

## **10.6. Rezoning of Land at Parraween Street, Cremorne**

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**ATTACHMENTS:** Nil

### **PURPOSE:**

To respond to Council's resolution of 14 November 2022 regarding the potential rezoning of land at Parraween Street, Cremorne.

### **EXECUTIVE SUMMARY:**

At its meeting on 14 November 2022, Council resolved to urgently rezone land at Parraween Street, Cremorne from *R4 High Density Residential* to *R2 Low Density Residential* under the provisions of the North Sydney Local Environmental Plan (NSLEP) 2013.

The process to achieve the rezoning of land is an involved one. It commences with the preparation of a Planning Proposal that must address various matters as outlined in the Department of Planning and Environment's (DPE) *Local Environmental Plan Making Guideline* (September 2022). These include such matters as justification for the proposal, demonstrating site specific and strategic merit, consistency with regional and local strategic planning, and consistency with State Environmental Planning Policies and Ministerial (section 9.1) directions. Once prepared, it must be referred to the North Sydney Local Planning Panel for its review and recommendation before being formally referred to Council. If Council is supportive of the proposal, it is then referred to the DPE for its review and potential issue of Gateway Determination. If not supported by the DPE, the Planning Proposal cannot proceed.

This report concludes that it will be challenging to prepare a planning proposal that satisfactorily addresses the various mandated requirements, to ultimately achieve the "downzoning" of the land in question as per Council's resolution.

Pursuing the rezoning of land in Parraween Street independently of the assessment of the heritage significance of that land in the first instance, is not recommended. An approach that would be more consistent with the Department of Planning's LEP Making Guideline and Council's own Local Strategic Planning Statement would be to combine a planning proposal that identifies potential heritage significance within the subject land, as already demonstrated through the preparation of interim heritage orders (IHO) for various properties along Parraween Street and any change to the zoning that may be necessitated as a result. In other words, a relevant question when preparing a planning proposal for the heritage significant land along Parraween Street, would be to assess whether a zoning and height amendment may also be required to the NSLEP 2013 to make this transition more compatible.

**FINANCIAL IMPLICATIONS:**

This report is for advice purposes only and carries no financial implications. If Council pursues the preparation of a Planning Proposal to rezone the land as described in this report, there will be minor administrative costs associated with this process that can be borne out of existing budget lines.

**RECOMMENDATION:**

**1. THAT** Council notes this report and that any change of zoning to Parraween Street be considered concurrently with a Planning Proposal that considers the heritage significance of the area and individual allotments in that street.

## LINK TO COMMUNITY STRATEGIC PLAN

The relationship with the Community Strategic Plan is as follows:

### 2. Our Built Infrastructure

#### 2.2 Vibrant public domains and villages

### 3. Our Innovative City

#### 3.1 Our commercial centres are prosperous and vibrant

#### 3.3 Distinctive sense of place and design excellence

### 4. Our Social Vitality

#### 4.3 North Sydney's history is preserved and recognised

### 5. Our Civic Leadership

#### 5.1 Lead North Sydney's strategic direction

#### 5.2 Strong civic leadership and customer focussed services

#### 5.3 Community is engaged in what Council does

## BACKGROUND

At its meeting on 14 November 2022, Council considered an urgent motion and resolved:

*1. THAT Council urgently issue an Interim Heritage Order (IHO) in respect of Nos. 82-88 and 108 Parraween Street, Cremorne.*

*2. THAT Council undertake further research on the properties at 82-88 and 108 Parraween Street, Cremorne to identify the extent of surviving buildings credited to Helier Harbutt to provide a better understanding of the involvement of the Harbutt Brothers on the early 20th century development of the North Sydney Council LGA as recommended at page 145 (163 of 185) of the Heritage Assessment Report prepared by Lucas, Stapleton, Johnson & Partners dated October 2022.*

The IHO required as part of that resolution was gazetted on 17 November 2022.

The land at Parraween Street is currently zoned *R4 High Density Residential* under the provisions of the North Sydney Local Environmental Plan (NSLEP) 2013. The extent of this zoning and adjacent zoning is shown in Figure 1 below.

Relevantly, an IHO for land at 50-56, 70, 72, 78 and 80 Parraween Street was also prepared and gazetted on 11 November 2022.

In addition to the above resolution, Council further resolved the following on 14 November 2022:

*1. THAT Council acknowledges the lack of suitability for Parraween Street to support significant further high density and associated development and therefore resolves to*

amend the North Sydney LEP by changing the zoning of the Northern side of Parraween Street from R4 High Density Residential to R2 Low Density Residential

2. THAT Council staff urgently and without delay begin the process, the appropriate scoping and/or Planning Proposal for lodgement with the Department of Planning.

3. THAT given this is an urgency motion and not on the agenda, that Council accepts public comments and opens the public form to include feedback on this motion.

4. THAT a report be prepared for the next Council meeting, including a draft timeline.

5. THAT Council writes to the State Government to lobby for the change.

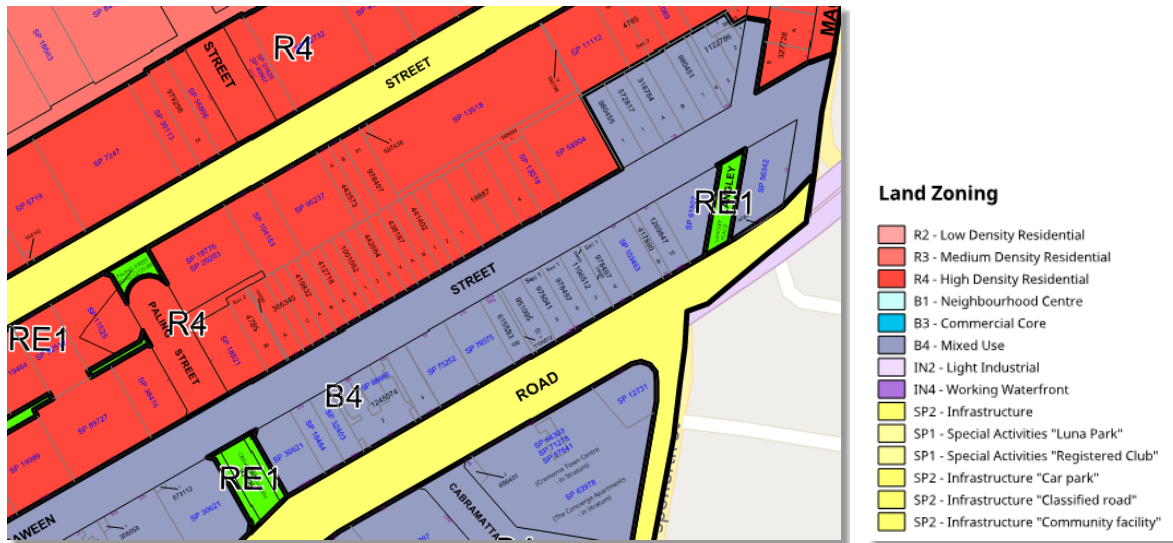


Figure 1 – Existing Zones (NSLEP 2013)

The height limit associated with this zone on the subject land is 12m as shown below in Figure 2. This generally equates to three to four storeys.

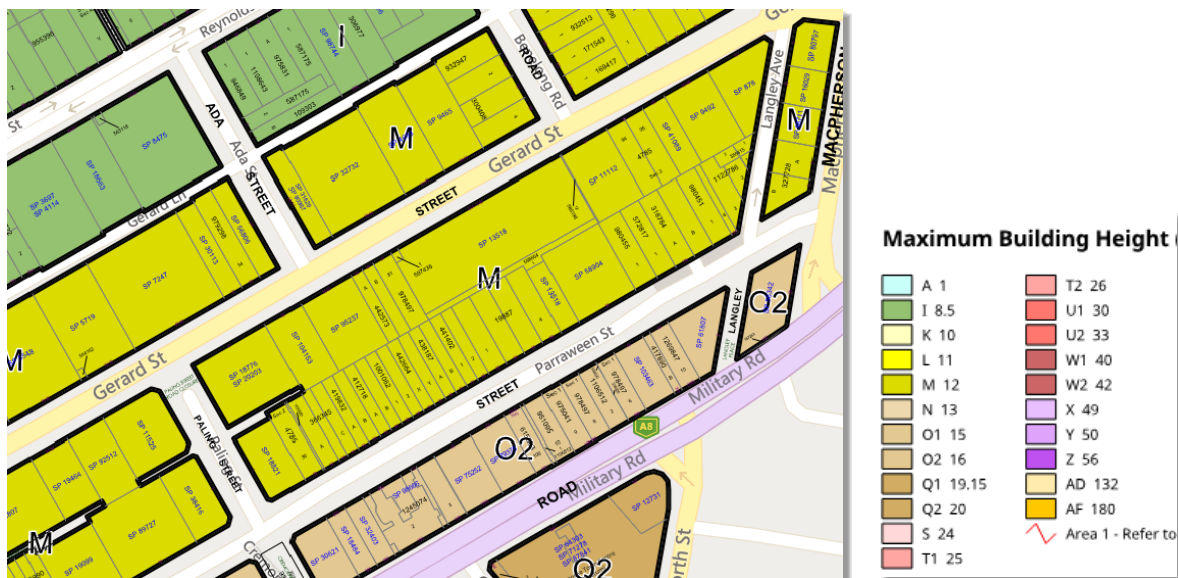


Figure 2 – Existing Height limits (NSLEP 2013)

The current zone and height as outlined in the NSLEP have been in place since 2013. It should be noted, however, that similar iterations of this higher density residential zone have been in place since the County of Cumberland Plan in 1951 wherein residential flat buildings were permissible. Whilst different definitions and zoning labels were previously ascribed under that Plan and its superseding planning instruments (the North Sydney Planning Scheme Ordinance, and LEPs 1989 and 2001), the zoning effect of making residential flat buildings permissible have been the same for many decades.

The current zone and height are therefore not new or recent. The “standard instrument order” under which the NSLEP 2013 was made, required that the height limits be mapped in the LEP. A 12 metre building height applies. The previous planning instruments as mentioned above applied similar height limits. The LEP 2001 applied a 12m height limit, the LEP 1989 a 3 storey height limit, and the Planning Scheme Ordinance of 1964 also applied a 3 storey height limit.

## **CONSULTATION REQUIREMENTS**

Community engagement is not required at this stage.

## **DETAIL**

### **1. Rezoning Land**

The process of rezoning of land is legislated through the *Environmental Planning and Assessment Act* and its associated Regulation. In addition, the Department of Planning has published guidelines to provide more detailed requirements to assist understanding and practice. This is the *Local Environmental Plan Making Guideline* (September 2022) and can be found here:

<https://www.planning.nsw.gov.au/-/media/Files/DPE/Guidelines/LEP-Making-Guideline.pdf>.

Two important components of the *LEP Making Guideline* that are relevant for Council’s consideration, are the actual composition and requirements of the Planning Proposal instrument, and the process that a Planning Proposal will follow in seeking to change the zoning and other NSLEP 2013 related controls associated with land.

### **2. The Contents of Planning Proposals**

The LEP Making Guideline includes detailed provisions regarding what matters must be included and addressed in the preparation of a planning proposal. The Guideline describes the most important section of a planning proposal to be the requirement to outline the justification of strategic and site-specific merit associated with the proposal. The Department of Planning (DPE) must be satisfied that this has been adequately addressed in order to proceed to a (favorable) Gateway Determination to enable formal public exhibition of the proposal.

Some key questions associated with demonstrating the justification for the planning proposal are:

- Is the planning proposal a result of an endorsed LSPS, strategic study or report?
- Will the planning proposal give effect to the objectives and actions of the applicable regional or district plan?
- Is the planning proposal consistent with the Council's Local Strategic Planning Statement?
- Is the planning proposal consistent with applicable SEPPs?
- Is the planning proposal consistent with section 9.1 Ministerial Directions?

In pursuing the "downzoning" of residential land through the preparation of a planning proposal, there are various challenges in satisfying some of the mandatory requirements outlined above. These include:

- The rezoning of land that is not the direct result of an LSPS action, a strategic study or report
- The North Sydney Local Housing Strategy being reliant on the capacity of the existing zoning regime to satisfy regional housing targets
- The specific requirement of Ministerial Direction 6.1 that states that "*a planning proposal must...not contain provisions which will reduce the permissible residential density of land*".

The proposed rezoning of the subject land as per Council's resolution of 14 November 2022 is arguably as a result of a strategic study or report (LSJ Heritage – November 2022), however, in the context of the North Sydney Local Housing Strategy and Ministerial Direction 6.1, this would represent a significantly reduced residential density or capacity for this street block.

### **3. The LEP Amendment Process**

Once a planning proposal is prepared by Council staff, it must be referred to the North Sydney Local Planning Panel for its review and recommendation. That recommendation and a covering report is then forwarded to Council for its determination as to whether to seek a Gateway Determination for the proposal from the Minister for Planning (or delegate).

The purpose of the Gateway Determination process that is undertaken by DPE staff is to review the strategic and site-specific merits of a proposal and to determine whether it should proceed to formal public exhibition. The planning proposal can only proceed to public exhibition if the Department issues a supportive Gateway Determination. The DPE therefore plays a fundamental role in the progress of a planning proposal that seeks to amend the planning controls that apply to a particular parcel(s) of land. Whilst Council is responsible for strategic planning and policy development, it does not have the final say.

## **4. Options**

### **4.1 Pursue a Planning Proposal for the Zoning of the Land**

As discussed in section 2 above, the preparation of a planning proposal that essentially seeks to change the zoning of the subject land from *R4 High Density Residential* to *R2 Low Density Residential*, would be challenging.

Demonstrating strategic merit and consistency with various strategic directions in this case, poses significant difficulties in the drafting of the planning proposal. In addition, the DPE would closely scrutinise the planning proposal in the context of the various matters outlined in section 2 above, and would likely resist its progression.

### **4.2 Pursue a Planning Proposal for Heritage Listing and Zoning**

Council recently pursued the creation of Interim Heritage Orders (IHO) for 50-56, 70, 72, 78 and 80 Parraween Street as well as 82-88 Parraween Street. These IHOs were gazetted on 11 and 17 November 2022 respectively. The IHOs provide temporary protection from demolition or harm and will lapse after 6 months of being made and 12 months after being made if Council resolves to prepare a planning proposal to identify these dwellings as permanent heritage items under the NSLEP 2013.

Council has resolved to prepare a planning proposal for those properties along Parraween Street that are the subject of an Interim Heritage Order as discussed above. It is noted that further heritage-related investigations must be undertaken to support the preparation of a planning proposal that arises from the preparation of the recently gazetted IHO(s).

Assessing the heritage significance of the subject land and its compatibility with the underlying zoning and height controls is a legitimate consideration in preparing the planning proposal for the heritage-related values of the land. Addressing these characteristics to achieve a logical and sensible planning framework in a combined planning proposal may be a more sustainable approach to achieve Council's objectives.

This is potentially more likely to be able to meet the various strategic and site-specific merit tests as required, compared with pursuing the rezoning of the land independently of the various heritage listings in the immediate term.

## **5. Timeframes**

Following Council's resolutions of 7 and 14 November 2022, a planning proposal will be prepared for the heritage listing of various properties along Parraween Street. As discussed, care needs to be taken with the drafting of a planning proposal to ensure all relevant matters are satisfactorily addressed and can withstand scrutiny and challenge. It is also noted that the second IHO prepared recently for the properties at 82-88 Parraween Street will require further work to determine whether these properties merit permanent listing as heritage items under the NSLEP 2013.

That planning proposal will be referred to a Local Planning Panel meeting in early 2023, after which it will be reported to Council. This report recommends that the heritage values of the sites in question be considered in the context of their underlying zoning and height controls,

so that a more holistic decision regarding the future planning controls of this land can be made.

Council will be in a position to deliberate on the specific provisions of a planning proposal dealing with the heritage and zoning issues of Parraween Street at that time before referral to the DPE to seek a Gateway Determination.