on the supply of rental housing, residential amenity, and local character.

The provision sought an exemption from clause 12(b) (Exempt Development – Non Hosted Short Term Accommodation) of the draft State Environmental Planning Policy (Short Term Rental Accommodation 2019) which imposes a 180 day threshold. These provisions commenced across most of NSW on 1 November 2021 in the Affordable Rental Housing (ARH) SEPP 2009.

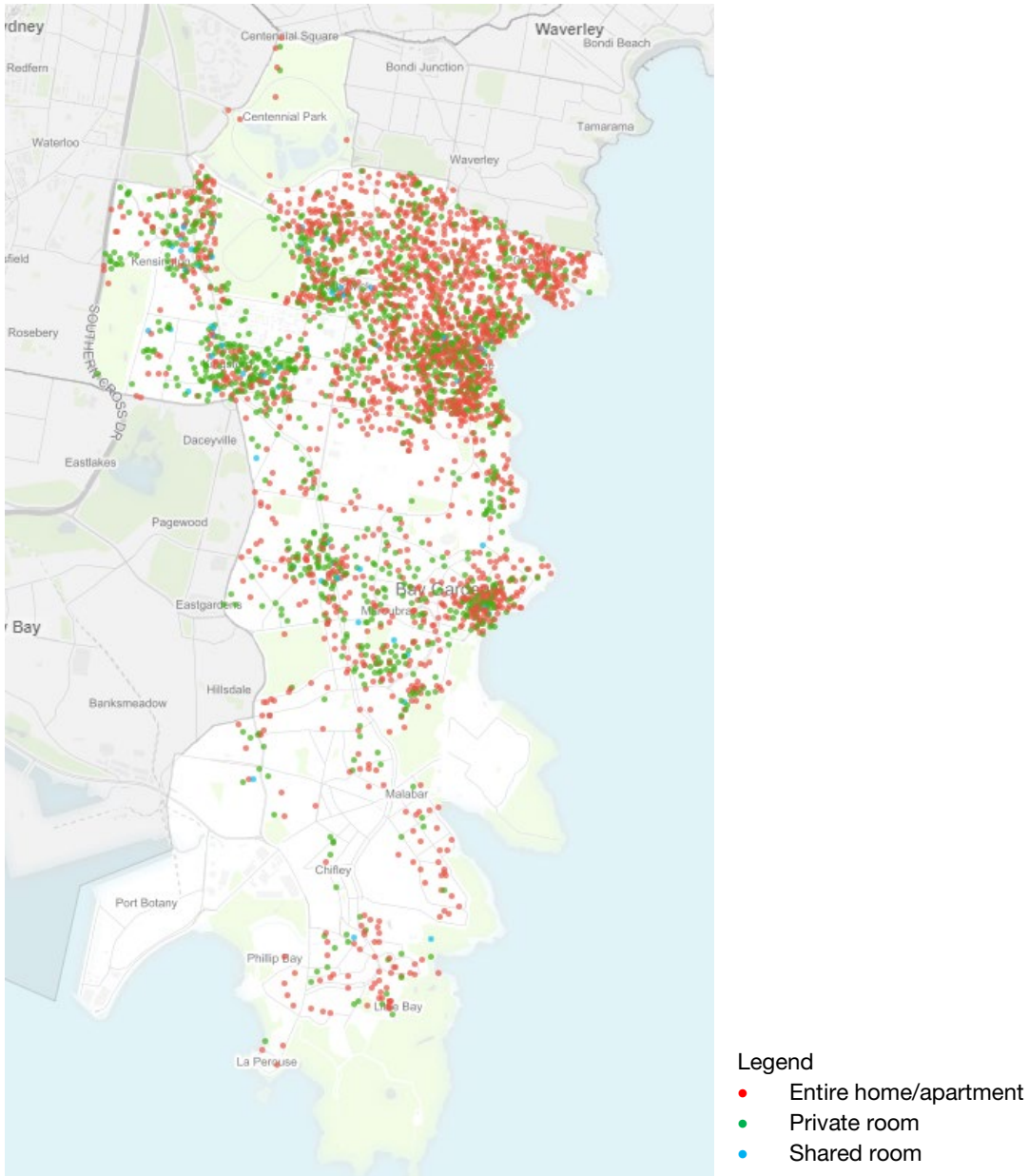
The Department's approval does not include support for the introduction of alternate thresholds on STRA exempt provisions. The Department's Gateway Determination report does not provide explanation as to why the change to the day limit was not supported, beyond the inconsistency with the state-wide approach under the ARH SEPP. This approach was confirmed with representatives of the Department in a meeting on 13 October whereby it was noted that the Department's assessment of Council's proposed STRA provision was largely based on inconsistency with State-wide policy, rather than a merit based assessment of the justification provided within the draft Planning Proposal.

### **Gateway Review justification**

Council maintains the position that local governments should decide what is the appropriate amount of STRA in their local area, and that any potential STRA cap should be considered on a case by case basis, noting that Randwick City has some of the highest numbers of STRA listings in the state (pre Covid 19).

As outlined in Council's Housing Strategy, approximately 3,346 STRA listing were provided on the Airbnb website in 2019. Of those listings, 59.6% are entire homes/apartments, 38.5% are private rooms only and 1.9% are shared rooms (Inside Airbnb). As illustrated in Figure 1 below, the listings were predominantly concentrated around the northern and coastal areas of the Randwick LGA including the suburbs of Randwick, Clovelly, Coogee and Maroubra.

Research by the Australian Housing and Urban Research Institute (October 2018) suggests that Airbnb is having an impact on the number of new rental bonds lodged in coastal areas of Sydney. This indicates that fewer properties are available for long term rental, which may be contributing to unaffordability. In 2015 there were 929 listings across the LGA with an average cost of \$258 per night. By 2018 there were 3,060 listings (the 3rd highest of any Sydney LGA) with an average cost of \$256/night. At least 312 of these Airbnb listings were from hosts who simultaneously operate 10 or more Airbnb's within the LGA.



**Figure 1: Location of Airbnb listing 2018 (Inside Airbnb)**

The recent amendments to the ARH SEPP places a limit on non-hosted STRA premises of 180 days a year. However, data from 2018 showed that on average, Airbnb rentals in the Randwick LGA were available for rent for 148 days a year. This 148-day figure suggests that the 180 day limit will unlikely contribute to an overall reduction in STRA properties in the Randwick LGA. A 90 day limit, allows STRA operators to rent their dwellings on a short term basis over the peak summer period (or any period of their choosing) whilst ensuring a 275 day (9 month) period for medium term renters, minimising the impact of STRA on housing supply and encouraging permanent, medium term occupation.

It is acknowledged that there is a need for the provision of STRA, particularly within the Randwick Collaboration Area. The new ARH SEPP provisions state that where a host is not present and the booking is for 21 or more consecutive days, the booking will not count towards the 180 day limit. Visitors to Randwick City staying for 21 or more consecutive days are usually on work related travel (e.g business travellers, visiting academics, doctors) or are visiting relatives, students or hospital patients. This 21 day exemption to the policy is an important part

of the policy framework which will continue to apply to Randwick City even if a 90 day operating maximum to non-hosted STRA is granted.

The number of STRA listings also impacts on residential amenity within the Randwick LGA. Randwick City Council compliance and enforcement teams have long received submissions from members of the community expressing frustration with the noise, inappropriate activity and general community disruption from STRA occupants. While the mandatory Code of Conduct may go some way to addressing these issues, a 90 day limit will also help to relieve the impacts of STRA on residential amenity, local character and community in Randwick City, limiting these impacts to a restricted period.

### **Recommendation**

The Gateway requirement to remove the proposed exempt development provision for non-hosted short-term rental accommodation would reduce residential amenity and impact on the available rental stock and increased rents in the long term in the coastal and inner-eastern city areas of Randwick City. On this basis, it is recommended that Gateway Condition 1.b) be removed.

## Local character

### ***Condition 1.c) Remove the proposed local character provision, mapping and local character statements***

The Planning Proposal seeks to amend Randwick Local Environmental Plan 2012 to introduce a new Local Character clause (consistent with the draft clause exhibited by the Department in November 2020) and associated LEP Maps for three coastal Local Character Areas (LCAs) being:

- Northern Coast Local Character Area
- Southern Coast Local Character Area
- The Bays Local Character Area.

The Gateway Determination report states that given ‘mixed feedback’ on the local character clause exhibited in 2020, a decision on the inclusion of local character in LEPs has not yet been made, and there is currently no Department-endorsed statutory pathway to include local character in LEPs. It goes on to state that local character areas may be included in Council’s Development Control Plan (DCP). In a recent meeting with the Department on this matter, it was raised that a Gateway Review of the local character provision would pre-empt the final decision by the State Government as to how local character would be dealt. It was also noted that the Department’s assessment of Councils proposed local character provision was largely based on inconsistency with State-wide policy and lack of statutory mechanism, rather than a merit based assessment of the justification provided within the draft Planning Proposal.

Council has undertaken considerable work on local character since its introduction by the Department. In January 2018, the Department released a Planning System Circular relating to local character that provided advice on how the planning system will deliver development that considers the context and local character of the surrounding area. The Department also released the Local Character and Place Guideline and the Discussion Paper – Local Character Overlays in February 2019.

In accordance with the planning priorities and actions of the endorsed Randwick LSPS and Randwick Housing Strategy, Council prepared and released for community consultation 11 draft Local Character Statements in 2019/2020. The draft Local Character Statements were prepared using community input from the Vision 2040: Shaping our Future consultation undertaken in 2019 and are consistent with the Local Character and Place Guideline.

In November 2020, the Department released the Draft Local Character Clause for comment. The Draft Local Character Clause would allow councils to insert a reference to local character in their LEP via a Local Character Statement and map. The intent of the clause was to achieve consistency in the way local character is considered through the planning proposal process, and the way it is included in LEP amendments. The Draft Local Character Clause exhibition material also included a criteria that outlines the information required to apply for an exemption to the Low Rise Housing Diversity Code within LCAs mapped in an LEP.

### **Gateway Review justification**

The Gateway Determination condition to remove local character from the Planning Proposal is contrary to Council’s strategic planning framework and contrary to the Department’s policy development on local character. Based on the information released by the Department on local character since 2018, Council has investigated significant time and resources into preparing this work over the last 2.5 years. The local character statements proposed for inclusion in the LEP are consistent with the Department’s own Local Character and Place Guideline and the Draft Local Character Clause. Information from the Department’s website clearly demonstrates the value in recognising local character provisions in planning decisions:



*The NSW Government has heard that communities would like local character consideration to be elevated in NSW planning decision making. The NSW Government is actively seeking to encourage neighbourhoods' people are proud to live in, where the community collaborates with local and state governments to share what they value about their area.*

*The Local Character and Place Guideline aims to support councils and communities to consider and nurture the unique identity of a place, while at the same time meeting the needs of a changing NSW. This guideline provides tools to help define existing character and set a desired future character that aligns with the strategic direction for an area.*

Council has developed a strong local character methodology that has been underpinned by two rounds of community consultation undertaken in 2019 and 2020. Council has placed high priority on integrating local character within the local planning framework. At the strategic level, local character has been embedded in the endorsed LSPS and Housing Strategy. The LSPS was 'made' on 26 March 2020 following assurance from the Greater Sydney Commission, while the Housing Strategy was approved by the Department on 23 June 2021. A planning priority in the LSPS is to work with the Department to seek an exclusion from the State Policy (Exempt and Complying Development Codes) 2008. Removing the local character areas from the housing section of the Policy would mean that proposals would be subject to a merit assessment rather than the complying development pathway.

The Department's Housing Strategy approval letter was received approximately 1 week before the Planning Proposal was reported to Council (1 June 2021) and included a number of conditions in relation to local character. The approval letter states that "should Council wish to exclude limited areas from the Low Rise Housing Diversity Code (LRHDC) this may be achieved through the application of local character areas under the LEP". It also states that Council will need to provide a comprehensive evidence base in relation to the delivery of medium density housing. This evidence base, consistent with the Department's criteria outlined in Local Character Provision – Explanation of Intended Effect (November 2020) has been undertaken by officers and was reported to Council in April 2021. Key points in relation to this matter area outlined below.

- As demonstrated through the Vision 2040 consultation and the public exhibition of draft statements, the community strongly values the coastal area of Randwick City, particularly its open spaces and environmental qualities. Council's comprehensive local character analysis support this and demonstrates that there is a strong coastal character within the three LCAs that must be protected.
- Approximately 60% of all residential zoned land in the three proposed LCAs is within Council's Foreshore Scenic Protection Area, which demonstrates the scenic qualities and need for merit assessment in the DA process to ensure that views are maintained, and new development is consistent with the coastal character.
- Council's analysis demonstrates that the Northern Coast, Southern Coast and The Bays LCAs account for approximately 15.2% of all development applications (DAs) and 13.3% of all complying development certificates (CDCs) approved in Randwick City in the last 5 years.
- Since the *Low Rise Housing Diversity Code* (Part 3B of the Codes SEPP) came in effect in Randwick City in July 2020, there have been 12 CDCs issued for low rise housing (up to April 2021). All 12 of these were for attached dual occupancy development and one of these fell within the Southern Coast LCA and none in the other two LCAs.
- An exemption from the *Low Rise Housing Diversity Code* would not prohibit the application of other relevant sections of the Code SEPP for certain types of development within the LCAs, including alterations and additions to existing residential dwellings, commercial premises alterations including new fitouts and installation of swimming pools.

- The residential zoned land within the 3 LCAs accounts for approximately 13% of all residential zoned land in the LGA. As such, the Code would still apply to approximately 87% of all residentially zoned land within the LGA.

Council's local character work is not intended to limit development, but rather ensure that future development is consistent with the desired future character as set out in the draft statements. Character principles that set the desired future character of these areas have been developed in consultation with the community. It is intended that the character principles will be supported by a subsequent DCP chapter to be prepared as part of the upcoming DCP review. While the Gateway Determination report states that councils can include local character in their DCPs, this will not carry the statutory weight that they would if they were included in the LEP as proposed. By embedding local character in the LEP, the statements become a key consideration for development proposals. Furthermore, the importance of character in designing places is embedded in the NSW Government's recent Draft Design and Place SEPP. This draft SEPP supports a place based approach to ensure high quality neighbourhoods.

No timeframe is provided in the report as to whether local character will be supported in LEPs at a later date. Given that Council has been undertaking its work on local character for 2.5 years (in collaboration with the Department) it is unsatisfactory to expect Council to wait until a final decision is made by the Department, which would then require another standalone Planning Proposal to implement local character into the LEP.

### **Recommendation**

This Gateway condition to remove local character from the Planning Proposal is inconsistent with the Department's own policy development since 2018 and is inconsistent with the endorsed LSPS and Housing Strategy. The Housing Strategy was approved a week before the Planning Proposal was reported to Council and supported Council proceeding to include local character in the LEP.

Council contends that the LEP is the appropriate statutory mechanism to include local character and it is on this basis that the Gateway condition 1.c) be removed.

## 1903R Botany Road, Matraville

### **Condition 1.d) Remove the proposed rezoning of the land at 1903R Botany Road, Matraville from RE1 Public Recreation to RE2 Private Recreation**

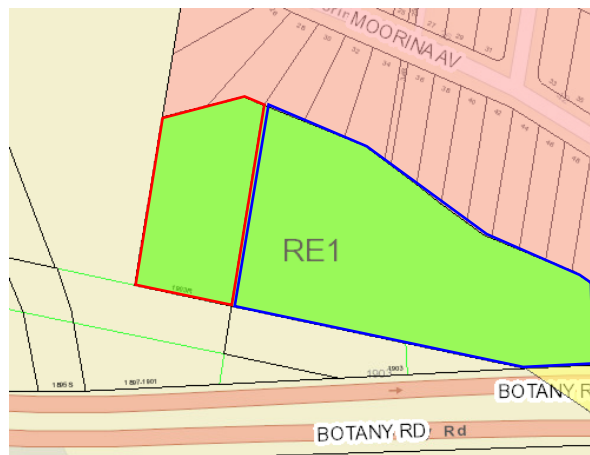
The site at 1903R Botany Road, Matraville is the subject of a rezoning request submitted under the Planning Proposal. The site is a vacant lot with no public road access, located near Botany Road in Matraville. The lot is adjacent to the Port Botany industrial area and the Bunnerong Creek waterway runs directly through the north section of the lot. A Council owned parcel of land of approximately 10,000m<sup>2</sup> is located immediately to the east of the site.

The current and previous landowners have in the past offered the site to Council for purchase in accordance with clause 5.1 of RLEP, however in June 2019, Council confirmed that it is not in a position to purchase the land. Given that Council is unable to purchase the land, the owners requested that the land be rezoned to reflect the private ownership of the site.



**Figure 2: Site location Aerial Map (Near Maps)**

Red = subject site / Blue = Council owned RE1 land



**Figure 3: Existing Zoning Map**

The request contained in the Planning Proposal was to rezone the site from RE1 Public Recreation to RE2 Private Recreation (subject to an assessment provided under State Environmental Planning Policy No.55 – Remediation of Land). The rezoning request was submitted under the justification that the land is in private ownership, is not intended or currently used for public recreation and Council does not intend to purchase the site.

The Department's approval does not include support for this rezoning request and removal of this request has been listed as a condition of gateway. According to the Department's Gateway Determination report, there is insufficient justification in the proposal to demonstrate that:

- The rezoning would not result in a net loss of existing and/or potential public or publicly-accessible open space, both across the LGA and for the locality; and
- there is no longer a need for Council to acquire the site for the purposes of local open space to support the open space and recreation needs for existing and future population.

The Department also expressed that this element of the Planning Proposal is inconsistent with the Eastern City District Plan, Randwick LSPS, Randwick Open Space and Recreation Needs Study, as well as a number of Ministerial Directions. Further, in a recent meeting held with the Department concerning this matter, it was noted that the issue of protecting public open space from being rezoned is a priority of the Minister across the State, and is not unique to Randwick City.

## Gateway Review justification

Council questions the Department's position that the site would not serve the recreational needs of the existing and future population if it is zoned RE2 Private Recreation. The objectives of the RE2 Private Recreation zone support the provision of a range of recreational settings and activities, as well as use of land for private open space and recreational purposes. As the site is currently in private ownership, with no immediate changes in ownership foreseen, the rezoning to RE2 Private Recreation is considered appropriate to facilitate the provision of private recreation facilities within Randwick City.

The provision of private recreation land is particularly important given the recent loss of private recreational areas made possible through State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (Seniors Housing SEPP). For instance, the site of the former Maroubra Bowling Club at 481- 499 Malabar Road, Maroubra is one of the few remaining pockets of RE2 zoned land. This 10,850m<sup>2</sup> site is being redeveloped into seniors housing, transforming the site's primary use from recreation to residential. Unlike the Maroubra Bowling club site, the conversion of the site at 1903 Botany road to seniors housing would not be possible under the Seniors Housing SEPP as the SEPP only applies to land that is used for an *existing registered club* (being a club that existed prior to the adoption of the Seniors Housing SEPP).

Current site access arrangements do not readily support the use of the site as publicly accessible open space. The site has no formal road access and sits adjacent to an established industrial precinct and road reserve. Pedestrian access is provided to the northern portion of the Council owned public open space immediately to the east of the site via Moorina Avenue. This access is via a drainage reserve and is not formalised. The site at 1903R Botany Road is fenced on all boundaries, with no pedestrian access available from Botany Road or the neighbouring Council owned site.

In May 2017 the Land and Environment Court approved the subdivision of the industrial land immediately to the west of the site, which is under the same ownership as the subject site. Approval was granted for subdivision, site remediation and landscape works, and includes provision for a right of way to the subject site via a newly created internal road approved as part of the subdivision DA. Recent discussions with the land owner/applicant revealed they are currently investigating potential uses for the site, including an aquatic centre or child care centre. It is noted that these uses are subject to feasibility and ongoing discussions with potential operators, as well as future development assessment. Notwithstanding, they are uses compatible with the RE2 Private Recreation zone and would support the recreational and/or social needs of the existing and future population, even if they are privately owned and operated.

The site currently acts as a buffer between the industrial land to the west and residential land located along Moorina Avenue. This buffer is maintained under the Land and Environment Court approval noted above, which requires a riparian corridor along Bunnerong Creek to be approved by the Department of Primary Industries. Under the NSW *Water Management Act 2000*, setbacks (riparian zones) are required on waterfront land, up to 40m from the waterway bank to form a transition zone between the terrestrial environment and the water course. This riparian zone would ensure that that site will continue to act as an appropriate buffer between uses.

The Randwick City Open Space and Recreation Needs Study (December 2020) found that the Malabar, La Perouse and Chifley zone which covers the subject site is well placed to cater for existing and future populations with approximately 32.1m<sup>2</sup> of Council owned and managed open space per person based on population projections to 2031. The Study does identify areas of Randwick LGA where public open space is deficient for existing and future populations, in particular the northern portions of the LGA where housing growth is planned. As such Council

will be focusing on provision of open space in areas forecast to decline, in line with expected housing growth. The walkable catchment analysis does identify some areas of Matrville that are not within 400m walking distance to an open space area of >0.1ha that is accessible at all times. However as the large portion of Council owned RE1 land immediate to the east of the site will remain, and given the subject site is not currently accessible to pedestrians, the rezoning of this land will not reduce open space access for the residents of Matrville and Chifley.

### **Recommendation**

The subject site is not currently accessible to pedestrians or vehicles and is of poor quality. The rezoning to RE2 Private Recreation would facilitate the redevelopment of the site for a use that would service the recreational and social needs of the community while reflecting the private ownership of the land. On this basis, it is recommended that Gateway Condition 1.d) be removed.

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## Conclusion

Council has undertaken a comprehensive planning review to guide the future growth and development of Randwick City in a manner that protects residential amenity, housing availability and affordability and preserves local character.

The Planning Proposal has been prepared to update the Randwick Local Environmental Plan 2012 to ensure it aligns with the strategic directions and planning priorities of the Greater Sydney Region Plan (A Metropolis for Three Cities), Eastern City District Plan and Randwick LSPS.

A number of Gateway Determination conditions imposed have not been adequately substantiated and will have consequences on the local character, liveability and affordability of Randwick City.

Condition 1.b) would result in unacceptable residential amenity and impact on the available rental stock and increased rents in the long term as a result of the prevalence of non-hosted STRA within the Randwick LGA.

Council contents that the LEP is the appropriate statutory mechanism to include local character, and that Condition 1.c) is inconsistent with the Department's own policy development since 2018, is inconsistent with the endorsed LSPS and Housing Strategy.

The rezoning of the site at 1903R Botany Road, Matraville to RE2 would continue to support the recreational needs of the community and appropriately reflects the private ownership of the site. As such, Council request Condition 1.d) be deleted.

A separate Gateway Alteration has been submitted concurrently with this Gateway Review to amend Condition 8 to commence public exhibition in February 2022 to allow appropriate time for the preparation of exhibition materials and additional consultant studies, and to prevent exhibition coinciding with the end of year holiday period and other major Council activities. The Alteration also requests Condition 9 be amended to allow reporting to Council at the end of June 2022 to align with the scheduled Council meeting dates.

