



GATEWAY REVIEW

Justification Assessment

Purpose: To request that the Independent Planning Commission review the Gateway determination of the subject planning proposal, consider the information provided by Council and provide advice regarding the merit of the review request.

Dept. Ref. No:	GR-2022-17
LGA	Woollahra Municipal Council
LEP to be Amended:	Woollahra Local Environmental Plan 2014
Address/ Location:	Various sites in Edgecliff: <ul style="list-style-type: none"> • Area 1 - Parts: 99, 101, 109, 113 and 115 New South Head (NSH) Road; • Area 2 - 133 NSH Road, 549 Glenmore Road, and parts 543-547 Glenmore Road; • Area 3 - Part 130 NSH Road; and • Area 4 - Part 136 NSH Road.
Proposal:	Planning proposal to remove land acquisition reservations in Edgecliff (PP-2021-6740)
Review request made by:	<input checked="" type="checkbox"/> The Council
	<input type="checkbox"/> A proponent
Reason for review:	<input checked="" 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 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	<p>Planning proposal</p> <p>The planning proposal (Attachment proposal) seeks to amend the Woollahra Local Environmental Plan (LEP) 2014 to remove several land acquisition reservations on New South Head Road and Glenmore Road in Edgecliff, which are identified as Classified Road (B4), from the Land Reservation Acquisition (LRA) Map (LRA_003).</p> <p>Transport for NSW (TfNSW) is identified in Clause 5.1 of the Woollahra LEP 2014 as the acquisition authority.</p> <p>The stated objectives of the planning proposal are to:</p> <ul style="list-style-type: none">• remove redundant road reservation affectations from the Woollahra LEP 2014;• ensure that the buildings of heritage significance on the affected properties are protected from any future demolition; and• allow Council to invest in the long-term place making of Edgecliff. <p>Site description</p> <p>The planning proposal applies to twelve parcels of land on New South Head Road and Glenmore Road in Edgecliff, grouped in four separate areas (Figure 1). The sites are located approximately 2.4 - 2.7km east of the Sydney Central Business District (CBD) and 1.7 - 2km north-west of Bondi Junction strategic centre (Figure 2).</p> <p>The sites are zoned B4 Mixed Use under the LEP and are in the Edgecliff Commercial Centre (ECC), which contains a mix of commercial, retail, entertainment, and residential uses. The sites are mostly occupied by buildings.</p> <p>Most sites are located on New South Head Road, which is a main arterial/classified road providing access from Sydney city through the eastern suburbs to Vaucluse. The sites are located along a ridgeline that rises from Rushcutters Bay towards Edgecliff along New South Head Road.</p> <p>One of the sites at 136 New South Head Road, is a heritage item under Schedule 5 of the Woollahra LEP 2014 listed as having local significance. Some of the sites also fall within the Paddington Heritage Conservation Area (HCA) (C8).</p> <p>Council has prepared a planning proposal to list the 3-storey sandstone commercial building at 133 New South Head Road and the adjoining sandstone cottage at 549 Glenmore Road (within 'Area 2' of the road reservations) as local heritage items. Council resolved at its meeting of 27 June 2022 to finalise the planning proposal and requests the Planning Secretary to make a local environmental plan under section 3.36(1) of the <i>Environmental Planning and Assessment Act 1979</i>. At the time of writing, the planning proposal is being finalised by the Department of Planning and Environment (Department).</p>
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Figure 1 Subject sites, with the land reservations in yellow (source: Planning proposal)



Figure 2 Site context (subject sites in blue) (Base source: Nearmap)

Reasons for Gateway determination

On 8 June 2022, the Department issued a Gateway determination (**Attachment Gateway**), which determined that the planning proposal should not proceed for the following reasons:

1. *Transport for NSW, the authority of the State that is the relevant acquisition authority for the subject land reservations pursuant to clause 5.1 of the Woollahra LEP 2014, does not support the planning proposal as*

	<p><i>the reservations are required to be retained for future public and active transport purposes.</i></p> <ol style="list-style-type: none"> 2. <i>New South Head Road and the subject reserved land have been identified by Transport for NSW as part of an important public transport corridor between Darlinghurst and Bondi. The planning proposal does not safeguard opportunities for future public and active transport improvements.</i> 3. <i>The proposal is inconsistent with the relevant aims, objectives, or actions of the following Priorities in the Eastern City District Plan:</i> <ol style="list-style-type: none"> (a) <i>Planning Priority E1: Planning for a city supported by infrastructure; and</i> (b) <i>Planning Priority E10: Delivering integrated land use and transport planning and a 30-minute city.</i> 4. <i>The proposal is inconsistent with section 9.1 Ministerial Direction 5.2 Reserving Land for Public Purposes as Transport for NSW, the relevant public authority, has not agreed or provided approval to facilitate the removal of the reservations.</i> <p>Details of the Department's Gateway assessment are provided in the Department's Gateway assessment report (Attachment Gateway report).</p>
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Council's views

<p>Details of justification</p>	<p>The Department has received a Gateway review request (Attachment Form and Attachment Request) from Council, in response to the Gateway determination that the planning proposal to remove land acquisition reservations in Edgecliff (PP-2021-6740) should not proceed.</p> <p>The Department's <i>Local Environmental Plan Making Guideline</i> states that if the Gateway determination is either to not proceed or to resubmit the planning proposal, the proponent or Council has 42 calendar days from notification to request a review of this determination. Council's Gateway review request was lodged on 22 July 2022, which had been 45 calendar days from the date of the Gateway determination (dated 8 June 2022), and 43 calendar days from when the Gateway determination was emailed to Council on 10 June 2022. As such, Council has slightly missed the timeframes stipulated in the Guideline. The Department has continued to process Council's request, nonetheless considering that the exceedance of the 42-day timeframe is minor.</p> <p>Council's request states that the land reservations are redundant, and that removal of the reservations will:</p> <ul style="list-style-type: none"> • give Council and the community certainty about the future use of the land; • enable Council to invest in long term public domain and active transport infrastructure improvements along the corridor; and • safeguard buildings of statutory or potential heritage significance from future demolition. <p>Council's justifications are broadly summarised as follows:</p> <ul style="list-style-type: none"> • The 1958 Road Alignment project that identified the land reservations has been superseded by the Cross City Tunnel Project, completed in 2005. This would have eradicated intentions to direct traffic via Paddington through widening of New South Head Road;
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- TfNSW has not provided any evidence, plans or strategies to demonstrate that the reserved land is needed for future transport improvements, or to justify its refusal to remove the land reservations;
- The *Road Network Plan 47 Darlinghurst to Bondi*, an internal planning document prepared by TfNSW, does not identify any major transport infrastructure upgrades within or in close proximity of the Darlinghurst to Bondi corridor;
- The land reservations inhibit Council’s progression of active transport and public domain improvements identified in the *Draft Edgecliff Commercial Centre Planning and Urban Design Strategy*, *Draft Edgecliff Commercial Centre Public Domain Plan*, and *Draft Active Transport Plan*. These draft plans seek to respond to future growth in the area and provide for infrastructure to support diverse transport usage, including active transport, and to address Council’s infrastructure priority to promote walking and cycling;
- Retaining the reservations will lead to a vehicular transport dominant future for the area, which would be inconsistent with TfNSW’s policy to prioritise walking and cycling over vehicular transport modes;
- The reservations create uncertainty about the future use of the land and would sterilise the area from any improvements;
- Removal of the land reservations will protect buildings of statutory or potential heritage significance from future demolition. Of the twelve parcels of land currently reserved for acquisition:
 - one parcel is a local heritage item listed in Woollahra LEP 2014 (item 238);
 - two parcels contain a proposed local heritage item, the planning proposal for which was on public exhibition from 6 April 2022 to 20 May 2022 (133 New South Head Road and 549 Glenmore Road); and
 - three parcels are currently under investigation for local heritage significance and potential heritage listing.
- The planning proposal supports the visions of the Eastern City District Plan and is consistent with Planning Priorities E1 *Planning for a city supported by infrastructure* and E10 *Delivering integrated land use and transport planning and a 30-minute city*; and
- Whilst acknowledging inconsistency with Section 9.1 Ministerial Direction 5.2 Reserving Land for Public Purposes, the planning proposal satisfies objective (b) of the Ministerial Direction, which states: “*to facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition*”.

The full justification is provided in **Attachment Request**.

Material provided in support of application / proposal	Council provided the following documents to support its Gateway determination review request:	
	Attachment Form	Gateway Determination Review Application Form and Attachment (Site Details)
	Attachment Request	Gateway Review Justification
	Attachment Proposal	Planning Proposal dated November 2021
	Attachment A	Planning Proposal Annexure 1 - Letter WMC to Min Stokes
	Attachment B	Planning Proposal Annexure 2 - Letter DPIE to WMC
	Attachment C	Planning Proposal Annexure 3 - Letter WMC to TfNSW
	Attachment D	Planning Proposal Annexure 4 - Letter TfNSW to WMC
	Attachment E	Planning Proposal Annexure 5 - WLPP report 16 September 2021
	Attachment F	Planning Proposal Annexure 6 - WLPP advice 16 September 2021
	Attachment G	Planning Proposal Annexure 7 - EPC report 11 October 2021
	Attachment H	Planning Proposal Annexure 8 - Council resolution 25 October 2021
	Attachment I	Planning Proposal cover letter
	Attachment J	Planning Proposal DPIE Information Checklist
	Attachment K	Planning Proposal Evaluation Criteria for the Delegation of Plan Making Functions
For reference and consideration by the IPC, the following documents are also attached to this justification assessment report:		
Attachment Gateway	Gateway determination issued by DPE	
Attachment Gateway report	Gateway assessment report prepared by DPE	
Attachment TfNSW	TfNSW's advice in response to Gateway Review 12 August 2022	

Assessment summary

Department's assessment	<p>The Department notes the justification provided by Council for the Gateway determination review. However, the Department's position remains unchanged and recommends that the planning proposal should not proceed. The key matters and reasoning behind this justification are considered below:</p> <p>Woollahra LEP 2014 Clause 5.1A</p> <p>Clause 5.1A <i>Development on land intended to be acquired for public purposes</i> in the Woollahra LEP 2014 prescribes that development consent must not be granted to any development on land reservation acquisition (LRA) affected land if it has not been acquired by the relevant authority, unless it is for the identified acquisition purpose (i.e. roads).</p> <p>The implications of this clause are recognised by the Department in that it does not allow for improvements that require development consent. The Department acknowledges the justification provided by Council in this regard and the benefit of having a greater level of certainty around the future transport needs for these parcels.</p>
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However, TfNSW, the authority of the State that is the relevant acquisition authority for the subject land reservations, does not support the removal of the road reservations and advised they are to be retained for future public and active transport improvements.

TfNSW's advice

A key point that Council made in the Gateway review justification is that TfNSW has not provided evidence to demonstrate that the land is needed for future transport improvements.

To the Department's understanding, TfNSW's advice has been consistent and has not changed in this regard, as outlined below:

- Council indicates that at the time of preparing Woollahra LEP 2014, TfNSW (then known as Roads and Maritime Services) were consulted with regard to the need to retain the reservations and they stated that the reservations had to be retained;
- On 21 April 2020, Council received a letter (**Attachment D**) from Eleni Petinos MP, former Parliamentary Secretary for Transport and Roads, stating that TfNSW had no plans for removal of land acquisition provisions applying to the subject sites at this time and stated that "*Removing the land reservations may allow for future developments on this site, which may hinder the public transport possibilities for this key corridor*". The letter states that the subject road reservation is part of an important public transport corridor between Darlinghurst and Bondi. It advises that one of the strategic visions in the road network plan for the corridor in the next 20 years is to encourage the use of sustainable transport mode and provide efficient public transport services.
- Following Council's lodgement of the planning proposal for Gateway determination in November 2021, the Department's Planning Delivery Unit (PDU) facilitated and chaired several meetings and discussions between Council and TfNSW. The outcome of these was that TfNSW reaffirmed the need for the subject land reservations for future public and active transport purposes consistent with the advice of the Parliamentary Secretary's letter to Council dated 21 April 2020.
- On 2 November 2021, Council lodged a planning proposal (PP-2021-6545) for the local heritage listing of the Cadry's building at 133 NSH Road and an early Victorian cottage at 549 Glenmore Road, Edgecliff for Gateway determination. These sites are subject to land reservation affectations and are in 'Area 2'. On 24 December 2021, the Department issued a Gateway determination to proceed subject to conditions, including that prior to public exhibition, consultation must be undertaken with TfNSW.

In late March 2022, TfNSW advised Council that both these properties are in the area identified for future transport improvements and its preference is to not list these buildings as heritage items. TfNSW advised Council that it '*....may acquire these two land parcels, if required, in the future once the type and extent of transport improvements are determined.*' The proposal was publicly exhibited from 6 April to 20 May 2022. At the time of writing, the proposal is under finalisation by the Department.

- The Department has invited TfNSW to provide comments in response to this Gateway review request. On 12 August 2022, TfNSW provided comments and confirmed that it has no current plans to remove the land reservations. TfNSW reiterated that *'New South Head Road and the reserved land is part of an important public transport corridor from Darlinghurst to Bondi'* and that *'Removing the land reservations may allow for future developments on these sites which may hinder the future public and active transport possibilities for this key corridor'*.

TfNSW's comments include information relating to its Strategic Cycleway Corridors program and the strategic cycleway corridors overview for Eastern Harbour City released in April 2022. TfNSW advised that it is *'currently reviewing the connections that make up each of the strategic cycleway corridors in Eastern Harbour City with respect to prioritising the planning for their implementation and delivery. This includes a corridor between Darlinghurst and Rose Bay via Double Bay'*.

The full advice is provided in **Attachment TfNSW**.

Council's Gateway review justification and the planning proposal refer to the road reservation affections as 'redundant', however this is contrary to TfNSW's advice as outlined above.

Council's Gateway review justification further states that *"Retaining the reservations is committing to a future dominated by vehicular transport instead of pursuing an opportunity to provide active transport to respond to the future densification of residential and commercial land uses"*. This statement is inconsistent with TfNSW's strategic visions for the corridor, which is *'to provide a safe and reliable corridor that encourages the use of sustainable transport modes with efficient public transport services and high-quality active transport facilities'*, as stated in TfNSW's comments in response to this Gateway review request.

Section 9.1 Ministerial Directions – Direction 5.2 (formerly 6.2)

The Department notes Council's acknowledgement in its Gateway review justification that the planning proposal is inconsistent with Section 9.1 Ministerial Directions - Direction 5.2 *Reserving land for public purposes*.

Under this Direction, a planning proposal must not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the relevant public authority and the Secretary of the Department.

TfNSW has indicated it still requires these parcels of land for potential future active and public transport needs. The planning proposal, which seeks to remove reservations of land for public purposes, is inconsistent with this Direction as TfNSW, the relevant public authority, has not agreed or provided approval for the removal of these reservations. Additionally, the Department's Secretary has not approved the proposed reservation, and the Gateway determination is not to enable the proposal to proceed.

Eastern City District Plan

Council's Gateway review justification states that:

"The Gateway determination does not provide any explanation to substantiate the view that the planning proposal is inconsistent with the identified elements of the Eastern City District Plan. The omission of strategic justification to support this

determination suggests a perverse interpretation of the Eastern District Plan's Planning Priorities to refuse the Gateway determination."

The Department has carefully considered the planning proposal with respect to the Eastern City District Plan at Gateway and concluded that the proposal is inconsistent with the following Planning Priorities of the District Plan:

- E1: *Planning for a city supported by infrastructure*
- E10: *Delivering integrated land use and transport planning and a 30-minute city.*

The Department's considerations are outlined in detail in its Gateway assessment report as follows:

- *"Discussion in the District Plan on these Priorities emphasises the importance of proactive and early safeguarding of transport corridors for future infrastructure investments and maximising the utility of existing infrastructure assets.*
- *It is stated on p. 74 [of the District Plan] that 'The NSW Government is planning for long-term transport needs of Greater Sydney by identifying and protecting corridors of land that can be used to deliver transport and infrastructure in the future when it is needed.'*
- *NSH Road is a key classified road and TfNSW has indicated that this road including the reserved land is part of an important public transport corridor from Darlinghurst to Bondi.*
- *One of the strategic visions in the corridor's road network plan for the next 20 years is to provide a safe and reliable corridor that encourages the use of sustainable transport modes with efficient public transport services and high-quality active transport facilities.*
- *Removing these land reservation affectations would be inconsistent with Priority E1's Objective 1 'Infrastructure supports the three cities' and Priority E10's Action 34 'Investigate, plan and protect future transport and infrastructure corridors.' "*

The Department considers that there are opportunities for Council to collaborate with TfNSW about active and public transport improvements or place-making initiatives in New South Head Road.

Recommendation

The Department recommends that the planning proposal should not proceed.

The Department considers the subject land for road reservations should remain identified for future transport uses to ensure opportunities for public and active transport improvements in the NSH Road corridor are safeguarded and future-proofed.

If there is a change in position from TfNSW in the future then a further planning proposal could be considered.

COMMISSION'S 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 not proceed past Gateway.
	<input type="checkbox"/>	<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 proceed past Gateway in accordance with the original Determination.

Any additional comments: