



New South Wales Government
Independent Planning Commission

Gateway Determination Review Request for 2 and 4 Nooal Street and 66 Bardo Road, Newport (PP_2018_NBEAC_004_00)

Gateway Determination Advice Report

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1 INTRODUCTION

1. On 16 July 2020, the NSW Independent Planning Commission (**Commission**) received a referral from the NSW Department of Planning, Industry and Environment (**Department**) to give advice pursuant to section 2.9(1)(c) of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* in relation to a planning proposal (**Planning Proposal**) and Gateway Determination in respect of 2 and 4 Nooal Street and 66 Bardo Road Newport (Lot 1 DP 540092, Lot 1 DP 315279 and Lot 2 DP 540092) (the **Site**), within the Northern Beaches Local Government Area (**LGA**).

2. Mr Peter Duncan AM, Acting Chair of the Commission, nominated Ilona Millar (Chair) and Adrian Pilton to constitute the Commission providing advice on the review of the Gateway determination.

3. The Department's Gateway Review Justification Assessment accompanying the referral states:

The planning proposal seeks to rezone Nos. 2 and 4 Nooal Street and No. 66 Bardo Road, Newport (being Lot 1 DP 540092, Lot 1 DP 315279 and Lot 2 DP 540092), from E4 Environmental Living to R2 Low Density Residential to enable 'seniors housing' on the land.

4. A Gateway determination that the Planning Proposal should proceed was issued by the Minister's delegate on 14 October 2019 on the grounds that the proposal, subject to the conditions of the Gateway, had strategic and site specific merit as it would:

- *provide for much needed seniors housing to cater for an ageing population;*
- *enable seniors housing in an infill location that is serviced by regular public transport less than 400m walking distance from the site;*
- *provide an opportunity for seniors to age in place by providing downsized accommodation within an existing community;*
- *allow for an additional permitted use which represents a compatible and logical extension of the residential uses in the R2 Low Density Residential land directly opposite the site on the eastern side of Nooal Street;*
- *will retain the scale of development currently permitted on the site and its surrounds; and*
- *not result in any likely detrimental environmental, social or economic impacts.*

5. The Department considers that amending Schedule 1 of Pittwater LEP 2014 to provide for seniors housing as an additional permitted use on the Site, rather than rezoning the land as R2 residential, is the most effective and preferred approach to achieve the Planning Proposal's intended outcome. Condition 1.b. of the Gateway determination provided that the Explanation of Provisions should be revised to reflect this mechanism on the basis that:

- *there is no obligation on the proponent to develop the land for seniors housing if the land were to be rezoned R2 Low Density Residential;*
- *seniors housing would be expressly permitted under Pittwater LEP 2014, thereby removing the need to rely upon the Seniors SEPP;*
- *that any future seniors housing development would be regulated by the Pittwater LEP 2014 and Council's DCP;*
- *rezoning the site R2 Low Density Residential would also permit the following forms of housing under State Environmental Planning Policy (Affordable Rental Housing) 2009:*
 - *'boarding houses';*

- 'group homes';
- 'secondary dwellings'; and
- maintaining the land's existing E4 zone is in keeping with Council's approach of predominately applying the E4 zone along the Pittwater waterfront edge from Gladstone Street to Palm Beach.

6. Northern Beaches Council requested a review of the Gateway determination (dated 12 December 2019), stating that:

Council has reviewed the Gateway Determination and the Gateway Determination Report and formed the view that the Planning Proposal has not demonstrated strategic or site specific merit. Further, the Gateway Determination appears to be based on inaccurate information in relation to the flood and estuarine hazards that affect the site.

Council believes the proposal should not proceed for the following reasons:

1. *A site specific Planning Proposal for the site is premature and is contrary to the Greater Sydney Commission's preference for holistic, consultative and comprehensive strategy led management of urban change.*
2. *Council's draft LSPS and [sic] indicates that Council already has existing capacity with residential zoned land to meet housing targets and provide seniors housing.*
3. *The DPIE Gateway Determination report contains errors in relation to the affectation of the site to natural hazards. The site is subject to flooding at the 1% AEP and PMF events under Newport Flood Study, 2019 and this has not been appropriately considered.*
4. *The site is affected by estuarine inundation as defined by Pittwater Estuary Mapping of Sea Level Rise Impacts, Cardno, 2015 and this has not been appropriately considered.*
5. *The proposal does not demonstrate site specific or strategic merit, and is inconsistent with Pittwater Local Strategy 2011 the draft Northern Beaches Council Local Strategic Planning Statement and the existing built form and character of the area.*
6. *The proposal is not needed to provide additional senior housing opportunities in the locality as the current residential zones have existing capacity to support senior housing development free of natural hazards.*
7. *Northern Beaches Council is generally on track to meet required housing targets, with the Councils Housing Study the appropriate vehicle to investigate and consider any additional housing opportunities.*
8. *The proposal is not consistent with all components of the strategic planning framework, with specific reference to North District Plan Planning Priorities N5, N17 and N22 and Ministerial Direction 2.2 Coastal Protection, 4.3 Flood Prone Land and 7.1 Metropolitan Planning and State Environmental Planning Policy (Coastal Management) 2018.*
9. *The proposal does not represent orderly and economic planning.*
10. *The proposal creates an undesirable precedent for similarly zoned adjoining properties.*
11. *The proposal is inconsistent with the existing and desired future built form and local character of the area.*

2 SCOPE OF REVIEW

7. The letter accompanying the Department's referral requested that the Commission:

...review the planning proposal and prepare advice concerning the merits of the review request. The advice should include a clear and concise recommendation to the Minister's delegate confirming whether, in the Commission's opinion, the Gateway determination should be altered.

8. The Department's *A Guide to Preparing Local Environmental Plans (LEP Guide)* states (on page 17 under section 6.4 *Review of Gateway determination*):

Step 3 –Independent Planning Commission (the Commission) advice

The Department's report and accompanying information will be forwarded to the Commission for its advice.

The Commission will review the planning proposal, giving consideration to the council or proponent's submission and the reasons given for the original determination in the Department's report.

The Commission will then determine whether or not the original Gateway determination should be altered and whether the planning proposal should proceed to public consultation.

9. The Department's *Planning Circular PS 18-012 Independent reviews of plan making decisions* states:

Review and determination

The Planning Panels or the Commission will provide advice on whether the original Gateway determination should be altered, giving consideration to the council or proponent's submission and the reasons given for the original Gateway determination.

The Minister's final decision on whether to alter the Gateway determination will be informed by this advice, and the views of the council and proponent.

10. The Commission notes that the present matter is a Gateway review request under section 6.4 of the Department's LEP Guide, not a pre-Gateway determination rezoning review request (as set out in section 6.2 of the LEP Guide). The Commission nonetheless finds that some of the considerations set out in section 6.2 of the LEP Guide provide a useful framework for advising on the merits of the Planning Proposal and Gateway Determination.

3 THE COMMISSION'S CONSIDERATION

3.1 The Commission's Meetings

11. As part of its review, the Commission met with various persons as set out in Table 1. All meeting, site inspection notes and associated documentation were made available on the Commission's website.

Table 1 – Commission's Meetings

Meeting	Date of Meeting
Department	5 August 2020
Proponent	5 August 2020
Council	4 August 2020
Site Inspection	31 July 2020

3.2 Material considered by the Commission

12. The following material was considered by the Commission in preparing this Advice Report:
- Department's *Local Environmental Plans – A guide to preparing local environmental plans* (dated December 2018)
 - Department's *Planning Circular PS 18-012 Independent reviews of plan making decisions* (dated 14 December 2018)
 - Department's referral letter to the Commission (dated 15 July 2020)
 - Department's Gateway review justification assessment (undated)
 - Department's Gateway determination (dated 14 October 2019)
 - Department's Gateway determination report (undated)
 - Northern Beaches Council's *Planning proposal - amendments to Pittwater Local Environmental Plan 2014 Nos. 2 & 4 Nooyal Street & No. 66 Bardo Road, Newport* (dated June 2019)
 - Northern Beaches Council's Gateway determination review request and supporting information (dated 12 December 2019)
 - King & Wood Mallesons letter to the Commission on behalf of Northern Beaches Council (dated 4 August 2020)
 - Greater Sydney Commission's *North District Plan* (dated March 2018)
 - Northern Beaches Council's *Towards 2040 Local Strategic Planning Statement* (dated March 2020)
 - *Pittwater Local Environmental Plan 2014*
 - *Pittwater 21 Development Control Plan* (adopted 8 December 2003)
 - *Pittwater Estuary Mapping of Sea Level Rise Impacts* (Cardno, 2015)
 - *Newport Flood Study* (Catchment Simulation Solutions, 2019)
 - Proponent's supplementary response to the Commission and supporting information (dated 11 August 2020)
 - *Ministerial Direction 2.2 Coastal Protection*
 - *Ministerial Direction 4.3 Flood Prone Land*
 - *Ministerial Direction 7.1 Metropolitan Planning*
 - *State Environmental Planning Policy (Coastal Management) 2018*

13. The Commission notes that the Department's assessment and determination considered the Planning Proposal against relevant SEPPs and other planning requirements not specifically covered in the scope of this review.

3.3 Merits of the Gateway determination

3.3.1 Regional, district or corridor/precinct plans

14. The Commission has considered the *North District Plan* (Greater Sydney Commission, 2018) in assessing the merits of the Gateway determination. The Plan states at page 124 that:

In undertaking strategic planning processes, and/or preparing or considering planning proposals, planning authorities must give effect to the District Plan, specifically the Planning Priorities and Actions.

15. The Plan sets out the following planning priorities and actions relevant to the proposal:
- **Planning Priority N5** - Providing housing supply, choice and affordability, with access to jobs, services and public transport
 - Action 17 - Prepare local or district housing strategies that address the following:
 - a. the delivery of five-year housing supply targets for each local government area
 - b. the delivery of 6–10 year (when agreed) housing supply targets for each local government area
 - c. capacity to contribute to the longer term 20-year strategic housing target for the District
 - d. the housing strategy requirements outlined in Objective 10 of A Metropolis of Three Cities that include:
 - i. creating capacity for more housing in the right locations
 - ii. supporting planning and delivery of growth areas and planned precincts as relevant to each local government area
 - iii. supporting investigation of opportunities for alignment with investment in regional and district infrastructure
 - iv. supporting the role of centres.
 - **Planning Priority N15** - Protecting and improving the health and enjoyment of Sydney Harbour and the District's waterways
 - Action 62 - Protect environmentally sensitive areas of waterways and the coastal environment areas.
 - Action 64 - Improve the health of catchments and waterways through a risk-based approach to managing the cumulative impacts of development including coordinated monitoring of outcomes.
 - **Planning Priority N17** - Protecting and enhancing scenic and cultural landscapes
 - Action 67 - Identify and protect scenic and cultural landscapes.
 - **Planning Priority N22** - Adapting to the impacts of urban and natural hazards and climate change
 - Action 81 - Avoid locating new urban development in areas exposed to natural and urban hazards and consider options to limit the intensification of development in existing urban areas most exposed to hazards.

16. The Plan specifically identifies that the projected North District population growth from 2016 to 2036 is 47% for the 65-84 year age group and 85% for the 85+ age group (page 9). It goes on to state (page 28):

More diverse housing types and medium density housing, as well as the design of walkable neighbourhoods, will create opportunities for older people to continue living in their community, where being close to family, friends and established health and support networks improves people's wellbeing.

Coordinated and additional health, social and aged care services and collaborative responses across government and industry are needed to meet the expected increase in demand for local aged care facilities and respite services, including home care options (with associated visitor parking).

17. Page 40 of the Plan addresses the need for increased housing supply:

More housing in the right locations

Creating capacity for new housing in the right locations requires clear criteria for where capacity is to be located. Accommodating homes needs to be linked to local infrastructure – both to optimise existing infrastructure and to maximise investment in new infrastructure. Opportunities for capacity that aligns with infrastructure can be realised by urban renewal, local infill developments and land release areas (refer to Figure 11).

Local infill development

Local infill development – the missing middle – refers to medium density housing such as villas and townhouses within existing areas, that provide greater housing variety.

Councils are in the best position to investigate and confirm which parts of their local government areas are suited to additional medium density opportunities. As part of their investigations councils should consider:

- transitional areas between urban renewal precincts and existing neighbourhoods*
- residential land around local centres where links for walking and cycling help promote a healthy lifestyle*
- areas with good proximity to regional transport where more intensive urban renewal is not suitable due to challenging topography or other characteristics*
- lower density parts of suburban Greater Sydney undergoing replacement of older housing stock*
- areas with existing social housing that could benefit from urban renewal and which provide good access to transport and jobs.*

18. Page 42 identifies that the 2016-2021 housing supply target is 3,400 for Northern Beaches LGA.

19. On page 43, under “Principles for housing strategies” the Plan identifies the need to meet housing demand by responding to the following principles:

Housing need: *the projected housing need and demographic characteristics of the existing and growing community, including different cultural, socio-economic and age groups and the availability of a range of housing types, tenures and price points.*

Diversity: including a mix of dwelling types, a mix of sizes, universal design, seniors and aged care housing, student accommodation, group homes, and boarding houses.

Market preferences: market demand considerations that drive the take-up of housing, including local housing preferences.

Alignment of infrastructure: opportunities to optimise transport infrastructure enabling access to jobs, health, education and recreation facilities, that align with State and local government infrastructure priorities (refer to 'More housing in the right locations').

The Commission's findings

20. The Commission has considered the North District Plan and additional material identified under heading 3.2 of this document.
21. The Commission notes that a small proportion of the Site is likely to be impacted by flooding and estuarine inundation. The Commission does not consider these to be significant hazards on this Site to the extent that they preclude development of the majority of the Site and notes that these issues can be addressed at the detailed design stage of any future development.
22. The Commission notes the North District Plan's reference (see paragraph 17) to the role of Council in investigating and confirming areas suited to additional medium density opportunities, however the Site is clearly within an area with good proximity to regional transport while more intensive urban renewal outside the Site is unlikely to be suitable due to challenging topography or other characteristics.
23. The Commission finds that the subject Planning Proposal is consistent with and will give effect to the strategic direction, planning priorities and actions of the North District Plan. This is because the Planning Proposal will provide senior's housing that will create opportunities for older people to continue living in their community and will also:
 - contribute to the delivery of the Plan's housing supply targets and strategy requirements (Planning Priority N5) while being consistent with the principles of that Plan;
 - not reduce protection of the District's waterways (Planning Priority N15);
 - not reduce protection of scenic and cultural landscapes (Planning Priority N17);
 - not be located in an area exposed to significant natural and urban hazards (Planning Priority N22)

3.3.2 Relevant local strategies

24. The Commission has considered the *Towards 2040 Local Strategic Planning Statement* (Northern Beaches Council, March 2020) (**LSPS**) being the only local strategy identified by the Commission as relevant to this Planning Proposal. The Commission understands that the LSPS has superseded the *Pittwater Local Planning Strategy 2011*.
25. The LSPS states that (page 14):

The Northern Beaches' population increase of around 39,000 people over the next 20 years represents 3% of Greater Sydney's growth (from 253,000 to 292,000). The population today is older than the Greater Sydney average and we expect this trend to continue.

26. And (page 15):

Based on projected population growth, we need to plan for an additional 11,747 dwellings over the next 20 years. This rate of growth is not extraordinary, representing a similar rate of growth to recent years.

Our five-year housing target (2016-2021) under the North District Plan is 3,400 new dwellings. This is likely to be achieved in existing areas, with Warriewood-Mona Vale, Dee Why-North Curl Curl and Narrabeen-Collaroy accommodating most new housing in recent years.

27. The Vision includes:

There is a range of housing to accommodate the whole community and we continue to pursue design excellence and sustainability outcomes in built forms (page 22).

A diverse mix of affordable and innovative housing gives residents more choice, creating more inclusive neighbourhoods that connect people across generations (page 23).

28. The Plan sets out the following planning priorities and actions relevant to the proposal:

- **Priority 3** – Protected scenic and cultural landscapes
 - Action 3.2 - Develop LEP and DCP controls to protect views, skylines and scenic and cultural landscapes, such as foreshore scenic protection areas and special clauses for building heights on steeply sloping land and significant ridgelines
- **Priority 8** – Adapted to the impacts of natural and urban hazards and climate change
 - Action 8.2 - Identify where to limit the intensification of development in areas exposed to hazards including bush fire prone areas for both risk minimisation and environmental protection
 - Action 8.3 - Undertake studies including constraints, coastal hazards and flood mapping and develop LEP and DCP controls to restrict development in high-risk hazard areas
- **Priority 15** – Housing supply, choice and affordability in the right locations
 - Action 15.1 - Prepare and implement a local housing strategy
 - Action 15.2 - Develop LEP and DCP controls informed by the local housing strategy to ensure the supply and mix of housing responds to community needs and minimises land use conflicts, including apartment mix controls; low-rise medium density housing; adequate communal spaces in higher density development; requirements for adaptable housing and universal design; removal of floor space ratio (FSR) controls for dwellings in Manly; and street activation in centres
 - Action 15.3 - Work with the Department of Planning, Infrastructure and Environment on the application of relevant State policies that override local housing provisions, by developing a local approach to the provision of seniors housing, boarding houses and medium density housing based on evidence in the local housing strategy, including a review of:
 - a. seniors housing under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004
 - b. boarding houses under State Environmental Planning Policy (Affordable Rental Housing) 2009

c. medium density housing under State Environmental Planning Policy (Exempt and Complying Development Code) 2008

29. Under “Managing growth and change on page 32:

The local housing strategy will investigate opportunities for changes to the planning controls to address housing needs, such as low levels of social housing and affordable housing, as well as provision of a diversity of housing types that cater for different demographic groups.

Planning proposals seeking changes to the planning controls for additional development capacity through spot rezoning must have strategic merit and site-specific merit. In some cases, these planning proposals may have merit and contribute to targets by unlocking previously identified capacity, particularly where they also have genuine broader public benefit, as well as achieving high- quality planning and urban design outcomes.

Planning proposals that simply seek additional residential density above that identified in the local housing strategy will have challenges in demonstrating their strategic merit as they are not necessary to achieve the housing targets and the strategic direction set out in Towards 2040.

30. Figure 45 (page 108) identifies that 55% of population growth by age for the Northern Beaches LGA from 2021-2036 will be retirees (65+ years).

31. Under “Principles” on (page 110):

Locate seniors housing, social and affordable housing near centres and high-frequency public transport.

32. Under “Housing” on page 118:

The population of the Northern Beaches is steadily growing. Much of the demand for new housing can be met by development in areas already zoned for growth such as Dee Why, Brookvale and Mona Vale, and by developing areas such as the Frenchs Forest strategic centre. We will still need to identify and plan for some growth in new areas over the medium to longer term to meet demand.

The demand for different forms of housing is also increasing, particularly medium density housing such as townhouses. With limited housing diversity, the Northern Beaches offers few affordable housing options and limited access to social housing.

The Northern Beaches requires a mix of housing types in well-planned neighbourhoods that are close to jobs, public transport, and walking and cycling options.

33. And on pages 119-120:

In 2016 there were 101,468 dwellings in the Northern Beaches LGA. The North District Plan sets a target for an additional 3,400 dwellings in the Northern Beaches between 2016 and 2021. We are well on the way to achieving this target through developments in existing centres and in areas such as Warriewood Valley. We will develop a 6-10 year housing target and a 20-year target in our local housing strategy, scheduled to be released in the first half of 2020.

The projected population growth for the Northern Beaches is expected to generate demand for an additional 11,747 dwellings by 2036. This is an implied dwelling requirement and equates to 652 new dwellings per year; consistent with historic development trends. Previous work by the Department of Planning, Industry and Environment (DPIE) assuming smaller household sizes in the future, estimated demand for up to 17,000 new dwellings in the same period. An updated determination of housing demand will be provided in Council's local housing strategy.

There is a feasible capacity for around 10,785 dwellings to be developed in the LGA. This includes 6,400 new dwellings in areas already zoned for growth (see Figure 50 and Map 17) and 4,360 dwellings in Frenchs Forest strategic centre.

Housing increases could also result from plans for the Ingleside Growth Area, the Brookvale Structure Plan Area and through implementation of the NSW Government's Low Rise Medium Density Housing Code....

The NSW Government's Low Rise Medium Density Housing Code will permit a variety of medium density development in the LGA as 'complying' development on land that is not currently subject to these controls. The commencement of the Code has been deferred until 1 July 2020. Council is considering alternatives to the Code in the preparation of its local housing strategy, including greater opportunities for small lot housing and dual occupancy housing close to existing centres.

While most housing demand to 2036 can be met through existing housing capacity and developing the Frenchs Forest strategic centre, we must also consider:

- current low levels of social housing and affordable housing stock (see P16)*
- limited public transport and existing road capacity issues*
- urban form that supports and encourages walking and cycling*
- current State housing policies including policies for seniors housing, boarding houses and proposed medium density housing controls*
- the LGA's natural environment, character and amenity, which constrain development*
- housing that caters for different demographic groups, especially older people and families....*

Existing residential areas will be investigated for increased housing diversity ('missing middle'), focusing on areas up to 1.5km from strategic and local centres with high-frequency public transport. Opportunities exist to renew villages (local centres) to cater for the needs of older people with new multi-generational housing and services for people to remain in their communities as their housing needs change. This will provide opportunities for older people to downsize and free up existing housing for younger families....

The new LEP and DCP will include controls to encourage high quality, well designed buildings, including medium density housing controls to create healthy, liveable neighbourhoods. Our local housing strategy will explore options for how we can address the housing needs of our community into the future.

34. Figure 48 (page 121) identifies that 128 seniors living units have been constructed in the LGA since 2016.

The Commission's findings

35. The Commission has considered the LSPS and additional material identified under heading 3.2 of this document.
36. The Commission notes that the LSPS is a new strategy, having been published in March 2020. The Commission also notes the references in the LSPS to the growing and ageing population, as well as the further work required in existing residential areas to increase housing diversity, cater for the needs of older people and address the 'missing middle'.
37. The Commission notes that the subject Planning Proposal is leveraging an existing consultative planning mechanism to provide additional opportunities to meet local demand and support ageing in place.
38. The Commission notes that a small proportion of the Site is likely to be impacted by flooding and estuarine inundation. The Commission does not consider these to be significant hazards on this Site to the extent that they preclude development of the majority of the Site and notes that these issues can be addressed at the detailed design stage of any future development.
39. The Commission finds that the subject Planning Proposal has merit on the basis that it is consistent with and will give effect to the vision, priorities and actions of the LSPS. This is because the Planning Proposal will:
 - Not diminish the scenic landscape (Priority 3);
 - Not be significantly exposed to the impacts of natural and urban hazards and climate change (Priority 8);
 - Respond to community needs by increasing housing supply and choice in an appropriate location (Priority 15).

3.3.3 Change in circumstances

40. The Commission has considered whether the Planning Proposal is responsive to a change in circumstances in the area.
41. The Commission notes that the LSPS identifies that:
 - The North District Plan sets a target for an additional 3,400 dwellings in the Northern Beaches between 2016 and 2021;
 - 128 seniors living units have been constructed in the Northern Beaches LGA since 2016;
 - The projected population growth for the Northern Beaches is expected to generate demand for an additional 11,747 dwellings by 2036;
 - A 6-10 year housing target and a 20 year target are planned to be identified in the pending local housing strategy.
42. The Commission notes that Northern Beaches Council is in the process of updating its existing planning controls to align with the LSPS, including the development of a new Northern Beaches LEP and DCP.
43. The Commission finds that the current planning controls for the subject area are pending revision and are therefore unlikely to fully account for current demographic trends and housing requirements.

3.3.4 Land use

44. The Commission has considered whether the Planning Proposal has site-specific merit with regard to the existing uses, approved uses and likely future uses of land in the vicinity of the land.
45. Seniors housing is currently prohibited in Zone E4 which applies to the subject Site under the Pittwater LEP.
46. Land to the east of the Site (on the opposing side of Nooal St and Bardo Rd from the subject Site) is subject to an R2 zoning (under which seniors housing is permissible), while land to the west of the Site (adjoining Crystal Bay) incorporates a mix of single dwellings, multi-storey apartments, a yacht club and marina.
47. The Planning Proposal will be required to comply with existing controls for seniors housing, including (under *Pittwater 21 Development Control Plan - C1.21 Seniors Housing*):

Cumulative Impact

Seniors housing developed in accordance with the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, outside the R3 Medium Density Residential and B4 Mixed Use zones shall:

- *Be in keeping with the development of the surrounding area in regard to bulk, building height, scale and character.*
- *Not result in such an accumulation of Seniors Housing developments to create a dominant social type in the surrounding neighbourhood.*
- *Not result in such an accumulation of Seniors Housing developments to create a dominant 'residential flat building' appearance in the neighbourhood.*

The Commission's findings

48. The Commission has considered the material identified under heading 3.2 of this document.
49. The Commission notes that land in the vicinity of the Site incorporates a mix of single dwellings, multi-storey apartments, a yacht club and marina. The Commission considers that the Planning Proposal will therefore not be inconsistent with the existing uses, approved uses and likely future uses of land in the vicinity.
50. The Commission is of the view that the Planning Proposal is unlikely to create a significant precedent for similarly zoned adjoining properties because of the limited number of suitable sites in the locality due to topography, access to transport and other factors.
51. The Commission finds that the Planning Proposal has site-specific merit with regard to the existing uses, approved uses and likely future uses of land in the vicinity of the land subject to the proposal.

3.3.5 Services and infrastructure

52. The Commission has considered whether the Planning Proposal has site-specific merit with regard to 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 Commission's findings

53. The Commission has considered the material identified under heading 3.2 of this document.
54. None of this material identifies any additional services or infrastructure requirements resulting from the Planning Proposal other than requiring (Planning Proposal page 24):

substantial changes to the Bardo Road reserve near to the intersection with Nooal Street. Currently this area serves as a driveway access to a small number of properties while the Proposal seeks to locate its primary road access here requiring upgrades to accommodate additional traffic impacts.

55. The Commission understands from its meetings with Council and the Proponent that any required upgrades would be required to be funded by the Proponent.
56. The Commission therefore finds that the Planning Proposal has site-specific merit with regard to 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.

3.4 Ministerial section 9.1 directions

57. Council's Gateway determination review request (page 2) states:

The proposal is not consistent with all components of the strategic planning framework, with specific reference to ... Ministerial Direction 2.2 Coastal Protection, 4.3 Flood Prone Land and 7.1 Metropolitan Planning...

The Commission's findings

58. The Commission has considered Council's objections with respect to the Ministerial directions identified in paragraph 57 and is satisfied that the Gateway determination is not substantively inconsistent with those directions.

3.5 State Environmental Planning Policy (Coastal Management) 2018

59. Council's Gateway determination review request (page 23) states:

The Planning Proposal is inconsistent with this SEPP. The aims of this SEPP are to promote a co-ordinated and integrated approach to the management of coastal areas, including managing development in the coastal zone and protecting the environmental assets of the coast.

Two of the subject properties are identified as being impacted by a coastal hazard, being inundation from the Pittwater estuary. In accordance with the recently released Planning Circular PS 19-006 Planning for coastal hazards, Council considers that the proposal is inconsistent with the SEPP as it does not comply with clause 15, which says "Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land". The proposal is inconsistent as it seeks to place additional people and property at risk from the hazard.

Attention is drawn to the circular where it states ‘The threshold test under Clause 15 is intentionally low. Councils and other consent authorities should take a precautionary approach to assessing risks associated with current and future coastal hazards pending the approval of a relevant CMPs.’

Currently the Pittwater estuary is not subject to a coastal zone management plan. It is however subject to a coastal hazard (inundation) as detailed in a number of studies such as the Pittwater Estuary Mapping of Sea Level Rise Impacts 2015 and the Pittwater Estuary Management Plan 2010. The estuary management plan is also a coastal zone management plan adopted under the former Coastal Protection Act 1979 which the circular confirms is still current and should be considered when assessing development proposals.

Given the site is impacted by a coastal hazard as identified in a recognised study and estuarine plan as well as the precautionary approach outlined through the circular, Council considers this proposal to be inconsistent with the SEPP.

The Commission’s findings

60. The Commission notes that a small proportion of the Site is likely to be impacted by estuarine inundation. Based on the material before it, the Commission does not consider this to be a significant hazard to the extent that it would preclude development of the majority of the Site. These issues (and clause 15 of the SEPP) can be addressed at the detailed design and development consent stage of any future development on the Site.

3.6 The Department’s Gateway determination conditions

61. On 14 October 2019 the delegate of the Minister for Planning and Public Spaces determined that the Planning Proposal should proceed subject to the following conditions:
 1. *Prior to community consultation, the planning proposal is to be updated to:*
 - a. *revise Part 1 - Objectives or Intended Outcomes without reference to the mechanism by which the objectives / intended outcomes will be achieved and include reference to the concept scheme prepared by Richard Cole Architecture for the proponent;*
 - b. *revise Part 2 - Explanation of Provisions to refer permitting ‘seniors housing’ as an additional permitted use on the land under schedule 1 of Pittwater LEP 2014;*
 - c. *revise Part 3 - Justification by:*
 - *updating Subsection 2 - Is the Planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?, to reflect that the proposal seeks to include ‘seniors housing’ as a permitted land use under schedule 1 of Pittwater LEP 2014;*
 - *revising Section B – Relationship to strategic planning framework to demonstrate that the proposal is consistent with the North District Plan (including Planning Priorities N5, N17, N19 and N22);*

- *revising subsections a) and b) of Section B – Relationship to strategic planning framework to demonstrate that the proposal does have strategic and site specific merit and removes reference to the requirement for a site specific Development Control Plan (DCP);*
 - *revising Section 4 to demonstrate that the proposal is consistent with the Pittwater Local Planning Strategy (2011);*
 - *updating Section 5 to demonstrate consistency with the following SEPPs:*
 - *SEPP 55 – Remediation of Land*
 - *SEPP (Building Sustainability Index: BASIX) 2004*
 - *SEPP (Coastal Management) 2018*
 - *SEPP (Exempt and Complying Development Codes) 2008*
 - *SEPP (Housing for Seniors or People with a Disability) 2004*
 - *removing reference to the following SEPPs in Section 5:*
 - *SEPP 65 – Design Quality of Residential Apartments*
 - *SEPP 70 – Affordable Rental Housing Scheme; and*
 - *revising Section 6 to demonstrate that the proposal is consistent with all relevant Section 9.1 Directions;*
- d. *ensure all figures/maps clearly depict labels and include a legend;*
 - e. *include figure extracts showing existing development standards that apply to the site;*
 - f. *remove the proposed Land Zoning Map in Part 4 and replace this with a proposed Additional Permitted Uses Map;*
 - g. *remove any discussion and reference of Council's Housing Affordability Policy;*
 - h. *remove any discussion and reference to potential voluntary planning agreement;*
 - i. *remove unsubstantiated claims regarding the site being affected by flooding and coastal inundation; and*
 - j. *remove any discussion and reference to a site-specific Development Control Plan (DCP) and/or the addition of site specific DCP controls into Pittwater DCP 2014 or Pittwater DCP 21; and*
 - k. *reflect the Council's 2019 Flood Study and to include a revised Estuarine Risk Management report to further assess the potential risk.*
2. *The revised planning proposal be forwarded to the Department for review and approval prior to exhibition.*
 3. *Public exhibition is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:*

- a. *the planning proposal must be made publicly available for a minimum of 28 days; and*
 - b. *the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 6.5.2 of A guide to preparing local environmental plans (Department of Planning, Industry and Environment 2016).*
4. *Consultation is required with the following public authorities/organisations under section 3.34(2)(d) of the Act and/or to comply with the requirements of relevant section 9.1 Directions:*
- *Sydney Water*
 - *NSW Crown Lands*
- Each public authority/organisation is to be provided with a copy of the planning proposal and any relevant supporting material and given at least 21 days to comment on the proposal.*
5. *A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).*
6. *The time frame for completing the LEP is to be 6 months following the date of the Gateway determination.*

The Commission's findings

62. The Commission has considered the material identified under heading 3.2 of this document and finds that Condition 1 of the Department's Gateway determination is inconsistent with *Ministerial Direction 6.3 Site Specific Provisions*, clause 5 of which provides that:
- A planning proposal must not contain or refer to drawings that show details of the development proposal.*
63. The Commission therefore finds that Condition 1.a. should be amended to remove the following text:
- and include reference to the concept scheme prepared by Richard Cole Architecture for the proponent*
64. Additionally, the Commission finds that Condition 1.c. (fourth point) should be updated to refer to the current LSPS (see paragraph 24).
65. The Department's Gateway determination conditions are otherwise reasonable and should not be further altered.

4 CONCLUSION: THE COMMISSION'S ADVICE

66. The Commission has undertaken a review of the Gateway determination as requested by the Department. In doing so, the Commission has given consideration to submissions by both the Council and Proponent and the reasons given for the original determination in the Department's report.
67. Based on its consideration of the material identified under heading 3.2 of this document, the Commission finds that the subject Planning Proposal has merit, and recommends that the Gateway determination should be upheld, subject to the amendments identified in this advice.



Ilona Millar (Chair)
Member of the Commission



Adrian Pilton
Member of the Commission