

11th August 2020

New South Wales Government Independent Planning Commission
Level 3, 201 Elizabeth Street
Sydney NSW 2000

Attention: Mr Stephen Barry – Director of Planning

Dear Mr Barry,

**Gateway Determination Review Request
2 - 4 Noonal Street and 66 Bardo Road, Newport**

Reference is made to the Zoom meeting between the Independent Planning Commission (**Commission**) and the Proponent on 5th August 2020. At the conclusion of the meeting the Commission requested the provision of available information in support of the proposition that the rezoning of the land from Residential 2(a) (Residential “A”) pursuant to Pittwater Local Environmental Plan 1993 (**PLEP 1993**) to E4 Environmental Living pursuant to Pittwater Local Environmental Plan 2014 (**PLEP 2014**) had the unintended or undisclosed consequence of turning off the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (**SEPP HSPD**) as it related to the subject properties.

In this regard, we rely on the following commentary the majority of which was contained within the Executive Summary of the Planning Proposal prepared on behalf of the Proponent.

- (i) We confirm that No. 4 Noonal Street, Newport was purchased by its current owner prior to the gazettal of PLEP 2014 with the intention of developing the land for the purpose of seniors housing. At the time of purchase this property was zoned 2(a) (Residential “A”) pursuant to PLEP 1993 with seniors housing permissible in the zone pursuant to SEPP HSPD.
- (ii) In 2013, Draft Pittwater Local Environmental Plan 2013 (**Draft PLEP 2014**) was formerly exhibited with both State and Local Governments making it clear that the transition to the Standard Template LEP would involve a translation of permissible uses from the old to the new format and that the underpinning intent of such translation was to preserve the range of permissible uses as they related to individual sites.

- (iii) At no time during the exhibition and community engagement process were the owners of the properties, the subject of this planning proposal, advised that the development potential of their land, as it relates to seniors housing, would be lost as a consequence of the inclusion of the E4 Environmental Living zone under the broad land use heading of “Environmental Protection Zones” at clause 2.1 of PLEP 2014. Such description excludes the E4 Environmental Living zone from the operation of SEPP HSPD pursuant to Schedule 1 of that policy which prohibits seniors housing on land described in another environmental planning instrument as “environmental protection” or any like description.
- (iv) We note that a number of submissions made in response to the formal exhibition of Draft PLEP 2014 raised concerns regarding the reduction of residential development potential associated with the translation from the Residential 2(a) (Residential “A”) zone to the E4 Environmental Living zone. All submissions were summarised in a submission extracts and responses document a copy of which is at Attachment 1. In particular, we draw your attention to the submissions and associated Council responses at objections 32, 150, and 161 of that document where Council responses included:
- *Council has resolved to take a ‘like for like’ approach, or translation of the Pittwater LEP 1993, to preparing the new LEP, where possible and appropriate. Subsequently, the proposed zones are considered the most equivalent to the current zones, including zone objectives and permissible land uses. All care has been taken within the bounds imposed by the State Government’s Standard Instrument LEP, to ensure that the draft Pittwater LEP 2013 provides for development outcomes generally consistent with the current Pittwater LEP 1993.*
 - *The draft Pittwater LEP 2013 is generally intended to provide the same development potential as Pittwater’s existing planning regime. It is considered that the E4 Environmental Living zone generally achieves this. Further, the draft Pittwater LEP 2013 proposes no additional controls that would specifically restrict development on land zoned E4 Environmental Living.*
 - *It is recognised that the E4 zone limits the ability to do certain types of complying development (development that can be approved by a private certifier) under State Environmental Planning Policies (also known as SEPPs). This includes removing the potential to do complying development for new dwellings, extensions to existing dwellings and secondary dwellings (also known as granny flats). Under the SEPPs for ‘Exempt and Complying Development’ and ‘Affordable Rental Housing’ these types of development cannot be undertaken as ‘complying development’ in the E4 zone.*

It is important to note that people may still have the potential to undertake these types of development in the E4 zone, but they require development consent from Council.

While this outcome may not be ideal, the draft Pittwater LEP 2013 is principally intended as a ‘like for like’ translation of Council’s existing Plan, i.e. the Pittwater Local Environment Plan 1993, into the new Local Environmental Plan format. The draft Pittwater LEP 2013 does not intend to translate the application of State Environmental Planning Policies, over which Council has no control.

- *It is acknowledged that section 117 direction 3.1(5)(b) generally requires that LEPs do not reduce the density of residential land.....*
 - *In relation to property values, as the proposed E4 zone objectives and permissible land uses do not significantly differ from those that apply now, Council staff consider it unlikely that the name of the zone alone would cause any reduction in property values.*
 - *Notwithstanding this, advice was sought from the Valuer General’s office in the Land & Property Information Division of the NSW Department of Finance & Services. The response indicated that the proposed zones would be unlikely to have any effect on land values as the proposed zones, regardless of their title, do not significantly change the permissible land uses.*
- (v) We note that whilst Council correctly identified that the E4 Environmental Living zone would impact the range of complying development able to be undertaken pursuant to State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 that nowhere in the formally exhibited Draft PLEP 2014 documentation, exhibition submission responses or final Council reporting was it identified that SEPP HSPD would no longer apply to certain Residential 2(a) (Residential “A”) zoned properties. Contrary to the opinions expressed by Council and the Valuer General’s office, the proposed rezoning did, in fact, represent a significant change to permissible land uses on the land, namely had the effect of prohibiting seniors housing pursuant to SEPPHSPD. Such outcome was likely to detrimentally impact land values.
- (vi) Unaware of the E4 Environmental Living zone implications, the Proponent engaged Richard Cole Architecture and a number of other consultants to commence preparation of a Development Application proposing seniors housing across the sites known as Lot 1, DP 540092, No. 2 Nooal Street, Lot 1, DP 315279, No. 4 Nooal Street and Lot 2, DP 540092, No. 66 Bardo Road, Newport (the development site). These concept plans form a component of the current Planning Proposal.

- (vii) Following a lengthy community consultation process PLEP 2014 was gazetted in May 2014 with the instrument commencing on 27th June 2014. This had the effect of prohibiting seniors housing on the land which until this time was permissible with consent pursuant to SEPP HSPD. This was confirmed in writing by the Department of Planning and Environment in its correspondence of 9th August 2016 a copy of which is at Attachment 2.
- (viii) Despite the advice of Council staff and the Valuer General's Office as contained within the submission extracts and responses document at Attachment 1 that the title of the zone would not have a significant impact on the permissible land uses on the site, or associated land value, such advice was clearly incorrect. The prohibition on seniors housing in the E4 Environmental Living zone pursuant to SEPP HSPD appearing to be an unintended or undisclosed consequence.
- (ix) We also met with the Minister for Planning, Mr Rob Stokes MP, who was sympathetic to the Proponents position in relation to the lack of consultation and transparency in the Draft LEP exhibition process as it relates to the E4 Environmental Living zone and the loss of development potential as it relates to seniors housing pursuant to SEPP HSPD. The Minister suggested that the proponent engage with Northern Beaches Council to discuss possible rezoning options to render seniors housing permissible on the land with such meeting taking place on 12th January 2017.
- (x) This Planning Proposal seeks to amend Schedule 1 of PLEP 2014 to permit seniors housing on the consolidated development site as an additional permitted use as historically facilitated by the now repealed 2(a) (Residential "A") PLEP 1993 zoning of the land and the resultant applicability of SEPP HSPD. Any future development application will rely on the provisions of PLEP 2014 in terms of permissibility and Pittwater 21 Development Control Plan in terms of built form and environmental considerations.

Please do not hesitate to contact me to discuss any aspect of this submission.

Yours sincerely

Boston Blyth Fleming Town Planners



Greg Boston
B Urb & Reg Plan (UNE) MPIA
Director

Attachments

1. Draft Pittwater Local Environmental Plan – Submission extracts and responses
2. NSW Department of Planning advice letter of 9th August 2016