



northern
beaches
council

PLANNING PROPOSAL

Amendments to Warringah Local Environmental Plan 2011

MANLY CREEK NATIVE VEGETATION (in the vicinity of “Mermaid Pool”, Manly Vale)

October 2019 (v.4 Incorporating Conditions of Gateway Determination)

TRIM PEX2018/0008 RN2019/595088

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Part 1 – Intended Outcomes

The intended outcome of the Planning Proposal is to rezone certain Crown Land parcels of native vegetation including riparian corridor lands of Manly Creek, downstream of Manly Dam, Manly Vale from Low Density Residential R2 to Public Recreation RE1 to provide for a range of recreational settings, activities and land uses that are compatible with the values of the land. The proposal will also better protect and enhance the natural environment and the values of the land.

It is also proposed that residential building height and minimum allotment size controls be removed from the land as residential uses will no longer be permitted under the RE1 zone.

Part 2 – Explanation of Provisions

The proposal seeks to amend Warringah LEP 2011 as follows:

Amend Zoning Map (LZN_008) to rezone certain land from Low Density Residential (R2) to Public Recreation (RE1) comprising the following land:

- Part Lot 7370 DP1165551 being land adjoining 102 King Street, Manly Vale
- Part Lot 7369 DP1165551 Wandella Road, Allambie, south of Jenna Close
- Lot 7371 DP1165577, Allambie, south of Blamey Street
- Part unmade road at the southern end of Wandella Road, near King Street, Manly Vale

The effect of the rezoning will be that the subject lots will be zoned Public Recreation (RE1) in their entirety (note: some of the above land parcels are currently zoned part Low Density Residential (R2) and part Public Recreation (RE1)).

Some minor consequential amendments to the LEP are also proposed to accompany the rezoning, removing residential development standards for height and minimum lot size from the subject land parcels.

In this regard, it is proposed to remove the subject land from the following LEP Maps:

- WLEP2011 Map HoB_008 (Height of Building Map)
- WLEP2011 Map LZN_008 (Minimum Lot Size Map)

The Land

The subject land parcels are contained within David Thomas Reserve and surrounding bushland located in the suburbs of Allambie Heights and Manly Vale below Manly Dam. The land is bounded by low density residential development to the north and south. The land is native vegetation and partly includes the riparian corridor of Manly Creek.

This creek line corridor of vegetation on and adjoining the subject lots directly connects Manly Dam in the west to Millers Reserve and Warringah Golf Club in the east, before discharging into Manly Lagoon. In this regard, the land contributes significantly to important vegetative links from Manly Dam to the coast. The land is also included in several local and state ecological studies and databases detailed in this Planning Proposal.



Figure 1 – The Subject Land

The subject land parcels and bushland form part of a place fondly known by the local community as the ‘Mermaid Pool’. The subject land parcels are in the vicinity of this riparian pool with associated waterfall and rock escarpments. This land is the subject of an ongoing community restoration project which gained recognition and impetus under the national Clean Up Australia Day campaign in 2001/2002 and the “Return of the Mermaids” project.

At this time, over 4 tonnes of waste was removed from the creek including old ovens, car parts, trolleys, and building material. From this event, efforts have been sustained with ongoing bush-care volunteers meeting monthly to continue the bushland regeneration of this community-valued place. Other events and workshops run by ‘Save Manly Dam Catchment Committee’ include educational programs, nesting box installation, drain stencilling, lobbying and advocacy. Council also currently manages and funds a bush regeneration volunteer program at the Mermaid Pool and bush regeneration contracts in the adjacent David Thomas Reserve.

The Zones

The existing zone to be omitted in relation to the subject lands is as follows:

Zone R2 Low Density Residential (existing zone)

1 Objectives of zone

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.

2 Permitted without consent

Home-based child care; Home occupations

3 Permitted with consent

Bed and breakfast accommodation; Boarding houses; Boat sheds; Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Dwelling houses; Educational establishments; Emergency services facilities; Environmental protection works; Exhibition homes; Group homes; Health consulting rooms; Home businesses; Hospitals; Places of public worship; Recreation areas; Respite day care centres; Roads; Secondary dwellings; Veterinary hospitals

4 Prohibited

Any development not specified in item 2 or 3

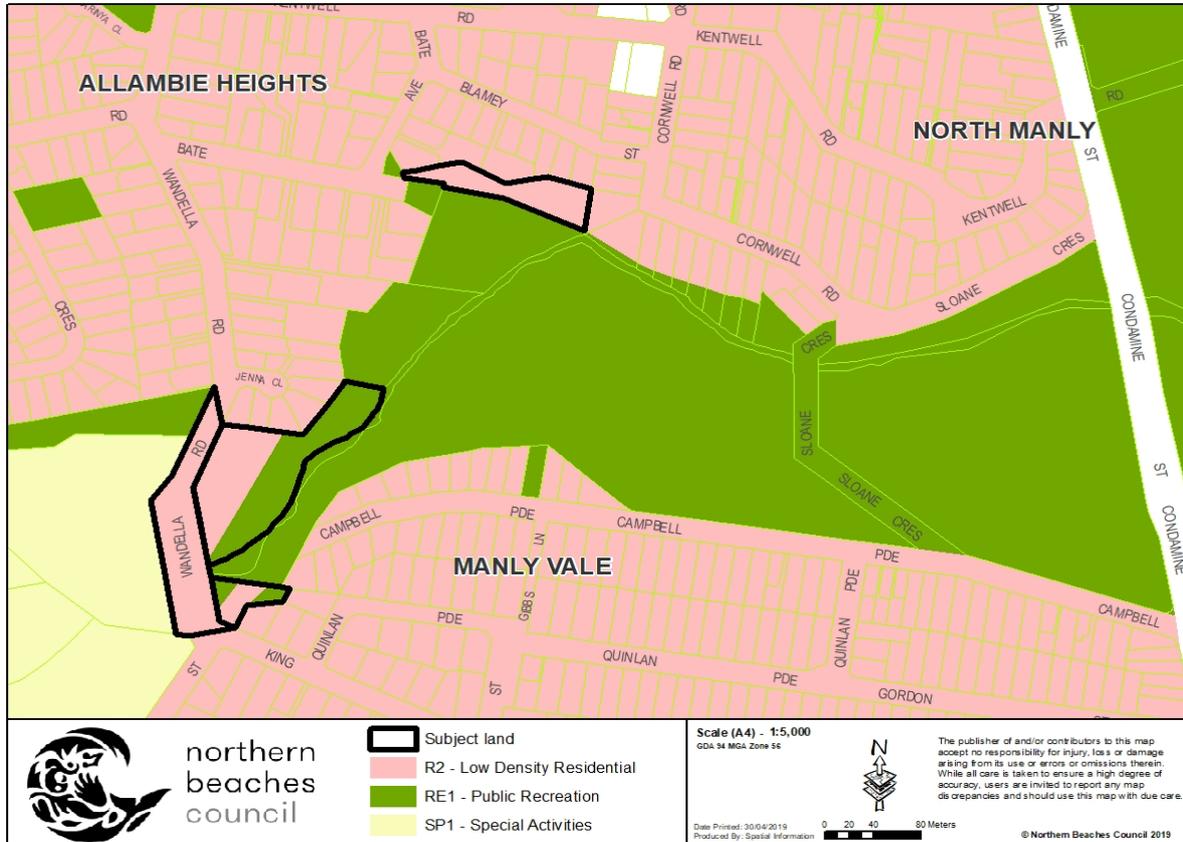


Figure 2 – Current Zones

The proposed zone land use table for Public Recreation (RE1) in relation to the subject lands is as follows:

Zone RE1 Public Recreation (proposed zone)

1 Objectives of zone

- To enable land to be used for public open space or recreational purposes.
- To provide a range of recreational settings and activities and compatible land uses.
- To protect and enhance the natural environment for recreational purposes.
- To protect, manage and restore public land that is of ecological, scientific, cultural or aesthetic value.
- To prevent development that could destroy, damage or otherwise have an adverse effect on those values.

2 Permitted without consent

Environmental facilities; Environmental protection works; Roads

3 Permitted with consent

Boat building and repair facilities; Boat sheds; Building identification signs; Business identification signs; Car parks; Centre-based child care facilities; Community facilities; Emergency services facilities; Kiosks; Recreation areas; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Respite day care centres; Restaurants or cafes; Water recreation structures

4 Prohibited

Any development not specified in item 2 or 3

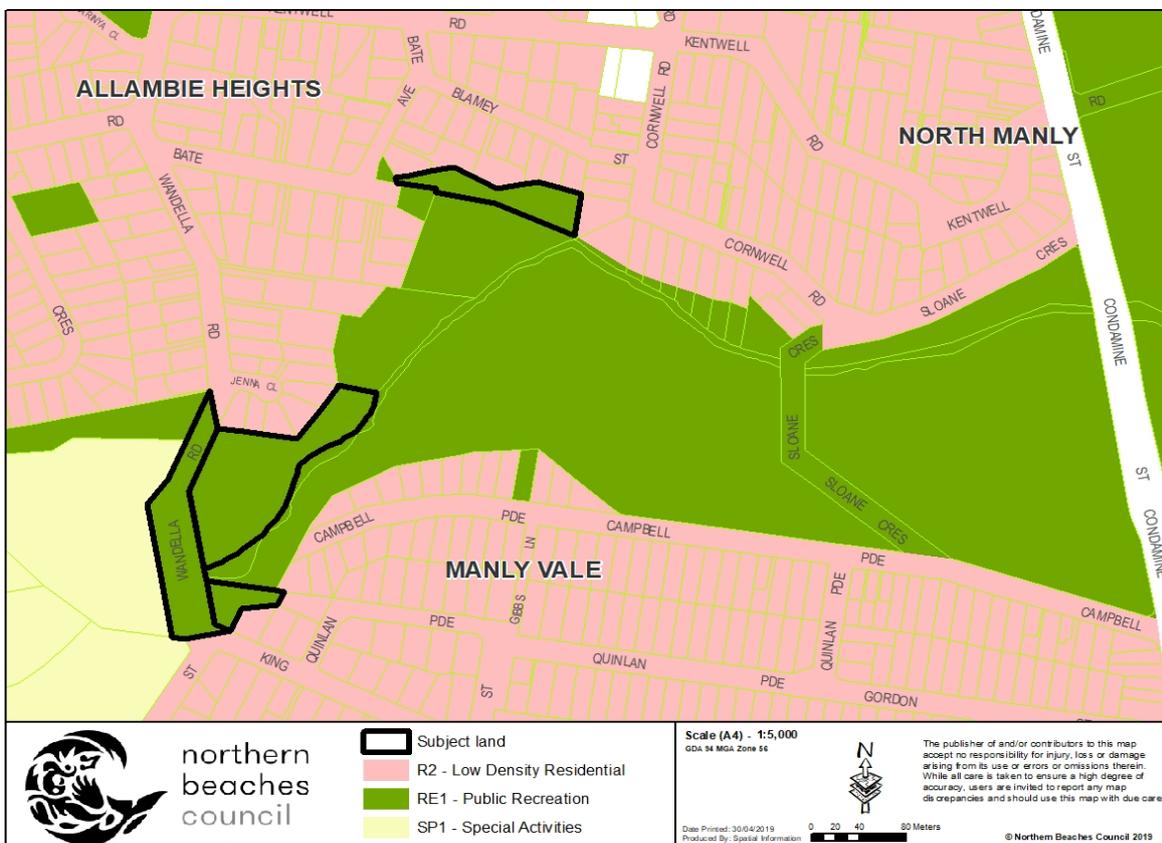


Figure 3 – Proposed Zone

Related Provisions in the Warringah LEP (Heritage and Land Slip Risk).

Other provisions associated with the land under Warringah LEP 2011 include Heritage (see Figure 4 – LEP Heritage Map) and Land Slip Risk (see Figure 5 – LEP Land Slip Risk Map).

In relation to Heritage, Councils Heritage Advisor has reviewed the Planning Proposal and provided the following comments:

The land is within the vicinity of a number of local heritage items and a heritage conservation area listed in Schedule 5 of Warringah Local Environmental Plan 2011, as can be seen on attached map, they being:

- *Item I144 - Manly Hydraulics Laboratory, 110b King Street, Manly Vale Item I84 - Manly Dam, King Street, Manly Vale Conservation Area C9 - Manly Dam and Surrounds Conservation Area*
- *Manly Dam is also listed as a State Heritage item under the NSW Heritage Act (Database No. 5051428). The extent of this State listing can be seen attached, which generally corresponds to local Item I84.*

The rezoning of these lots to RE1 will have no adverse impact upon the heritage items in the vicinity nor the Manly Dam and surrounding Conservation Area.

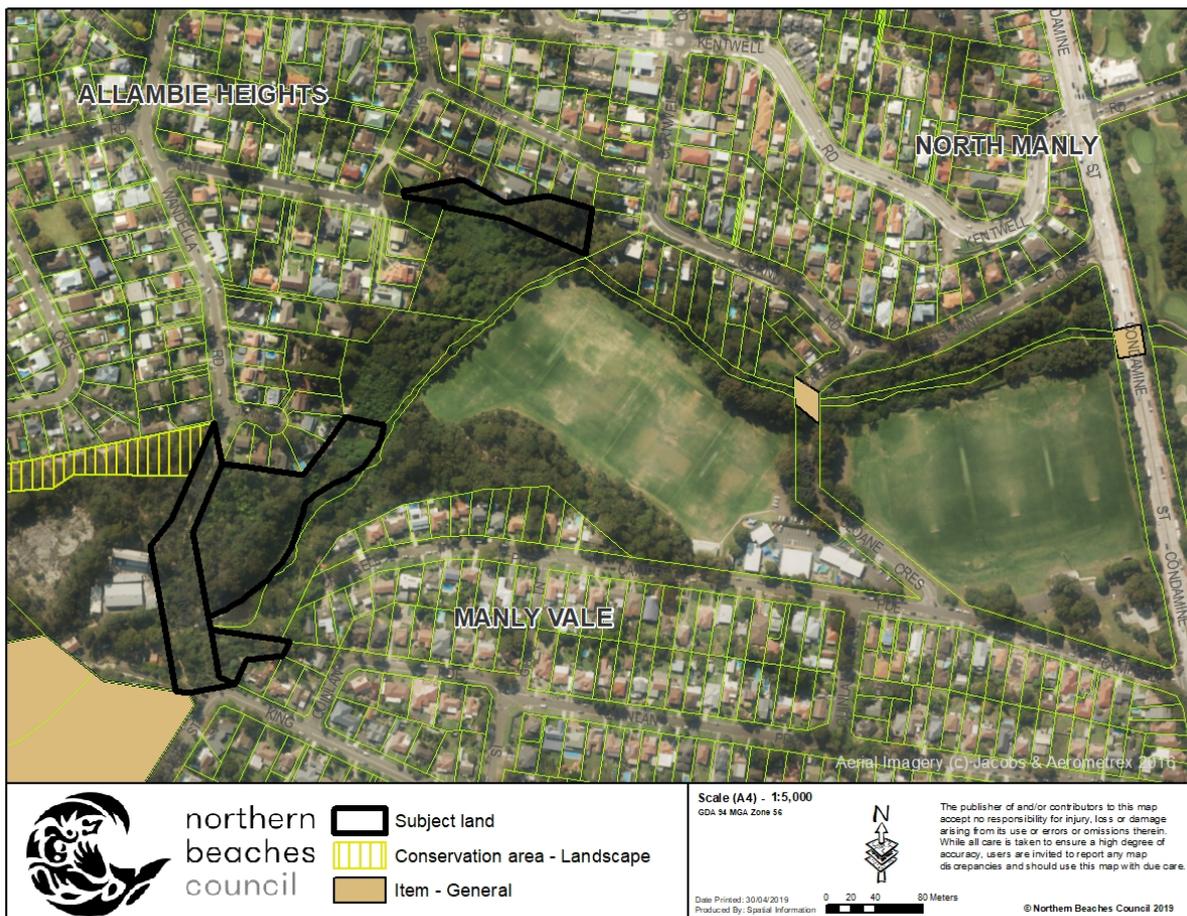


Figure 4 – LEP Heritage Map

In relation to Landslip Risk, the Warringah LEP maps the subject land as 'Area B – Flanking Slopes' in terms of landslip risk (see Figure 5). Consideration is required to be given to risk associated with landslides and their impact on both property and life when assessing applications for development. Furthermore, such development must not cause significant detrimental impacts because of stormwater discharge from the development site or impact on or affect the existing subsurface flow conditions.

The Planning Proposal is consistent with the existing provisions as applicable to the land to be re-zoned.

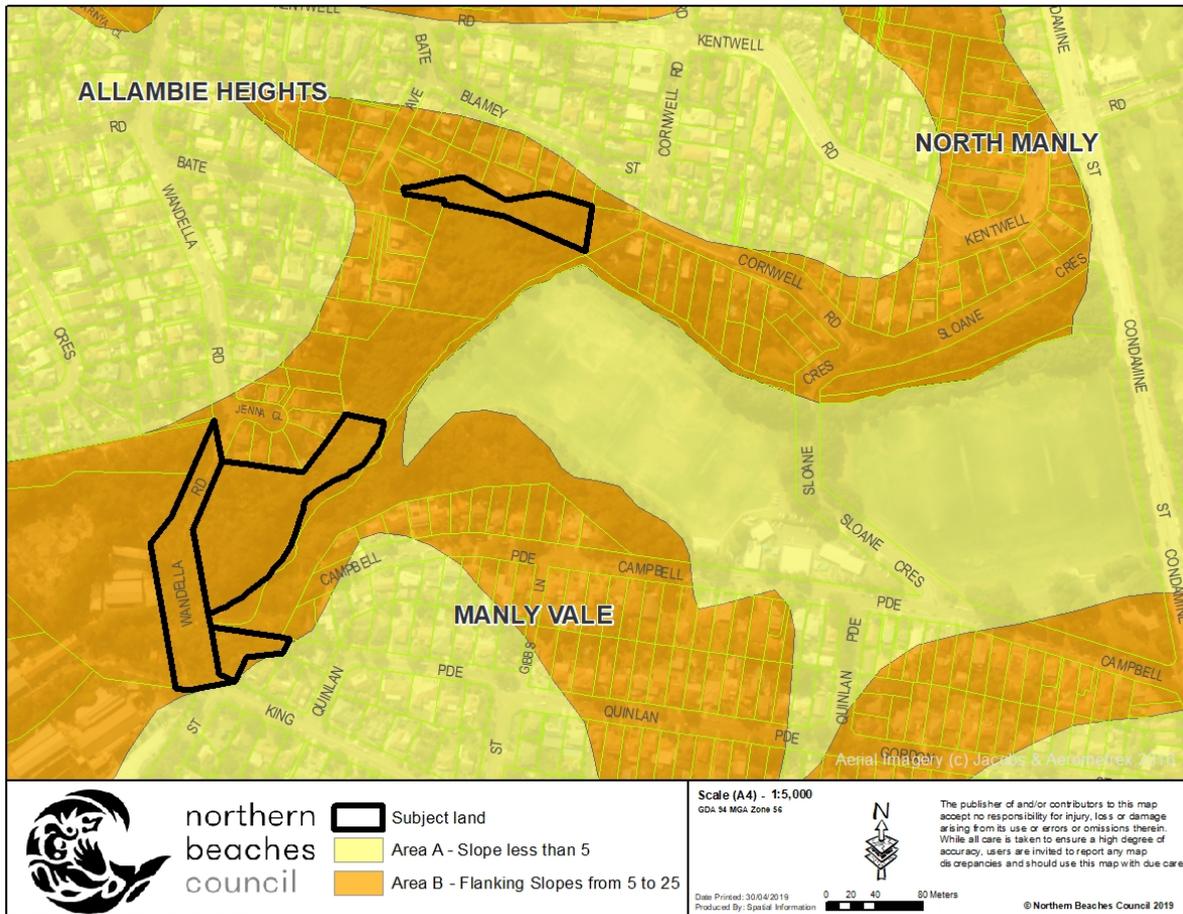


Figure 5 – LEP Land Slip Risk Map

Part 3 – Justification

Section A – Need for the Planning Proposal

1. Is the Planning Proposal a result of any strategic study or report?

The Planning Proposal results from a resolution of Council at its Ordinary Meeting dated 27 November 2018. At this time, Council considered Notice of Motion No 65/2018 regarding a variety of land parcels for rezoning in and around Manly Warringah Memorial Park.

Council's resolution regarding parcels of land owned by Sydney Water and the Crown in the vicinity of Wakehurst Parkway, Seaforth is to be subject to a separate Planning Proposal.

Part B of the Council's Resolution was as follows:

B. Council prepare a Planning Proposal to rezone two lots owned by the Crown in the vicinity of King Street and Wandella Road from Low Density Residential (R2) to Public Recreation (RE1) under the Warringah LEP 2011. The two lots are identified as:

- Part Lot 7370 DP1165551 being land adjoining 102 King Street, Manly Vale
- Part Lot 7369 DP1165551 Wandella Road, Allambie, south of Jenna Close, Allambie

In this regard, a further two parcels are also sought to be incorporated into the Planning Proposal as follows:

- Lot 7371 DP1165577
- Part unmade road at the southern end of Wandella Road, King Street, Manly Vale

At its Ordinary Meeting dated 26 February 2019, Council resolved:

That:

A. Council submit the attached Planning Proposal to the Department of Planning and Environment for a Gateway Determination to rezone the following parcels of land from Low Density Residential (R2) to Public Recreation (RE1) and to remove height and minimum allotment size controls from the land:

- Lot 7370 DP1165551 being land adjoining 102 King Street, Manly Vale
- Lot 7369 DP1165551 Wandella Road, Allambie, south of Jenna Close
- Lot 7371 DP1165577, Allambie, south of Blamey Street
- Part unmade road at the southern end of Wandella Road, King Street, Manly Vale.

B. Council prepare and exhibit consequential amendments to Warringah DCP 2011 to remove residential development controls, including setback and minimum landscaped area controls, from this land.

A number of existing ecological studies data supports the current Planning Proposal:

- Connected Corridors for Biodiversity project by Southern Sydney Regional Organisation of Councils in December 2016
- Local Habitat Strategy by former Warringah Council in 2007
- Biodiversity Values Map by Office of Environment and Heritage (OEH) in 2018
- Sydney Metropolitan Catchment Management Authority v3 Mapping, OEH 2016
- Warringah Creek Management Study 2000, former Warringah Council
- Native Vegetation DCP Mapping, former Warringah Council
- BioNet threatened species records, OEH 2018

Other existing site-specific and locality information include:

- Manly Creek/Mermaid's Pool Restoration Plan (Total Earth Care 2003)
- Manly Dam ongoing comprehensive species list project (Northern Beaches Council 2018)
- Biodiversity Assessment of nearby Sydney Water land (Sydney Water 2018)

All of the above studies and databases are further detailed in this report in Part 3B – Relationship to Strategic Planning Framework.

In this regard, Council commissioned a Biological Study from independent ecological consultants Niche Environment and Heritage to provide a full species inventory, determine and map native vegetation, undertake a habitat assessment and targeted surveys for threatened species and provide an independent assessment of the area's function as a wildlife corridor. This study primarily assists Council in its future management of the native vegetation lands, not directly affected or determinative to the land use zoning of the land. Further, the study does not result in a different land use zone or additional LEP amendments beyond what is currently proposed in the Planning Proposal.

This Study supports the rezoning planning proposal for various lots currently zoned R2 contained within Manly Creek Native Vegetation, near Mermaid Pool, Manly Vale.

2. Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The Planning Proposal to rezone the land to RE1 Public Recreation is the best means of achieving the objectives to maintain the use of the land for public open space and recreational purposes and to better protect and enhance the natural environment and the values of the land.

In 2016, the Manly Lagoon Catchment Coordinating Committee sought to have the land rezoned to environmental protection (E1 or E2). Warringah Council subsequently committed to a review of the zoning due to the environmental significance of land, with the Mayor of Warringah seeking support for the rezoning from Member for Manly and the Minister for Lands and Water. Whilst environmental protection zones in the LEP provide a higher level of environmental protection, the extent of the Manly Warringah Memorial Park, the Mermaid Pool and much of the riparian corridor is zoned RE1 Public Recreation. The RE1 Public Recreation is therefore considered the most appropriate means of achieving the intended outcomes of the Planning Proposal.

Section B – Relationship to strategic planning framework

3. Is the Planning Proposal consistent with the objective and actions of the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

The Greater Sydney Region Plan

The Planning Proposal has been reviewed against relevant outcomes of the Greater Sydney Region Plan “A Metropolis of Three Cities – connecting people” published on 18 March 2018. The Plan identifies a number of strategic directions and specific policy settings transforming the Greater Sydney Region into a metropolis of three cities comprising the Western Parkland City, the Central River City and the Eastern Harbour City. The Planning Proposal is informed by the Plan’s vision for the Eastern Harbour City and aligns with the Directions of the Plan. In particular, the Planning Proposal satisfies a range of Objectives as follows:

- Objective 25 - The coast and waterways are protected and healthier

The Planning Proposal is consistent with this Objective on the basis that the subject land is native vegetation and the proposed Public Recreation zone protects the biodiversity in an area around the land and enhances sustainability and livability in the management of public lands.

- Objective 27 - Biodiversity is protected, urban bushland and remnant vegetation is enhanced

The Planning Proposal is consistent with this Objective on the basis that biodiversity values of the land are recognised under the proposed Public Recreation zone, landscape-scale biodiversity conservation and the restoration of bushland is supported and urban bushland is better managed as green infrastructure.

- Objective 28 – Scenic and cultural landscapes are protected

The Planning Proposal is consistent with this Objective on the basis that the scenic and cultural landscape values of the subject land have been considered and are supported.

- Objective 30 – Urban Tree Canopy is increased

The Planning Proposal is consistent with this Objective on the basis that the proposed Public Recreation zone provides for maximizing the urban tree canopy and enhancing the amenity of the public domain.

- Objective 31 – Public open space is accessible, protected and enhanced

The Planning Proposal is consistent with this Objective on the basis that the subject land is part of the network of public open space and the proposed Public Recreation zone represent the optimal use of the land that is accessible, protected and enhanced.

- Objective 32 – The Green Grid links parks, open spaces, bushland and walking and cycling paths

The Planning Proposal is consistent with this Objective on the basis that the proposed zoning of the subject land for open space purposes appropriately refined zoning for the local delivery of the Greater Sydney Green Grid in terms of the bushland and corridor values of the land.

North District Plan

The Planning Proposal supports the North District Plan vision for 'A city in its Landscape' and Directions 'Valuing green spaces and landscape'.

The Planning Proposal is consistent with a number of Planning Priorities of the North District Plan as follows:

- Planning Priority N15 – Protecting and improving the health and enjoyment of Sydney Harbour and Waterways

The Planning Proposal is consistent with this Planning Priority on the basis that the subject land is within the Manly Lagoon Catchment and the proposed Public Recreation zone supports the protection and improvement of the health and enjoyment of land within the Waterways catchment.

- Planning Priority N16 – Protecting and enhancing bushland and biodiversity

The Planning Proposal is consistent with this Planning Priority on the basis that the proposed rezoning of land involves areas of native vegetation with better opportunities to protect and enhance connected bushland corridors and endangered ecological communities.

- Planning Priority N17 – Protecting and enhancing scenic and cultural landscapes

The Planning Proposal is consistent with this Planning Priority on the basis that the scenic and cultural landscape values of the subject land have been considered and supported by the zoning of the land to RE1 Public Recreation in the LEP.

- Planning Priority N19 – Increasing urban tree canopy cover and delivering Green Grid Connections

The Planning Proposal is consistent with this Planning Priority on the basis that the proposed zoning of the subject land for open space purposes appropriately refines the local delivery of the North District Green Grid in terms of the bushland and corridor values of the land.

- Planning Priority N20 – Delivering high quality open space

The Planning Proposal is consistent with this Planning Priority on the basis that the zoning of the land RE1 Public Recreation delivers high quality open space near Manly Creek, Manly Vale.

4. Is the Planning Proposal consistent with a council's local strategy or other local strategic plan?

A review has been undertaken of the Planning Proposal against certain policies and plans of Northern Beaches Council as follows:

Northern Beaches Community Strategic Plan 2017-2028 'SHAPE 2028'

The Northern Beaches Community Strategic Plan was adopted by the Northern Beaches Council in June 2018 following 2 stages of engagement and drafting in September/October 2016 (developing community issues, priorities and visions) and in March/April 2017 (developing draft goals and strategies to achieve the vision).

The Plan is built around themes of community, place, environment and leadership. The objectives and intended outcomes of the Planning Proposal are supported by the Community Strategic Plan.

Relevant Goals and Strategies of the Community Strategic Plan include the following:

- Goal 1 Our bushland, coast and waterways are protected to ensure safe and sustainable use for present and future generations

The Planning Proposal is consistent with this Goal on the basis that the land subject for rezoning is bushland and the proposed Public Recreation zone protects and ensures sustainable use of the land for present and future generations.

- Goal 2 Our environment and community are resilient to natural hazards and climate change

The Planning Proposal is consistent with this Goal on the basis that the proposed zoning will provide for protection and restoration of local biodiversity and bushland; improve ecological conditions in Manly Creek and recognise and protect the cultural and heritage value of the land.

- Goal 3 Our community is well-supported in protecting the environment

The Planning Proposal is consistent with this Goal on the basis that the proposed Public Recreation zone encourages the community to protect the environment noting that the site of the proposal is associated with well established community participation and education programs including local community groups involved in restoring the natural environment through community participation and volunteering.

- Goal 5 Our built environment is developed in line with best practice sustainability principles

The Planning Proposal is consistent with this Goal on the basis that the proposed Public Recreation zone ensures integrated land use planning - balancing the environmental, social and economic needs of present and future generations. The proposed rezoning also aligns with associated strategy under the Community Strategic Plan to create greener and resilient urban environments by improving tree cover and native vegetation.

Northern Beaches Draft Local Strategic Planning Statement (*Towards 2040*)

Northern Beaches Draft Local Strategic Planning Statement (*Towards 2040*) is on public exhibition from Friday 27 September to Sunday 10 November 2019. *Towards 2040* is the Northern Beaches Council's first Local Strategic Planning Statement. It outlines the Northern Beaches' direction for housing, employment, transport, recreation, environment and infrastructure over the next 20 years. It will help guide future land use decisions through planning priorities, principles and actions that build on the strengths and opportunities for the Northern Beaches as well as addressing key issues and challenges.

The Planning Proposal is consistent with the following priorities contained in *Towards 2040*.

- Priority 1 - Healthy and valued coast and waterways

The Planning Proposal will protect and enhance the ecological condition of the catchments, waterways and their riparian areas. It will improve the quality of water discharged to beaches, waterways, riparian areas and bushland. Rezoning of subject land will conserve watercourses and will restore them to their natural state.

- Priority 2 - Protected and enhanced bushland and biodiversity

The Planning Proposal will conserve and restore threatened species habitat and will retain native vegetation and maintain ecological functions in wildlife corridors.

- Priority 3 - Protected scenic and cultural landscapes

The Planning Proposal will enhance and protect views of scenic and cultural landscapes from public areas.

- Priority 4 - Protected Metropolitan Rural Area

The Planning Proposal will protect biodiversity values for riparian corridors and areas that support threatened species, communities and populations and on lands identified for biodiversity connectivity.

- Priority 6 - High quality open space for recreation

The Planning Proposal will improve the provision, diversity and quality of open space for recreation, and will use open space to connect people to nature. Rezoning of subject properties will ensure new open space contributes to, connects and enhances the local green grid. Further, it will ensure access to natural open space and waterways is sustainable so that these areas are preserved for the future.

Warringah DCP Native Vegetation, and Waterways and Riparian Lands Mapping

The subject lots are identified in the Warringah DCP 2011 as predominantly “Native Vegetation” and to a lesser extent, “Waterways and Riparian Lands” (see Figure 6 below). The DCP outlines Objectives relating to this land and states that these objectives must be satisfied by technical studies for certain development as follows:

In relation to land identified on the DCP Native Vegetation Map (WDCP2011 Section E5), the following is sought:

- To preserve and enhance the area’s amenity, whilst protecting human life and property.
- To improve air quality, prevent soil erosion; assist in improving water quality, carbon sequestration, storm water retention, energy conservation and noise reduction.
- To provide natural habitat for local wildlife, maintain natural shade profiles and provide psychological & social benefits.
- To promote the retention of native vegetation in parcels of a size, condition and configuration which will as far as possible enable local plant and animal communities to survive in the long term.
- To maintain the amount, local occurrence and diversity of native vegetation in the area

In relation to land identified on the DCP Waterway or Riparian Land Map (WDCP2011 Section E8), the following is sought:

- To protect, maintain and enhance the ecology and biodiversity of waterways and riparian land.
- To encourage development to be located outside waterways and riparian land.
- To avoid impacts that will result in an adverse change in watercourse or riparian land condition.
- To minimise risk to life and property from stream bank erosion and flooding by incorporating appropriate controls and mitigation measures.

- To maintain and improve access, amenity and scenic quality of waterways and riparian lands.
- Development on waterways and riparian lands shall aim to return Group B and Group C creeks to a Group A standard (as described in Warringah Creek Management Study, 2004) through appropriate siting and development of development.

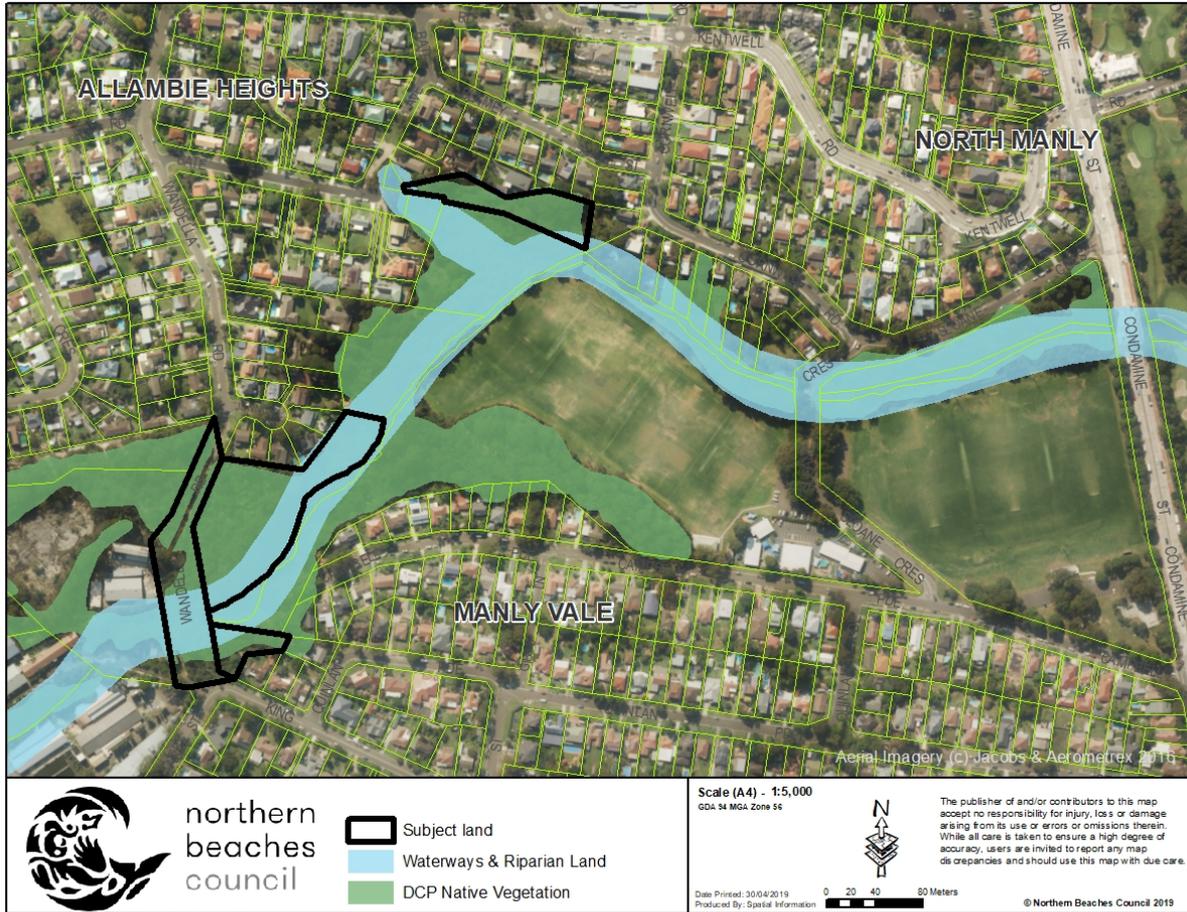


Figure 6 – Native Vegetation and Waterways & Riparian Lands DCP mapping

Local Habitat Strategy (Warringah Council, 2007)

This strategy outlines the state of habitat in Warringah and suggests actions Council can take, in partnership with the community, to preserve, protect and restore habitat areas. The Strategy identifies “Local Habitat” which was defined as any area which provides food, shelter and opportunities to breed for native plants and animals, within the former Warringah LGA.

The objectives of this strategy are as follows:

- Local habitat is recognised, maintained and improved throughout Warringah
- Warringah’s community values habitat and is actively involved in its protection and improvement

The subject lots are mapped as “existing vegetation” within this strategy (See Figure 7).

The subject lots and surrounding areas, particularly around Mermaid Pools, have undergone significant restoration fuelled by volunteers within the community. In this regard the Strategy objectives are being satisfied in relation to the subject lots. The Biodiversity Study being undertaken in conjunction with the Planning Proposal will provide a more detailed and updated species list and habitat assessment for the subject lots and surrounding land to further establish the value of this habitat for local native species.

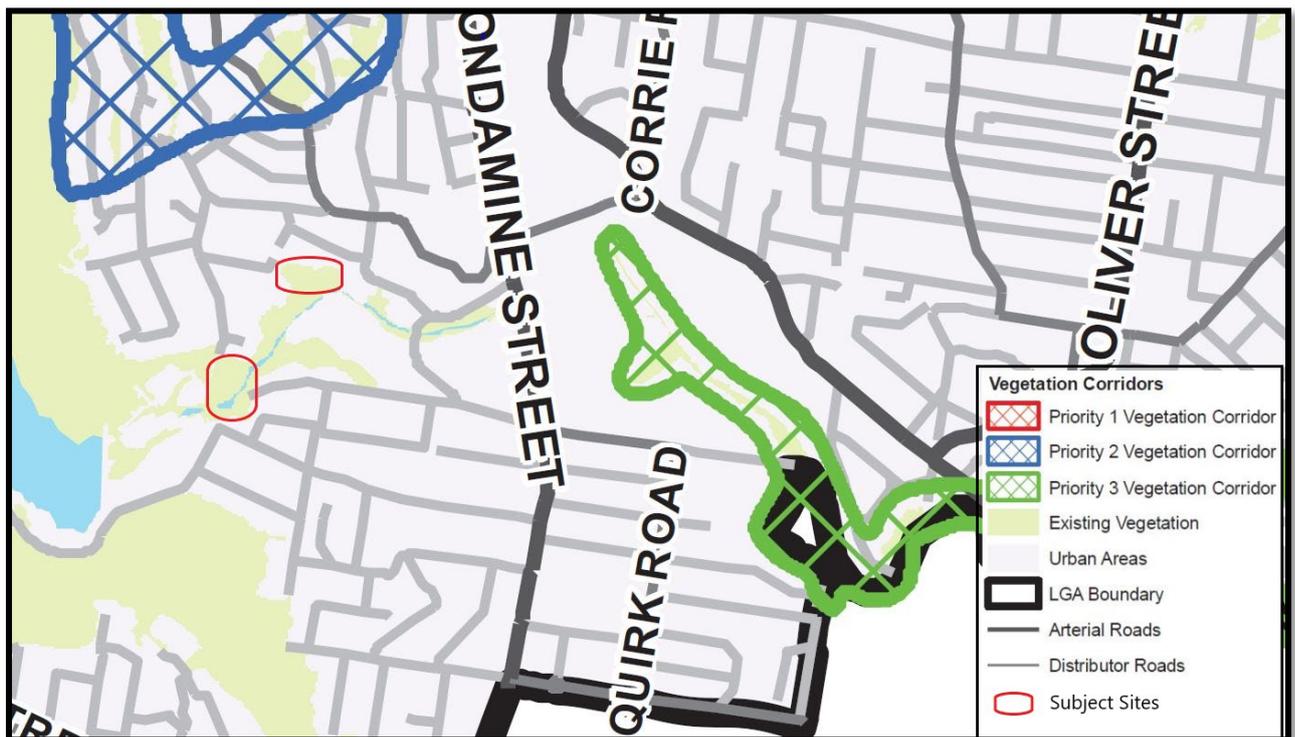


Figure 7 – Local Habitat Strategy mapping (Warringah Council, 2007)

Warringah Creek Management Study, 2000

The Manly Creek sub-catchment covers an area of approximately 810 ha. Upstream of Manly Dam, steep headwaters tributaries in the north-western corner of the Manly Dam Reserve flow through natural bushland into the main stream (known as Curl Curl Creek) which feeds into Manly Reservoir. The section downstream of the Manly Dam (known as Manly Creek) flows through a bedrock controlled, discontinuous floodplain, surrounded by parkland and residential development, before flowing under the Condamine Street Bridge and adjoining Brookvale Creek immediately upstream of Passmore Reserve. The catchments surrounding the upper and lower reaches are less than 10% impervious and over 30% impervious, respectively. Major users of the creek’s water include research laboratories and Warringah Golf Course.

Figure 8 shows a core riparian zone of approximately 30m in total width with an additional buffer zone of approx. 5-10m on either side of the creek.

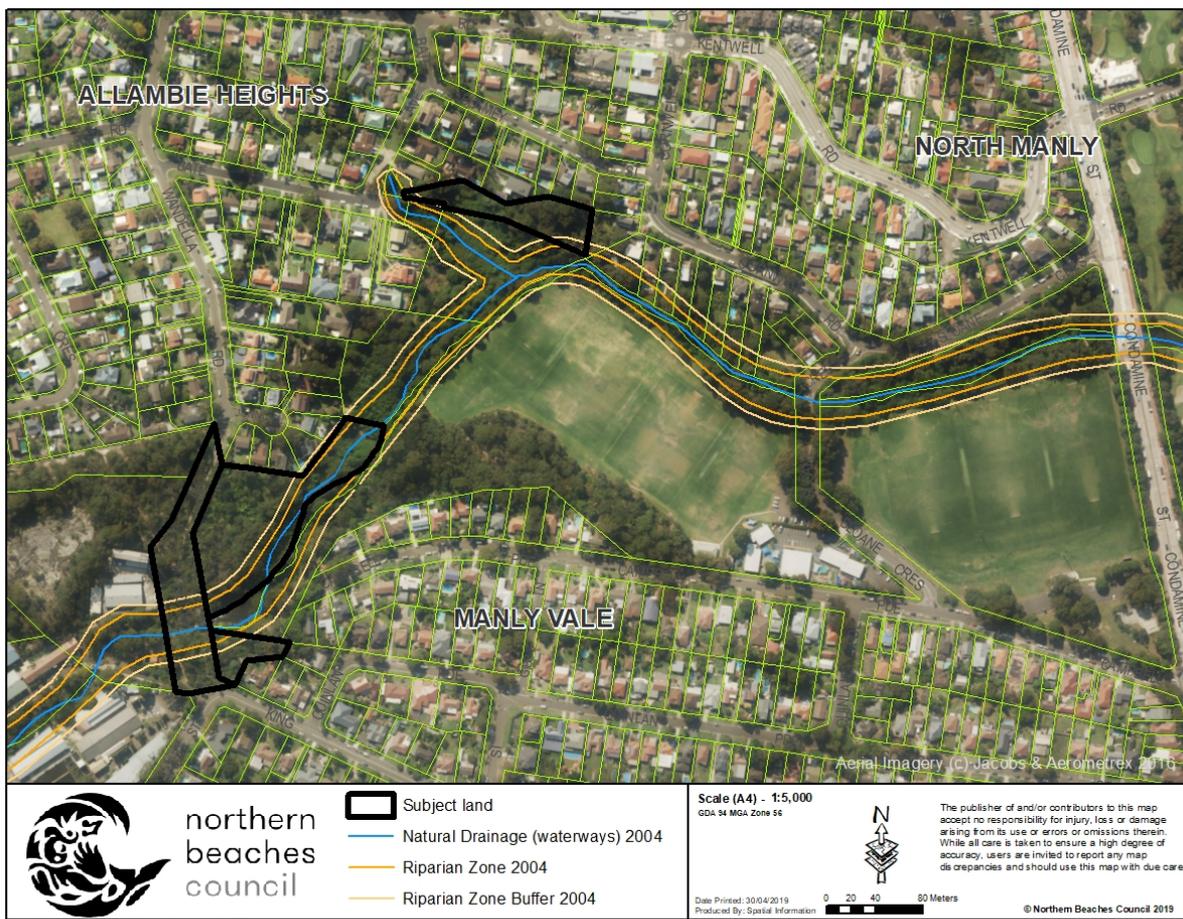


Figure 8 – Manly Creek Riparian Zone and Buffer (Warringah Council, 2000)

Connected Corridors for Biodiversity project by Southern Sydney Regional Organisation of Councils in December 2016

This project provides Council with tools for habitat corridor mapping across Sydney and identifies the subject lots as 'Priority Habitat'. The main aim of the Connected Corridors for Biodiversity project was to create tools to be used by Councils to facilitate increased habitat connectivity. This included the preparation of a habitat corridor map.

The subject lots and surrounding land are mapped as "Priority Habitats" within the Connected Corridors for Biodiversity project by Southern Sydney Regional Organisation of Councils in December 2016. See Figure 9.



Figure 9 – Biodiversity Corridor linking Manly Dam to the coast (SSROC 2016)

The Sydney Metropolitan Catchment Management Authority V3 mapping (OEH 2016)

The Sydney Metropolitan Catchment Management Authority map some areas of the subject lots and surrounding land as being made up of 3 Plant Community Types (PCT) (Figure 10).

- PCT 1250 - S_DSF09: Coastal Sandstone Gully Forest
- PCT 1783 - S_DSF11: Sydney North Exposed Sandstone Woodland
- PCT 1824 - S_HL08: Coastal Sandstone Heath-Mallee

Coastal Sandstone Gully Forest (PCT1250, S_DSF09) is known to support at least five rare plant species (*Angophora crassifolia*, *Darwinia procera*, *Eucalyptus luehmanniana*, *Hibbertia nitida* and *Lomandra brevis*), and fourteen species rare in northern Sydney (*Amyema pendulum*, *Blechnum minus*, *Deyeuxia decipiens*, *Eucalyptus capitellata*, *E. scias*, *Gahnia radula*, *Juncus pallidus*, *Lepidosperma elatius*, *Lycopodiella cernua*, *Ophioglossum lusitanicum*, *Prostanthera denticulata*, *Utricularia australis*, *U. uliginosa* and *Xanthorrhoea minor*).

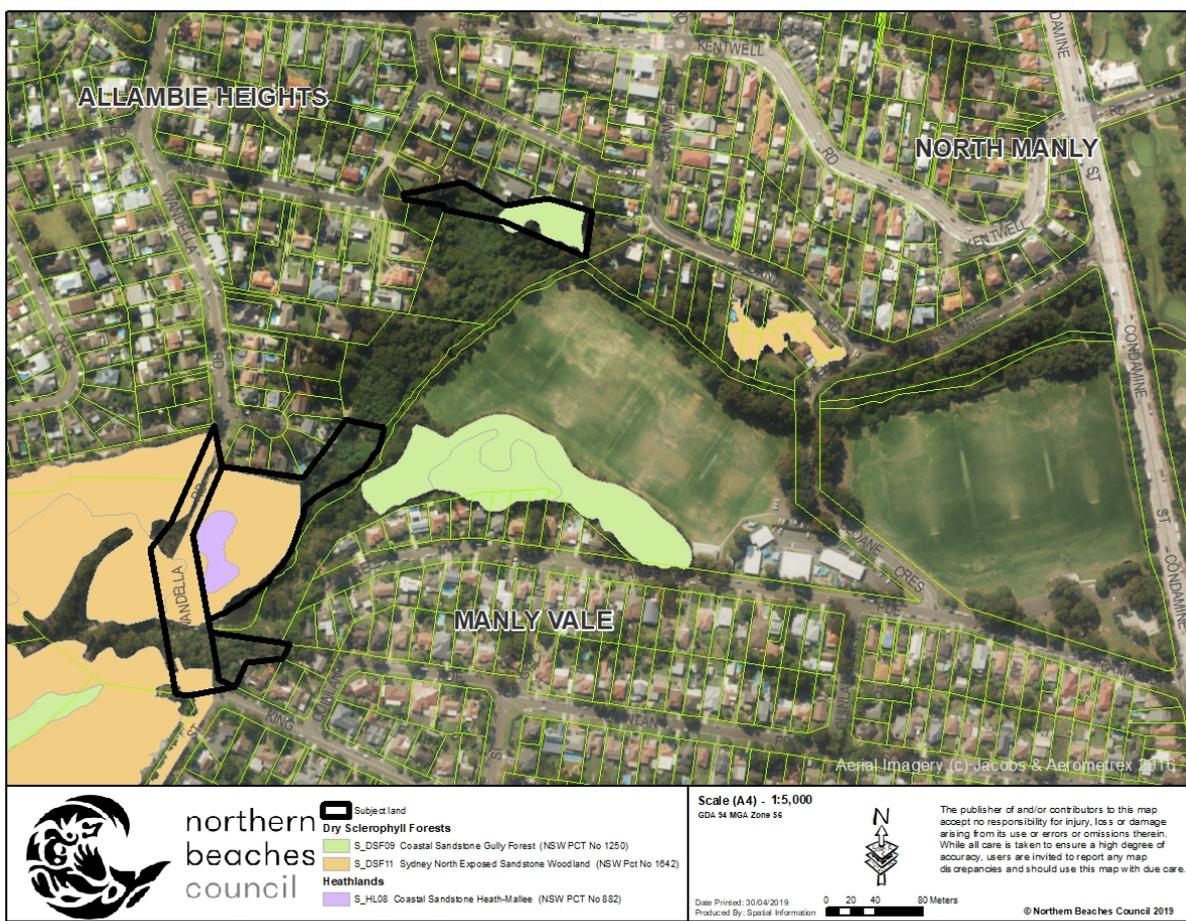


Figure 10 – SMCMA V3 mapping (OEH 2016)

Manly Creek/Mermaid's Pool Restoration Plan (Total Earth Care 2003)

In 2003, Total Earth Care Pty Ltd was commissioned by Warringah Council to prepare a Restoration Plan for the Mermaid's Pool reach of Manly Creek. The Study Area encompassed all publicly owned land on both sides of Manly Creek between the Manly Dam wall (to the west) and Condamine Street (to the east), excluding the playing fields within David Thomas Reserve and Millers Reserve. This study included a flora and fauna field survey, an assessment of habitat, a discussion of threats to biodiversity, and recommended bushland restoration methods.

The primary recommendation of the Plan is that a comprehensive and ongoing biotic survey be undertaken so that the bushland management recommendations are amended periodically to ensure the study area is appropriately managed. This plan also suggested that the species lists provided in the Plan should be included in the Manly Dam Reserve species list. Council's Bushland and Biodiversity team advises the plans and actions associated with this Plan will assist in integrating the management of these contiguous bushland areas. The Planning Proposal, with the associated Biodiversity Study will fulfil the primary recommendation of this project.

Manly Dam species list project (Northern Beaches Council 2018)

This ongoing project lists species recorded within Manly Dam. The list currently contains as many as 97 bird species, 23 reptile species, 9 amphibian species, 13 mammal species, 6 fish species, and 320 flora species. Two threatened mammal species previously recorded are now locally extinct, the *phascolarctos cinereus* Koala and *dasyurus maculatus* Spotted-tailed Quoll.

Biodiversity Assessment on nearby Sydney Water land (Sydney Water 2018)

In 2018, Sydney Water undertook a comprehensive survey on their land adjacent to the Manly Dam wall, nearby to the subject lots. This survey identified an additional threatened species occurring including *chalinobus dwyeri* Large-eared pied bat (Vulnerable under the BC Act 2016 and the EPBC Act 1999), which has not been recorded within 5 km of the site in the NSW BioNet database.

The subject lots and surrounding land contain suitable potential breeding habitat for the *chalinobus dwyeri* Large-eared pied bat, which is listed as a SAI under the BC Act. "Habitat" for bat species is defined by OEH as, all areas of potential habitat on the subject land where the species is determined to be present. Potential habitat for this species is defined by OEH as "Potential breeding habitat is PCTs associated with the species within 100m of rocky areas containing caves, or overhangs or crevices, cliffs or escarpments, or old mines, tunnels, culverts, derelict concrete buildings. Surveys must be undertaken as per the Threatened Bat Survey Guide to confirm breeding habitat". The study also notes the potential presence of 2 other threatened bat species.

Council's Bushland and Biodiversity team advise this project demonstrates that previously unrecorded threatened species are still being recorded within the locality and that further biodiversity surveys are required to determine whether threatened species or species habitat are located on the land.

Manly Warringah War Memorial Park Plan of Management

While this Plan of Management does not apply to the subject Crown land for rezoning, it is relevant in that it states that 'Bushland linkages need to be protected and enhanced to enable movement of flora and fauna between reserves in Warringah' (p61). In this regard, the subject land parcels are recognised as important strategic Bushland linkages in the vicinity of, and connected with Manly Warringah War Memorial Park.

Other Local Reports and Investigation

Council has been advised of Community investigations and support for the establishment of a small bird habitat corridor comprising the Mermaid Pool locality and outlined by Greater Sydney Landcare Network (and Save Manly Dam Catchment Committee). These strategic initiatives are supported by the Greater Manly Residents Forum, Birdlife Australia, Humaine Society International and STEP Inc. Current investigations support the suitability of the proposed

corridor given the large areas of dense undisturbed vegetation, connectivity with surrounding reserves, and refuge from other predation and other impacts on the fringe of residential areas.

A Species Impact Statement by Kleinfelder (for Manly Vale Public School) identified small birds of significance (Eastern Spinebill, Superb Fairy Wren, Red Browned Finch, Spotted Pardalote, New Holland Honey Eater, White Browned Scrub Wren). Further independent surveys identified Scarlet Honey Eater, Little Wattlebird, Brown Thornbill & Black Faced Cuckoo Shrike. Upstream at Manly Dam Reserve over 80 bird species have been recorded.

5. Is the Planning Proposal consistent with applicable State Environmental Planning Policies?

The Planning Proposal is consistent with applicable State Environmental Planning Policies as shown in the following Table 1.

Table 1. Compliance with State Environmental Planning Policies (SEPPs)

| SEPPs (as at September 2017) | | Applicable | Consistent |
|------------------------------|---|------------|------------|
| 1 | Development Standards | NO | N/A |
| 19 | Bushland in Urban Areas | YES | YES |
| 21 | Caravan Parks | NO | N/A |
| 33 | Hazardous and Offensive Development | NO | N/A |
| 36 | Manufactured Home Estates | NO | N/A |
| 44 | Koala Habitat Protection | NO | N/A |
| 47 | Moore Park Showground | NO | N/A |
| 50 | Canal Estate Development | NO | N/A |
| 55 | Remediation of Land | NO | N/A |
| 64 | Advertising and Signage | NO | N/A |
| 65 | Design Quality of Residential Apartment Development | NO | N/A |
| 70 | Affordable Housing (Revised Schemes) | NO | N/A |
| | Coastal Management 2018 | NO | N/A |
| | (Aboriginal Land) 2019 | NO | N/A |
| | (Affordable Rental Housing) 2009 | NO | N/A |
| | (Building Sustainability Index: BASIX) 2004 | NO | N/A |
| | (Concurrences) 2018 | NO | N/A |
| | (Education Establishments and Child Care Facilities) 2017 | NO | N/A |
| | (Exempt and Complying Development Codes) 2008 | NO | N/A |
| | (Gosford City Centre) 2018 | NO | N/A |
| | (Housing for Seniors or People with a Disability) 2004 | NO | N/A |
| | (Infrastructure) 2007 | YES | YES |
| | (Kosciuszko National Park – Alpine Resorts) 2007 | NO | N/A |
| | (Kurnell Peninsula) 1989 | NO | N/A |
| | (Mining, Petroleum Production and Extractive Industries) 2007 | NO | N/A |
| | (Miscellaneous Consent Provisions) 2007 | NO | N/A |
| | (Penrith Lakes Scheme) 1989 | NO | N/A |
| | (Primary Production and Rural Development) 2019 | NO | N/A |
| | (State and Regional Development) 2011 | NO | N/A |
| | (State Significant Precincts) 2005 | NO | N/A |
| | (Sydney Drinking Water Catchment) 2011 | NO | N/A |
| | (Sydney Region Growth Centres) 2006 | NO | N/A |
| | (Three Ports) 2013 | NO | N/A |
| | (Urban Renewal) 2010 | NO | N/A |
| | (Vegetation in Non-Rural Areas) 2017 | YES | YES |
| | (Western Sydney Employment Area) 2009 | NO | N/A |
| | (Western Sydney Parklands) 2009 | NO | N/A |

| Sydney Regional Environmental Plans (Deemed SEPPs): | | | |
|---|---|----|-----|
| | (Sydney Harbour Catchment) 2005 | NO | N/A |
| 8 | (Central Coast Plateau Areas) | NO | N/A |
| 9 | Extractive Industry (No 2 -1995) | NO | N/A |
| 16 | Walsh Bay | NO | N/A |
| 20 | Hawkesbury – Nepean River (No 2 – 1997) | NO | N/A |
| 24 | Homebush Bay Area | NO | N/A |
| 26 | City West | NO | N/A |
| 30 | St Marys | NO | N/A |
| 33 | Cooks Cove | NO | N/A |

In relation to applicable SEPPs listed at Table 1, the following comments are provided regarding how the Planning Proposal is either consistent or inconsistent with the SEPPs as follows:

SEPP 19 - Bushland in Urban Areas

The Planning Proposal is consistent with SEPP 19 -Bushland in Urban Areas on the basis that bushland within the urban area is being protected and preserved bushland because of:

- (a) its value to the community as part of the natural heritage,
- (b) its aesthetic value, and
- (c) its value as a recreational, educational and scientific resource.

SEPP (Infrastructure) 2007

The Planning Proposal is consistent with SEPP (Infrastructure) 2007 on the basis that the proposed Public Recreational zone will continue to facilitate the effective delivery of infrastructure and the provision of services.

SEPP (Vegetation in Non-Rural Areas) 2017

The Planning Proposal is consistent with SEPP (Vegetation in Non-Rural Areas) 2007 on the basis that the proposed Public Recreational zone will continue to preserve trees and other vegetation and protect the biodiversity values of trees and other vegetation in non-rural areas of the State but with particular regard to the land the subject of the Planning Proposal.

Is the planning proposal consistent with applicable Ministerial Directions?

Applicable Directions are summarised at Table 2 below including comments on each of the applicable directions. The following comments are provided regarding where the Planning Proposal may be inconsistent with the terms of any direction, and any such inconsistencies are addressed below as follows:

Direction 3.1 Residential Zones

This direction applies as the Planning Proposal affects land within an existing residential zone i.e. Zone R2 Low Density Residential.

Under clause 3.1(1) of the Direction, the objectives of this direction are:

- (a) to encourage a variety and choice of housing types to provide for existing and future housing needs,
- (b) to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and
- (c) to minimise the impact of residential development on the environment and resource lands.

Under clause 3.1(4) & (5) of the Direction, the Planning Proposal must:

- (4) include provisions that encourage the provision of housing that will:

- (a) broaden the choice of building types and locations available in the housing market, and
- (b) make more efficient use of existing infrastructure and services, and
- (c) reduce the consumption of land for housing and associated urban development on the urban fringe, and
- (d) be of good design.

(5) in relation to land to which this direction applies:

- (a) contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and
- (b) not contain provisions which will reduce the permissible residential density of land.

The Planning Proposal is inconsistent with the above requirements as the proposed rezoning will not provide for residential development on the subject land. In this regard, a planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are:

(a) justified by a strategy which:

- (i) gives consideration to the objective of this direction, and
- (ii) identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and
- (iii) is approved by the Director-General of the Department of Planning, or
- (b) justified by a study prepared in support of the planning proposal which gives consideration to the objective of this direction, or
- (c) in accordance with the relevant Regional Strategy, Regional Plan or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or
- (d) of minor significance.

The provisions of the Planning Proposal that are inconsistent are considered to be of minor significance for the following reasons:

- While the land is subject to an existing residential zone, the Planning Proposal supports and fully justifies a future zone that is not a residential zone in which residential development is not permitted or proposed to be permitted
- The Planning Proposal is confined to 4 parcels of Crown Land which comprises part of a wider Open Space Reserve for public purposes
- The provisions of a variety and choice of housing types and the existing and future housing needs will not be effected by the Planning Proposal
- The environmental studies and strategies identified in this report provide detailed support for the proposed non-residential zoning of the land
- The Planning Proposal seeks to minimise the impact of residential development on the environment by rezoning the land to Zone RE1 Public Recreation, consistent with the remainder of the Public Reserve and consistent with the ecological, scientific, cultural and aesthetic values of the land.

Direction 6.2 - Reserving Land for Public Purposes

This direction applies as the Planning Proposal seeks to create a new zone requiring the approval of the relevant public authority and the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General).

Under clause 6.2(1) of the Direction, the objectives of this direction are:

- (a) to facilitate the provision of public services and facilities by reserving land for public purposes, and

- (b) to facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition.

Under clause 6.2(4) of the Direction, the Planning Proposal must:

- (a) not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the relevant public authority and the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General).

Other requirements apply at paragraphs (5)-(7) in respect of when a Minister or public authority may request that Council reserve land for a public purpose and in other circumstances where the land is to be acquired under Division 3 of Part 2 of the Land Acquisition (Just Terms Compensation) Act 1991.

The Planning Proposal seeks to rezone certain Crown Land parcels from a residential zone to Zone RE1 Public Recreation. It has been prepared with the preliminary support of the Regional Crown Lands Office as detailed in the report. The Planning Proposal does not involve the reservation of land and does not involve changes to the LEP Land Acquisition Map. As outlined in Section D of this Planning Proposal, NSW Crown Lands was consulted in accordance with the Gateway Determination.

In relation to Ministerial Direction 5.11 Development of Aboriginal Land Council land, this Direction is not applicable as the subject land is not located on the Land Application Map of State Environmental Planning Policy (Aboriginal Land) 2019. The land is however subject to a claim made by Aboriginal Land Council elsewhere addressed in this report.

Table 2: Ministerial (Local Planning) Directions – Summary of Applicable Directions

| Ministerial Direction | Comment |
|--|---|
| 1 Employment and Resources | |
| 1.1 Business and Industrial Zones | Not applicable |
| 1.2 Rural Zones | Not applicable |
| 1.3 Mining, Petroleum Production and Extractive Industries | Not applicable |
| 1.4 Oyster Aquaculture | Not applicable |
| 1.5 Rural Lands | Not applicable |
| 2 Environment and Heritage | |
| 2.1 Environment Protection Zones | Applicable and consistent |
| The objective of this direction is to protect and conserve environmentally sensitive areas. | The Planning Proposal seeks to rezone certain lands which will facilitate the protection and conservation of environmentally sensitive areas and does not reduce any environmental protection standards that apply to the land. |
| 2.2 Coastal Protection | Not applicable |
| 2.3 Heritage Conservation | Applicable and consistent |
| The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance. | While the Planning Proposal applies to certain lands which are listed as heritage significant, the proposed rezoning is not considered to impact on the heritage significance of any listed heritage item as detailed in the Planning Proposal. |
| 2.4 Recreation Vehicle Areas | Not applicable |
| 2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEP's | Not applicable |

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| 3. Housing, Infrastructure and Urban Development | |
| 3.1 Residential Zones | Applicable |
| The objectives of this direction are to: a) encourage a variety of choice of housing types to provide for existing and future housing needs, b) to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and c) To minimise the impact of residential development on the environment and resource lands. | Inconsistency with the terms of this Direction is addressed in accordance with the requirements of the Direction above in detail. |
| 3.2 Caravan Parks and Manufactured Home Estates | Not applicable |
| 3.3 Home Occupations | Not applicable |
| 3.4 Integrating Land Use and Transport | Applicable and consistent |
| The objective of this direction is to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve the following planning objectives: (a) improving access to housing, jobs and services by walking, cycling and public transport, and (b) increasing the choice of available transport and reducing dependence on cars, and (c) reducing travel demand including the number of trips generated by development and the distances travelled, especially by car, and (d) supporting the efficient and viable operation of public transport services, and (e) providing for the efficient movement of freight. | This direction applies as the planning proposal will alter zones or provisions relating to urban land, including land zoned for residential purposes. In this regard the planning proposal is consistent with the aims, objectives and principles of Improving Transport Choice – Guidelines for planning and development (DUAP 2001). |
| 3.5 Development Near Licensed Aerodromes. | Not applicable. |
| 3.6 Shooting Ranges. | Not applicable. |
| 3.7 Reduction in non-hosted short term rental accommodation. | Not applicable. |
| 4. Hazard and Risk | |
| 4.1 Acid Sulfate Soils | Applicable and consistent. |
| The objective of this direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils. | While the Planning Proposal applies to certain lands contained on LEP Acid Sulfate Soils Planning Maps, the existing provisions adequately regulate works and are consistent with the Acid Sulfate Soils Planning Guidelines. |
| 4.2 Mine Subsidence and Unstable Land | Not applicable |
| 4.3 Flood Prone Land | Applicable and consistent. |
| The objectives of this direction are: (a) to ensure that development of flood prone land is consistent with the NSW | While the Planning Proposal partly applies to certain lands identified as Flood Prone Land (see Figure 11), the existing provisions |

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| <p>Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005, and (b) to ensure that the provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land.</p> | <p>adequately regulate works and are consistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005. Water management facilities may be designed and constructed in accordance with these requirements more readily on larger sites identified in the planning proposal.</p> |
| <p>4.4 Planning for Bushfire Protection</p> | <p>Applicable and consistent.</p> |
| <p>The objectives of this direction are: (a) to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, and (b) to encourage sound management of bush fire prone areas.</p> | <p>Appropriate consideration was given to the subject land as it is mapped as bushfire prone (see Figure 12).</p> <p>Further, in accordance with the Gateway Determination, Council consulted with the Commissioner of the NSW Rural Fire Service prior to community consultation.</p> <p>The correspondence received in response provided the following comments for consideration:</p> <p><i>It is noted that there are several permitted uses, with consent, within the proposed Public Recreation Zone RE1 under the Warringah LEP 2011 which the NSW RFS consider to be inappropriate due to the bushfire risk. Some uses are Special Fire Protection Purpose developments under PBP, and require larger APZs than residential development. The requirement for complying APZs under PBB would require significant vegetation clearing and ongoing management which would be inconsistent with the objectives of the zone:</i></p> <ul style="list-style-type: none"> • <i>To protect and enhance the natural environment for recreational purposes.</i> <p><i>In the preparation of the new Northern Beaches LEP, Council should consider prohibiting inappropriate development.</i></p> <p>It is noted that the RE1 Public Recreation zone permits developments that the NSW RFS consider inappropriate due to the bush fire risk, including some Special Fire Protection Purpose developments, which require larger APZs. However, it is also noted that the current zone (R2 Low Density Residential) permits the same Special Fire Protection Purpose developments, including additional ones.</p> |

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| | <p>The proposed RE1 zone will prohibit many land uses which could be Special Fire Protection Purpose developments including bed and breakfast accommodation, boarding houses and group homes, as well as prohibiting dwelling houses.</p> <p>Further, in the unlikely circumstance that a Development Application was lodged for a Special Fire Protection Purpose development requiring '<i>...significant vegetation clearing and ongoing management which would be inconsistent with the objectives of the zone...</i>', or other development requiring the clearing of vegetation, it is unlikely that Council would support the proposed development given the environmental value of the land, which has been demonstrated in several documents outlined in this Planning Proposal.</p> |
| 5 Regional Planning | |
| 5.1 Implementation of Regional Strategies | Not applicable |
| 5.2 Sydney Drinking Water Catchments | Not applicable |
| 5.3 Farmland of State and Regional Significance on the NSW Far North Coast | Not applicable |
| 5.4 Commercial and Retail Development along the Pacific Highway, North Coast | Not applicable |
| 5.5 Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA) (Revoked 18 June 2010) | Not applicable |
| 5.6 Sydney to Canberra Corridor (Revoked 10 July 2008 See amended Direction 5.1) | Not applicable |
| 5.7 Central Coast (Revoked 10 July 2008. See amended Direction 5.1) | Not applicable |
| 5.8 Second Sydney Airport: Badgerys Creek | Not applicable |
| 5.9 North West Rail Link Corridor Strategy | Not applicable |
| 5.10 Implementation of Regional Plans | Not applicable |
| 5.11 Development of Aboriginal Land Council land | Not applicable |
| 6. Local Plan Making | |
| 6.1 Approval and Referral Requirements | Applicable and consistent. |
| The objective of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development. | <p>The Planning Proposal is consistent with the terms of this direction as follows:</p> <p>a) provisions that require the concurrence, consultation or referral of DAs to a Minister or public authority are minimised</p> <p>(b) no provisions are contained in the Planning Proposal requiring concurrence, consultation or referral of a Minister or public authority without approval prior to undertaking consultation.</p> <p>(c) no development is identified as designated development.</p> |
| 6.2 Reserving Land for Public Purposes | Applicable and possibly inconsistent. |

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|--|--|
| The objectives of this direction are: (a) to facilitate the provision of public services and facilities by reserving land for public purposes, and (b) to facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition. | Approval requirements of the relevant public authority and Department Secretary under the terms of this Direction are addressed above in detail. |
| 6.3 Site Specific Provisions | Applicable and consistent. |
| The objective of this Direction is to discourage unnecessarily restrictive site specific planning controls. | The Planning Proposal does not seek to allow a particular development proposal under the terms of the Direction. |
| 7 Metropolitan Planning | |
| 7.1 Implementation of A Plan for Growing Sydney | Applicable and consistent. |
| The objective of this direction is to give legal effect to the planning principles; directions; and priorities for subregions, strategic centres and transport gateways contained in A Plan for Growing Sydney. | The Planning Proposal is consistent with the NSW Government's Greater Sydney Regional Plan "A Metropolis of Three Cities – connecting people" published on 18 March 2018, as outlined in Part 3, Section B of this report. |
| 7.2 Implementation of Greater Macarthur Land Release Investigation | Not applicable |
| 7.3 Parramatta Road Corridor Urban Transformation Strategy | Not applicable |
| 7.4 Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan | Not applicable |
| 7.5 Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan | Not applicable |
| 7.6 Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan | Not applicable |
| 7.7 Implementation of Glenfield to Macarthur Urban Renewal Corridor | Not applicable |
| 7.8 Implementation of Western Sydney Aerotropolis Interim Land Use and Infrastructure Implementation Plan | Not applicable |
| 7.9 Implementation of Bayside West Precincts 2036 Plan | Not applicable |
| 7.10 Implementation of Planning Principles for the Cooks Cove Precinct | Not applicable |

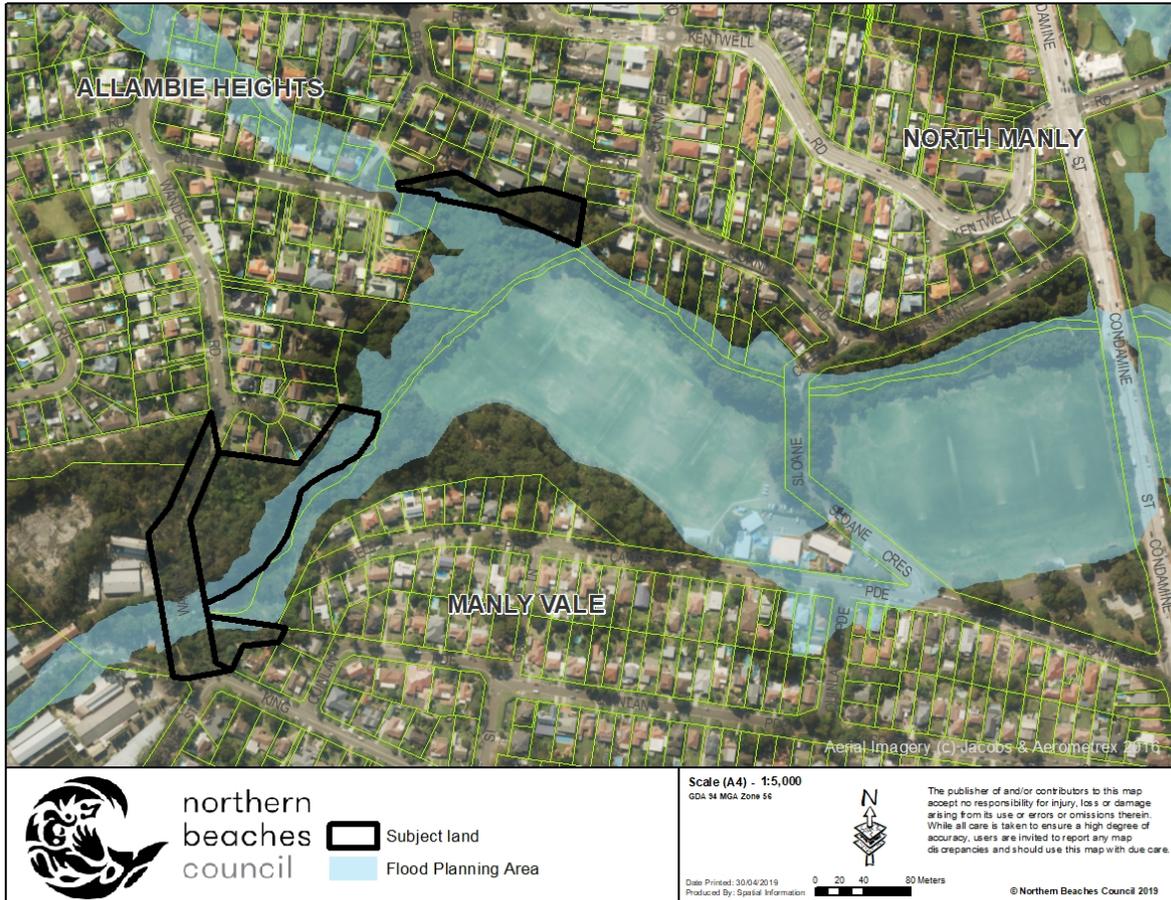


Figure 11 – Flood Planning Area

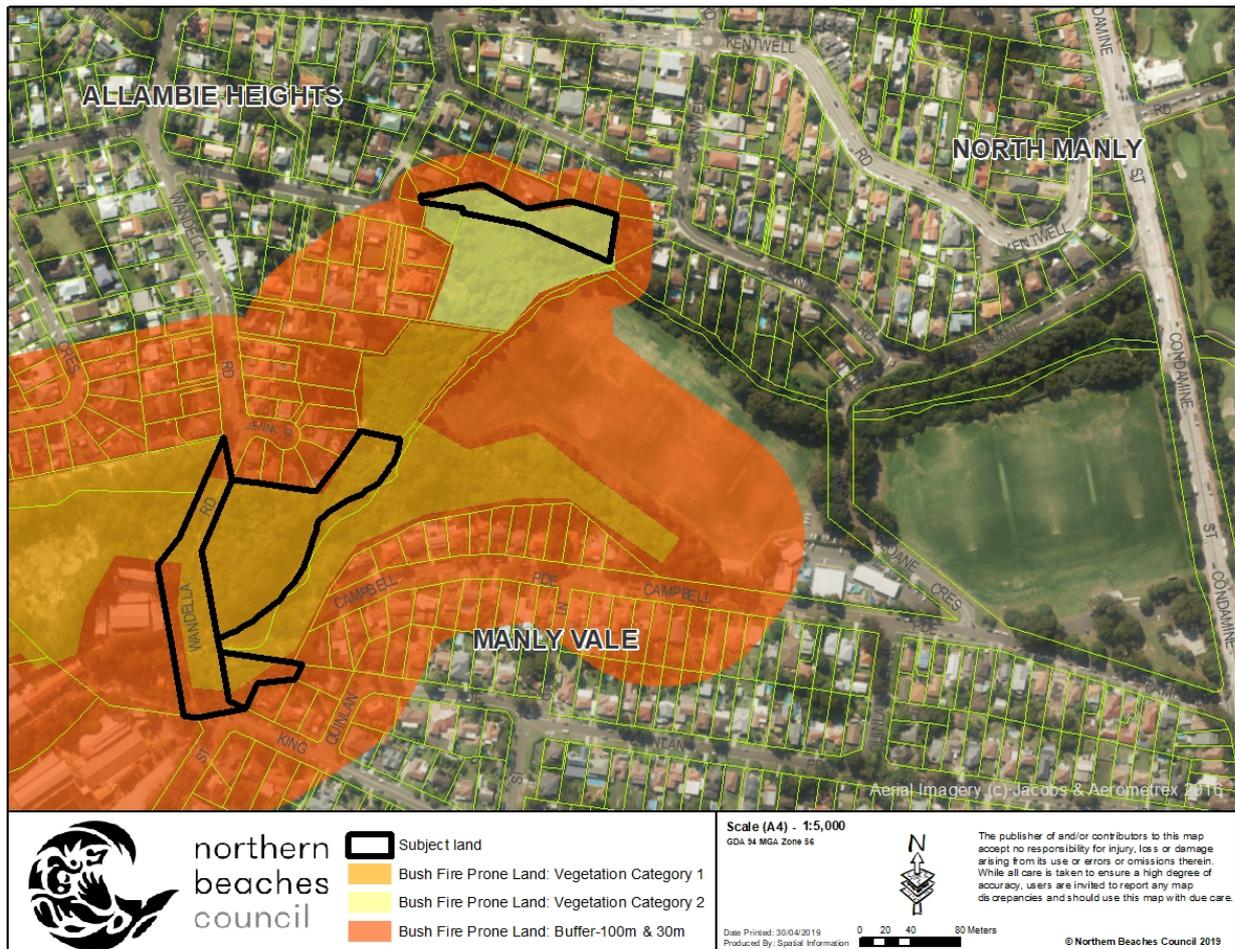


Figure 12 – Bushfire Prone Lands Map

6. Other Legislation under the Strategic Planning Framework

Biodiversity Conservation Act 2016

Biodiversity Values Mapping by the Office of Environment and Heritage (OEH) in 2018 under the Biodiversity Conservation Act 2016 acts as one of the thresholds for entry into the Biodiversity Offsets Scheme. This map is published by the OEH under the Biodiversity Conservation Regulation 2017. This tool identifies ‘Biodiversity Value’ within some parts of the subject lots due to the presence of species with potential for ‘serious and irreversible impacts on biodiversity values under section 6.5 (2) of the Act’.

Lot 7369 DP 1165551 is identified as having “Biodiversity Value” on the Biodiversity Values Map and Threshold Tool (<https://www.lmbc.nsw.gov.au/Maps/index.html?viewer=BOSETMap>) due to the presence of potential habitat for *prostanthera marifolia* Seaforth Mintbush. Habitat for this species is currently only known from the northern Sydney suburb of Seaforth and has a very highly restricted distribution within the Sydney Basin Bioregion.

Prostanthera marifolia, Seaforth Mintbush has been identified as a species where there is potential for serious and irreversible impacts because of the very small population (principle 2) and its very limited distribution (principle 3). To date no individuals have been recorded within the lot. The upcoming Biodiversity Study will include targeted surveys to investigate and map suitable habitat at a site-scale and determine presence/absence of the species.

Aboriginal Land Rights Act 1983

Under clause 36 of the Aboriginal Land Rights Act 1983, provisions exist for claims to Crown lands made by Aboriginal Land Councils. The Planning Proposal comprises certain lands subject to undetermined land claims under the Aboriginal Land Rights Act 1983. In this regard, Figure 13 below, indicates the Land Claims provided by the Crown Lands Office. Having regard to these interests, the Crown Lands Office and NSW Department of Planning, Industry and Environment have been advised during the drafting of the Planning Proposal that consultation with the Metropolitan Local Aboriginal Land Council will be undertaken during Community Consultation/Public Exhibition.

The NSW Department of Planning, Industry and Environment have advised that ‘...there is no restriction on a planning proposal to rezone land proceeding where the relevant land is subject to a pending land claim’.

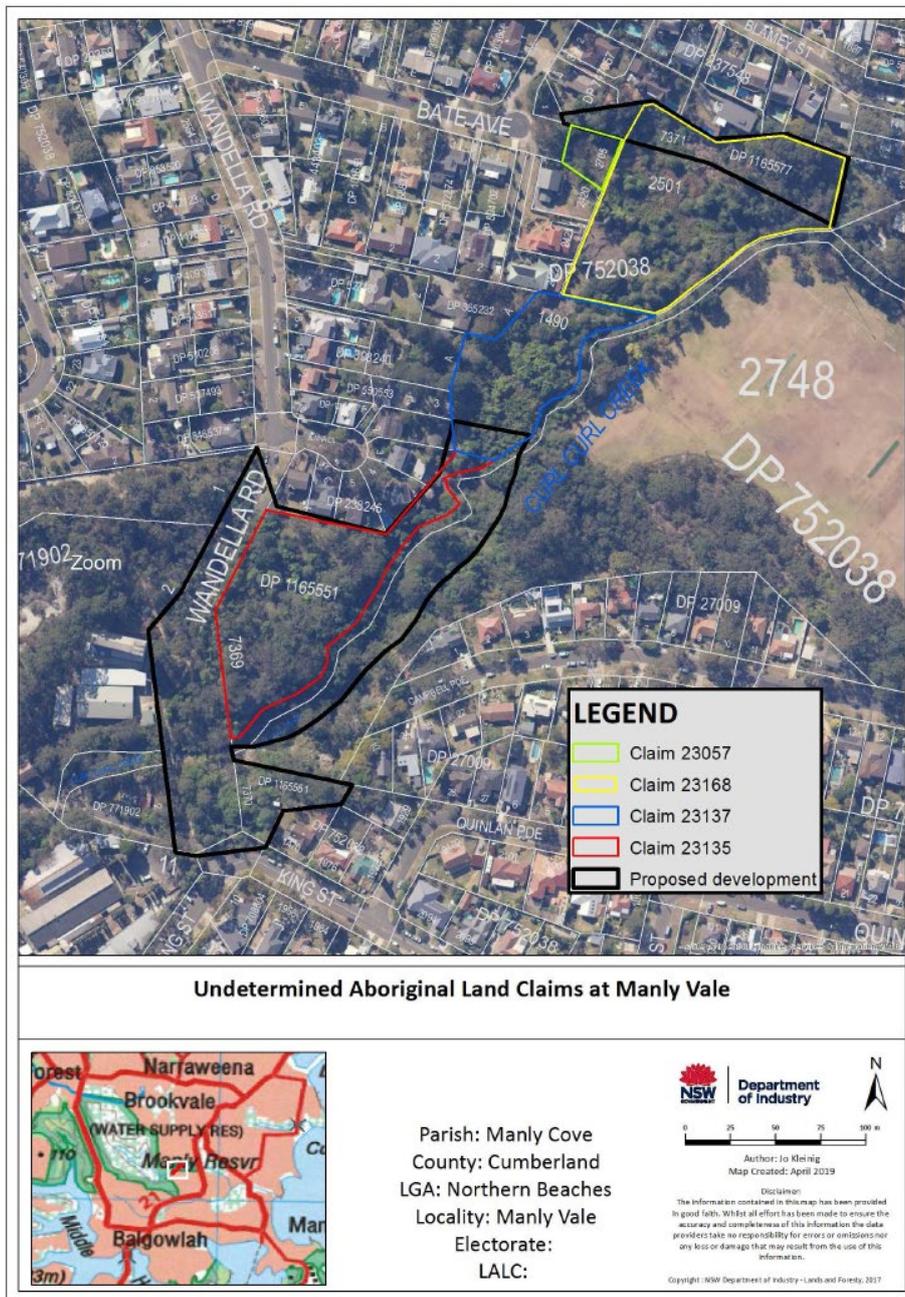


Figure 13 – Aboriginal Land Claims (undetermined)

Section C – Environmental, social and economic impact

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

No adverse effects on critical habitat or threatened species, populations or ecological communities, or their habitats are likely as a result of the proposal.

The proposed rezoning of certain lands will introduce new zone objectives and land use permissibility for the land that will provide for a range of recreational settings, activities and compatible land uses that will better address the local flora and fauna which characterise the land. The planning provisions will also better protect and enhance the natural environment and the values of the land. The likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats may be identified on the land will warrant further ecological study identified in the Planning Proposal.

Council's Bushland and Biodiversity Team review of Office of Environment & Heritage datasets of threatened species, populations in the vicinity (BioNet 10 x 10 km search - report generated on 18/12/2018 4:23 PM), returned 99 threatened and migratory species over 3,458 records. Since 2008, thirty-nine (39) of these species have been recorded in the area with 2,714 records.

The most abundant threatened species recorded within the locality is the *Prostanthera marifolia* Seaforth Mintbush, which is listed as Critically Endangered under both the NSW Biodiversity Conservation Act 2016 (BC Act 2016) and Commonwealth Environment Protection & Biodiversity Conservation Act 1999 (EPBC Act 1999), and the *Cercartetus nanus* Eastern Pygmy-possum, *Ninox strenua* Powerful Owl, *Varanus rosenbergi* Rosenberg's Goanna and *Pseudophryne australis* Red-crowned Toadlet, all listed as Vulnerable under the NSW BC Act 2016.

The Biodiversity Study prepared in conjunction with this Planning Proposal identifies the presence of threatened species currently utilising the subject lots. The threatened fauna detected were the Southern Myotis (*Myotis macropus*), Eastern Bentwing-bat (*Miniopterus schreibersii*), Little Bentwing-bat (*Miniopterus australis*), Grey headed Flying Fox (*Pteropus poliocephalus*), Black Bittern (*Ixobrychus flavicollis*), Powerful Owl (*Ninox strenua*), White-throated Needletail (*Hirundapus caudacutus*), Little Lorikeet (*Glossopsitta pusilla*), Swift Parrot (*Lathamus discolor*), Heath Monitor (*Varanus rosenbergi*) and Red-crowned Toadlet (*Pseudophryne australis*).

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

Council's Bushland & Biodiversity and Coast & Catchments teams have assisted in the preparation of the Planning Proposal and confirm that the likely environmental effects of the planning proposal will be to better protect manage and restore public land with ecological, scientific, cultural or aesthetic values.

The studies and mapping outlined and discussed in this Planning Proposal provide evidence that the subject lots are highly likely to contain habitat for local native species including threatened species, and are also likely to function as an important wildlife corridor, particularly for local native species including a range of bird species.

Council's Natural Environment and Climate Change Division advise as follows In relation to the proposed Zone (RE1) Objectives for the subject land:

- Objective 1: To enable land to be used for public open space or recreational purposes.

Response: The local community in conjunction with Save Manly Dam Catchment Committee have been working to protect the bushland around Mermaid Pool since 2002. The Mermaid Pool Volunteers meet regularly on the 4th Saturday of every month.

The area is well known locally for its beauty and natural resources, and is already heavily used for public recreation activities including bush walking, and picnics. This connects well with adjacent land for public recreation, including Manly Dam and David Thomas Reserve facilities.

The site has a long history of human-use and enjoyment for recreational activities. The area contains two (2) listed Aboriginal Places. The rezoning of the land will ensure the continuation of these activities at the site.

- Objective 2: To provide a range of recreational settings and activities and compatible land uses.

Response: As well as providing a range of recreational activities listed above, the subject lots and surrounding land provide a range of opportunities for educational activities such as community engagement programs, school educational programs, and the continuation of ongoing volunteer bush regeneration.

- Objective 3: To protect and enhance the natural environment for recreational purposes.

Response: As stated above, this land is well known for its beauty and natural resources, with stunning waterfalls, waterholes and sandstone cliff-faces in an otherwise urban landscape. The subject lots form part of a locally significant environmental feature and heritage site which should be protected and conserved, to be enjoyed by many future generations.

- Objective 4: To protect, manage and restore public land that is of ecological, scientific, cultural or aesthetic value.

Response: The subject land has important ecological, scientific, cultural *and* aesthetic value. Ecologically, this land provides potential and known habitat for hundreds of local native species. Scientifically, this land provides potential habitat for state and Commonwealth listed threatened species, including the Critically Endangered *Prostanthera marifolia* Seaforth Mintbush. Culturally, this land contains two (2) Aboriginal Places. Aesthetically, this land provides stunning natural land forms including waterfalls, and sandstone cliffs and escarpments.

- Objective 5: To prevent development that could destroy, damage or otherwise have an adverse effect on those values.

Response: From an ecological perspective, any development, except those permissible within RE1 zoning, may impact or otherwise have an adverse effect on the ecological, scientific, cultural and aesthetic values listed above and described throughout this referral.

The Biodiversity Study

A detailed biodiversity study was undertaken by ecological consultants, Niche Environment and Heritage, in conjunction with the Planning Proposal to assist with the future environmental management of the land.

The objectives of the study are as follows:

- Determine and map the NSW Plant Community Types (PCTs) on all vegetated areas;
- Undertake a comprehensive field survey including complete flora and fauna inventory, targeting threatened flora and fauna as well as small cryptic birds and introduced

species, in accordance with relevant government guidelines and including the most up-to-date survey methods;

- Record and map important habitat features and wildlife corridors, including known threatened species and small bird habitat, and;
- Report on findings and provide general recommendations to improve biodiversity values in the future.

The project was completed in July 2019. The conclusion of the report was:

'The study area contains areas valuable for the conservation of biodiversity in the Northern Beaches region. The site helps to link the more substantial bushland areas to the west with smaller patches of habitat and open space towards the coastal beaches. The site is also one of the closest patches of wooded habitat to North Head (Sydney Harbour National Park) which contains an endangered population of the Long-nosed Bandicoot (Perameles nasuta). The area is important habitat in its own right for a number of threatened animals. The preservation of this site is important for the ongoing welfare of wildlife in the local area.'

9. Has the Planning Proposal adequately addressed any social and economic effects?

The Planning Proposal will well ensure social and economic effects are addressed in the zoning of certain lands for Public Recreation (RE1). In terms of social effects, the rezoning aligns with community aspirations for the site including volunteer bushland regeneration events in an around the site. The proposed Public Recreation zone provides new zone objectives and a land use framework that will provide for a range of passive recreational activities and local amenity and values. In terms of economic effects, the proposal constitutes the optimal use of the land. Council does not foresee any significant economic consequences arising from the Planning Proposal. Any likely economic consequences arising for the Metropolitan Local Aboriginal Land Council in relation to current Land Claims will be informed by consultations to be undertaken as detailed in this Planning Proposal.

Aboriginal Heritage Office Comments

Comments received from the Aboriginal Heritage Office in relation to the Planning Proposal are as follows:

'Recorded Aboriginal rock art sites exist within the locality of the proposed rezoning ranging from paintings in excellent condition to those faded with time, damaged by graffiti and vandalism and obscured by vegetation. Each individual site is considered to be of high significance by the Aboriginal community. Overall, they have national and international significance due to their age (some sites dated over 6000 years, and many have occupation evidence going back at least 4000 years old), the style and variety of art, their level of preservation in the context of Australia's biggest city, the representative variety of different overlapping site types, and their association with the place where Europeans first settled Aboriginal land.'

These sites in this location are important to the custodians, the Metropolitan Local Aboriginal Land Council (MLALC), to local Aboriginal people and to Aboriginal communities across Australia where they symbolise the survival of Aboriginal culture even where the impacts of invasion have been the longest and hardest felt. This heritage is also of increasing importance to the wider public. Local residents have grown up with the sites and many have undertaken Sites Awareness training to learn more. There are many local people involved in reconciliation issues who appreciate the Aboriginal heritage of their local area and are active in trying to protect it. Visitors from

Australia and internationally value the heritage and appreciate the opportunity to see at first hand Aboriginal heritage in Sydney, not just 'outback'.

No rock art sites are currently specifically listed on heritage registers. This is not due to the paucity of significant rock art sites but due to historical neglect of Indigenous heritage in this context and a general policy of keeping such sites low profile.'

Section D – State and Commonwealth interests

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

The Planning Proposal involves land that is supported by adequate infrastructure. However, in accordance with the Department Guidelines, this question typically applies to Planning Proposal's that result in substantial subdivisions, urban renewal, or development that will result in additional demand for infrastructure. The Planning Proposal is not considered to result in additional demand for infrastructure.

11. What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?

In accordance with the Gateway Determination, the following public authorities have been consulted:

- NSW Rural Fire Service
- NSW Department of Industry – Lands and Water (Crown Lands)
- Office of Environment and Heritage
- Metropolitan Local Aboriginal Land Council

NSW Department of Industry – Lands and Water (Crown Lands)

Prior to Gateway Determination, Council consulted with NSW Department of Industry - Lands and Water. They advised in correspondence dated 14 January 2019 (see Figure 14) that “The resolution of Northern Beaches Council to rezone R2 land to RE2 [sic] land seems worthwhile.” It is noted that this correspondence incorrectly reference RE2 zone, which is not proposed by this Planning Proposal. Other comments included:

- Lot 7371 DP1165577 - ‘this land is a relatively steep strip of R2 land at back of properties arguably unusable as R2 - recently subject of Crown land weed control work. Worth rezoning to RE1.’
- ‘Unmade southern end of Wandella Rd affords a vegetated curtilage to the Mermaid Pool. Desirably, this road can be added to RE2 [sic] land to help protect the Mermaid Pool.’

The Department is also consulting with Council regarding a range of other projects including the Crown Land Negotiation Program. Councils Property Assets Team has advised that the lands under the Planning Proposal are also being considered in these negotiations. All necessary consultations are to proceed under the statutory provisions and processes of the Planning Proposal.

The email correspondence as referred to above is detailed as follows:

From: Christopher Wright [mailto:chris.wright@crowland.nsw.gov.au]
Sent: Monday, 14 January 2019 6:03 PM
To: Paul Christmas
Cc: Neil Cocks
Subject: RE: Referral - Mermaid Pool Crown Land - Planning Proposal to rezone to RE1

Hi Paul

Please refer to attached email advice from Stan Rees, Natural Resource Management Project Officer. The department supports Council's preparation of the rezoning proposal as outlined below. As previously discussed, Council is encouraged to consult with the Metropolitan Local Aboriginal Land Council as the lands described below are subject to Aboriginal Land Claims.

Regards,

Chris Wright | Acting Senior Group Leader Property & Projects
Regional Services
Department of Industry – Lands & Water
10 Valentine Ave, Parramatta | PO Box 2185| Dangar NSW 2309
T: +61 2 9842 8328 | M: +61 (0) 438 587 369
E: chris.wright@crowland.nsw.gov.au
W: www.crowland.nsw.gov.au

Figure 14 – Email correspondence

From: [Stanley Rees](#)
To: [Christopher Wright](#)
Subject: Mermaid Pool - Planning proposal to rezone to RE1
Date: Thursday, 10 January 2019 1:17:51 PM

Chris

It seems that this email to me has been withdrawn.

The resolution of Northern Beaches Council to rezone R2 land to RE2 land seems worthwhile.

Part Lot 7370 DP 1165551 - likely refers to an RE2 lot at the end of King St
Part Lot 7369 DP 1165551 - hopefully refers to the R2 land on this lot adjoining Wandella Rd. The remainder of this lot is zoned RE1

Lot 7371 DP1165577 - is a relatively steep strip of R2 land at back of properties arguably unusable as R2 - recently subject of Crown land weed control work. Worth rezoning to RE2.

Unmade southern end of Wandella Rd affords a vegetated curtilage to the Mermaid Pool. Desirably this road can be added to RE2 land to help protect the Mermaid Pool. Zoning Maps attached.

Stan Rees | Natural Resources Management Project Officer
NSW Department of Industry - Lands and Water | Regional Services
[Level 11, 10 Valentine Avenue, Parramatta | PO Box 2185 Dangar NSW 2309](#)
P: 9842 8327 | E: stan.rees@crowland.nsw.gov.au
W: www.crowland.nsw.gov.au | www.industry.nsw.gov.au

Figure 14A – Email correspondence

NSW Department of Planning, Industry and Environment – Environment, Energy and Science Group

Following the Gateway Determination, Council consulted with the NSW Department of Planning, Industry and Environment - Environment, Energy and Science Group on 16 August 2019. They advised in correspondence dated 2 September 2019 (see Figure 15) "...the proposed amendments are unlikely to create adverse impacts to natural hazards or Aboriginal cultural heritage issues."



Planning,
Industry &
Environment

Our ref: doc19/740426
Senders ref: 2019/457203

Neil Cocks
Manager Strategic & Place Planning
Northern Beaches Council
PO BOX 1336
Dee Why NSW 2099

Dear Mr Cocks

Subject: Planning Proposal to Amend Warringah Local Environmental Plan 2011

Thank you for your letter dated 16 August 2019, requesting input from Environment, Energy and Science Group (EES), Department of Planning, Industry and Environment on the planning proposal which seeks to amend *Warringah Local Environmental Plan 2011* (WLEP 2011) by rezoning four (4) parcels of Crown land downstream of Manly Dam, in the suburbs of Manly Vale and Allambie Heights, from R2 Low Density Residential to RE1 Public Recreation and remove all development standards.

EES has reviewed the planning proposal and supporting documentation and consider that the proposed amendments are unlikely to create adverse impacts to natural hazards or Aboriginal cultural heritage issues.

Please be advised that a separate response may be provided on heritage matters by the Heritage Division of Premier and Cabinet as delegate of the Heritage Council of NSW.

Should you have any queries regarding this matter, please contact Bronwyn Smith, Senior Conservation Planning Officer on 9873 8604 or Bronwyn.smith@environment.nsw.gov.au

Yours sincerely

A handwritten signature in black ink that reads "S. Harrison 02/09/19".

Susan Harrison
Senior Team Leader Planning
Greater Sydney Branch
Climate Change and Sustainability

Figure 15 – Environment, Energy and Science Group correspondence

NSW Department of Planning, Industry and Environment (Region Team)

Council has consulted with the NSW Department of Planning, Industry and Environment (Region Team). The Department advises "...there is no restriction on a planning proposal to rezone land proceeding where the relevant land is subject to a pending land claim under the Aboriginal Land Rights Act". The Department confirmed that any future Gateway would likely require consultation with Crown Lands and the relevant Metropolitan Local Aboriginal Land Council.

NSW Rural Fire Service

In accordance with the Gateway Determination (dated 9 August 2019), NSW Rural Fire Service (RFS) was consulted on 16 August 2019. RFS responded to the Council request on 13 September 2019 (see Figure 16) and provided the following comments for consideration:

'It is noted that there are several permitted uses, with consent, within the proposed Public Recreation Zone RE1 under the Warringah LEP 2011 which the NSW RFS consider to be inappropriate due to the bushfire risk. Some uses are Special Fire Protection Purpose developments under BPB, and require larger APZs than residential development. The requirement for complying APZs under BPB would require significant vegetation clearing and ongoing management which would be inconsistent with the objectives of the zone:

- *To protect and enhance the natural environment for recreational purposes.*

In the preparation of the new Northern Beaches LEP, Council should consider prohibiting inappropriate development.'

It is noted that the RE1 Public Recreation zone permits developments that the NSW RFS consider inappropriate due to the bush fire risk, including some Special Fire Protection Purpose developments, which require larger APZ zones. However, it is also noted that the current zone (R2 Low Density Residential) permits the same Special Fire Protection Purpose developments, including additional ones.

The proposed RE1 zone will prohibit many land uses which could be Special Fire Protection Purpose developments including bed and breakfast accommodation, boarding houses and group homes, as well as prohibiting dwelling houses.

Further, in the unlikely circumstance that a Development Application was lodged for a Special Fire Protection Purpose development requiring '*...significant vegetation clearing and ongoing management which would be inconsistent with the objectives of the zone...*', or other development requiring the clearing of vegetation, it is unlikely that Council would support the proposed development given the environmental value of the land, which has been demonstrated in several documents outlined in this Planning Proposal.

In accordance with the NSW RFS correspondence, in preparation of the new Northern Beaches LEP, Council will consider the land uses currently permitted in the RE1 Public Recreation zone.



NSW RURAL FIRE SERVICE



The General Manager
Northern Beaches Council
PO Box 882
MONA VALE NSW 1660

Your reference: 2019/457203
Our reference: R19/104
DA19082320138

13 September 2019

Attention: Carla Davies

Dear Sir/Madam,

Planning Proposal - Planning Proposal to Amend Warringah LEP 2011

Reference is made to Council's correspondence dated 16 August 2019 requesting comments in relation to the above Planning Proposal which seeks to rezone four parcels of Crown land downstream of Manly Dam, in the suburbs of Manly Vale and Allambie Heights, from R2 Low Density Residential to RE1 Public Recreation.

The New South Wales Rural Fire Service (NSW RFS) has reviewed the proposal with regard to Section 4.4 of the directions issued in accordance with Section 9.1(2) of the *Environmental Planning and Assessment Act 1979*.

The direction provides that a Planning Proposal must:

- (a) have regard to *Planning for Bushfire Protection (PBP)*,
- (b) introduce controls that avoid placing inappropriate developments in hazardous areas, and
- (c) ensure that bushfire hazard reduction is not prohibited within the asset protection zone (APZ).

The following comments are provided for Council's consideration.

It is noted that there are several permitted uses, with consent, within the proposed Public Recreation Zone RE1 under the Warringah LEP 2011 which the NSW RFS consider to be inappropriate due to the bush fire risk. Some uses are Special Fire Protection Purpose developments under PBP, and require larger APZs than residential development. The requirement for complying APZs under PBP would require significant vegetation clearing and ongoing management which would be inconsistent with the objectives of the zone:

- To protect and enhance the natural environment for recreational purposes.

In the preparation of the new Northern Beaches LEP, Council should consider prohibiting inappropriate development.

Postal address
NSW Rural Fire Service
Planning and Environment Services
Locked Bag 17
GRANVILLE NSW 2141

T 1300 NSW RFS
F (02) 8741 3400
E records@rfs.nsw.gov.au
www.rfs.nsw.gov.au

Figure 16 – Page 1 of RFS correspondence

If you have any queries regarding this advice please contact Garth Bladwell Development Assessment and Planning Officer on 1300 NSW RFS.

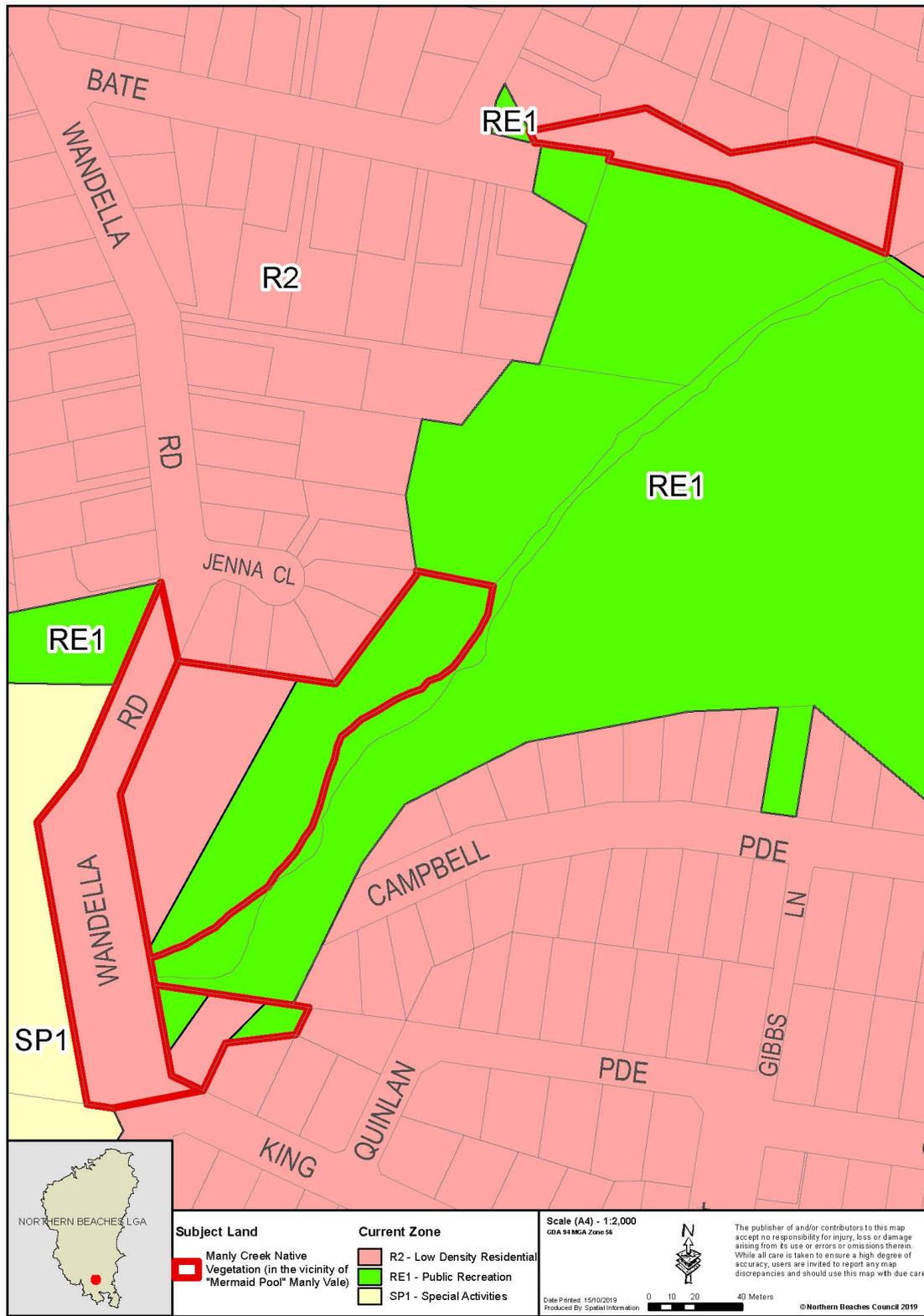
Yours sincerely,



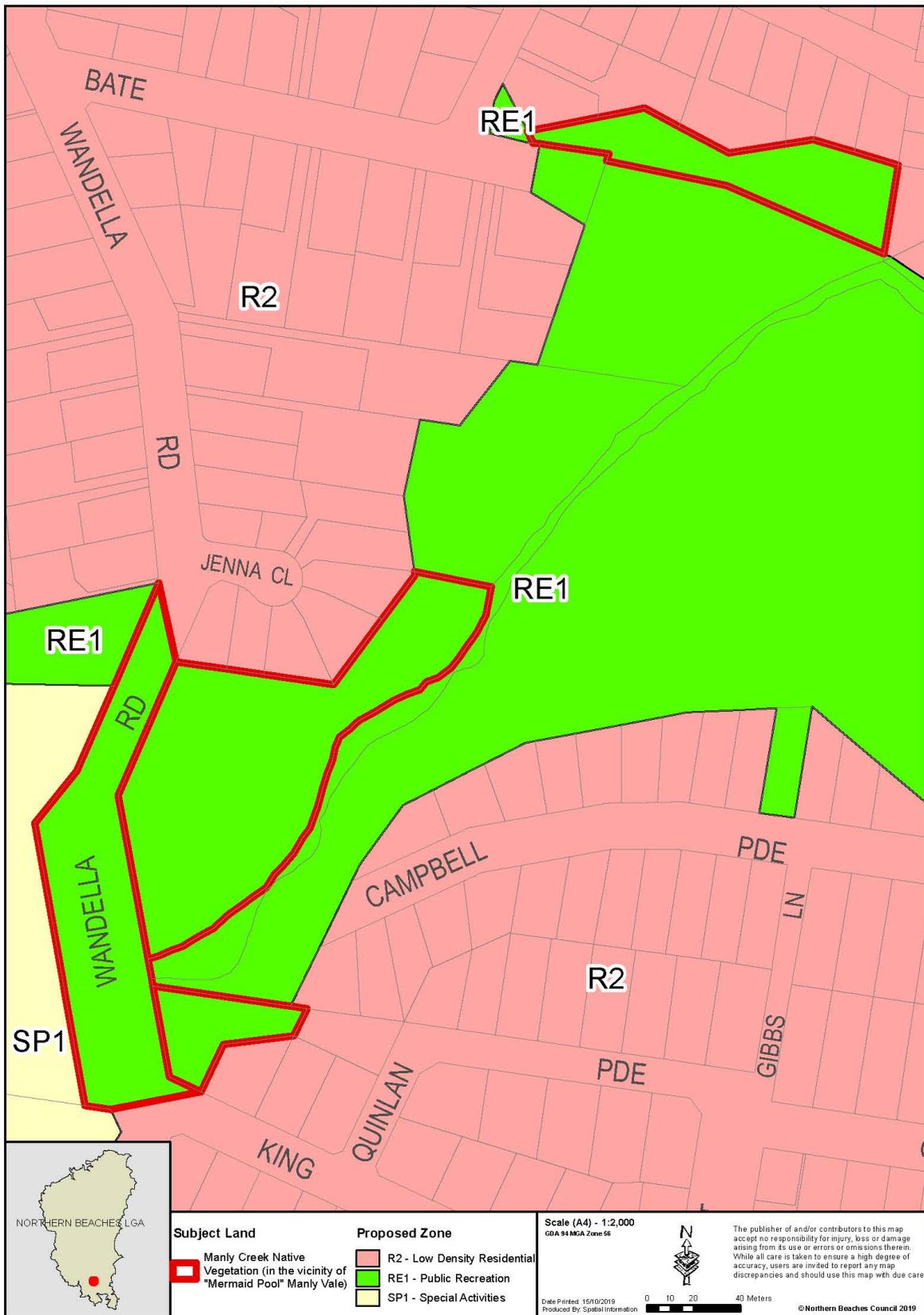
Nika Fomin
Manager
Planning and Environment Services (East)

Part 4 – Maps

Existing Mapping – Zoning – WLEP2011 Map LZN 008 002 20191015

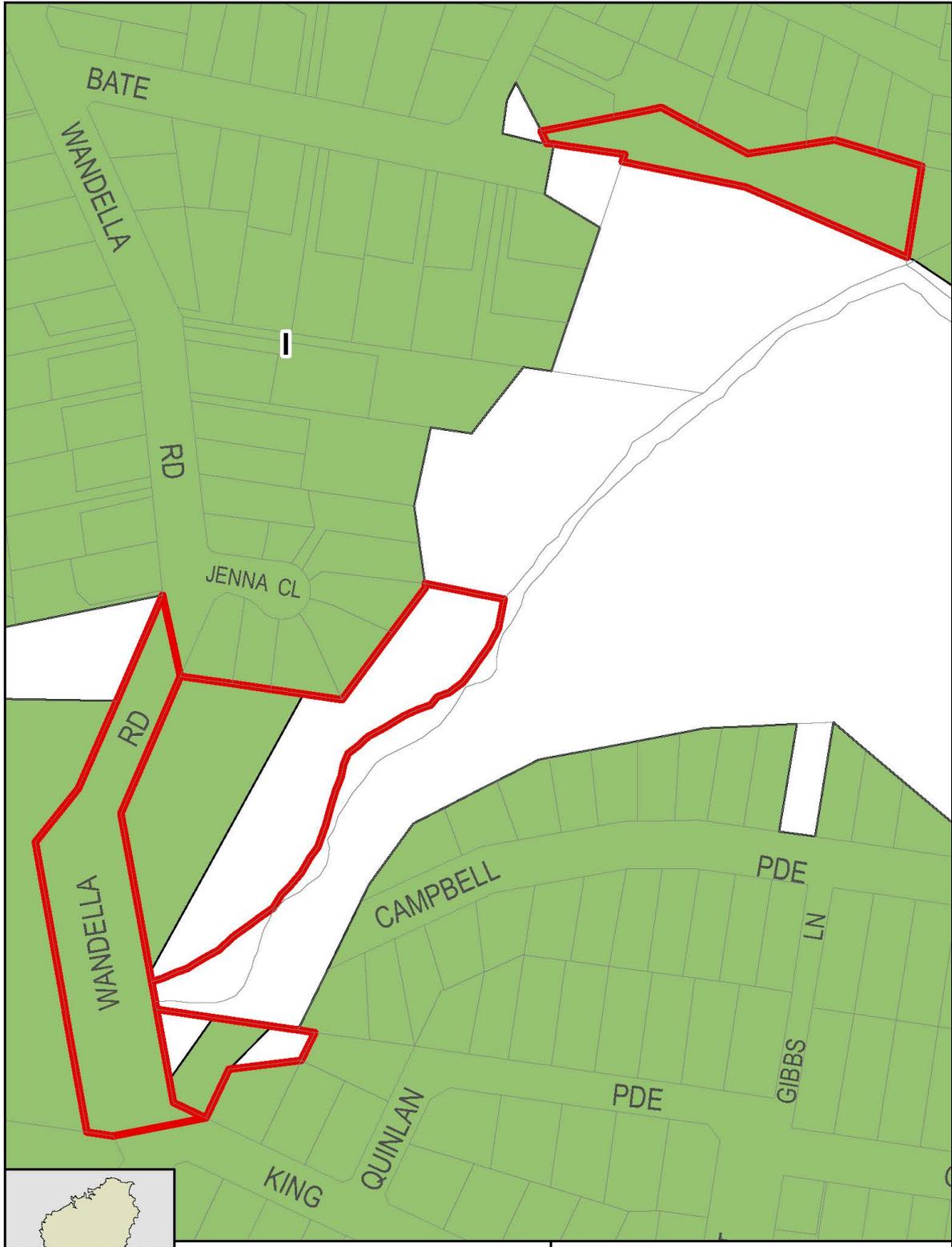


Proposed Mapping Amendment – WLEP2011 Map LZN 008 002 20191015

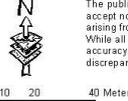


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Existing Mapping – WLEP2011 Map HOB_008_002_20191015 (Height of Building)

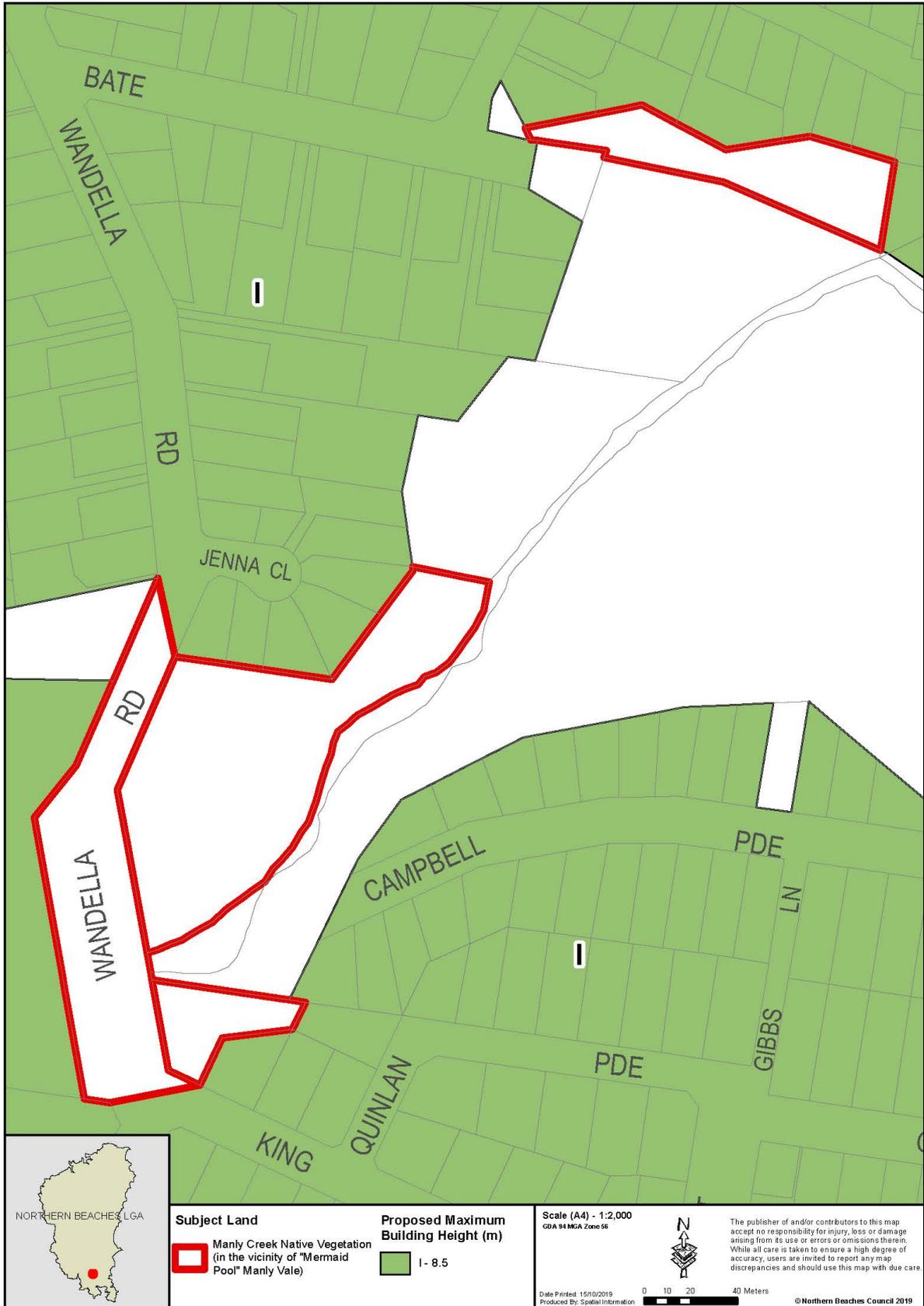


| | |
|--|--|
| <p>Subject Land</p> <p> Manly Creek Native Vegetation (in the vicinity of "Mermaid Pool" Manly Vale)</p> | <p>Current Maximum Building Height (m)</p> <p> 1 - 8.5</p> |
|--|--|

| | | |
|---|---|---|
| <p>Scale (A4) - 1:2,000 GDA 94 MGA Zone 56</p> <p>Date Printed: 15/10/2019 Produced By: Spatial Information</p> |  | <p>The publisher of and/or contributors to this map accept no responsibility for injury, loss or damage arising from its use or errors or omissions therein. While all care is taken to ensure a high degree of accuracy, users are invited to report any map discrepancies and should use this map with due care.</p> <p>© Northern Beaches Council 2019</p> |
|---|---|---|

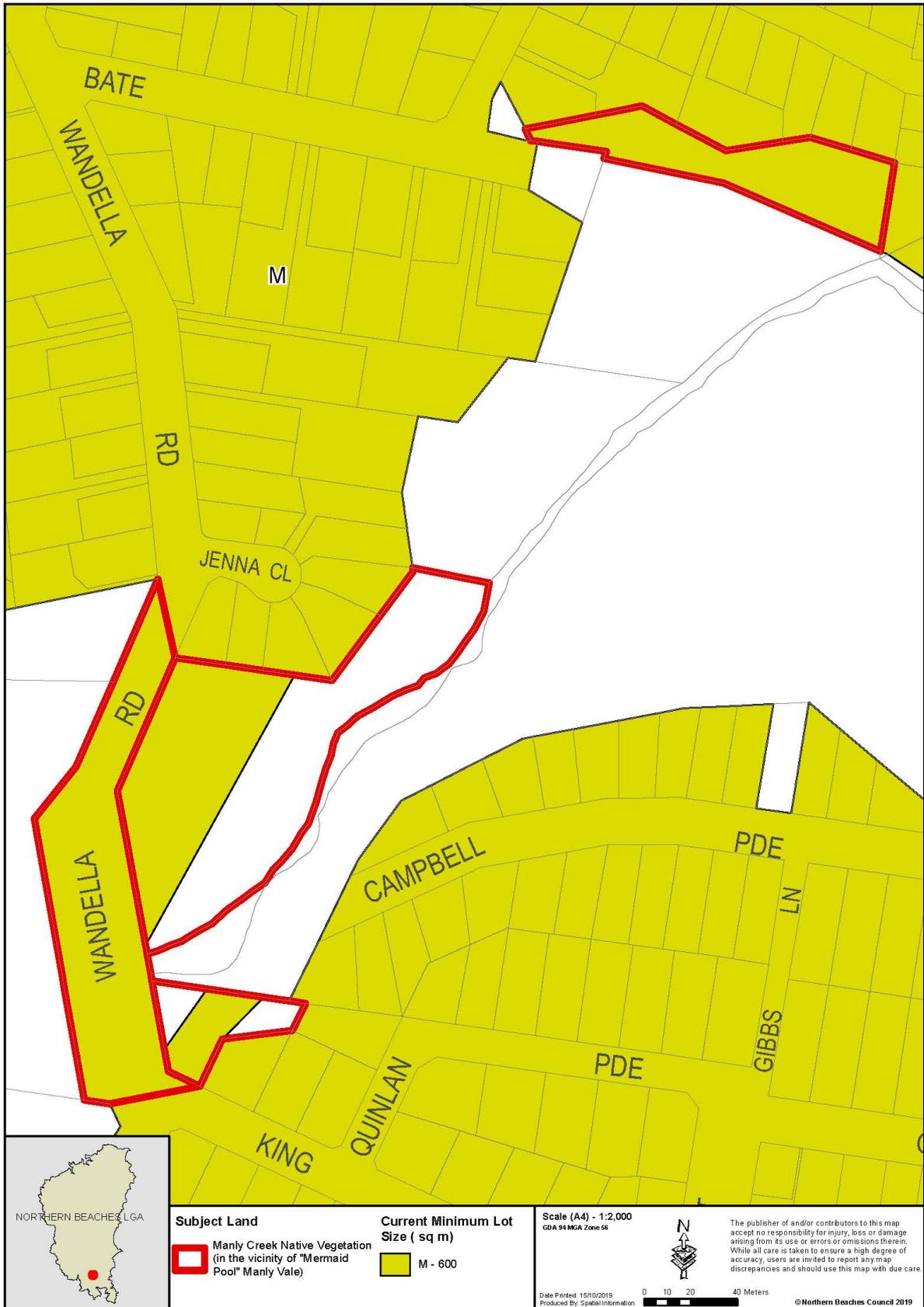
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Proposed Mapping Amendment – WLEP2011 Map HOB 008 002 20191015 (Height of Building)



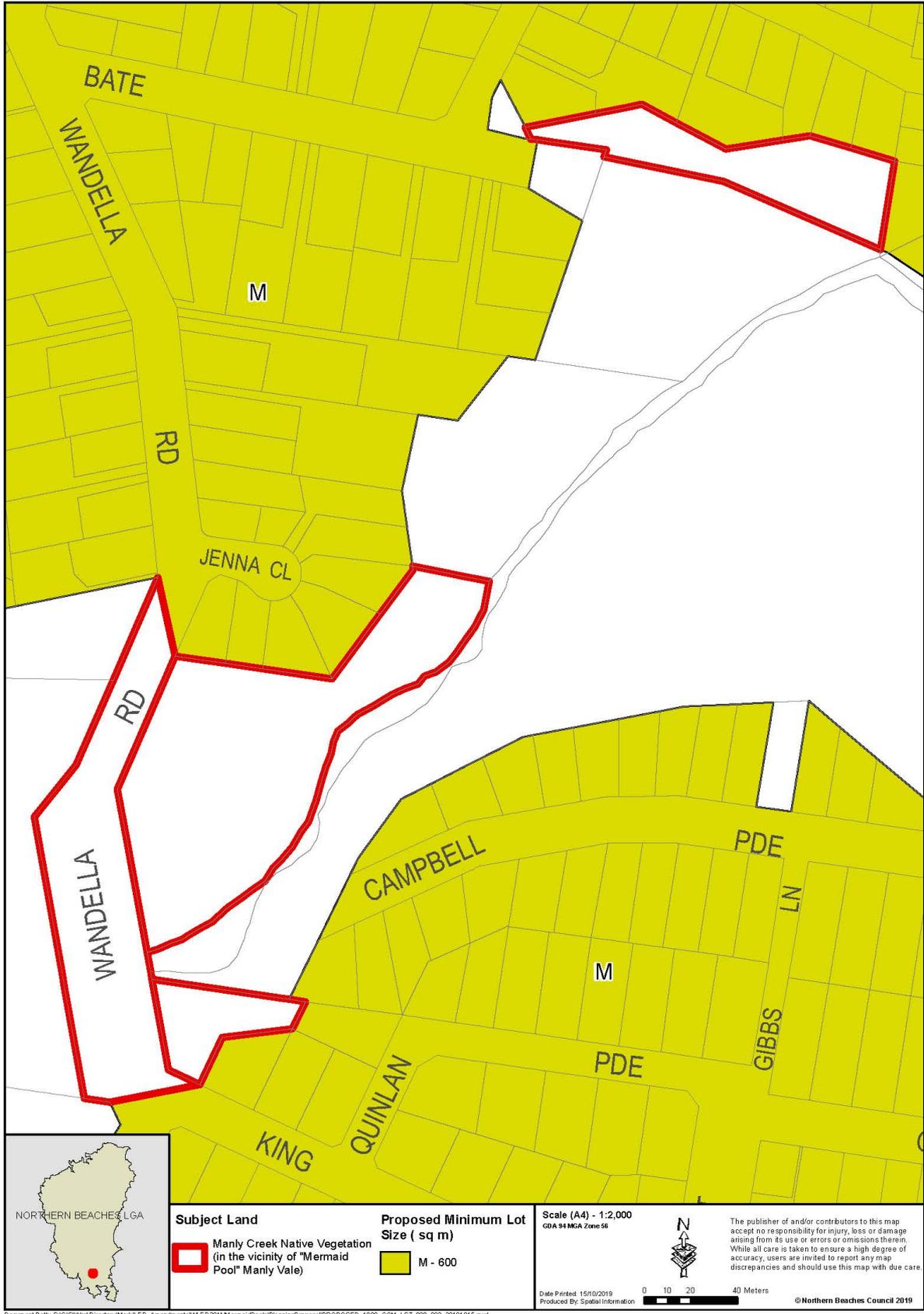
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Existing Mapping Amendment – WLEP2011 Map LSZ 008 002 20191015 (Minimum Lot Size)



Document Path: S:\GIS\Work\Directory\Map\LEP_Amendments\WLEP 2011 MermaidPool\Planning\proposal\CURRENT_1600_C OM_LSZ_008_002_20191015.mxd

Proposed Mapping Amendment – WLEP2011 Map LSZ 008 002 20191015 (Minimum Lot Size)



Subject Land
 Manly Creek Native Vegetation
 (in the vicinity of "Mermaid Pool" Manly Vale)

Proposed Minimum Lot Size (sq m)
 M - 600

Scale (A4) - 1:2,000
 GDA 94 MGA Zone 56

Date Printed: 15/10/2019
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Part 5 – Community Consultation

The Planning Proposal is on public exhibition in accordance with the Gateway Determination and consistent with Council's Community Engagement Policy including:

- A public notice in the Manly Daily notifying of the public exhibition;
- Letters to key stakeholders, including relevant state agencies, community groups, and owners and occupiers of adjoining and nearby properties;
- Hard copies of the exhibition material at Council's offices; and
- Electronic copies of the exhibition material on Council's website.

In particular, consultation has been undertaken with:

- NSW Rural Fire Service
- Department of Industry – Lands and Water (Crown Lands)
- Office of Environment and Heritage
- Metropolitan Local Aboriginal Land Council
- Save Manly Dam Catchment Committee

Part 6 – Project Timeline

| Task | Anticipated timeframe |
|--|-------------------------------------|
| Referral of Planning Proposal to NSW Department of Planning, Industry and Environment for Gateway determination | 5 March 2019 (complete) |
| Issue of further guidance from NSW Department of Planning, Industry and Environment, and submission of Planning Proposal with minor edits in reply (including additional map of ALCs from Crown Land, 30 April 2019) | 10 April 2019-3 May 2019 (complete) |
| Detailed Biodiversity Study complete | July 2019 |
| Issue of Gateway Determination | 9 August 2019 |
| Government agency consultation (as required) | 18 October 2019 |
| Public exhibition period | 19 October 2019-1 December 2019 |
| Consideration of submissions and agency consultations | November-December 2019 |
| Report to Council to determine Planning Proposal | February 2020 |
| Submit Planning Proposal to the DPI and Parliamentary Counsel for LEP drafting and publication | February 2020 |