



GATEWAY REVIEW

Justification Assessment

Purpose: To outline the Planning Proposal, the reasons why the original Gateway determination was made and to consider and assess the request for a review of a Gateway determination.

Dept. Ref. No:	GR_2020_NBEAC_001_00
LGA	Northern Beaches
LEP to be Amended:	Pittwater LEP 2014
Address/ Location:	2 and 4 Nooal Street and 66 Bardo Road, Newport
Proposal:	The planning proposal seeks to amend Pittwater Local Environmental Plan (LEP) 2014 to permit development for the purposes of seniors housing on land at 2 and 4 Nooal Street and 66 Bardo Road, Newport.
Review request made by:	<input checked="" type="checkbox"/> The council <input type="checkbox"/> A proponent
Reason for review:	<input type="checkbox"/> A determination has been made that the Planning Proposal should not proceed. <input type="checkbox"/> A determination has been made that the Planning Proposal should be resubmitted to the Gateway. <input checked="" type="checkbox"/> A determination has been made that has imposed requirements (other than consultation requirements) or makes variations to the proposal that the proponent or council thinks should be reconsidered.

BACKGROUND INFORMATION

Details of the Planning Proposal

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

The Gateway determination (**Attachment D**) dated 14 October 2019 conditioned that the planning proposal be updated to reflect a change in the mechanism by which 'seniors housing' was enabled on the land. Amongst several other conditions, the Gateway required that 'Part 2 - Explanation of Provisions' was revised to refer permitting 'seniors housing' as an additional permitted use on the land under schedule 1 of Pittwater LEP 2014, instead of altering the land use zoning.

BACKGROUND

In May 2018, the Sydney North Planning Panel considered the proposal as a rezoning review request and unanimously determined the planning proposal should be submitted for a Gateway determination because the proposal has demonstrated strategic and site-specific merit (Panel Ref: 2018SNH008).

The planning proposal outlines the proposed amendments in more detail (see **Attachment E**).

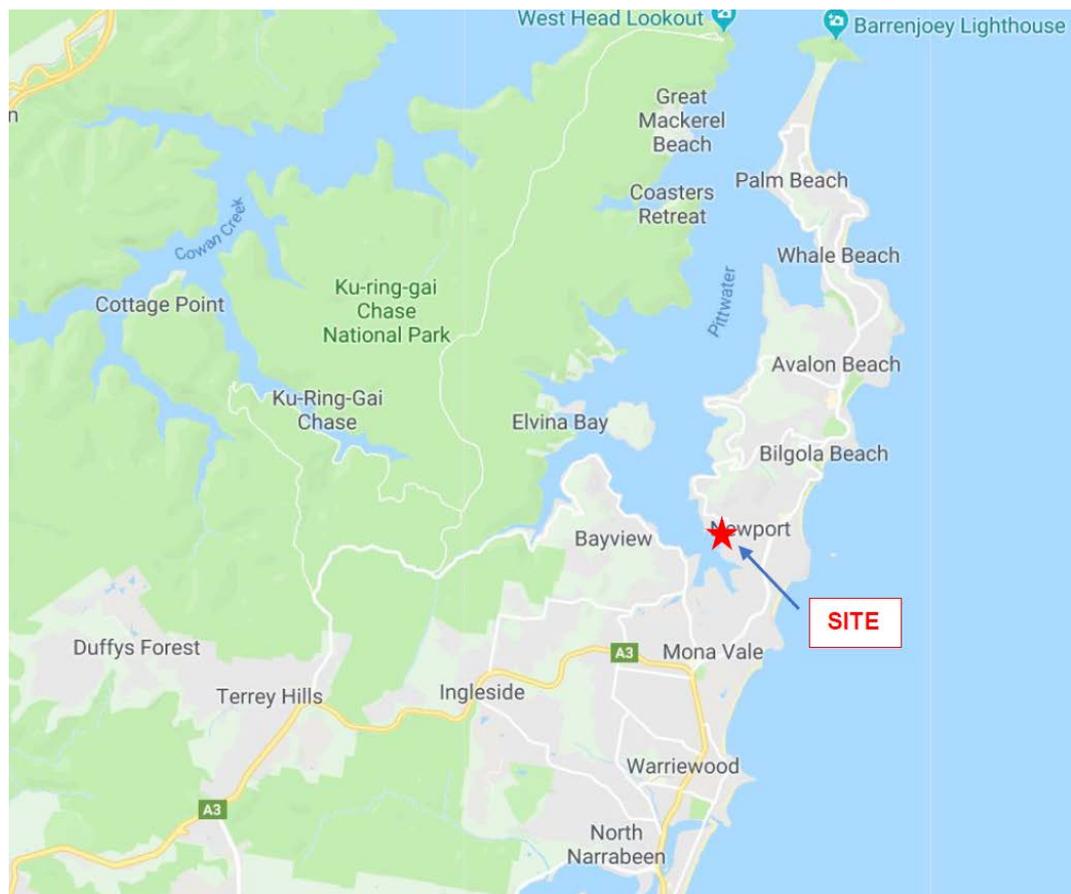


Figure 1: Context map

The site comprises of three parcels of land, described as:

- Lot 1 DP 540092 (2 Nooal Street, Newport)
- Lot 1 DP 315279 (4 Nooal Street, Newport)
- Lot 2 DP 540092 (66 Bardo Road, Newport) (**Figure 2**).



Figure 2: Aerial view of site

Under Pittwater LEP 2014 the site:

- is zoned E4 Environmental Living (Figure 3)
- has a maximum building height of 8.5 m applies (Figure 4);
- has a 700 m² minimum lot size requirement (Figure 5); and
- has a foreshore building line applying to the western boundary (Figure 6).

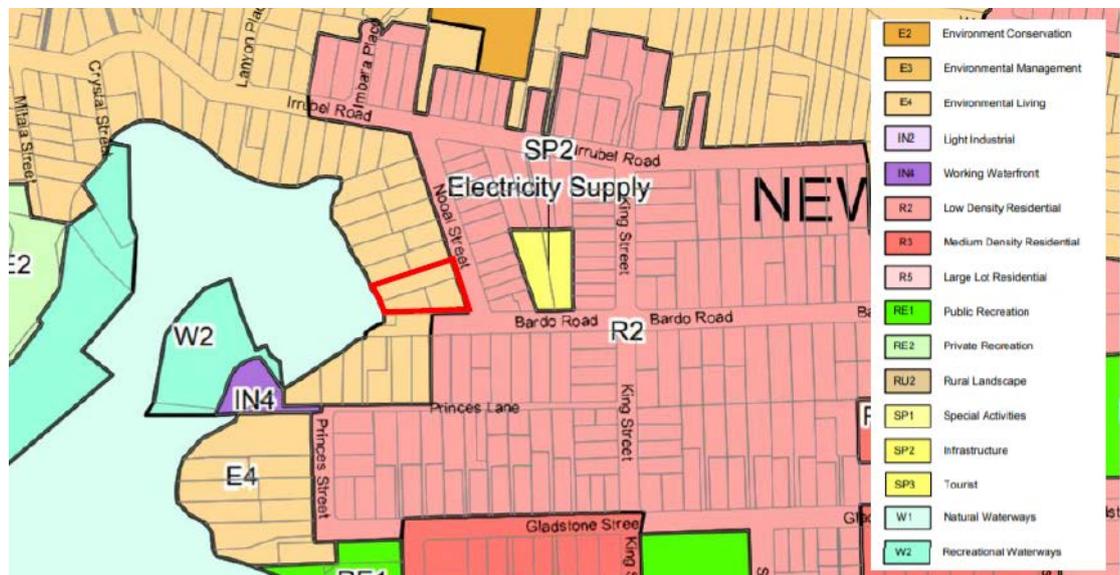


Figure 3: Existing Land Zoning Map with site outlined in red



Figure 4: Existing Height of Building Map with site outlined in red



Figure 5: Existing Lot Size Map with site outlined in red



Figure 6: Foreshore building line

The original planning proposal submitted to Council by Boston Blyth Fleming Town Planners on behalf of Crystal Apartments Pty Ltd sought to amend Schedule 1 of Pittwater LEP 2014 to permit seniors housing as an additional permitted use on the site. The supporting concept design for the proposal included eight seniors' independent units with a total floor space ratio of 0.5:1 and up a height of 8.5m.

On 28 November 2017 the Council resolved not to support the planning proposal.

On 30 January 2018 the proponent submitted a rezoning review request with the Department which was referred to the Sydney North Planning Panel.

On 2 May 2018 the panel formed the view that the proposal had strategic merit as it provided needed seniors housing consistent with the North District Plan and that it had site specific merit as it was for development of a scale and form that was consistent with the existing built form and character of the area.

The panel also indicated that Council had not adequately justified why this and other sites along the western side of Nooyal Street were zoned E4 Environmental Living under Pittwater LEP 2014. Consequently, the panel recommended that the planning proposal be revised to include all land along Nooyal Street up to Irrubel Road, and that this land be proposed to be zoned R2 Low Density Residential. This approach was recommended as being more appropriate as it also permitted other residential uses such as dual occupancies.

The planning proposal which is the subject of the current Gateway determination review relates only to the site at 2 and 4 Nooal Street and 66 Bardo Road, Newport being the same land which was the subject of previous Rezoning Review. Council may review the zoning of the remaining land referred to by the Sydney North Planning Panel at a later time.

The below table (**Table 1**) provides a timeline of the significant events in relation to the planning proposal.

Table 1 – Summary of significant events

Year	Month	
2017	Sept	Council receives a planning proposal request to permit seniors housing on the subject land from Boston Blyth Fleming Pty Ltd. The proposal is for a seniors housing development comprising eight apartments, a gym and car parking for 29 spaces.
2017	Nov	Council resolved not to support the planning proposal.
2018	Jan	The proponent submits a rezoning review request with the Department.
2018	May	The Sydney North Planning Panel determines that the planning proposal demonstrates strategic and site-specific merit and should be submitted for Gateway determination.
2018	June	Northern Beaches Council accepts the role of Planning Proposal Authority.
2018	Aug	Council submits a planning proposal to the Department and seeks a Gateway determination.
2018	Oct	The Department advises the planning proposal as submitted is inadequate for Gateway determination and requires revision.
2018	Nov	Council submits a revised planning proposal to the Department, dated November 2018, and seeks a Gateway determination.
2019	Mar	The Department advises Council the planning proposal remains inadequate and further revision is required.
2019	June	Council submits a revised planning proposal dated June 2019, (version 3).
2019	Oct	14 October 2019 – The Department issues Gateway determination.
2019	Dec	12 December 2019 – Council lodges a formal Gateway determination review request

The Department assessed the proposal as submitted.

The planning proposal submitted for Gateway in response to the Sydney North Planning Panel's decision on the rezoning review provides for the rezoning of 2 and 4 Nooal Street and 66 Bardo Road from E4 Environmental Living to R2 Low Density Residential. However, the planning proposal also discusses an alternative mechanism to achieve the proposal's objective being to permit development on the site for the purposes of seniors housing. The alternative mechanism is to retain the existing E4 Environmental Living land use zoning and amend Schedule 1 of Pittwater LEP 2014 to permit seniors housing as an additional permitted use on the site.

These two alternatives were considered in the Department's assessment as discussed below.

Reason for Gateway determination

On 14 of October 2019 the delegate of the Minister for Planning and Public Spaces determined that the planning proposal should proceed subject to conditions.

A Gateway determination was issued on the basis that the proposal, subject to the conditions of the Gateway, has strategic and site specific merit as it will:

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

The Department considered the two alternative mechanisms to achieve the planning proposal's objective and considered that amending Schedule 1 of Pittwater LEP 2014 to provide for seniors housing as an additional permitted use is the most effective and preferred approach to achieve the planning proposal's intended outcome. Condition 1 (b) of the Gateway determination provided that the Explanation of Provisions be revised to reflect this mechanism. This decision was made on the basis that:

- there is no obligation on the proponent to develop the land for seniors housing if the land were to be rezoned R2 Low Density Residential;
- seniors housing would be expressly permitted under Pittwater LEP 2014, thereby removing the need to rely upon the Seniors SEPP;
- that any future seniors housing development would be regulated by the Pittwater LEP 2014 and Council's DCP;
- rezoning the site R2 Low Density Residential would also permit the following forms of housing under State Environmental Planning Policy (Affordable Rental Housing) 2009:
 - 'boarding houses';
 - 'group homes';
 - 'secondary dwellings; and
- maintaining the land's existing E4 zone is in keeping with Council's approach of predominately applying the E4 zone along the Pittwater waterfront edge from Gladstone Street to Palm Beach.

Condition 1(a) in the Gateway determination provides that the planning proposal's intended outcome should be revised prior to community consultation. The proposal's intended outcome should refer to permitting development for the purposes of seniors housing on the land, without reference to the mechanism by which this is proposed to be achieved.

This condition is in accordance with the Department's *A guide to preparing planning proposals* (August 2016) which provides that the objectives or intended outcomes of a planning proposal should be a statement of what is planned or intended to be achieved by the proposal, not how it is to be achieved.

The Gateway determination also requires changes to the planning proposal prior to

<p>community consultation to update maps and details to be consistent with the preferred mechanism to enable seniors housing on the site, namely amending Schedule 1 of Pittwater LEP 2014 to provide for seniors housing as an additional permitted use.</p>

COUNCIL'S JUSTIFICATION FOR REVIEW

Details of justification:

On 12 December 2019, the Department received a Gateway Review request from Northern Beaches Council. Council's Review request is not in response to the conditions imposed on the Planning Proposal as part of the Gateway determination issued on 14 October 2019, but on a generalised view that the Planning Proposal has not demonstrated strategic or site specific merit. The Review of Gateway Request (**Attachment D**) also states that the Gateway Determination is based on inaccurate information in relation to the flood and estuarine hazards that affect the site.

Council cites the following as reasons why the proposal should not proceed:

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

Council has not presented new information which alters the assessment and

	conclusions of the Gateway determination. Nor has Council requested the review of specific conditions of the Gateway determination.
Material provided in support of application/proposal:	Council has provided the following documents to support the Gateway Review request: <ul style="list-style-type: none">• Gateway determination review request covering letter and response to the Department's Gateway determination Report. (Attachment D)• Planning Proposal PP0003/17 v3 (Attachment E)

ASSESSMENT SUMMARY

Department's Assessment

The Department has undertaken a detailed assessment of the review request documentation submitted by Council.

The Department's position on the Gateway determination review application is that the planning proposal should proceed without change to the Gateway conditions.

The considerations raised by Council's review request are not consistent with the intention of the Gateway review process. The Gateway review process gives Council or a proponent the opportunity to request that the determination is reviewed considering new information or circumstances. The Gateway review process may also be used to consider alterations to the conditions of the Gateway Determination.

A Gateway review is not an opportunity for Council to challenge the Department's assessment or determination decision, without any additional information, change in circumstances, or justification which had not been previously considered by the Panel or the Department.

The Gateway review documentation submitted by Council for 2 and 4 Nooal Street and 66 Bardo Road states "*The Gateway Review challenges the Gateway Determination issued by the DPIE...*" and calls the Department's Gateway determination report "*deficient and flawed.*" Council does not raise new considerations, but revisits the considerations already assessed by the Gateway determination report, arguing that these haven't been adequately addressed and should preclude the proposal from progressing.

The Department's position is that the issues raised by this Gateway review have been previously considered and where necessary will be mitigated by further investigation, provision of information, or by other measures. These are outlined by the conditions of the Gateway Determination (**Attachment F**).

The Department's response to the matters raised by Council in the review request is as follows:

1. *A site specific planning proposal for the site is premature and is contrary to the Greater Sydney Commission's preference for holistic, consultative and comprehensive strategy led management of urban change.*

Although the proposal is site specific rather than a broader strategy led proposal, it has been assessed for strategic and site specific merit by both the Sydney North Planning Panel and the Department. The Sydney North Planning Panel assessed the proposal as a Rezoning Review. The Panel found the proposal had "*strategic merit because it provides much needed senior living [housing], consistent with the Sydney North District Plan.*" The Panel also considered that "*the planning proposal has local merit because of the scale and form of development allowed by the planning proposal will be consistent with the built form and character of the area*" (**Attachment H**).

The Department also assessed the proposal at Gateway, concluding that it had strategic merit and should be allowed to proceed, subject to meeting the conditions of the Gateway (**Attachment G**).

2. *Council's draft LSPS indicates that Council already has existing capacity with residential zoned land to meet housing targets and provide seniors housing.*

It is noted that Council is undertaking strategic mapping work for Council's Local Housing Strategy and to inform future updates to the LSPS. The Department's Gateway assessment indicates that this site is appropriate for a seniors housing use as it is in an infill location that is serviced by regular public transport less than 400m walking distance from the site. The provision of appropriate senior's living development on this site does not inhibit Council's ability to continue their strategic

work and will assist Council meet its housing goals.

3. *The DPIE Gateway Determination report contains errors in relation to the affectation of the site to natural hazards. The site is subject to flooding at the 1% AEP and PMF events under Newport Flood Study, 2019 and this has not been appropriately considered; and*
4. *The site is affected by estuarine inundation as defined by Pittwater Estuary Mapping of Sea Level Rise Impacts, Cardno, 2015 and this has not been appropriately considered.*

The relevant conditions of the Department's Gateway Determination require Council to:

- remove unsubstantiated claims regarding the site being affected by flooding and coastal inundation; and
- reflect the Council's 2019 Flood Study and to include a revised Estuarine Risk Management report to further assess the potential risk.

These conditions are to be fulfilled prior to community consultation. The revised Estuarine Risk Management report is the appropriate place where the 1% AEP and PMF events under Newport Flood Study, 2019 may be addressed. Claims that the site is affected by coastal and estuarine inundation need to be substantiated as part of this Estuarine Risk Management report.

It is also noted that prior to the application of the standard instrument Local Environmental Plan, seniors living development was permissible on the site under the Seniors Living SEPP. The Panel commented on this in their rezoning review decision:

"The introduction of the E4 zone due to purported environmental concerns relating to the land switched off the operation of the SEPP. However, it is unclear to the Panel what the environmental factors were relating to this particular land and that in the immediate vicinity, that led to the decision to zone it environmental living (and thus the prohibition of dual occupancy and seniors living). The Panel notes in particular, that the biodiversity map of the Pittwater LEP 2014 generally equates to the E4 zone; however, it does not cover this land and neighbouring sites. Council could not indicate why this land was zoned E4 rather than R2, other than to indicate that it has "scenic value" and that the land is subject to coastal inundation up to 25%. In this respect the Panel notes that a foreshore building line exists on the land up to approximately 25% of the site, so that the possibility of inundation would not inhibit the proposal."

As the below maps show, and as has been discussed in the Department's Gateway determination report, the property is only marginally affected by flooding impacts. These may be mitigated by further investigation and the conditioning of development.



Figure 3- Northern Beaches Council Flood Hazard Map – 1% AEP
 Newport Flood Study 2019 - 1% Annual Exceedance Probability (AEP) flood event



Figure 4: Draft Newport Flood Study 2018 high (red), medium (blue) and low (green) flood risk (site shown red crossed hatched)

5. *The proposal does not demonstrate site specific or strategic merit and is inconsistent with Pittwater Local Strategy 2011, the draft Northern Beaches Council Local Strategic Planning Statement and the existing built form and character of the area.*

The strategic and site specific merit of the proposal have been addressed in the Panel's Record of Decision (**Attachment H**) and the Department's Gateway Determination Report (**Attachment G**). The Gateway report also addresses the *Pittwater Local Strategy 2011*, which has not been endorsed by the Department.

The proposal is consistent with the principles of Council's LSPS, which aims to "protect biodiversity values for riparian corridors and areas that support threatened species..."; noting the site is not identified in the Pittwater LEP 2014 biodiversity map. The proposal will locate seniors housing in an area accessible to regular bus services that is well connected to local and regional services, shops and facilities, meeting another LSPS principle.

The proposal does not seek to amend the existing development standards that apply under Pittwater LEP 2014. Therefore, all matters relating to bulk, scale and character can be addressed as part of any future development application.

6. *The proposal is not needed to provide additional senior housing opportunities in the locality as the current residential zones have existing capacity to support senior housing development free of natural hazards.*

Council's LSPS also acknowledges the need to find housing for seniors in an area where the population is aging in place: "The population today is older than the Greater Sydney average and we expect this trend to continue. The LGA also has a distinctly lower proportion of young adults compared to Greater Sydney." (LSPS 2019, p. 14). The proposal provides seniors housing in an appropriate location where the natural hazards can be mitigated.

7. *Northern Beaches Council is generally on track to meet required housing targets, with the Council's Housing Study the appropriate vehicle to investigate and consider any additional housing opportunities.*

These facts do not prohibit the progression of this proposal, which has been previously assessed by the Sydney North Planning Panel as appropriate for the area (**Attachment H**).

8. *The proposal is not consistent with all components of the strategic planning framework, with specific reference to North District Plan Planning Priorities N5, N17 and N22 and Ministerial Direction 2.2 Coastal Protection, 4.3 Flood Prone Land and 7.1 Metropolitan Planning and State Environmental Planning Policy (Coastal Management) 2018.*

These have been previously addressed as part of the Gateway Determination report (**Attachment G**).

9. *The proposal does not represent orderly and economic planning.*

This has been previously addressed as part of the Gateway Determination report (**Attachment G**). Council submitted the proposal to the Department for a Gateway Determination three times. At each occasion, Council raised issues with the proposal's perceived lack of strategic and site specific merit and that it is affected by natural hazards. The Department has repeatedly addressed these concerns and issued a Gateway determination in October 2019 with conditions requesting

amendments to the planning proposal.

10. *The proposal creates an undesirable precedent for similarly zoned adjoining properties; and*
11. *The proposal is inconsistent with the existing and desired future built form and local character of the area.*

The Sydney North Planning Panel previously stated that “*the Panel is reluctant to recommend that seniors living becomes permissible as a specific use on this site, which does not appear to be “unique” or unusual in any way in relation to other waterfront sites in its immediate vicinity.*” The Panel recommended the site was rezoned from E4 Environmental Living as the site was not differentiated from land around it. Council’s request for Gateway review argues that because the site is not unique there is no merit to progressing the planning proposal.

The Department has considered rezoning as an option in the Gateway assessment. The Department is of the opinion that amending Schedule 1 of Pittwater LEP 2014 to achieve the planning proposal’s intended outcome is the most effective and preferred approach for the reasons outlined in the section above. The Department does not believe the proposal is out of character with the area or that the progression of the proposal will create an undesirable precedent, as applications are assessed according to their merits. The Gateway determination has recommended that the Planning Proposal be amended to apply an additional permitted use for “seniors housing” on the site.

Recommendation

The Gateway review lodged by Council reiterates Council’s original objections to the proposal which have been addressed, in some cases at multiple stages of the process. Council’s refusal to accept the assessment by the Sydney North Planning Panel and subsequently the conclusions and justification by the Department’s Gateway determination have resulted in this request for Gateway review.

The Department recommends that the Gateway conditions are retained without change based on the Gateway assessment previously undertaken.

It is recommended the planning proposal should proceed subject to the conditions of the Gateway as the proposal will:

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

Timeframe for completion of LEP

Council submitted the proposal to the Department for a Gateway determination three times. The Department notes the previous delays caused by the necessity of seeking revisions to the planning proposal from Council. The Department recommends that Council is granted no more than 6 months from the date of the final decision by the IPC to

	complete this LEP.
Attachments	Attachment D: Northern Beaches Council Gateway determination review request Attachment E: Planning Proposal Attachment F: Gateway determination Attachment G: Gateway determination report Attachment H: Sydney North Planning Panel record of decision 2 May 2018

RECOMMENDATION

Reason for review: A determination has been made that has imposed requirements (other than consultation requirements) or makes variations to the proposal that the proponent or council thinks should be reconsidered.

Recommendation:	<input type="checkbox"/>	The planning proposal should proceed past Gateway in accordance with the original submission.
		<input type="checkbox"/> no amendments are suggested to original determination. <input type="checkbox"/> amendments are suggested to the original determination.
	<input type="checkbox"/>	The planning proposal should not proceed past Gateway in accordance with the original determination.