

ITEM 0	PEX2022/0002 - 15 MONA STREET, MONA VALE - PLANNING PROPOSAL
AUTHORISING MANAGER	EXECUTIVE ASSISTANT TO EXECUTIVE MANAGER
TRIM FILE REF	2022/773286
ATTACHMENTS	1 NSW SES Preliminary Advice on PEX2022-0002 15 Mona St Mona Vale 2 Submissions Summary - PEX2022/0002

PURPOSE

To report the assessment of a Planning Proposal for land at 15-17 Mona Street, Mona Vale to the Northern Beaches Local Planning Panel (Panel) and to recommend that the Panel advise Council to reject and not progress the Planning Proposal to a Gateway Determination.

SUMMARY

A Planning Proposal for land at 15 Mona Street, Mona Vale (the subject site) has been submitted by Sydney Water Pty Ltd and seeks to amend *Pittwater Local Environmental Plan 2014* by rezoning the north-western portion of the subject site from SP2 Infrastructure Water Supply System to R2 Low Density Residential to enable a proposed five lot subdivision, creating four residential lots and one residue open space lot to remain zoned SP2 Infrastructure Water Supply System.

The Planning Proposal also seeks to apply a minimum lot size of 700 sqm to the four residential lots.

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, emergency evacuation, and overall public benefit.

RECOMMENDATION OF MANAGER STRATEGIC & PLACE PLANNING

That the Northern Beaches Local Planning Panel recommend that Council reject the Planning Proposal for 15 Mona Street, Mona Vale and not forward it to the NSW Department of Planning and Environment for a Gateway determination for the following reasons:

- A. 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 that will result in an increase in risk to life, health or property of people living on the floodplain with risk management strategies that rely on early evacuation, private alarm systems, 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.
- B. 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:
 - 1. result in a net loss of flood storage in the floodplain;
 - 2. result in significant adverse impacts to other properties;
 - 3. result in an increased requirement for government spending on emergency management services, flood mitigation and emergency response measures; which can include but are not limited to the provision of road infrastructure, flood mitigation infrastructure and utilities
 - 4. adversely affect the safe occupation and efficient evacuation of people; and

5. place people and property at risk or in intolerable conditions in the event of a major flood.
- C. The Planning Proposal is inconsistent with objectives of Clause 5.21 Flood Planning of Pittwater Local Environmental Plan 2014.
- D. The Planning Proposal is inconsistent with the Local Planning Directions issued by the Minister under section 9.1(2) of the *Environmental Planning and Assessment Act 1979*, being Direction 4.1 Flooding subclause (2) - A planning proposal must not rezone land within the flood planning area from Recreation, Rural, Special Purpose or Conservation Zones to a Residential, Business, Industrial or Special Purpose Zones.
- E. The Planning Proposal is likely to result in unacceptable impacts on biodiversity, particularly in respect of:
1. failure to site and design development to avoid and minimise impacts to biodiversity; including the Swamp Oak Floodplain Forest, which is listed as an Endangered Ecological Community under the *Biodiversity Conservation Act 2016*,
 2. unacceptable impacts to the Threatened Ecological Communities, loss of fauna habitats and loss of native canopy tree cover including local wildlife connectivity,
 3. uncertainty with regards to Biodiversity Certification and the likelihood of a net loss of local biodiversity,
 4. inadequate groundwater investigation and water quality monitoring to demonstrate adequate management of impacts on the downstream environment.
- F. 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:
1. *Greater Sydney Region Plan*:
 - i. Objective 27: Biodiversity is protected, urban bushland remnant vegetation is enhanced
 - ii. Objective 36: People and places adapt to climate change and future shocks and stresses
 - iii. Objective 37: Exposure to natural and urban hazards is reduced.
 2. *North District Plan*:
 - i. Planning Priority N16: Protecting and enhancing bushland and biodiversity
 - ii. Planning Priority N22: Adapting to the impacts of urban and natural hazards and climate change
 3. *Towards 2040 Local Strategic Planning Statement* for the Northern Beaches:
 - i. Priority 1: Healthy and valued coast and waterways
 - ii. Priority 2: Protected and enhanced bushland and biodiversity
 - iii. Priority 8: Adapted to the impacts of natural and urban hazards and climate change
 - iv. Priority 18 Protected, conserved and celebrated heritage
 4. *Local Planning Directions* issued by the Minister for Planning:
Local Planning Direction 4.1: Flooding
Local Planning Direction 4.2 Coastal Management.
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- G. The Planning Proposal does not meet the requirements of Council's Affordable Housing Policy.
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REPORT

BACKGROUND

Previous Planning Proposals

The site has been the subject of several rezoning applications and Planning Proposals spanning from 1987 to 2022, all of which have not proceeded due to a range of factors including community opposition, biodiversity, and flooding concerns.

The first rezoning request was lodged by the Land Commission of NSW in 1980 and sought to re-zone the subject land from zone 5(a) Special Uses "A" - "Taronga (sic) Zoo Park" to Residential, with inclusion on the Flat Map, to allow the development of three four-bedroom and ten three-bedroom family dwellings and 16 pensioner units. The rezoning proposal never progressed.

In 1987, the Department of Housing lodged a request with Warringah Shire Council to rezone the land for a mix of 29 housing units. The rezoning proposal was met with strong community opposition, with the community calls for the subject site to be a designated a "bushland park". Warringah Shire Council formed the opinion that the site was unsuitable for multi-unit housing. An amended proposal was lodged in 1989 which reduced the quantity of multi-unit housing however following significant public objection, the rezoning request was deferred to allow traffic and drainage issues to be addressed.

In 1989 a rezoning proposal for Lot 100 Mona Street, Mona Vale was lodged seeking a rezoning of the site to permit development of public housing. The proposed development consisted of a mix of detached and semi-detached dwellings. After Council's assessment of the proposal, drainage was identified as a major issue and additional information was requested. Upon receipt of and review of the flood report Council raised concerns and sought a more detailed investigation about the possible flooding impacts on adjoining properties because of the mitigation works proposed in the consultants' flood report.

In 1998 a rezoning request was lodged by Property Services Group on behalf of Sydney Water Corporation to prepare a Draft LEP to amend the zoning of the subject properties. The rezoning request for 15, 17/19 Mona St, Mona Vale (known as Lot 100) from 5(a) Special Uses "A" (Taronga Zoo) to 2(a) Residential "A", to enable Council to consider a future Development Application for subdivision into eight residential lots and housing development.

None of these previous proposals have proceeded, given the flooding and biodiversity issues.

Pre-Lodgement Meeting

A pre-lodgement meeting (PLM) was held with Council officers on 2 September 2021 in relation to the current Planning Proposal, and formal PLM notes were issued to the applicant on 5 November 2021. Amongst other matters, the notes include specific requirements and considerations in relation to the strategic planning context, affordable housing, biodiversity, flooding, traffic, geotechnical, existing stormwater channel contamination, and the necessary components of justification for a Planning Proposal.

SITE DESCRIPTION

The site is known as 15 Mona Street, Mona Vale and is located at the corner of Mona and Bassett Streets (see Figure 1). The legal description of the site is Lot 100 in DP 1273408.

The site has a frontage of 78.05m to Mona Street, a depth of 125.65m, a rear boundary of 54.25m and a site area of approximately 8,286 sqm. Within the site along the boundary with Bassett Street runs a concrete lined drainage channel. Vehicular access to the site is gained from Mona Street. The site is otherwise free of built improvements but contains important vegetation.



Figure 1. Site location – Aerial Photograph -15 Mona Street, Mona Vale.

The subject site contains biodiversity values including Threatened Ecological Communities (TEC), records of threatened species and native trees which provide for local wildlife connectivity. In particular, the site contains Swamp Oak Floodplain Forest which is listed as an Endangered Ecological Community (EEC) under the *NSW Biodiversity Conservation Act 2016* (BC Act) and the Commonwealth's *Environmental Protection and Biodiversity Conservation Act 1999*.

The site is also within the Flood Planning Area. Council's Flood Hazard Map identifies High, Medium and Low Risk Precinct areas within the site (see Figure 2). The site is also identified in the Pittwater Estuary Mapping of Sea Level Rise Impacts Study (2015), as being impacted by estuarine wave action and tidal inundation coastal inundation.



Figure 2 NBC Flood Hazard Map



Figure 3 Distribution of Estuarine Swamp Oak Forest, Source: ACE Environmental Pty Ltd (2018)

THE PROPOSAL

Sydney Water Pty Ltd lodged a Planning Proposal application via the NSW Government ePlanning Portal and it was assigned for review by Council on 28 June 2022, though payment was not received by Council until 26 September 2022.

Documents submitted with the application which are relied on for this assessment include:

- Planning Proposal by Planning Directions Pty Ltd, dated June 2022;
- Survey plan of lot consolidation, prepared by Steve James Davey, dated July 2021;
- Property Contamination Assessment Sign-off & Recommendations form, prepared by Sydney Water and dated February 2020;
- Site Audit Statement, dated February 2020;
- Flood Assessment Report by ZAIT Engineering Solutions Pty Ltd, dated October 2020;
- Addendum Ecological Assessment by Narla Environmental Pty Ltd, dated March 2020;
- Acid Sulfate Soils Investigation by Alliance Geotechnical Pty Ltd, dated April 2022;
- Geotechnical Investigation Report by Alliance Geotechnical Pty Ltd, dated April 2022;
- Preliminary Biodiversity Assessment by Alison Hunt and Associates Pty Ltd, date December 2020;
- Traffic Impact Assessment by Traffic Solutions Pty Ltd, dated May 2022

The Planning Proposal seeks to amend Pittwater Local Environmental Plan 2014 (LEP) for land at 15-17 Mona Street, Mona Vale, to rezone the north-western portion of the site from SP2 Infrastructure - Water Supply System to R2 Low Density Residential. The remainder of the site would retain the SP2 Infrastructure - Water Supply System zone. The rezoning would permit future residential development of four dwellings within the R2 portion of the site.

A conceptual 5 lot subdivision plan prepared by the applicant has been reproduced at Figure 4 below. A concept plan showing four freestanding houses and a retained vegetated lot with walkway prepared by the applicant has been reproduced at Figure 5. The concept plans include a large variable front setback to Mona Street and a 6m setback to adjoining properties in Nailon Place. This is due to the existing variable width easement for sewerage on the current title.

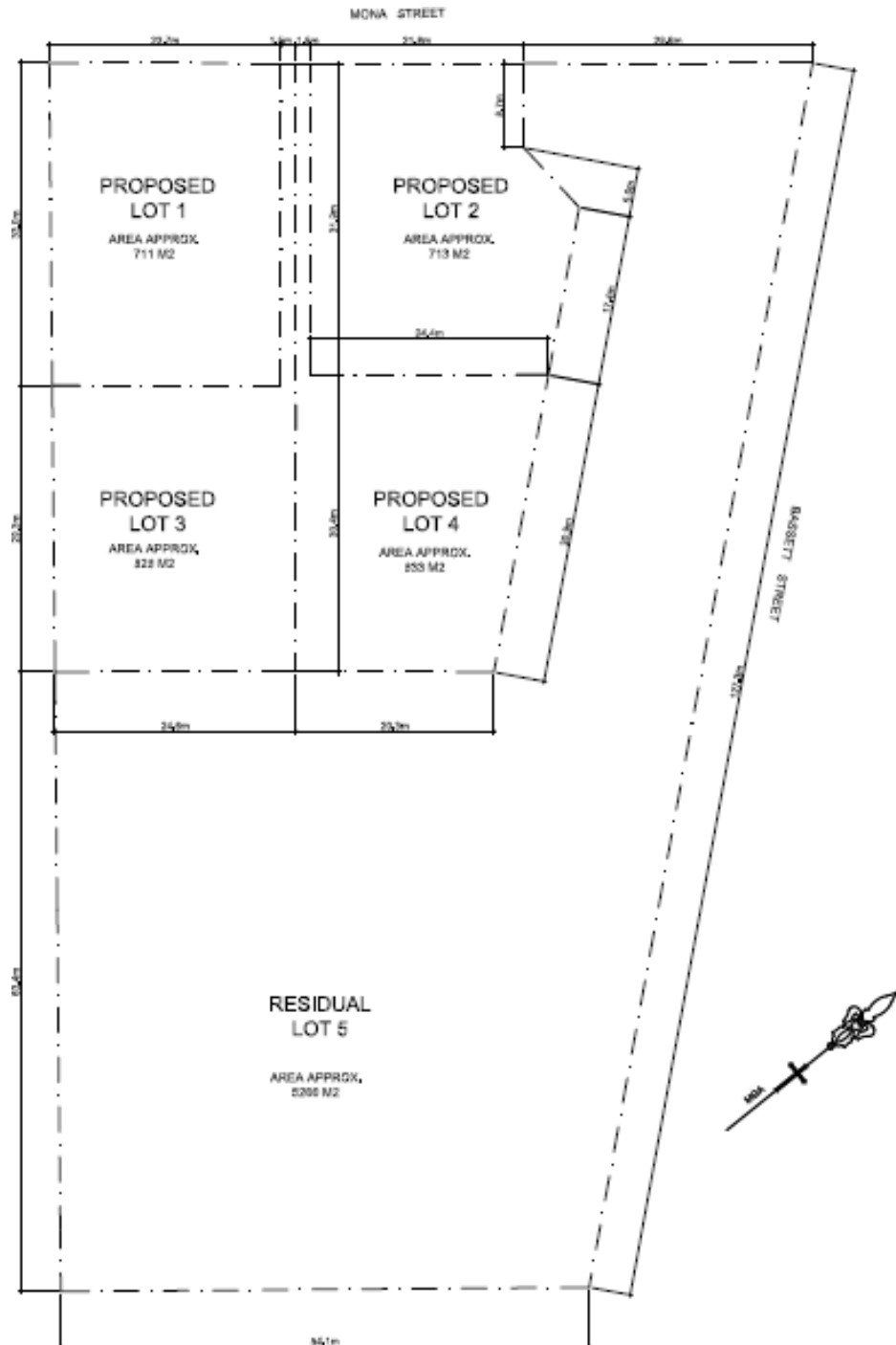


Figure 4 Proposed plan of subdivision



Figure 5 Proposed detached housing and residue lot concept plan

The applicant has not made an offer to enter into any Planning Agreement.

ASSESSMENT OF PLANNING PROPOSAL

The following assessment is undertaken in accordance with the NSW Government's Local Environmental Plan Making Guideline September 2022 (the Guideline).

Part 1 – Objectives or Intended Outcomes

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

- Facilitate the redevelopment of the north-western portion of the site for 4 residential dwellings;
- Create 1 residual lot as a parkland vegetation pocket which is to be retained.

Part 2 – Explanation of Provisions

The applicant's proposed LEP amendments seek to:

- Rezone part of the site from SP2 Water Supply System to R2 Low Density Residential (see Figures 7 and 8).
- Apply a minimum lot size of 700 sqm to the four residential lots (See Figure 9).

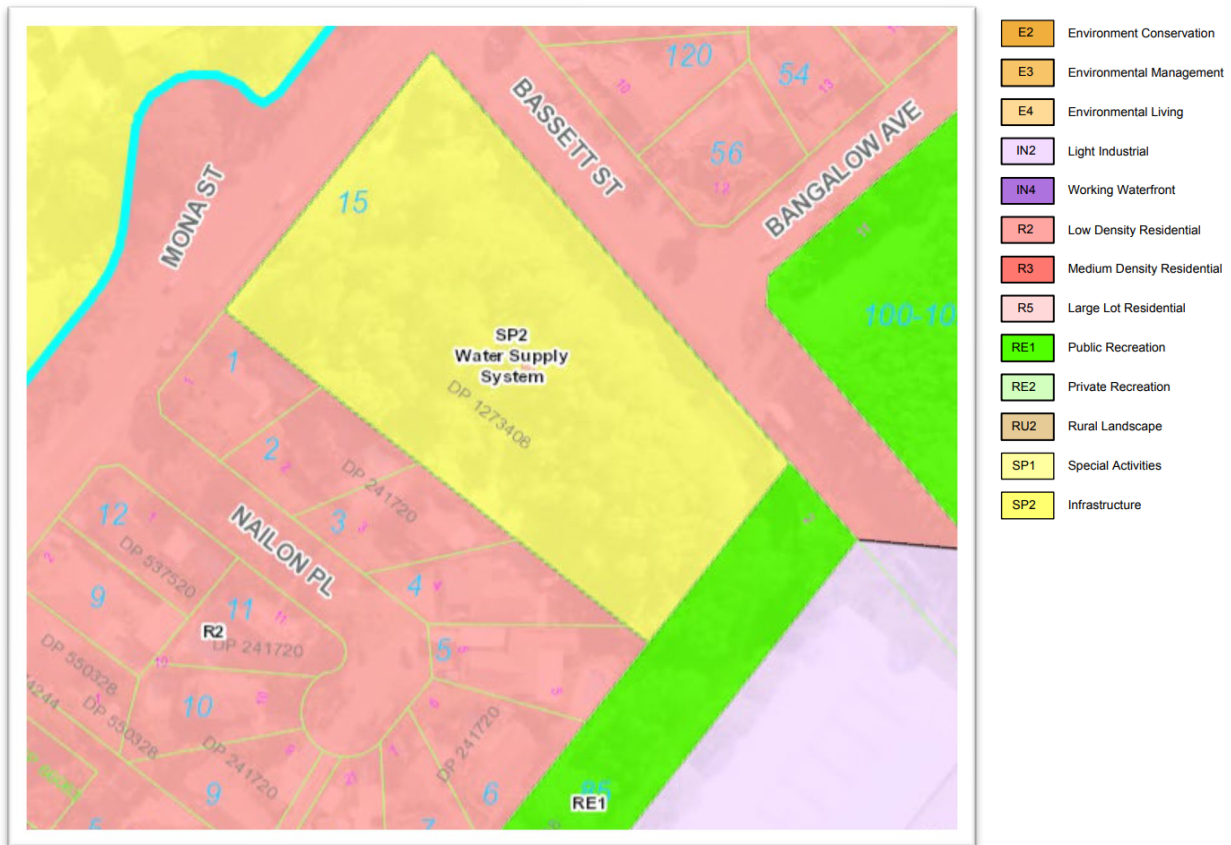


Figure 7 – Existing Zoning

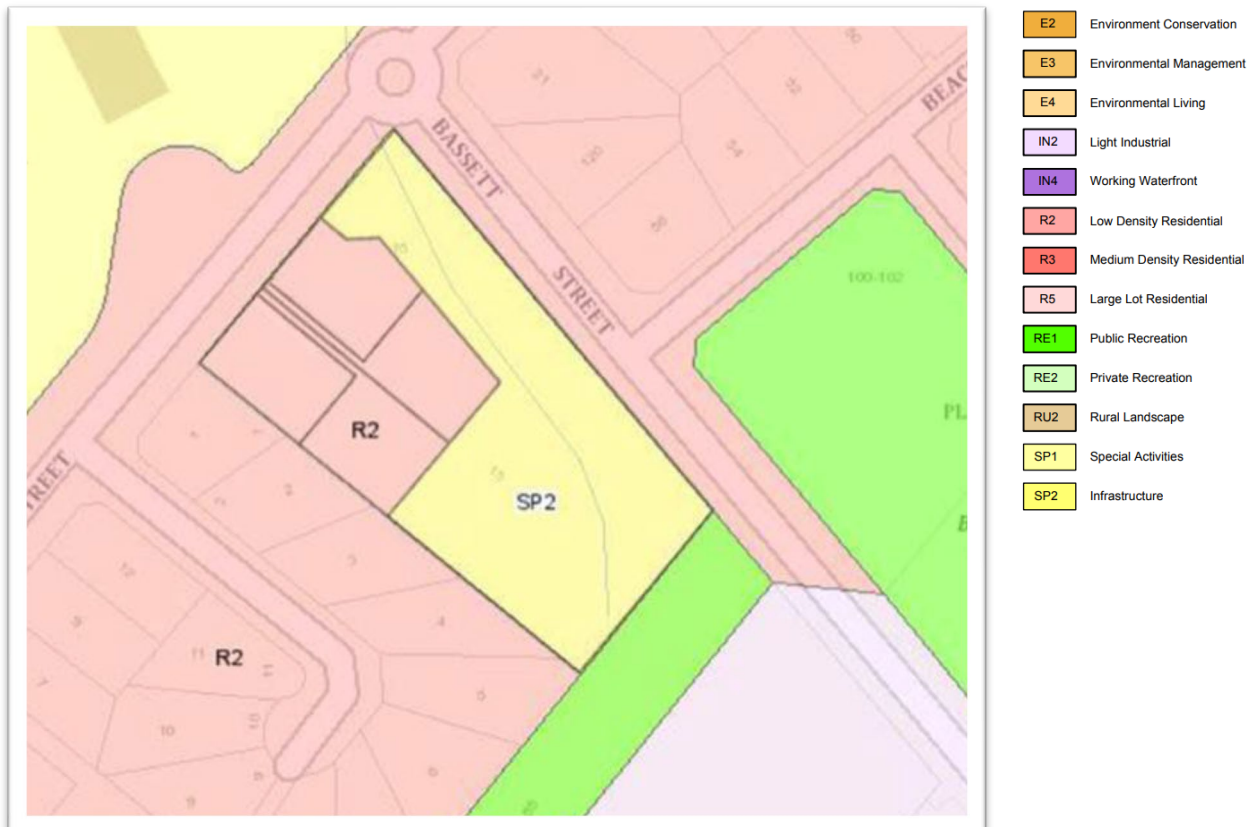


Figure 8 – Proposed Zoning

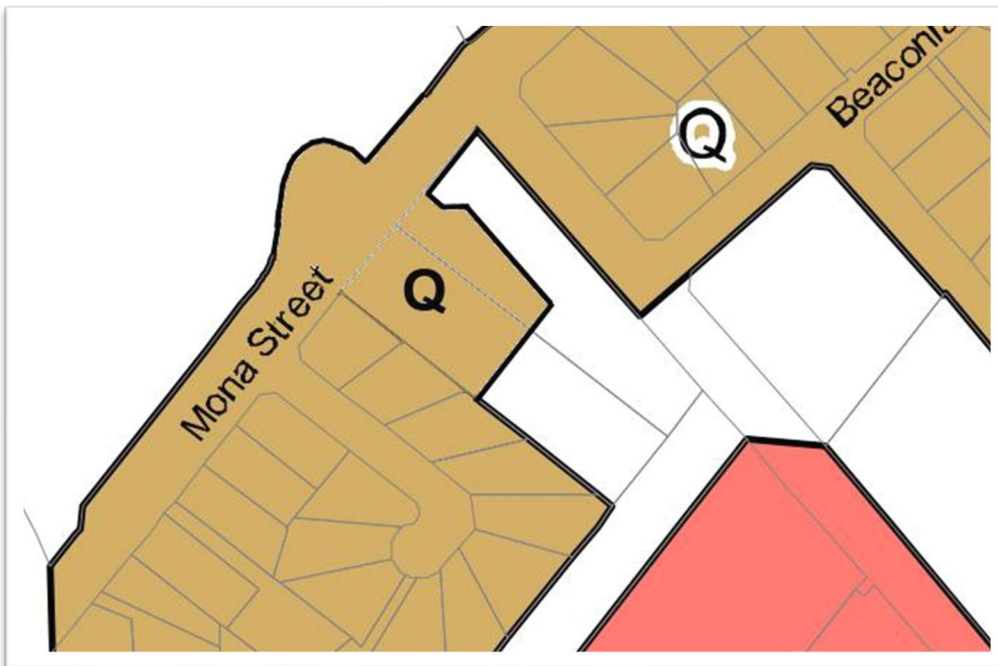


Figure 9 Proposed Lot Size Map

Response – Proposed Zoning

The proposed R2 Low Density Residential zoning may be a suitable zoning to accommodate the residential development that is proposed. However, the development is not appropriate having regard to flooding, coastal inundation, and biodiversity impacts. These issues are discussed further in Part 3.

Response – Proposed Minimum Lot Size

The proposed 700sqm minimum lot size would appear to be an appropriate to permit low density residential development and would match the minimum lot size for adjoining land zoned R2 Low Density Residential. However as identified above, there are flooding, coastal inundation and biodiversity impacts that make the proposal unsupportable.

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 Planning Proposal has been initiated by Sydney Water in its consideration of land holdings before indicating that the proposal aligns with Council's Local Housing Strategy.

Response

Sydney Water's consideration of its own land holdings is not by itself an appropriate justification for a rezoning, nor is it the result of an endorsed LSPS strategic study or report that would justify the development of the land for residential purposes.

The applicant's justification with regard to the Local Housing Strategy and need is not supported.

The LHS forecast housing demand to the year 2036 and identified a deficit in capacity under the current planning controls of 275 dwellings across the entire Northern Beaches local government area.

The LHS buildings 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 opportunity for renewal and respond to the unique circumstances and character of each centre. This will also consider the various hazards and constrained sites within each centre and locate development outside of areas subject to hazards.

The LHS estimates of capacity to meet housing demand factored in 1,000 new dwellings in Ingleside. In response to the State Government's decision to not proceed with the Ingleside Place Strategy, Council's strategic planning team has been actively investigating alternative locations.

Planning for Brookvale to deliver on housing targets is well advanced. Brookvale strategic centre will meet the requirement for 1,000 dwellings no longer being planned in Ingleside. Forward planning for growth and development in Brookvale began in 2016 and a revised Draft Structure Plan is currently on public exhibition with a view to an endorsement of a final plan. This plan indicates how Council intends to deliver on its housing targets within Brookvale.

Planning for Mona Vale to deliver on its housing targets is also well advanced as part of the Mona Vale Place Plan. Planning for Mona Vale commenced in 2021 and a draft Place Plan is expected to be reported to Council in early 2023 for public exhibition. This plan will identify where and how Council expects to meet its housing targets for Mona Vale.

The Planning Proposal is also incorrect to state that the area proposed for housing is within the 800m radius Centre Investigation Area for Mona Vale, or that the site has not been previously considered. The site is not within the Centre Investigation Area and has been specifically identified as being heavily constrained in the Local Housing Strategy as indicated in the following image from the Local Housing Strategy



Figure 10 – 800m Centre Investigation Area and site constraints mapping (Source: Northern Beaches Local Housing Strategy)



Figure 11 – Site located outside of the 800m Centre Investigation Area as indicated by purple line

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 an environmentally sensitive and flood prone area, 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 states that the current zoning of the site prevents residential development and a rezoning is required.

Response

The site is not required to meet Council's housing targets and planning for Mona Vale is well advanced. Given the hazards and constraints on the site, there are other better located and unconstrained sites within Mona Vale that can meet housing targets.

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 the priorities and actions of the 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 site is also impacted by coastal inundation and the land proposed to be subdivided is significantly below the estuarine planning levels for 2050 and 2100, placing occupants and property at risk. Further, the proposed development will result in unacceptable impacts on biodiversity through impacts to the endangered ecological community on site, loss of fauna habitat and loss of tree cover. Insufficient information has also been submitted in relation to water quality management and impacts on the surrounding environment. 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 as the site is well located, will contribute to housing supply and environmental and hazards matters can be resolved.

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 site also is impacted by coastal inundation and the land proposed to be subdivided is significantly below the estuarine planning levels for 2050 and 2100 placing occupants and property at risk. Further, the proposed development will result in unacceptable impacts on biodiversity through impacts to the endangered ecological community on site, loss of fauna habitat and loss of tree cover. Insufficient information has also been submitted in relation to water quality management and impacts on the surrounding environment. For these reasons, the Planning Proposal is inconsistent with:

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 5 Greener urban environments;
- 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;

The Planning Proposal is 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.

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

Response – Northern Beaches Local Housing Strategy

The LHS building on the strategy for housing delivery 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 opportunity for renewal and respond to the unique circumstances and character of each centre. This will also consider the various hazards and constrained sites within each centre and locate development outside of these areas.

As outlined above, planning for Brookvale to deliver on housing targets is well advanced. Brookvale strategic centre will meet the requirement for 1000 dwellings no longer being planned in Ingleside. Forward planning for growth and development in Brookvale began in 2016 and a revised Draft Structure Plan is currently on public exhibition with a view to an endorsement of a final plan. This Plan indicates how Council intends to deliver on its housing targets within Brookvale.

Planning for Mona Vale to deliver on its housing targets is also well advanced as part of the Mona Vale Place Plan. Planning for Mona Vale commenced in 2021 and a draft Place Plan is expected to be reported to Council in early 2023 for public exhibition. This plan will identify where and how Council expects to meet its housing targets for Mona Vale.

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 such as the ongoing Mona Vale Place Plan, there is no need to rezone the subject site to allow housing, especially given the flooding constraints and environmental impacts.

The Planning Proposal is therefore inconsistent with the Local Housing Strategy.

Response Affordable Housing

Council's adopted Affordable Housing Policy identifies a requirement for the provision/ dedication of 10% affordable housing where "up-zoning" of land occurs. The requirements of this policy have not been addressed.

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)

The northern part of the site is mapped as being within the land application map of the SEPP (Resilience and Hazards) 2021, specifically within Chapter 2 Coastal Management. The northern part is then further mapped as Coastal Use Area and Coastal Environment Area.



Figure 11 – Extent of Coastal Management application

In accordance with Part 2.2 of the SEPP (R&H), Council must not grant consent for development within the coastal environmental area unless it has considered whether the proposed development is likely to cause an adverse impact on the following:

- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
- (b) *coastal environmental values and natural coastal processes,*
- (c) *the water quality of the marine estate (within the meaning of the [Marine Estate Management Act 2014](#)), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
- (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*

The Planning Proposal has not demonstrated that a future development application will be able to satisfy Council in accordance with these requirements. Part of the mapped Endangered Ecological Community (EEC) of Swamp Oak Floodplain Forest is within the proposed R2 Low Density Residential zoned area that is intended to be developed, including areas subject to proposed earthworks, parking and dwellings. 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 residue lots.

All of the site that is to be zoned R2 has the potential to be subject to major works to either raise the land or the resulting dwellings above the flood and estuarine planning levels which will significantly impact flows to and from the site. The applicant has not submitted information regarding the potential impact of the altered flow regimes on the site or surrounding sites or undertaken adequate groundwater investigation and water quality monitoring.

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

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 subject site has been identified as being impacted by Medium and High flooding hazards. 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 SP2 Infrastructure Water Supply System 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.

The Planning Proposal involves constructing dwellings on piers to raise them to a flood planning level of 2.36m AHD. This is a significant raising above the lowest noted level on site near the proposed development of 1.51m AHD. However, it does not indicate whether garages are also to be built on piers and where there is to be an impact to flood storage and flood flows through the site or adjoining sites. In addition, as the site is also impacted by a coastal inundation, the planning level will be set by which ever has a higher planning level, in this case a coastal inundation estuarine planning level (EPL) of 2.74m AHD would apply. The flood report does not mention the EPL level.

The NSW State Emergency Service (SES) has provided preliminary advice (Attachment 1) on the Planning Proposal. The SES advice makes reference 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
- the SES does not support early evacuation as a strategy for future 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
- SES is opposed to imposition of development consent conditions requiring private flood evacuation plans rather than application of sound land use planning and flood 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.

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;

- Failure to consider the higher Estuarine Planning Level
- Filling of land or pier construction resulting in a loss of flood storage
- 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.
- Evacuation will place pressure on a road system that is already restricted in major flood events.
- The land is flood prone and any building up of the site would have serious implications for the adjoining residential properties in Nailon Place.

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. Council recently adopted the Northern Beaches Resilience Strategy. A key priority and associated action of the Resilience Strategy is:

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.

Response Local Planning Direction – 4.2 Coastal Management

The Planning Proposal is not consistent with clause (2) of Direction 4.2 as it seeks to rezone land within an area identified in a study as being impacted by a coastal hazard to enable increased development and more intensive land use on the site. No report or study has been submitted either by the applicant to demonstrate that the site can safely accommodate development given this hazard, or to justify an inconsistency with the direction. The Planning Proposal report itself is also silent on this direction.

In accordance with the Pittwater Estuary Mapping of Sea Level Rise Impacts Study (2015), the site has been identified as being impacted by estuarine wave action and tidal inundation coastal inundation. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP), the relevant B3.10 Estuarine Hazard Subdivision and C4.1 Subdivision - Protection from Hazards will apply to any proposed development of the site.

In accordance with the Pittwater Estuary Mapping of Sea Level Rise Impacts Study (2015), a base estuarine planning level (EPL) of RL 2.24m AHD in 2050 and EPL of RL 2.74m AHD in 2100 would apply at the subject site. The information submitted with proposal notes that lowest ground level in the vicinity of the development is 1.51m AHD. B3.10 and C4.1 of the Pittwater DCP require land to be subdivided to be higher than the EPL and be located free from hazards. This would mean that land to be subdivided would be located below the EPL for the site and would place future occupants and property at risk.

Council's Coast and Catchments team have indicated they do not support the proposal as:

- The site is impacted by coastal hazards and below is the Estuarine Planning Level.

- The site is unable to demonstrate how the subdivided land is to be above the EPL level in accordance with Section B3.10 of the Pittwater DCP.
- The resulting lots are not free from hazards in accordance with Section C4.1 of the Pittwater DCP

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 response states that the proposal has been designed in a manner that minimises impacts to ecology within the subject property and the level of impact is below the threshold for the Biodiversity Offset Scheme, indicating that a significant impact is unlikely to occur.

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. The identified Endangered Ecological Communities (EEC) on the site is Swamp Oak Floodplain Forest. The Swamp Oak Floodplain Forest (SOFF) would be directly impacted by the proposed development through the development of the site for housing and associated works, as well as pedestrian works within the residue lot.

Council's Biodiversity & Planning Team have indicated they are not supportive of the proposal as it will result in the clearing of the EEC with an impact on threatened species and tree canopy loss. The proposal has also incorrectly calculated the loss of vegetation on site and whether the offset requirement is triggered.

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

"...the Planning Proposal is not supported for the following reasons:

In summary, the current Planning Proposal design and layout is not supported due to unacceptable impacts to the endangered ecological community, loss of fauna habitats and loss of native canopy tree cover as described below.

The subject lots contain biodiversity values including Threatened Ecological Communities (TEC), records of threatened species and native trees which provide for local wildlife connectivity. This is detailed within publicly available vegetation mapping and flora and fauna records (Bionet), documented in the Preliminary Biodiversity Report (Alison Hunt and Associates) and confirmed in the Narla Addendum Ecological Assessment. In particular, the site contains a patch of Swamp Oak Floodplain Forest which is listed as an Endangered Ecological Community (EEC) under the Biodiversity Conservation Act (BC Act).

The NSW Biodiversity Conservation Act 2016 (BC Act) provides a framework and tools to avoid, minimise and offset impacts on biodiversity through the planning and development assessment process. As per the accepted impact mitigation hierarchy, any proposal must first avoid, then minimise impacts to biodiversity, prior to assessing the offset requirements for the residual biodiversity impacts.

Narla have described vegetation on site as conforming to Swamp Oak Floodplain Forest EEC. An area of exotic vegetation occurs along the western boundary of the site, however Narla do not provide total areas of the native and exotic communities occurrence on the site.

While Narla rely on the assessment by Hunt & Associates to some degree, they have responded to the Council comments issued following a pre-lodgement meeting held in September 2021. Narla have surveyed Vegetation Integrity (VI) plots and calculated Vegetation Integrity scores in accordance with the NSW Biodiversity Assessment Method 2020, and also provided additional justification of the merits of the proposal, including whether the proposal will exceed the Biodiversity Offset Scheme clearing threshold as well as the steps taken to avoid and minimise impacts.

The assessment by Narla identifies that the EEC exists on site in two condition classes. The VI scores for Vegetation Zone 1 Estuarine Swamp Oak Forest and Vegetation Zone 2 Parkland Vegetation were calculated as 26.7 and 17.2 respectively. In accordance with the NSW Biodiversity Assessment Method, where the PCT is representative of an EEC, an offset needs to be calculated for all impacts of proposals on PCTs for a vegetation zone with a vegetation integrity score of ≥ 15 . As the VI scores are greater than 15 for both vegetation zones, if the future subdivision development proposal exceeds a Biodiversity Offset Scheme threshold, a Biodiversity Development Assessment Report would be required, and a biodiversity credit obligation would result.

In relation to the Avoid and Minimise framework, Narla have concluded that a total of 0.15ha of native vegetation and 0.03ha of exotic vegetation would be directly impacted. The Area Clearing Threshold for the subject site is 0.25ha, and the direct impact calculated by Narla is below the threshold and therefore does not trigger entry into the Biodiversity Offset Scheme (BOS). This contrasts with the assessment from Hunt & Associates who calculated an impact of 0.3ha which, if correct, would trigger entry into the BOS.

In relation to this, Council considers that the area of direct impacts to native vegetation that would result from a future residential development should be calculated using the entirety of the proposed R2 zone, as well as any accessways, loop track and any services. It appears that Narla may have only used the impacts associated with the proposed dwelling footprints, accessways and pedestrian loop track, and if correct underestimates the impact of the future development. Council agrees with the area calculated in the preliminary report and believes that the current design will trigger the BOS.

The proposal will result in impacts to the EEC and fauna habitats that have not been justified with in the plans and supporting information supplied, and as the current design triggers the BOS, the avoid and minimise framework has not been applied satisfactorily. Alternate designs should be considered that will reduce the overall impacts of the proposal, with a reduced development footprint focused on the north-western portion of the site. A development of this nature would avoid impacts to the majority of EEC within Vegetation Zone 1: Estuarine Swamp Oak Forest, with development concentrated within Vegetation Zone 2: Parkland Vegetation and the area of disturbed exotic vegetation.

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 biodiversity impacts 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 as a strategy to manage flood risk for future development on land not currently zoned for housing. Additionally Council's Floodplain team have raised concerns around flooding and insufficient information has been provided to demonstrate that the proposed

development will not result in significant 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.

Further, Council's Coast and Catchment teams have raised issues regarding the coastal hazard impacts, as has Council's Biodiversity and Planning teams regarding the EEC on site. These issues have not been resolved.

Response to Aboriginal Heritage

The proposal was provided to the Aboriginal Heritage Office for comment who provided the following response:

There are known Aboriginal sites in this area. No sites are recorded in the current development area, however, the area of the proposed development is considered as having high potential for unrecorded Aboriginal sites.

Given the high potential, the AHO recommends an Aboriginal Due Diligence heritage assessment be carried out for the land by a qualified Aboriginal heritage professional, including consideration for subsurface archaeological testing. This would provide an assessment of any unrecorded or potential Aboriginal sites within the allotment, and advice on potential (direct or indirect) impacts to any Aboriginal sites. Should any Aboriginal sites be uncovered during earthworks, works should cease and Council, Heritage NSW and the Metropolitan Local Aboriginal Land Council should be contacted.

This issue could be conditioned as part of the Gateway Determination, should the proposal proceed that far.

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

The applicants report indicates that the proposal will provide a benefit through additional housing supply, local employment during the construction phase and development contributions which can be levied for local infrastructure.

Response

As previously indicated, the site is subject to flooding, coastal inundation and has an Ecological Endangered Community on site. These matters have not been appropriately addressed and the hazards would place both life and property at risk. The proposal has not adequately addressed how the site can be capable of development without negative social and economic impacts from these hazards and constraints.

Section D – Infrastructure (Local, State and Commonwealth)

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

The applicant's response states that the site is already serviced by required infrastructure and services. The additional impact of 4 dwellings by themselves is unlikely to have a significant impact on local infrastructure provisions, or the local road and traffic network. However as indicated by the response from the SES the site is likely to place further demand on emergency services during an event requiring SES assistance.

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 preliminary advice is not supportive of the Planning Proposal.

Part 4 – Mapping

The Planning Proposal includes a map indicating the proposed zones. If the Planning Proposal is to proceed, the precise boundaries of the new zones will need to be verified and other draft maps prepared to reflect the proposed amendments to the Pittwater LEP Height of Buildings and Minimum Lot Size maps

Part 5 – Community Consultation

A non-statutory (Pre-Gateway) public exhibition of the Planning Proposal was undertaken from 12 October 2022 to 26 October 2022.

A total of ten (10) submissions were received. The issues raised are summarised in Attachment 2. The main issues raised relate to:

- Loss of green space;
- Impact on native fauna and Flora, wildlife corridors including EEC;
- Environmental assets – need protection, maintenance and regeneration of the site;
- Preserved and enhanced for the community to enjoy;
- Traffic and road safety;
- Flood risk of the site and nearby properties;
- Tidal flows, king tides, storm events;
- Inappropriate location for housing due to flooding;
- Emergency evacuation;
- Traffic – increased congestion
- Historical value
- Proposed zoning of C3 in the current review of conservation zones

Part 6 – Project Timeline

As the Planning Proposal is not recommended for endorsement to be submitted for Gateway Determination, a Project Timeline is not required. The following reporting dates are anticipated:

Local Planning Panel: 14 December 2022

Ordinary Council: 28 February 2023

The Planning Proposal was lodged via the NSW Government's ePlanning Portal. The applicant is able to request a rezoning review if Council has not indicated support for the proposal within 90 days of the proponent submitting the request. The proponent paid the application fees on 26 Sept 2022 and Council completed its initial check of the material submitted on 03 October 2022. Based on the completeness check date, the 90-day deadline would be 25 December