ITEM 12.1	**PLANNING PROPOSAL 10-12 BOONDAH ROAD, WARRIEWOOD PEX2022/0001**
REPORTING MANAGER	**EXECUTIVE MANAGER STRATEGIC & PLACE PLANNING**
TRIM FILE REF	**2022/580108**
ATTACHMENTS	**1 Minutes of Northern Beaches Local Planning Panel Meeting 21 December 2022 (Included In Attachments Booklet)** **2 NSW State Emergency Service (SES) - Letter of Advice (Included In Attachments Booklet)** **3 Submissions - Summary of Issues Raised (Included In Attachments Booklet)**

SUMMARY

PURPOSE

To seek Council's approval to reject a Planning Proposal for land at 10-12 Boondah Road, Warriewood, and not forward the Planning Proposal to the Minister for Planning.

EXECUTIVE SUMMARY

Henroth Pty Ltd submitted a Planning Proposal to amend *Pittwater Local Environmental Plan 2014* by rezoning land at 10-12 Boondah Road, Warriewood from RU2 Rural Landscape to R3 Medium Density Residential and C2 Environmental Conservation, along with other amendments, to enable residential development comprising 40 dwellings in a 3-storey townhouse typology and 4 affordable housing dwellings for a 10-year period in a manor home or 2-storey residential flat building typology.

The Planning Proposal has been assessed and found to be inconsistent with the strategic planning framework and fails to demonstrate sufficient strategic and site-specific merit, particularly in relation to flooding, water management, biodiversity impacts, affordable housing, and overall public benefit.

On 21 December 2022, the Northern Beaches Local Planning Panel (the Panel) considered the Planning Proposal and recommended that Council reject the Planning Proposal and not forward it on for a Gateway Determination. The Panel's full recommendation is contained in Attachment 1.

RECOMMENDATION OF DIRECTOR PLANNING AND PLACE

That:

1. Council rejects the proponent's Planning Proposal and not forward it to the Minister for Planning for a Gateway determination for the following reasons:

    A. The Planning Proposal has not demonstrated sufficient strategic merit or site-specific merit, and is inconsistent with the following elements of the strategic planning framework:

        i. Greater Sydney Region Plan:

        Objective 27: Biodiversity is protected, urban bushland and remnant vegetation is enhanced.
        Objective 36: People and places adapt to climate change and future shocks and stresses.
        Objective 37: Exposure to natural and urban hazards is reduced.

ii. North District Plan:

Planning Priority N16: Protecting and enhancing bushland and biodiversity
Planning Priority N22: Adapting to the impacts of urban and natural hazards and climate change

iii. Towards 2040 Local Strategic Planning Statement for the Northern Beaches:

Priority 1: Healthy and valued coast and waterways
Priority 2: Protected and enhanced bushland and biodiversity
Priority 8: Adapted to the impacts of natural and urban hazards and climate change
Priority 15: Housing supply, choice, and affordability in the right locations

iv. Warriewood Valley Strategic Review Addendum Report adopted 17 November 2014 and amended 19 December 2017 by Northern Beaches Council and incorporated in Clause 6.1 Warriewood Valley Release Area of the *Pittwater Local Environmental Plan 2014*.

v. Local Planning Directions issued by the Minister for Planning:

Local Planning Direction 4.1: Flood Prone Land
Local Planning Direction 4.2 Coastal Management
Local Planning Direction 4.4: Planning for Bushfire Protection.

B. The NSW State Emergency Service (SES) has raised significant concerns in relation to flood risk, and has indicated it does not support rezonings to enable development on the floodplain with risk management strategies that rely on early evacuation, private alarm systems, shelter in place, and transfer of residual risk in terms of emergency response to the SES, thereby increasing demands on SES resourcing and capabilities and potentially increasing risk to life, health and property for both existing and future communities.

C. The Planning Proposal seeks to rezone land within the flood planning area and insufficient information has been provided to demonstrate that the proposed development will not:

i. result in a net loss of flood storage in the floodplain;

ii. result in significant adverse impacts to other properties;

iii. result in an increased requirement for government spending on emergency management services, flood mitigation and emergency response measures;

iv. adversely affect the safe occupation and efficient evacuation of people; and

v. place people and property at unacceptable risk in the event of a major flood.

D. The Planning Proposal is inconsistent with the objectives of Clause 5.21 Flood Planning of *Pittwater Local Environmental Plan 2014*.

E. The Planning Proposal is likely to result in unacceptable impacts on biodiversity, particularly in respect of:

i. failure to site and design development to avoid and minimise impacts to biodiversity;

ii. impacts on the remnant Bangalay Sand Forest, an Endangered Ecological Community of significant biodiversity value, as well as impacts to threatened

species habitats, reduction in local wildlife connectivity, and potential for altered flow regimes to impact groundwater dependent ecosystems;

iii. uncertainty with regards to Biodiversity Certification and, given that offset obligations are not available in the Northern Beaches, the likelihood of a net loss of local biodiversity;

iv. failure to exclude from development all the mapped Coastal Wetland;

v. failure to provide an adequate 15-metre-wide landscaped buffer, exclusive of the bushfire asset protection zone, to protect the adjacent wetlands; and

vi. inadequate groundwater investigation and water quality monitoring to demonstrate adequate management of impacts on the downstream environment and the wetland.

F. The Planning Proposal does not comply with Council's Affordable Housing Policy as it only offers dwellings as affordable housing for a period of 10 years, and it fails to include a suitable mechanism to include the site in the Northern Beaches Affordable Housing Contributions Scheme.

G. The proposed C2 zoning of land could trigger acquisition obligations for Council, noting that this matter may be able to be clarified if the Planning Proposal were to progress.

REPORT

BACKGROUND

Previous Planning Proposals

The site has been the subject of three previous Planning Proposals which have not proceeded, in summary:

2013 Planning Proposal (PP0007/13)

The 2013 Planning Proposal lodged with the former Pittwater Council, which included the subject site and land at 6 Jacksons Road and 3, 6 and 8 Boondah Road, was for a large mixed use development comprising retail, commercial and residential land uses. The former Pittwater Council resolved to not support this proposal on 17 March 2014. Upon a review sought by the applicant, the Joint Regional Planning Panel's decision on 17 February 2015 was to recommend against the Planning Proposal proceeding to Gateway Determination.

2016 Planning Proposal (PP0005/16)

The 2016 Planning Proposal, which included the subject site and land at 6 Jacksons Road, sought to enable development of a 4-storey residential flat building with a yield of up to 30 dwelling units, and a 2-storey bulky goods retail centre of up to 17,000sqm GFA. Northern Beaches Council resolved not to support this proposal on 28 March 2017. Upon review sought by the applicant, the Sydney North Planning Panel's unanimous decision on 31 May 2017 was that the Planning Proposal should not be submitted for Gateway Determination as it had not demonstrated strategic merit. Subsequent legal challenges by the applicant to the Land & Environment Court and the Court of Appeal were dismissed.

2019 Planning Proposal (PEX2019/0003)

The 2019 Planning Proposal, which included the subject site and land at 6 Jacksons Road, sought to enable development of five 4-storey residential flat buildings with a yield of up to 130 dwelling units, along with an offer to enter into a Planning Agreement to dedicate land at 6 Jacksons Road to Council and facilitate the provision of new and expanded sports fields. Council resolved not to support this proposal on 17 December 2019. Upon review sought by the applicant, the Sydney North Planning Panel's unanimous decision on 8 September 2020 was that the Planning Proposal should not be submitted for Gateway Determination as it had not demonstrated strategic merit.

Pre-Lodgment Meeting

A pre-lodgment meeting was held with Council officers on 22 July 2021 in relation to the current Planning Proposal, and formal notes were issued to the applicant on 27 August 2021. Amongst other things, the notes include specific requirements and considerations in relation to the strategic planning context, flooding, biodiversity, bush fire, riparian values, stormwater quality management, traffic and road design, parks and landscaping, dwelling density, affordable housing, development contributions, and the necessary components of justification for a Planning Proposal.

Revisions to Warriewood Valley Development Contributions Plan

At the time of the pre-lodgement meeting, the Warriewood Valley Development Contributions Plan Amendment 16, Revision 3 June 2018 (2018 Contributions Plan) was under review by the Council. Section 6.2.3 of 2018 Contributions Plan identified the strategy for provision of open space and recreation areas to meet the needs of the anticipated residential population in the release area. Land at 10-12 Boondah Road, Warriewood (the site of the current Planning Proposal), was identified as two of five properties in the Southern Buffer area for purchase for future active open space.

To date, the Council has only been successful in purchasing one of the five properties (3 Boondah Road, Warriewood) identified for future active open space.

The applicant was advised at the pre-lodgement meeting that provision of open space, particularly active open space such as sports fields, remains a key area in which community needs are not adequately met in Warriewood Valley, and that the Council was considering alternatives.

At its meeting on 28 June 2022, the Council resolved to adopt the Warriewood Valley Development Contributions Plan Amendment 16, Revision 4 2022 (2022 Contributions Plan) which came into effect on 1 July 2022. The 2022 Contributions Plan included revised calculations of open space still to be delivered, based on updated assumptions on anticipated development in the release area. Active open space still to be delivered has been revised down from 3.74ha in the 2018 Contributions Plan to 1.31ha in the 2022 Contributions Plan. Section 6.2.3 no longer identifies properties in the Southern Buffer area, including the site, for purchase for future active open space. The 2022 Contributions Plan recognises that opportunities for future land purchase for active open space are limited and focuses instead on satisfying remaining active open space demands through the embellishment of existing sports fields to increase available hours of use through upgrading turf surfaces, improving drainage and providing lighting.

Site Description

The site is located at 10-12 Boondah Road, in Warriewood Valley (see Figure 1).

Figure 1 - Site Location - Aerial Photograph

The site adjoins Warriewood Wetlands to the west, land developed with a 3-storey residential flat building to the north (part of the larger residential complex developed by Meriton at the corner of Boondah Road and Macpherson Street), and a rural property to the south-east with a dwelling.

Warriewood Square shopping centre is further south of the site on Jacksons Road, and to the east on the opposite side of Boondah Road is bushland and a Sydney Water sewerage treatment plant.

The area referred to in planning documents as the Southern Buffer, derived its name from a 400m buffer distance to the sewerage treatment plant which was originally embargoed from the land release area until Sydney Water developed a plan for capping the plant to reduce odour impacts on the surrounding area.

Other land uses along Boondah Road include public sports fields and netball courts, a Council depot, and a community centre.

The site has a total area of 2.044ha, comprising lots described in the table below.

Address	Property Description	Area	Owner
10 Boondah Road	Lot 4 DP 26902	1.027	Henry Fraser Pty Ltd
12 Boondah Road	Lot 3 DP 26902	1.017	Cassius Investments Pty Ltd

The site is used in part for rural and storage purposes, and contains sheds, a small paddock and at least one dwelling. The topography of the site is generally flat and low-lying land, draining to the Warriewood Wetlands adjoining to the west and Narrabeen Creek to the south.

Although parts of the site are cleared, substantial vegetation exists on the site having significant biodiversity and wildlife connectivity value, including Threatened Ecological Communities (TEC) and Threatened Species and their habitats. In particular, the site contains two Endangered Ecological Communities (EEC), being Bangalay Sand Forest an EEC under the NSW Biodiversity Conservation Act 2016 (NSWBC Act) located on 12 Boondah Road, and Swamp Oak Floodplain Forest an EEC within NSWBC Act and Commonwealth Environmental Protection and Biodiversity Conservation Act 1999 (EPBC Act) located on 10 Boondah Road. Vegetation on the site merges with that of the adjacent Warriewood Wetlands and includes intact mature canopy.

The site is in the Flood Planning Area. Council's Flood Hazard Map identifies High, Medium and Low Risk Precinct areas within the site (see Figure 2).

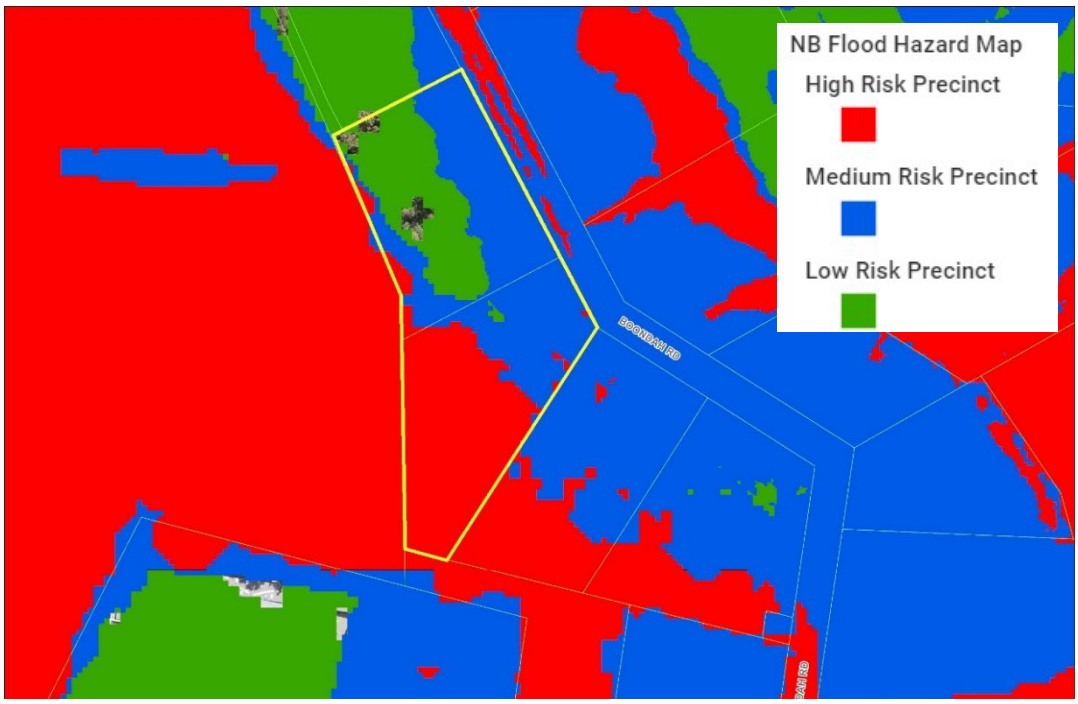


Figure 2 - Flood Hazard Map

The site includes Vegetation Category 1 and Vegetation Buffer on Council's Bushfire Prone Land Map (see Figure 3).

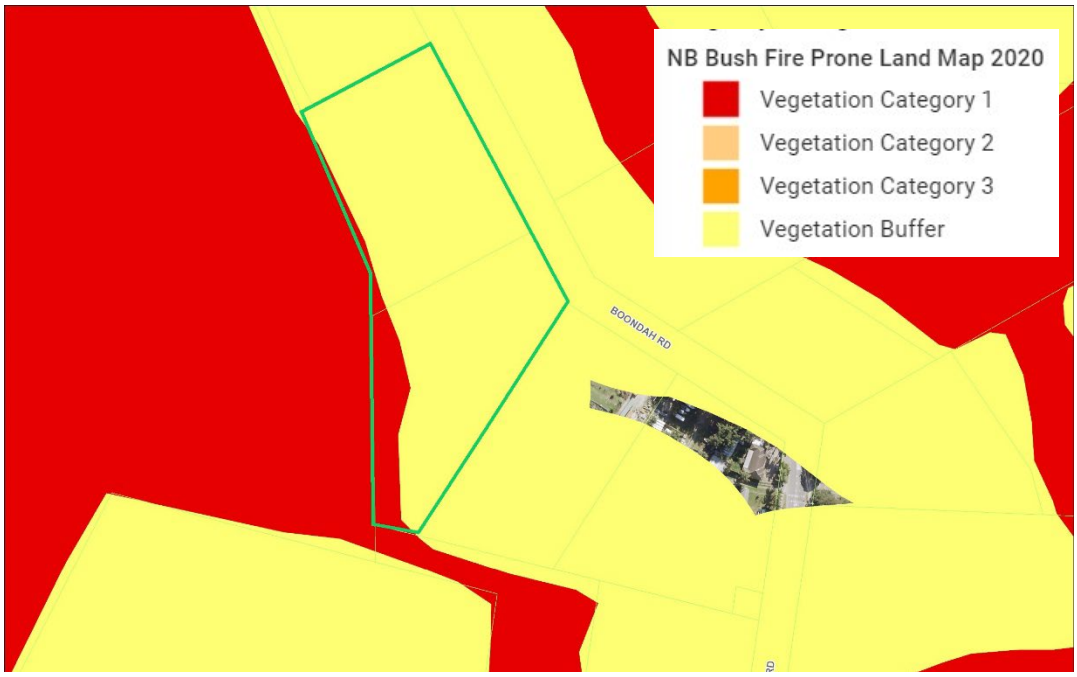


Figure 3 – Bush Fire Prone Land Map

The Proposal

Henroth Pty Ltd lodged a Planning Proposal application via the NSW Government Planning Portal and it was assigned for review by Council on 22 July 2022. Various technical supporting documents were submitted with the application. On several occasions after lodgement, further information was submitted by the proponent, including amendments to the proposal. All additional information and amendments have been considered in the assessment contained in this report. The Planning Proposal and all associated documentation has been made accessible to the Council for its consideration.

The Planning Proposal seeks to amend Pittwater Local Environmental Plan 2014 (LEP) for land at 10-12 Boondah Road, Warriewood to permit future residential development of 44 dwellings, including 40 x three-storey multi-dwelling housing dwellings (townhouses) and four dwellings in a manor house form to be used as affordable housing for a period of 10 years.

A conceptual Site Plan shows six rows of townhouses with internal circulation roads and driveways across much of the site, along with a kids' playground, pedestrian pathway/fire trail, informal open space areas and a riparian corridor in the southern part of the site (see Figure 4). This Site Plan is a revision of an earlier version lodged with the application, in response to some issues raised at a meeting with Council officers. The revision increases, to 15m, the setback of the internal road from the site's boundary to Warriewood Wetland, with the end townhouses in each row re-oriented to achieve suitable road/driveway gradients. The development footprint remains largely unchanged.

The Site Plan indicates a 6m setback of the proposed townhouses from Boondah Road, and a 24m wide bushfire asset protection zone (APZ) between the proposed townhouses and the boundary to the Warriewood Wetland, with roads, paths and parking located within the 24m wide APZ area. The APZ is also intended to overlap a 15m wide ecological buffer to the adjacent Wetland.

Other changes to the Planning Proposal as lodged, include:

- a statement that the proposed C2 zone boundary would be adjusted to include all the mapped Coastal Wetland under State Environmental Planning Policy (Resilience & Hazards)
- an alternative building height limit using maximum RL to AHD (flood planning level plus 9.5m).

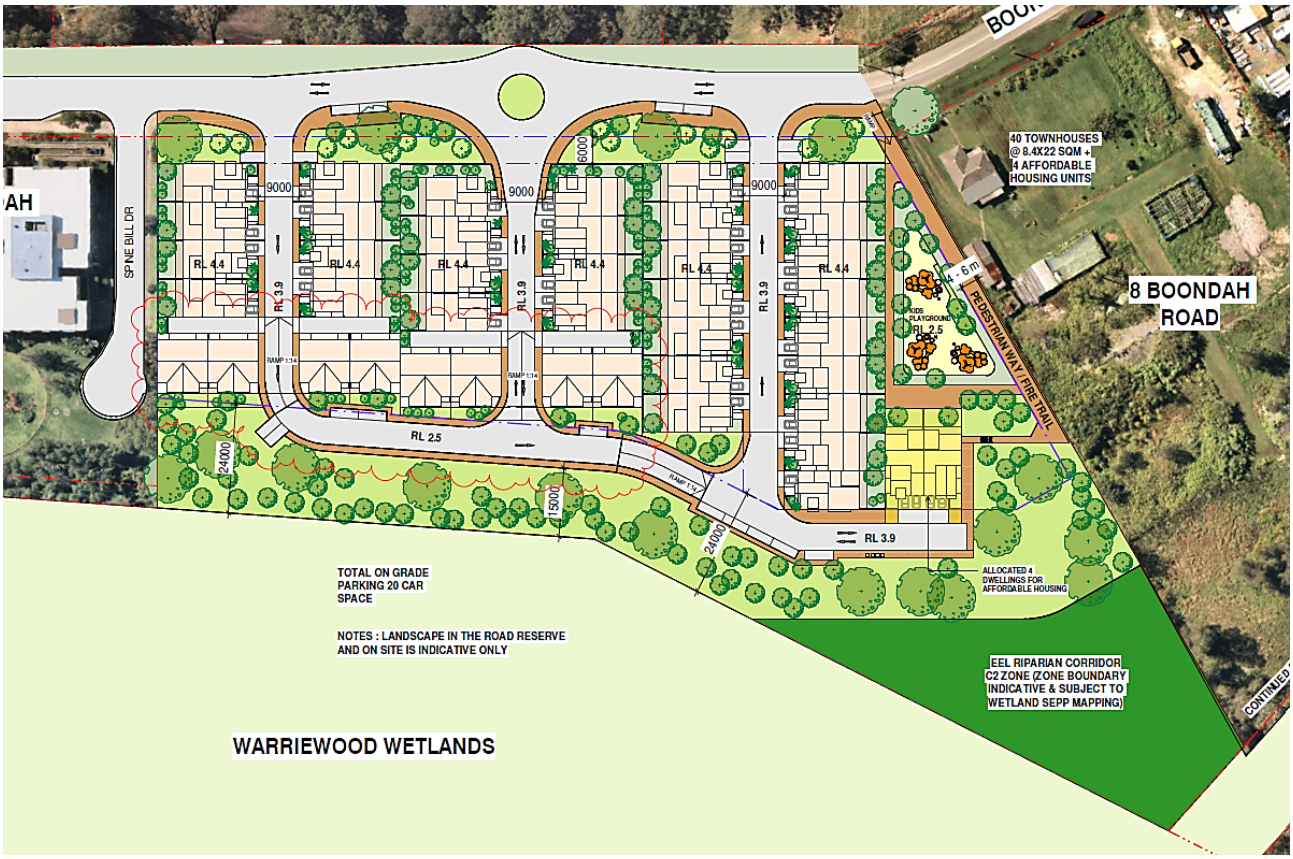


Figure 4 - Extract of Site Plan prepared by Buchan Group

The three-storey townhouse designs incorporate garage, living, dining and kitchen at ground level, and bedrooms and bathrooms on the two levels above (see Figures 5 and 6).

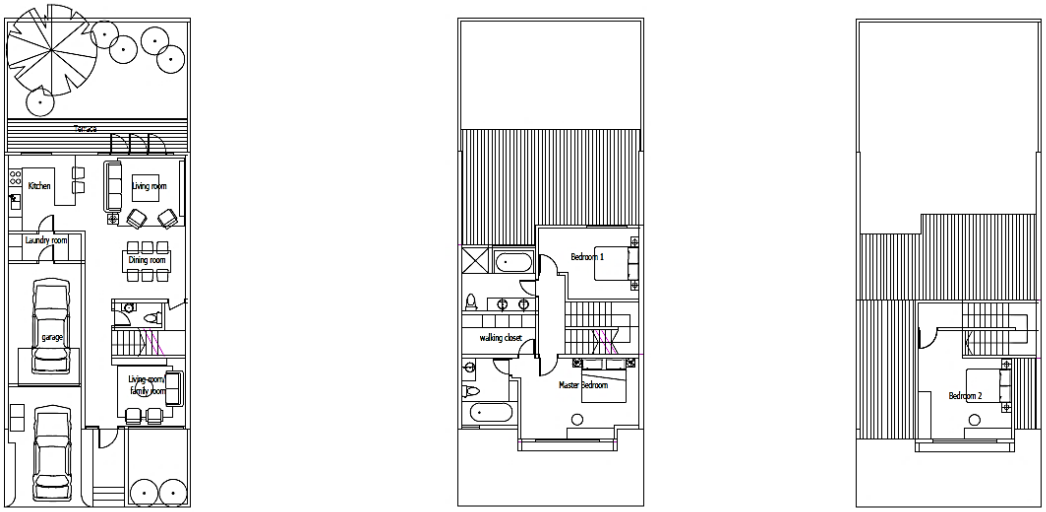


Figure 5 – Standard Housing Type 2 (Extract from Buchan Group report)

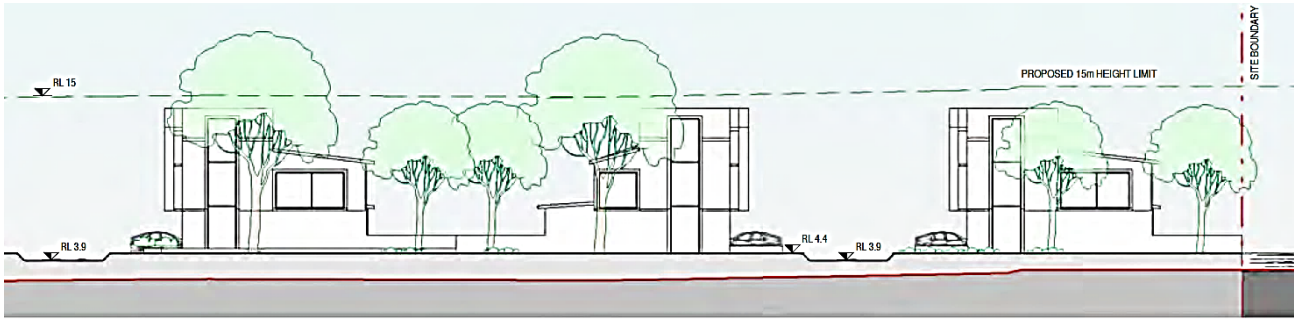


Figure 6 - Elevation to Boondah Rd, north end of site next to Meriton complex (extract Buchan Group report)

Most, if not all the proposed R3 Medium Density Residential zoned land (around 90% of total site area) will be subject to earthworks, mostly filling to raise the land to achieve levels required to meet flood planning criteria, including townhouse ground levels at RL4.4m, road and driveways at RL3.9m, and park and play areas at RL2.5m. Boondah Road along the site's frontage is also to be raised to RL3.9m - which is 1% AEP (previously referred to as 1 in 100-year flood level) plus an allowance for climate change. The earthworks are likely to necessitate removal of most if not all the existing vegetation in the proposed R3 zoned area. No earthworks are proposed for the riparian corridor proposed to be zoned C2 Environmental Conservation.

The applicant has not made an offer to enter into a Planning Agreement. The applicant has stated the intention is for the C2 zoned land to remain in private ownership as part of a Community Title.

Assessment of Planning Proposal

The following assessment is set out in accordance with the relevant NSW Government Local Environmental Plan Making Guideline (Guideline).

Part 1 – Objectives or Intended Outcomes

The stated objectives and intended outcomes of the Planning Proposal are to:

- continue residential development adjoining existing residential development within the Warriewood Valley release area
- provide residential accommodation opportunities responding to identified demand
- optimise the utilisation of existing infrastructure
- preclude from urban development those areas identified through the studies undertaken that are not suited for urban development
- to accommodate approximately 44 dwellings equating to a yield of approximately 22 dwellings per hectare.

The stated objectives rely on the proponent's stated premise that the Planning Proposal responds to the outcomes of the previous Rezoning Review for the 2019 Planning Proposal. The proponent suggests that the SNPP found that the proposed development potentially had site specific merit but not strategic merit, and that changes to the 2018 Warriewood Valley Development Contributions Plan (Contributions Plan) whereby Council is no longer targeting the land for acquisition for open space resolve a key reason for the 2019 Planning Proposal failing to satisfy strategic merit.

Response

This premise is not accepted. Although the quantum of open space still to be delivered in the Release Area has been revised down and the site is no longer identified in the Contributions Plan for purchase for future active open space, this does not mean that the site by default becomes suitable in a strategic planning sense for urban or residential development.

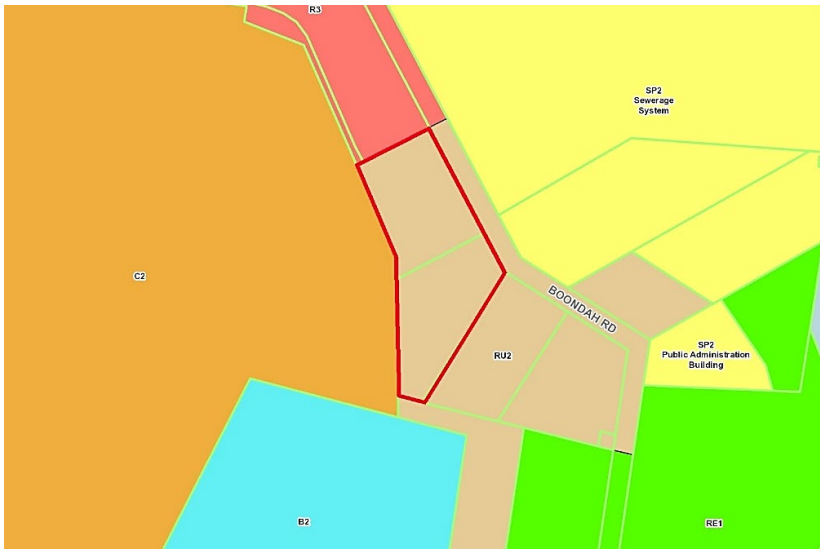
The site's earlier designation for active open space was not based solely on meeting the needs of the anticipated population, but also on the findings of a suite of technical studies that informed the planning strategy for Warriewood Valley Release Area. These studies included land capability mapping based on identified environmental constraints to development such as flooding, bush fire and biodiversity. Strategic Merit is discussed further in Part 3 below.

The current zoning remains strategically appropriate particularly having regard for the constraints of the site and the commentary from the SES.

Part 2 – Explanation of Provisions

The applicant's proposed LEP amendments seek to:

- rezone the site from RU2 Rural Landscape to R3 Medium Density Residential and C2 Environmental Conservation (see Figures 7 and 8)
- increase the maximum building height from 8.5m to 15m over the proposed R3 zoned land, or an alternative approach that imposes an RL to AHD limit based on flood planning level plus 9.5m
- remove the minimum subdivision lot size
- amend the Urban Release Area Map and clause 6.1(3) to apply a dwelling yield range of 40-45 dwellings.



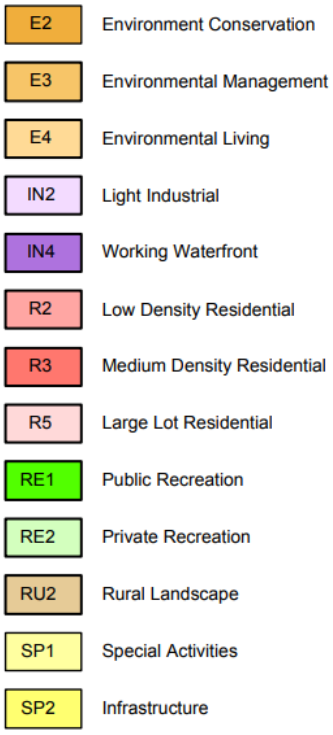


Figure 7 – Existing Zoning

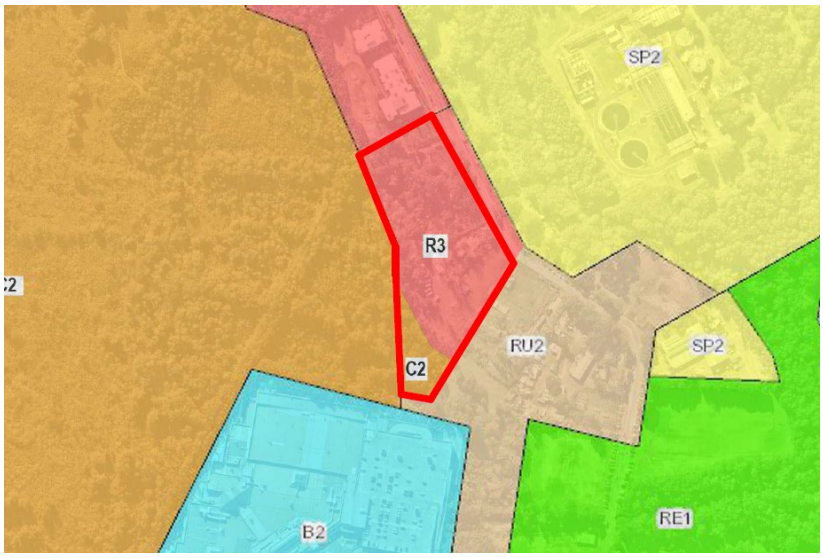


Figure 8 – Proposed Zoning

Response – Proposed Zoning

The proposed R3 zoning may be a suitable zoning to accommodate residential development at the density that is proposed. However, the extent of development proposed is not appropriate having regard to flooding, biodiversity, and water quality. These issues are discussed further in Part 3. As discussed above, the current zoning remains strategically appropriate particularly having regard for the constraints of the site and the commentary from the SES.

The proposed C2 Environmental zoning is not acceptable, for the following reasons:

- It has not been demonstrated that the extent of the proposed C2 zoning adequately aligns with the biodiversity values of the land and the conservation requirements to protect these values.
- While the applicant has stated that the proposed C2 zoning boundary will encompass all the mapped Coastal Wetland under State Environmental Planning Policy (Resilience and Hazards) 2021, the Site Plan has not been revised to reflect this. Although conceptual in nature, the Site Plan and plans included in a supporting memo by Calibre dated 14 October 2022 show roads, earthworks, asset protection zones, and indicative locations of bioretention basins, stormwater filters and discharge points within areas of mapped Coastal Wetland.

- While the applicant has stated that the proposed C2 zoned land is intended to remain in private ownership under a Community Title scheme, without confirmation to indicate otherwise, it is possible that the C2 zoning could trigger an obligation for Council to acquire the land under the owner-initiated hardship provisions of the Land Acquisition (Just Terms Compensation) Act 1991, if the C2 zoning is deemed to be reserving the land for use for a public purpose. Despite enquiries made by Council planners, the Department of Planning and Environment (DPE) was unable to clarify the operation of the relevant legislation in this instance due to legal complexity. While this remains uncertain, it represents a financial risk for Council.

- While the proposed C2 zoning may offer better protection of biodiversity values than the current RU2 Rural Landscape zoning, there is uncertainty over responsibility for implementing the proposed conservation measures, and the prospects of Biodiversity Certification.

If the Planning Proposal were to proceed, the above issues could be investigated further, and potentially resolved through suitable detailed information and amendments to the proposal. Amongst other things, to allay concerns about an acquisition obligation, Council would need confirmation from the DPE that it would not require the proposed C2 zoned land to be included on the Land Reservation Acquisition Map in Pittwater LEP and assurance from a legal perspective that the proposed C2 zoned land would not be subject to owner-initiated acquisition provisions of the Land Acquisition (Just Terms Compensation) Act 1991.

If the Planning Proposal were to proceed, the precise boundaries of the new zones would need to be determined through resolution of the relationship of the proposed C2 zone boundary to mapped Coastal Wetland under SEPP (R&H) and ground-truthing of vegetation and biodiversity mapping.

Response – Building Height

In response to concerns about the proposed 15m building height limit, the applicant suggested an alternative building height limit using a maximum RL based on flood planning level plus 9.5m.

No ground survey information has been submitted to indicate the maximum level of fill necessary to achieve flood planning levels. The onus is on the applicant to satisfy Council that future buildings would not be excessive in scale or out of character with the area. Nevertheless, while precise LEP provisions or maps have not been provided, the applicant has indicated the intended outcome is for future buildings be limited to two-storeys plus attic with a maximum height above filled ground levels of 9.5m. This is sufficient explanation to assist in legal drafting of a suitable LEP amendment if the Planning Proposal were to proceed. As such, building height is no longer considered to be a reason to reject the proposal and has been deleted from the recommendation since reporting to the Local Planning Panel.

Response – Dwelling Yield Range

Part 6.1 of the LEP implements the adopted planning strategy for Warriewood Valley Release Area contained in the Warriewood Valley Strategic Review (WVSR) adopted by former Pittwater Council and endorsed by NSW Director of Planning in 2013 and the Warriewood Valley Strategic Review Addendum (WVSR Addendum) adopted in 2014 and amended in 2017 (WVSR Addendum).

Clause 6.1(3) of the LEP specifies dwelling yield ranges to control the density of residential development. The dwelling yield ranges are based on densities adopted through the WVSR and WVSR Addendum for individual residential sectors, with density calculated on the 'developable area' – that is, the total site area excluding land identified as environmentally sensitive, creek line corridor and/or having no potential for development due to a prevailing condition/hazard.

32 dwellings per developable hectare is the maximum density that has been planned and applied generally across most of the undeveloped release land in Warriewood Valley through the WVSR and WVSR Addendum.

The Planning Proposal seeks a dwelling yield range of 40-45 dwellings which equates to a density of approximately 22 dwellings/ha. However, this calculation is not appropriate as not all of the site can reasonably be considered 'developable' given significant environmental constraints associated with flooding and riparian and biodiversity values, especially in the southern half of the site.

The Water Management Report by Calibre nominates at page 37 that the 'developable land' is a minimum of 1.32ha, defined as the land within the low and medium flood hazard zones. 1.32ha at a density of 32 dwellings per hectare will permit 42 dwellings.

On this basis, the proposed dwelling yield range is generally consistent with the density limit of 32 dwellings/ha applied by the planning strategy for Warriewood Valley.

Affordable Housing

Council's stated policy is that it is committed to a 10% affordable rental housing target for all planning proposals for urban renewal or greenfield development, and the Contributions Scheme and related LEP provisions are the mechanism by which affordable housing is to be secured.

The proposed LEP amendments do not include any amendments to give effect to an affordable housing contribution in accordance with Council's Affordable Housing Policy and its Affordable Housing Contributions Scheme. Such amendments would include a new LEP clause and map, and a new section in the Contributions Scheme applying to the subject land, to specify the proportion of total residential gross floor area to be dedicated as affordable housing or provided as a monetary contribution in lieu of dedication as a condition of a future development consent.

The Planning Proposal includes an offer to provide four dwellings as affordable housing for a period of 10 years, managed during that time by a registered community housing provider. Affordable housing for a time limited period is not acceptable, nor is it in accordance with Council's Policy. Dwellings secured for affordable housing are required to be in Council ownership in perpetuity.

Part 3 – Justification

Strategic Merit

Section A – Need for the Planning Proposal

Q1. Is the planning proposal a result of an endorsed LSPS, strategic study or report?

The applicant's report states the site has been part of the Warriewood Valley Release Area since its inception and is identified in the WVSR and WVSR Addendum as land having development capability ranging from Least to More.

The case for need put forward by the applicant is based on housing need, in particular that the proposal responds to a shortfall of 275 dwellings identified in Council's Local Housing Strategy (LHS), a shortfall of 251 dwellings from the original forecasts for the Release Area, and the exacerbation of any shortfall resulting from the abandonment of the Ingleside Place Strategy.

The proposal also relies on the provision of four dwellings for a period of 10 years as affordable housing which is stated to maximum opportunities for affordable housing dwellings.

Response

The applicant's justification with regards to need is not supported.

The LHS forecasts housing demand to the year 2036 and identifies a deficit in capacity under the current planning controls of 275 dwellings across the entire Northern Beaches local government area. The LHS estimates of capacity to meet housing demand factored in 1000 new dwellings in Ingleside. In response to the State Government's decision last year to not proceed with Ingleside Place Strategy, Council's strategic planning team is actively investigating alternative locations.

The LHS builds on the strategy for housing identified in Council's Towards 2040 Local Strategic Planning Statement (LSPS) of focusing new housing in and around centres with good transport. Centre Investigation Areas are the cornerstone of Council's adopted approach to meeting housing targets and the LHS identifies Brookvale, Dee Why, Mona Vale, Manly Vale and Narrabeen as priorities for urban renewal in the short-medium term. Medium density residential development is to be concentrated in strategic and selected town centres on the current and future B-line routes, and these centres will be the subject of detailed planning to identify opportunities for renewal and respond to the unique circumstances and character of each centre. As discussed further under Q.4 below, Warriewood was not identified as a viable option for a Centre Investigation Area in the LHS.

Planning for Brookvale to deliver on housing targets is well advanced. Brookvale strategic centre has potential to meet the 275 dwellings deficit identified in the LHS and a major portion of the 1000 dwellings no longer being planned in Ingleside, in a location having significant advantages in terms of existing infrastructure, proximity to employment and services, and an efficient, transit-supportive urban structure that can promote less reliance on private vehicles and less impact on traffic congestion. Forward planning for growth and development in Brookvale began in 2016 and a revised Draft Structure Plan was endorsed by Council in November 2022 and is undergoing a final phase of public exhibition until 28 February 2023. The plan envisages an additional 1300 apartment-style dwellings in and around Brookvale centre, which will add to housing diversity.

Given the progress made to date and the ability for Council to meet its housing targets through a methodical, strategic, principles-based approach to increasing housing capacity in and around its most accessible centres, there is no need for the subject Planning Proposal to rezone land in Warriewood, especially given the site-specific constraints and potential environmental, social, and economic impacts which are discussed in the section on Site-Specific Merit later in this report.

Q2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The applicant's report suggests the site is a logical extension of existing urban zoned lands and the Planning Proposal is a logical infill development opportunity that does not face the infrastructure delivery constraints that pose challenges to the Ingleside and Frenchs Forest release areas.

Response

As discussed under Q1. above, Council is on track to meet the housing targets identified in its' LHS and detailed planning is underway for Centre Investigation Areas, including Brookvale. Phase 1 of the Frenchs Forest Precinct is being implemented through new planning controls that came into effect on 1 June 2022 and is scaled to ensure growth and development is in line with infrastructure.

The subject site faces other challenges that Frenchs Forest and Brookvale are not so affected by, for example flooding, bushfire and biodiversity. There are better ways to achieve the objectives or intended outcomes, as discussed further below.

Section B – Relationship to strategic planning framework

Q3. Will the planning proposal give effect to the objectives and actions of the applicable regional, or district plan or strategy?

The applicant's report states that the Planning Proposal is consistent with Greater Sydney Region Plan and North District Plan.

Response

The proposed development involves significant issues associated with flood risk and the SES has raised significant concerns. Shelter in place is not an acceptable strategy to manage flood risk for future development of housing on land not currently zoned for housing. The proposed development will result in unacceptable impacts on biodiversity, fails to provide an adequate buffer to adjacent

wetland, and insufficient information has been submitted in relation to water quality management and impacts on groundwater dependent ecosystems. For these reasons, the Planning Proposal is inconsistent with:

Greater Sydney Region Plan

- Objective 27: Biodiversity is protected, urban bushland and remnant vegetation is enhanced
- Objective 36: People and places adapt to climate change and future shocks and stresses
- Objective 37: Exposure to natural and urban hazards is reduced.

North District Plan:

- Planning Priority N16: Protecting and enhancing bushland and biodiversity
- Planning Priority N22: Adapting to the impacts of urban and natural hazards and climate change

Q4. Is the planning proposal consistent with a council LSPS that has been endorsed by the Planning Secretary or GSC, or another endorsed local strategy or strategic plan?

The applicant's report states that the Planning Proposal is consistent with the endorsed LSPS and the endorsed LHS.

Response - Towards 2040 Local Strategic Planning Statement

The proposed development involves significant issues associated with flood risk and the SES has raised significant concerns. Shelter in place is not an acceptable strategy to manage flood risk for future development of housing on land not currently zoned for housing. The proposed development will result in unacceptable impacts on biodiversity, fails to provide an adequate buffer to adjacent wetland, and insufficient information has been submitted in relation to water quality management and impacts on groundwater dependent ecosystems.

With good progress made to date and the ability for Council to meet its housing targets through a methodical, principles-based approach to increasing housing capacity and diversity in and around its most accessible centres, there is no need to rezone the subject site to allow housing, especially given the flooding constraints and potential environmental impacts.

The proposal fails to incorporate appropriate provision for contributing affordable housing dwellings in perpetuity in accordance with the relevant policy and scheme.

The proposed C2 zoned land presents uncertainty for Council with regards to potential acquisition triggers and responsibility for ongoing implementation of conservation measures.

For these reasons, the Planning Proposal is inconsistent with the following Priorities of the LSPS:

- Priority 1: Healthy and valued coast and waterways
- Priority 2: Protected and enhanced bushland and biodiversity
- Priority 8: Adapted to the impacts of natural and urban hazards and climate change
- Priority 15: Housing supply, choice and affordability in the right locations
- Priority 16: Access to quality social and affordable housing

It is furthermore inconsistent with the following Housing Principle adopted in the LSPS:

- Limit development where there are unacceptable risks from natural and urban hazards, or impact on tree canopy.

Response – Northern Beaches Local Housing Strategy

Council's ongoing forward planning for centres will address the shortfall of 275 dwellings identified in the LHS and find alternatives for the 1000 dwellings previously envisaged for Ingleside.

The Centre Investigation Areas earmarked in the LHS for investigation for renewal will be the key locations for delivering new housing with detailed planning for these centres looking to provide a variety of housing types including medium to higher density housing in highly accessible locations.

The second approach outlined in the LHS, Low-rise Housing Diversity Areas, identifies Warriewood as one of several local centres potentially suited to low to medium density typologies within 400m of centres. This approach is explicitly subject to environmental and other constraints, which means the site's flooding, bushfire and biodiversity constraints would need to be properly considered and addressed.

Warriewood's disjointed layout, with the shopping centre being more than 350m from the B-line stop, does not lend itself to a decision on balance where the benefits of providing more housing would outweigh the disbenefits associated with flood risk and impacts on biodiversity.

These issues with the location of the B-line stop, the layout of the wider centre, and the local environmental and flooding constraints, are the reason Warriewood did not present as a viable option for a Centre Investigation Area in the LHS.

As the Planning Proposal does not adequately address the site's environmental constraints, it is inconsistent with the LHS.

Warriewood Valley Strategic Review and Warriewood Valley Strategic Review Addendum

Assessment of Strategic Merit should also consider the adopted planning strategy for Warriewood Valley Release Area contained in the Warriewood Valley Strategic Review Report adopted by the former Pittwater Council and endorsed by the NSW Director of Planning in 2013 (WVSR) and the Warriewood Valley Strategic Review Addendum Report adopted in 2014 and amended in 2017 (WVSR Addendum). Clause 6.1(3) of the LEP, which implements the planning strategy for Warriewood Valley Release Area, includes the objectives:

(a) to permit development in the Warriewood Valley Release Area in accordance with the Warriewood Valley Strategic Review Report and the Warriewood Valley Strategic Review Addendum Report, and

(b) to ensure that development in that area does not adversely impact on waterways and creek line corridors, protects existing native riparian vegetation and rehabilitates the creek line corridors.

The catalyst for WVSR was an approval in 2011 by the Planning Assessment Commission (PAC), under its now repealed Part 3A powers, of the Meriton development at the corner of Macpherson Street and Boondah Road, comprising multiple 3-4 storey residential flat buildings with a total of approximately 450 dwellings. Part of this development adjoins the subject site's northern boundary. The PAC called for a comprehensive strategic study for all undeveloped land in Warriewood Valley, including for the first time the Southern Buffer area, which includes the subject site.

The WVSR investigated the remaining undeveloped lands, first utilising composite land capability mapping of a range of environmental, economic, and social characteristics to classify land into categories of capability for development ranging from Least to Most developable. It then drew on a major hydrology study to inform developable land classifications, and used independent urban design, strategic transport, and economic feasibility studies to determine the recommended density and dwelling yield ranges for specific residential sectors. These were incorporated into the controls in clause 6.1 of the LEP, and such provisions required endorsement by the State Government.

The WVSR explored development opportunities for the Southern Buffer, including the potential for a mixed-use centre. It recognised that under existing conditions, flood depths exceed 1m across most of the Southern Buffer in a 1% AEP event and that a significant amount of compensatory cut

and fill would be required to create two developable areas; one being 0.87ha at the northern end of the Southern Buffer (i.e., part of 10 Boondah Road), the other at the corner of Pittwater and Jacksons Rds. It also recognised the high biodiversity values of some of the Southern Buffer land. Although a draft concept plan and design principles were publicly exhibited, due to community opposition and a reluctance amongst landowners to collaborate, the concept did not progress any further. No future land use or dwelling yield was recommended for the Southern Buffer.

The WVSR Addendum was prepared to identify a forward path for remaining sectors which were not considered or not identified with a forward path by the WVSR. The WVSR Addendum utilised updated information on bushfire, flooding, biodiversity, and slope to produce new land capability mapping. It re-evaluated sector boundaries and recommended dwelling densities with dwelling yield ranges that were once again incorporated into subsequent amendments to LEP clause 6.1.

The WVSR Addendum was also informed by the Pittwater Open Space and Recreation Strategy in 2014, which highlighted a significant undersupply of active recreation areas in the Pittwater LGA and the importance of Release Areas providing places and facilities for recreation to meet the needs of their incoming populations. The estimated remaining open space to be provided in Warriewood Valley Release Area was identified as 6.32ha, comprising 1.69ha of linear open space and 4.63ha of active open space.

For the Southern Buffer, based on updated flood and bushfire information, biodiversity values, and the findings of the Open Space and Recreation Strategy, no residential potential was identified. Most of the Southern Buffer, including the subject site was given a land use designation of 'Active Recreation'. This outcome is reflected in the absence of any Southern Buffer land from the table in Clause 6.1(3) of the LEP which specifies the number of dwellings to be erected on specified land areas in the Release Area. It was also later reflected in the Warriewood Valley Development Contributions Plan which specifically identified 5 properties along Boondah Road, including the subject site, for purchase for active open space.

Following years of unsuccessful attempts to purchase this land, revisions to the Contributions Plan which came into effect on 1 July 2022 reflect a change in strategy to focus on embellishment of existing sports fields instead of purchasing of additional land to meet the needs of the population for active open space. While the subject site is no longer identified for purchase for active open space, this does not mean that site by default becomes suitable in a strategic planning sense for residential development. The planning strategy for Warriewood Valley set out in the WVSR and the WVSR Addendum was informed by land capability mapping and a suite of technical studies that recognised constraints to development such as flooding, bush fire and biodiversity. The site has never been allocated an endorsed forward path for residential development because of these characteristics. Any Planning Proposal to enable residential development would need to demonstrate that these characteristics can be properly managed through a design and impact assessment process that achieves a site that is suitable for the intended uses, without significant adverse economic, social, or environmental impact. This has not been demonstrated in this case.

Q5. Is the planning proposal consistent with any other applicable State and regional studies or strategies?

See earlier comments under Question 3.

Q6. Is the planning proposal consistent with applicable SEPPs?

The applicant's report states that the Planning Proposal does not conflict with any of the SEPPs.

Response - SEPP (Resilience and Hazards)

In relation to Chapter 2 Coastal Management of the SEPP (R&H), the site is mapped as Coastal Wetlands and Proximity Area for Coastal Wetlands (see Figure 9).

In accordance with Part 2.2 of the SEPP (R&H), Council must not grant consent for development unless it is satisfied that:

- for Coastal Wetlands, "*sufficient measures have been, or will be, taken to protect, and where possible enhance, the biophysical, hydrological and ecological integrity of the coastal wetland or littoral rainforest*"; and
- for Proximity Areas, "*the proposed development will not significantly impact on -*
  - *(a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or*
  - *(b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland…*"

The Planning Proposal has not demonstrated that a future development application will be able to satisfy Council in accordance with these requirements.

Figure 9 Coastal Wetlands and Littoral Rainforest Area Map

Part of the mapped Coastal Wetland falls within the proposed R3 zoned area that is intended to be developed, including areas subject to proposed earthworks, roads, parking, bioretention basins, stormwater filters and outlets, and management as a bushfire APZ. Wetland vegetation will necessarily be removed and altered stormwater flow regimes could have detrimental impacts on groundwater dependent ecosystems both within the site and the adjacent Warriewood Wetlands.

All of the site that is mapped Proximity Area will be subject to major earthworks to raise the land above flood planning levels which will significantly alter flows to and from the site. The applicant has not submitted information regarding the potential impact of the altered flow regimes on the Wetland or undertaken adequate groundwater investigation and water quality monitoring.

The Planning Proposal fails to provide a 15m wide extensively landscaped buffer to protect the adjacent wetlands in accordance with clause 6.6 of the Pittwater DCP (DCP) due to management requirements of the overlapping bushfire Asset Protection Zone (APZ). In order to function as an effective ecological buffer to the wetland, the DCP requires a 15m buffer consisting of landscaped mounds with mass planting of native trees and shrubs. The buffer should be exclusive of any APZ, and not overlap with it as is proposed. This is consistent with conditions of approval set by the PAC for the adjacent Meriton development, requiring a 25m wide APZ outside of a 10m wide Vegetated Wetland Buffer Zone and no excavation works in the Wetland Buffer Zone.

The Planning Proposal does not take adequate measures to protect or enhance the hydrological and ecological integrity of the mapped Coastal Wetland or to minimise impact on the quantity and quality of surface and ground water flows to and from the adjacent Coastal Wetland.

Furthermore, any development within the mapped Coastal Wetland area would be Designated Development requiring an Environmental Impact Statement under the SEPP (R&H) provisions.

Having regard for deficiencies associated with the proponent's Strategic Bushfire Study, as discussed further under Q.7 below, concern exists in relation to the ability for a future development application to satisfy section 4.14 of the Environmental Planning and Assessment Act 1979.

Q7. Is the planning proposal consistent with applicable Ministerial Directions (s.9.1 directions)?

The applicant's report states the Planning Proposal would be consistent with all relevant Directions.

Response - Local Planning Direction 4.1 Flooding

The Planning Proposal is not consistent with clause 4.1(2) of Direction 4.1 as it seeks to rezone land within the flood planning area from a Rural zone to a Residential zone.

The Planning Proposal is not consistent with clause 4.1(3) of Direction 4.1 as it will:

- permit development that will result in significant flood impacts to other properties,
- permit a significant increase in the development and/or dwelling density of that land; and
- is likely to result in a significantly increased requirement for government spending on emergency management services, flood mitigation and emergency response measures.

Direction 4.1 requires planning proposals to give effect to and be consistent with the principles of the Floodplain Development Manual 2005 (the Manual), any flood study prepared by Council in accordance with the Manual, and the Considering Flooding in Land Use Planning Guidelines which introduced Standard Instrument LEP clauses related to Flooding.

The Manual promotes a merit approach to development decisions in the floodplain, taking into account social, economic, and ecological factors as well as flooding considerations. Its primary objective is to reduce the impact of private and public losses resulting from floods, and it looks to containing the potential for flood losses through application of planning and development controls and enabling councils to be responsible for determining the appropriate planning and development controls to manage future flood risk.

The Pittwater Development Control Plan (DCP) includes flood-related controls in section B3.11 Flood Prone Land. For land affected by flooding in High and Medium Risk Flood Precincts, the controls require that development must demonstrate, amongst other things, for all flood events up to the 1% AEP event: no adverse impacts on flood levels or velocities caused by alterations to the flood conveyance, no adverse impacts on surrounding properties, and no net loss of flood storage.

The Planning Proposal involves filling of most of the proposed R3 zoned land and the amount of fill is substantial to achieve flood planning levels for the townhouses of RL4.4m, well above existing ground levels of around 2-4m AHD. Without compensatory cut, this will result in a sizeable net loss of flood storage from the site which will need to be absorbed by other properties in the floodplain. The proponent has not demonstrated no net loss of flood storage. No volumetric calculations indicating the balance of cut and fill have been provided. The proponent has instead focused on modelling to demonstrate no adverse impacts on surrounding properties and compliance with specific DCP controls for Warriewood Valley Release Area under C6.1.

Development that results in a net loss of flood storage is contrary to specific controls established by Council to manage flood risk.

Cumulative loss of floodplain storage is an important consideration, particularly where land is not currently zoned for the type and intensity of development proposed. Any net loss of flood storage from the site, as a result of filling to achieve adequate levels for new houses and roads, requires other properties to absorb the storage lost. Flood levels and flows can increase on other properties and the combined, cumulative effects may be excessive if other sites in the catchment are similarly rezoned and filled for housing following any precedent set by this Planning Proposal.

Risks to life and property are critical considerations under Direction 4.1.

The results of Calibre's flood modelling of the Probable Maximum Flood (PMF) event indicate that at 195 minutes into a PMF storm event, internal driveways and Boondah Road become unsafe for small vehicles, and at 210 minutes into a PMF storm event water levels on the site have risen to 4.54m and will enter the ground floors of the townhouses, and anyone who has not evacuated will need to shelter in place on the first floor above. The applicant proposes a private evacuation alarm system (light and siren) set to trigger at a flood level 90 minutes into the PMF storm event allowing 75 minutes for people to pack and leave, and another sensor set to trigger at 180 minutes (different light and siren) indicating it is too late to leave and residents must shelter in place.

Evacuation will add pressure on a road system that is restricted in major flood events, and the efficacy of a private alarm system is questionable in terms of who maintains it in working order and how future residents will understand and respond to alarms when activated.

The NSW State Emergency Service (SES) provided advice (Attachment 2) on the Planning Proposal. The SES advice refers to the Ministerial Direction for Flooding and the NSW Floodplain Development Manual and identifies the following issues with Planning Proposal:

- zoning should not enable development that will result in an increase in risk to life, health or property of people living on the floodplain
- warning technology cannot be relied on to guarantee a faster response from the community and any advantage gained by the application of warning technology should be considered as a safety factor, not a potential for increasing development
- evacuation must not require people to drive or walk through flood water
- development strategies relying on deliberate isolation or sheltering in buildings surrounded by flood water are not equivalent, in risk management terms, to evacuation
- shelter in place is not a flood management strategy endorsed by the SES for future development, such an approach is only suitable to allow existing dwellings that are currently at risk to reduce their risk, without increasing the number of people subject to such risk
- SES is opposed to imposition of development consent conditions requiring private flood evacuation plans rather than application of sound land use planning and risk management
- SES is opposed to development strategies that transfer residual risk, in terms of emergency response activities, to the SES and/or increase capability requirements of the SES
- consent authorities should consider the cumulative impacts any development will have on risk to life and the existing and future community and emergency service resources.

The views of the SES, as the lead agency in NSW for planning for, responding to, and coordinating recovery from floods, should be paramount in land use decisions for flood-prone land. The agency has expressed a view that it does not support future development (i.e. new residential development enabled by rezoning) on flood prone land where early evacuation, private alarm systems and shelter in place strategies are necessary to manage flood risk. In other words, the Council should not support rezonings which place new communities in locations that expose people and property to risks associated with major floods and increase the potential burden on emergency services.

The proponent submitted a memorandum by Calibre dated 16 September 2022 in response to issues raised by the SES in its preliminary advice. Upon review of this further information, the SES advised it does not have any further comment.

The proponent further submitted a letter by SJB Planning dated 20 December 2022 and a letter by Calibre dated 20 December 2022, in which points were raised about the consistency of the flood risk assessment and evacuation requirements of the proposal with DPE's Flood Risk Management Manual and associated Flood Risk Management Guide EM01 (Guide EM01) published in February 2022, in particular the flow charts for rezoning and greenfield developments.

The SES confirmed that Guide EM01 is a draft, and the proposal has not satisfied the conditions outlined in Guide EM01, in particular:

- Noting that Boondah Road will be raised to the level of 1% AEP plus climate change, this area will still be a Low Flood Island. Low Flood Islands represent the highest risk to life.
- The proposed development does not have sufficient time to evacuate.
- The proposed modifications do not address the evacuation constraints.
- The flood evacuation constraints in an area should not be used as a reason to justify new development by requiring the new development to have a suitable refuge above the PMF. Allowing such development will increase the number of people exposed to the effects of flooding.

Since the release in draft of the abovementioned Guide EM01, catastrophic floods have occurred in NSW, and it is understood that the Department of Planning and Environment is giving further thought to the ways in which natural hazards can be better managed early in the strategic planning process.

The NSW government has explicitly recognised the important role of the planning system in supporting resilience in places and communities, and its' commitment to continuous improvement to the planning system to create greater resilience to chronic stresses and episodic shocks such as floods and bushfires.

Effective planning can and should reduce exposure to natural hazards. The Planning Proposal is fundamentally contrary to planning for resilience, as it will increase the number of people exposed to flood risk on the Northern Beaches.

Council's Floodplain Planning unit does not support the Planning Proposal and has indicated the proposal is not compliant with Local Planning Direction 4.1, identifying the following issues:

- the applicant has not demonstrated that the proposed development will not result in significant adverse impacts to other properties.
- land filling to raise the roads and building platforms appears to result in a net loss of flood storage in the mainstream flood lagoon floodplain.
- no volumetric figures showing the cut and fill balance have been provided.
- Council must be satisfied that the proposed development will convey water and have the same flood storage function as existing.
- it is not appropriate for Council to support future development (via rezoning) that uses shelter in place as a management strategy that will increase the flood risk and the number of people exposed to flooding.
- the applicant has not demonstrated that the proposed development will not result in a significantly increase requirement for government spending on emergency management services, flood mitigation or emergency response measures.

Council's Floodplain Planning unit also identified inconsistencies with:

- principles of the NSW Floodplain Development Manual 2005
- the Australian Disaster Resilience Handbook Collection
- Pittwater LEP Clause 5.21 Flood Planning

Given the level of filling proposed, loss of flood storage, exposure of people and property to flood risk, and the reliance on a shelter in place strategy with a private alarm system, the Planning Proposal is inconsistent with Pittwater Local Environmental Plan (LEP) clause 5.21 in that it will:

- result in significant adverse impacts to other properties or adverse cumulative impacts on flood behaviour in a way that results in detrimental increases in the potential flood affectation of other properties;
- adversely affect the safe occupation and efficient evacuation of people; and
- place people and property at risk or in intolerable conditions in the event of a major flood.

With regards to assessing flood risk for this proposal, Council's floodplain engineers have advised:

- when assessing flood risk, Council considers the full range of flood events up to the PMF
- during a PMF event, the roads will be cut off and evacuation will not be possible
- for events larger than 1% AEP + CC and up to the PMF event the proposal relies on shelter in place as the strategy to manage flood risk
- the DCP does allow for shelter in place when flood free evacuation during a PMF event is not possible, however as this is a rezoning application and not a development application, Council needs to consider SES's concerns and other relevant policies and guidelines. Shelter in place is generally only suitable for existing dwellings that are currently at risk to reduce their risk.

The imperative for Council to carefully consider the risks associated with development on flood prone land has increased markedly in recent years on account of extreme weather and flood events on the Northern Beaches and elsewhere in NSW and Queensland. On 28 June 2022, Council adopted the Northern Beaches Resilience Strategy, with a key priority and associated action being:

Priority 1. Avoid intensification of development, inappropriate development and incompatible land uses in areas exposed to natural and urban hazards.

Action 1a. Establish planning controls that limit intensification, inappropriate development and incompatible land uses to reduce or avoid risks from natural hazards.

This is a logical shift in policy toward a more considered and cautious approach to managing the risk posed by natural hazards, particularly in the context of climate change.

<u>Response - Local Planning Direction 4.3 Planning for Bushfire Protection (Direction 4.3)</u>

The referral response from Council's Bush Fire Management Coordinator highlights the following deficiencies in the Strategic Bush Fire Study submitted with the Planning Proposal:

- "*There is minimal consideration of the likelihood of a bush fire impacting the site and its potential severity on a landscape scale.*
- *The study relies on site specific protection measures rather than assessing the appropriateness of the proposal in the context of the surrounding landscape.*
- *The suitability of the proposal on the landscape should have stronger logical connections to informing the siting and layout of the proposed development.*
- *There is no assessment on the capacity of the road network either internally or externally to sufficiently handle evacuating residents and responding emergency services to/from the*

proposal; nor identification of evacuation routes or assessment of the potential for the development to become isolated during a fire event.

- *There is no assessment of the development impact on the provision or capacity of emergency services, other than minor references to the proximity of surrounding fire stations.*
- *There is no assessment of the provision of infrastructure services to the proposal as the study suggests that this should be the subject of a separate study.*
- *There is limited assessment of the impact of the proposal on neighbouring lands, and no consideration for managed lands to the south of the proposal to remain such in perpetuity.*
- *Site specific APZs are not contained within the development relying on adjoining road verges. Should any land with the proposal be vested to Council, Council may be burdened with the ongoing APZ management of these and/or adjoining road verges.*
- *The study indicates that perimeter roads within the proposal rely on a performance solution. Performance solutions should be accompanied with the appropriate Bush Fire Design Brief and/or Bush Fire Management Plan which has not been supplied.*"

If the Planning Proposal proceeds through Gateway Determination, it will be formally referred to the Rural Fire Service for comment.

Site-Specific Merit

Section C – Environmental, social, and economic impact

Q8. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected because of the proposal?

The Applicant's report states that the Biodiversity Certification process will manage the potential impacts on identified threatened species, habitat, ecological communities, and that the masterplan for the proposal has been guided by the site's ecological constraints and bush fire management requirements with the perimeter road network providing a managed edge to the ecological values of the adjacent Wetland and a defendable perimeter for the development.

Response

The site contains significant biodiversity values including Threatened Ecological Communities, mapped Coastal Wetland and Proximity Area for Coastal Wetland, records of threatened species, threatened species habitats and fauna connectivity.

Areas along the site's western boundary and the south-western corner of the site are mapped on the Department of Planning and Environment's Biodiversity Values map which identifies land with high biodiversity value that is particularly sensitive to impacts from development and clearing. The mapping is part of the Biodiversity Offsets Scheme (BOS) thresholds and any vegetation clearing as part of future development will trigger entry into the BOS. The applicant has made application for BioCertification to the State Government and the Biodiversity Certification Assessment Report and accompanying Conservation and Vegetation Management Plans have been formally submitted to Council for comment.

The two identified Endangered Ecological Communities (EEC) on the site are:

- Bangalay Sand Forest
- Swamp Oak Floodplain Forest

The six identified threatened fauna species are:

- Grey-headed Flying-fox (*Pteropus poliocephalus*)

- Large Bent-winged Bat (*Miniopterus orianae oceanensis*)
- Eastern Cave Bat (*Vespadelus troughtoni*)
- Southern Myotis (*Myotis macropus*)
- Little Bent-winged Bat (*Miniopterus australis*)
- Powerful Owl (*Ninox strenua*).

Earthworks and clearing for the proposed development will directly impact all the Bangalay Sand Forest which covers around 0.23ha and is entirely within the proposed R3 zone residential area. The complete removal of this vegetation represents the loss of approximately 50% of the mapped extent of this EEC on the Northern Beaches. Nine hollow-bearing trees, some with hollows suitable for the recorded Southern Myotis will be removed. Whilst this vegetation is degraded, intact mature canopy remains. The layout of the proposed development fails to avoid or minimise impacts to this EEC. The BioCertification application recommends retirement of biodiversity credits or more likely payment into the State Government's Biodiversity Conservation Fund to offset the impact.

The Swamp Oak Floodplain Forest (SOFF) covers 0.44ha of the site and 0.18ha would be directly impacted by the proposed development. The remainder is located within the portion of the site proposed to be zoned C2 Environmental Conservation.

The six recorded threatened fauna species and their habitats will be significantly impacted and clearing will remove existing wildlife corridors through the site between core habitats in Warriewood Wetlands to the west and corridors along Narrabeen Creek to the east of the site.

In addition to the direct removal of vegetation, altered surface and groundwater flow regimes have potential to adversely impact ground water dependent ecosystems on the site and in the wetland.

Other potential impacts relate to 'edge effects' to the wetland and remaining SOFF associated with maintaining a 24m wide Bushfire APZ along the site's western boundary. The required 15m wide extensively landscaped buffer to the wetland should be outside of the APZ.

The referral response from Council's Biodiversity and Planning unit states:

"*…the Planning Proposal is not supported for the following reasons:*

- *Lack of measures to avoid and minimise impacts to threatened biodiversity, including the complete removal of Bangalay Sand Forest. It is noted that the BCAR states that the proposal will lead to the avoidance of the majority of mapped biodiversity values within the subject lots, however this is not correct as the full extent of BSF on site will be directly impacted, as well as impacts to six threatened fauna species and other native flora and fauna species.*
- *Regardless of the reduced development footprint, it appears that the development within the proposed R3 zone intersects the BV map / Coastal Wetland and as such, the current concept proposal for 10 & 12 Boondah Road would require an EIS.*
- *The current design is not sited and designed to avoid and minimise impacts to biodiversity. The proposal would result in a direct net loss of biodiversity. Potential impacts that would result from the proposal include locating dwellings, associated infrastructure, excavation and filling, and APZs within the mapped coastal wetland. Further impacts to biodiversity include the clearing of native vegetation and endangered ecological communities, impacts to threatened species habitats, reduction in local wildlife connectivity, indirect impacts associated within increased light and noise pollution, and impacts to ground water dependent ecosystems within the site and adjoining Warriewood wetlands.*
- *The requirement for the retention and enhancement of an ecological buffer to protect the mapped coastal wetland on site and to the adjoining Warriewood Wetlands needs*

amendment to achieve a suitable biodiversity outcome and reduce potential impacts to the adjoining wetland;

- *The lack of a 15 metre wide extensively landscaped buffer strip adjoining Warriewood Wetlands, exclusive of bushfire asset protection zone, and consisting of landscaped mounds with mass plantings of native trees and shrubs, locally indigenous canopy trees with native shrubs, locally indigenous canopy trees with native shrubs and groundcovers as required by the P21 DCP control 6.6 Landscape treatment of the Buffer Strip. …*
- *Flooding, flood storage and water flows are of concern, and the areas of significant vegetation (trees), fauna habitats and wetland buffers should be retained must not be subject to any excavation / filling.*
- *The removal of wildlife corridors through and surrounding the site including direct connection to core habitats within Warriewood Wetlands, as well as connections to the east that form part of a wildlife corridor that extends further north along the Narrabeen Creek catchment. It is recommended that a corridor is provided in the northern boundary of the site, thereby retaining, enhancing and protecting areas of the TEC BSF.*
- *Potential for indirect and prescribed impacts to TECs, threatened species and their habitats*
- *Likelihood of altered surface and groundwater flow regimes, and therefore potential direct and indirect impacts to Groundwater Dependent Ecosystems (GDE) on the subject site and in the locality.*
- *A reliance within the BCAR that an appropriate storm water management plan will be prepared to avoid impacts on the TEC, and is not expected to impact on groundwater resources or groundwater dependent ecosystems.*

Therefore, the range of issues described above, as well as the loss of native tree canopy, will result in a future development that does not satisfy the applicable planning controls, and is not supported by Council's Biodiversity Planning section.

In addition, the offset obligations calculated as part of the Biodiversity Certification Assessment Report for the TECs and threatened species are not available on the Northern Beaches, and therefore will result in net loss of biodiversity within the Northern Beaches LGA."

Council's Catchments unit also raised concerns in relation to impacts on groundwater dependent ecosystems, earthworks in the buffer to the wetland, and the need for water quality monitoring and further groundwater and hydrological investigations to demonstrate that impacts on the downstream environment and the wetland can be suitably managed. The Catchments unit does not support the Planning Proposal as it is not in accordance with Local Planning Direction 4.2 Coastal Management or SEPP (Resilience and Hazards) 2021.

Q9. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

The proponent's report identifies potential impacts associated with flood and bushfire hazard, acid sulphate soils and contamination, and makes reference to various aspects of the design and layout of the proposed development and studies undertaken for the Planning Proposal as evidence that these potential impacts can be minimised and are within acceptable levels.

Response

As discussed earlier, in relation to flood hazard, the SES has raised significant concerns and does not support shelter in place or private alarm systems as a strategy to manage flood risk for future development on land not currently zoned for housing. Extensive filling of the site to achieve flood planning levels will result in net loss of flood storage in the floodplain and insufficient information has been provided to demonstrate that the proposed development will not result in adverse impacts to other properties, place people and property at risk or in intolerable conditions in the

event of a major flood, adversely affect the safe occupation and efficient evacuation of people, or significantly increase the requirement for government spending on emergency management, flood mitigation and emergency response measures.

As discussed earlier, in relation to bushfire hazard, Council's Bush Fire Management Coordinator has identified deficiencies in the Strategic Bush Fire Study submitted by the proponent.

The applicant's submissions in relation to acid sulphate soils and contamination are accepted.

Q10. Has the planning proposal adequately addressed any social and economic effects?

The applicant's report describes the proposed affordable housing, traffic impact assessment and access road network, and provision of open space with a playground and pedestrian link between Boondah Road and Warriewood Wetlands in relation to addressing social and economic effects.

Response

As discussed earlier, the Planning Proposal fails to include a suitable mechanism to give effect to an affordable housing contribution in accordance with Council's Policy and Contributions Scheme. These documents contemplate that dwellings secured for affordable housing are meant to come into Council ownership in perpetuity. Any residential uplift will require 10% of the dwellings to be affordable housing stock transferred into Council ownership. Amendments to Council's Affordable Housing Scheme and to Pittwater LEP to secure this contribution would need to be made in conjunction with a Planning Proposal being progressed to Gateway Determination, and eventually published as part of the rezoning.

Council's Transport Network Manager has provided a referral response on the Planning Proposal which indicates that the road design is acceptable subject to certain requirements which can be resolved at the more detailed application stage. Although the impact on the local road network is acceptable, the applicant is still required to provide confirmation that the modelling requirements of the RMS (now Transport for NSW) have been met, particularly with regards to potential impacts on the intersections of Mona Vale Road/ Pittwater Road and Pittwater Road/Warriewood Road. If the Planning Proposal proceeds through Gateway Determination, it will be formally referred to Transport for NSW for comment.

The proposed open space area including the playground will provide for the recreation needs of the new resident population. The playground and open space would form part of a community title and be constructed and maintained by the landholders. The playground and open space are not suitable for Council ownership as a park asset.

The proposed pedestrian pathway connection between Boondah Road and Warriewood Wetlands would be required to be constructed by the developer and dedicated to Council to ensure public access. The location of the pathway through the southern end of the site is potentially acceptable, however it should be separate to the internal road network and not cross any internal roads.

There are potential economic effects associated with the proposed C2 zoned land. While the applicant has stated that the proposed C2 zoned land is intended to remain in private ownership, without confirmation to indicate otherwise, there is a possibility that the C2 zoning could trigger acquisition and there is no funding mechanism for Council to purchase the land.

There is also no certainty as to who will be responsible for any ongoing supervision and/or maintenance of this land, or bushfire APZs and the buffer to the wetland, and it may be a further economic burden placed upon the Council.

Additionally, as discussed earlier in relation to flood hazard, the proposed flood responses are insufficient and transfer residual risk in terms of emergency response to the SES, thereby increasing demands on SES resourcing and capabilities and potentially increasing risk to life, health and property for both existing and future communities.

Section D – Infrastructure (Local, State and Commonwealth)

Q11. Is there adequate public infrastructure for the planning proposal?

The referral response from Council's Infrastructure unit identifies the following local infrastructure requirements if a rezoning to permit an additional 45 dwellings on the site were to proceed:

- Reconstruction of Boondah Road

The applicant's report acknowledges the requirement for raising of Boondah Road to the level of 1% AED plus climate change. If the Planning Proposal is to proceed, the full width of Boondah Road for the entire length of the site's frontage would need to be constructed up to the level required for flood evacuation (1% AED plus climate change) including suitable transitions to the existing carriageway alignments.

- Payment of development contributions towards open space infrastructure and community facilities in accordance with the applicable Development Contributions Plan.

An additional 45 dwellings will represent around 120 additional residents, or an increase of around 2.2% in the total population forecast for Warriewood Valley. Council's Parks unit has advised that this will place additional pressure on active recreation facilities, but in and of itself does not justify further augmentation of existing facilities in Warriewood Valley or the acquisition of additional ones.

The approved design of a new community facility in Warriewood Valley will once constructed provide sufficient floorspace to accommodate the additional resident population if the Planning Proposal were to proceed.

Section E - State and Commonwealth interests

Q12. What are the views of state and federal public authorities and government agencies consulted in order to inform the Gateway determination?

The NSW SES was the only agency consulted and their advice is not supportive of the Planning Proposal.

CONSULTATION

A non-statutory (Pre-Gateway) public exhibition of the Planning Proposal was undertaken from 29 July 2022 to 12 August 2022.

A total of eight submissions (one late) were received. The issues raised are summarised in Attachment 3. Two of the submissions indicated support for the proposal. The issues raised relate to:

- loss of green space;
- impact on wildlife and environment, including wetland;
- traffic and road safety;
- building height out of character;
- potential increase in run-off and flooding of nearby properties;
- negative impact on property values;
- need for master planning for development of other properties along Boondah Road;
- disruption from construction;
- opposition to affordable housing; and
- flooding impact, roads out being cut off by floodwater.

TIMING

The Planning Proposal was lodged via the NSW Government's Planning Portal. The applicant is able to request a rezoning review if Council has not indicated support for the proposal within a certain timeframe, which in this case is 115 days for a planning proposal categorised as Complex due to its inconsistency with Council's endorsed LSPS and the relevant regional and district plans.

The proponent paid the application fees on 18 July 2022 and Council completed its initial check of on 22 July 2022. Based on that date, the 115 day deadline passed 14 November 2022.

The Northern Beaches Planning Panel (the Panel) first considered the proposal at its meeting on 16 November 2022 and agreed to defer its decision at the request of the applicant. At its meeting on 21 December 2022, the Panel determined its advice to Council to reject the proposal.

At the time of writing this report, the proponent had not sought a rezoning review.

LINK TO STRATEGY

The assessment in this report relates to the Community Strategic Plan Outcomes of:

- Protection of the environment - Goal 1 Our bushland, coast and waterways are protected for their intrinsic value
- Protection of the environment - Goal 2 Our environment is resilient to natural hazards and climate change
- Housing, places and spaces - Goal 10 Our community has access to diverse and affordable housing options to meet their current and evolving needs

FINANCIAL CONSIDERATIONS

If Council resolves to reject the Planning Proposal and the development does not proceed, there will be minimal financial impact on Council, with the possible exception of costs associated with any review. If the proposal were to proceed, financial considerations for Council include potential costs associated with flood mitigation and emergency management, response and recovery after flood events, possible acquisition obligations for the C2 zoned land, and ongoing supervision and/or maintenance of bushfire APZs and the buffer to the wetland. Any future development consent would require a contribution in accordance with the Warriewood Valley Development Contributions Plan. The developer would be responsible for works to raise and widen Boondah Road and construct the children's playground.

SOCIAL CONSIDERATIONS

There is potential for significant adverse social impacts as a result of flooding. The proposal relies on a private alarm system for early evacuation in the event of a major flood. For those unable to evacuate in time, when the evacuation route becomes impassable in floods above 1% + climate change, the proposal relies on shelter in place. In a PMF event this would involve sheltering on the upper levels of the proposed townhouses. At a fundamental level, rezoning land to allow housing in a location that exposes people and property to flood hazards represents increased risk for the community and potentially increases the burden on emergency services. The SES has raised significant concerns about the proposal.

There is no overriding social benefit in terms of housing provision. Council is readily able to meet its housing targets through a methodical, strategic, principles-based approach to increasing housing capacity in and around its most accessible centres, including an additional 1300 dwellings in Brookvale. There is no need to rezone the subject land in Warriewood, especially given the site-specific constraints and potential environmental, social, and economic impacts.

The proposal fails to provide for the required affordable housing contribution, dedicated to Council in perpetuity.

ENVIRONMENTAL CONSIDERATIONS

The likely environmental impacts of the proposed development include loss of EEC vegetation and associated impacts on threatened species, habitat and wildlife corridors, altered groundwater flow regimes with potential impacts on groundwater dependent ecosystems both on the site and in the adjacent wetland, and potential edge effects on the wetland and remaining EEC vegetation on the site due to failure to provide adequate vegetated buffers.

The proposal does not take adequate measures to protect or enhance the hydrological and ecological integrity of the mapped Coastal Wetland or to minimise impact on the quantity and quality of surface and ground water flows to and from the adjacent Coastal Wetland.

Extensive filling of the site to achieve flood planning levels will result in net loss of flood storage in the floodplain, and it has not been demonstrated that the proposed development will not result in adverse flood impacts to other properties or contribute to significant cumulative impacts.

GOVERNANCE AND RISK CONSIDERATIONS

By far the most significant risk consideration for Council is the increased exposure to flood hazard for the community, and for emergency services.

Other risks considerations if the proposal were to proceed relate to biodiversity and water quality impacts, and the ongoing conservation management of the C2 zoned land.

If Council decides to reject the Planning Proposal, it is possible that the applicant will request a rezoning review. If that occurs, the decision as to whether the Planning Proposal can proceed will rest with the Sydney North Planning Panel.