

Attachment 5: Material Handed up at Public Hearing

Speaker 1
Hylde Rolfe

The General Manager
Woollahra Municipal Council

records@woollahra.nsw.gov.au

Dear Sir,

SC3794 Submissions: Proposed changes to land management controls of Dunara Reserve, Point Piper

With the formal mechanism for disposal of the Dunara Gardens reserve land parcel now in train, a note of caution seems well warranted. I mention two issues that (belatedly) occur to me:

- I attach a high degree of relevance to the ***purpose*** of the original reservation for ***public garden and recreation*** space, and the vision that it presumably entailed. It is hard to imagine that it was reserved carelessly, without recognition of its landform and accessibility. Sixty-odd years later, it may still be a valid and feasible vision. I'd like to see it explored and re-visited.
- Similarly, the (later) classification of the Reserve as ***community land*** was, I imagine, not done carelessly either. That classification has stood for some time now. I wonder whether – and, if so how and why – its rationale is now seen to be deficient. That, too, could use some explanation.

The background thinking on those two matters seems especially important given the ultimate aim of the Council to sell the land. I note that I never was impressed by the notion that its continued upkeep would involve expenditure; that is not unusual for any or all public land, whether held under community classification or otherwise. It's one – entirely valid - reason why we pay our rates!

So, might we have some information and analysis to address the two matters in the next round of documentation, please?

Yours sincerely,
Hylde Rolfe

41 Cove Street Watsons Bay NSW 2030
13 August 2017

DUNARA RESERVE

HERITAGE:

1. The Heritage Council of NSW has objected to its sale and recommended consideration of it being listed as both a State Heritage Item (because of its connection to State Listed “Dunara “) and a landscape Local Heritage item. Its Chair wishes to consult with Council re this.
2. Council’s own heritage officer in 2005 reviewed the historical basis for the Dunara Gardens subdivision and stated “ *the creation of the special lot for public garden & recreation should be preserved*”.
3. There is a 28m high heritage listed Cook Pine, visible from Darling Pt. on the Reserve (as well as two 14m high Moreton Bay figs and 4 Canary Island Date Palms)
4. Dunara Gardens has the State Heritage Listed “ Dunara” (birthplace of Dorothea MacKellar) as well as a locally heritage listed house
5. The Reserve was part of the original gardens of the Dunara Estate
6. The proposal is inconsistent with Council’s own Heritage Conservation objectives in its LEP
7. The full Council on 12 March unanimously adopted a motion that staff prepare a report for consideration of the Reserve being listed as a heritage item of state significance on the NSW State Heritage Register as well as a heritage item in the LEP (corresponding to the Heritage Council’s submission).

HISTORY OF THE SITE:

1. It was all originally the grounds of Dunara
2. In the mid 1950’s the Dunara Estate was subdivided
3. Under the then LGA , Council in fixing the number of lots, had to “ *embrace public reserves & open spaces*” and in respect of the application for approval of the subdivision had to take into consideration “*the amount of public garden & recreation space to be provided in the land to be subdivided*”
4. It was part of the conditions of consent that the Reserve be specifically set aside as “ Public Garden & Recreation Space”
5. Further Council not only insisted on a larger public space being created, but directed that it be transferred to Council to ensure it remained so in perpetuity.

6. That made the land subject to a “trust for public purposes” as held by the High Court in similar circumstances, with the residents & ratepayers the beneficiaries and Council the Trustee
7. Whilst Council by reclassifying can discharge the Trust, it should not morally do so.

USAGE BY THE PUBLIC;

1. Existence of green space & tree canopy provides a public amenity by its addition to the streetscape, irrespective of usage
2. The Reserve is used by
 - residents,
 - visitors,
 - walking groups resting in the shade
 - children playing,
 - the elderly & less mobile residents who find it difficult to walk up & down the steep slope to Rose Bay
3. Heritage groups come onto it to admire the heritage listed Cook Pine
4. Pt Piper has insufficient open green space
5. Development of the Reserve is likely to result in the death and removal of trees

THE EXPRESSED JUSTIFICATION FOR THE RECLASSIFICATION BEING BAD PUBLIC POLICY:

1. An adjoining neighbour’s car port encroached significantly for years on the Reserve and refused to remove it and Council took no action.
2. In Jan 2008 the Land & Environment court confirmed by Order a 2005 requirement that the owner remove the encroachment and that the disturbed areas of Council’s property be restored to match the existing. Council failed to enforce that.
3. Council then abrogated its legal obligations, and on its own admission, “*in response to the encroachment*” decided to wash its hands of the land by commissioning a report with the express purpose of selling the land
4. The offending owner was identified in the Planning Proposal as one of only 2 adjoining owners as a likely purchaser, the other subsequently indicating no interest.

5. The result would be to reward the offender for its own longstanding refusal to demolish the encroachment , thereby profiting by its own breach.
6. That ground is now irrelevant as it was finally removed in 2017.
7. Similarly another principal justification for the sale of the Reserve was the dumping of garden waste on the Reserve. Council had evidence for years that it was that same owner who was doing that dumping , yet took no action. Instead of taking legal action, Council again seeks to abrogate its responsibilities by selling the land, most likely to the offender
8. This sends an appalling message and sets an appalling precedent ie ignore Council & Court orders , dump rubbish on Council land , cut the vegetation & make life difficult for Council & you can be guaranteed that Council will abandon its obligation to do anything about it and sell the land to you.

THE WHOLE PROCESS IS LEGALLY VOID AB INITIO:

1. The Gateway determination is invalid by reason of the Minister being provided with a report which was factually inaccurate and omitted to reveal the existence of the trust, all material aspects to the Minister's decision. There are numerous court cases setting a Minister's decision aside based on incorrect and/or omitted information
2. Everything that follows thereafter is therefore invalid
3. The planning proposal is in breach of s 55 EPA in a number of respects, which also affected the Minister's decision under s 56
4. The Council Resolution authorising the planning proposal is invalid as it purports to reclassify " Dunara Gardens" which is private land and not " Dunara Reserve". Council has no power to reclassify private land
5. The planning proposal is therefore legally unauthorised
6. These matters cannot be retrospectively validated and the whole process has to begin all over again, which is a further waste of ratepayers funds.
7. As there is no Plan of Management for Dunara Reserve, s 44 LGA states that therefore re community land, "*the nature & use of the land must not be changed*"
The proposal is therefore prohibited by the LGA.

This Option could include extension of the right-of-way along the frontages of the site as suggested in Option 3.

In order to maximize the usefulness of the dedication to the public, I consider that the following objectives should be realised:

- (a) Extending the existing beach area on the foreshore of the road reserve so as to permit legal public access to a larger beach area for generally passive recreation use;
- (b) Upgrading and embellishing the existing road reserve adjacent to the beach area, (perhaps in a form comparable to Duff Reserve) in order to make better use of the outlook and the peaceful character of the location.
- (c) Enabling legal access by the public to the area fronting the site so as to allow access along the foreshore. (At present this is only legally achieved below Mean High Water Mark).

vii) **Probable Demand:** The Council's Residential D.C.P. identified this area as a Priority Zone for the demand for Public Open Space. The Point Piper precinct has a provision, according to the D.C.P., of 0.96 ha/1000 persons compared with the adopted standard of 2.83 ha/1000 persons.

I consider that the additional population generated by the subdivision, in addition to the existing shortfall of public open space in the precinct, does justify the provision of the open space to be dedicated. I have not obtained any data on the frequency of public use of the Wingadal Place beach area.

In my opinion, the use and attractiveness of the existing road reserve at the foreshore, in conjunction with the land to be dedicated would be significantly enhanced by landscaping and other treatment by way of terracing, paving, clearing of weeds and provison of seating.

The Council resolved (1/7/88) to adopt the following objective in regard to Open Space along the harbour foreshore.

"To preserve existing public open space along the harbour foreshores, and to promote the dedication, acquisition, lease or occupation of additional usable areas so as to provide further public pedestrian access to and along the harbour foreshore in appropriate locations."

I believe this objective can be achieved, in this instance, by requiring the following:

- (1) The dedication of 40m² as offered by the applicant;
- (2) The monetary contribution of \$35,430 in lieu of the 59.05m² shortfall in required dedication; and

BUILDING AND DEVELOPMENT COMMITTEE 20/2/1989

MUNICIPAL ENGINEER'S REPORT DENNIS CAFE

- D 13
1. REFERENCE NO: \$1552/88
 2. ADDRESS: 2 WINGADAL PLACE, POINT PIPER
 3. APPLICANT: M. ROSE
 4. PROPOSAL: SUBDIVISION INTO 3 LOTS
 5. DATE OF LODGEMENT: 12/12/1988

6. PROPOSAL:

Subdivision of property comprising 2590m² into three allotments -

Lot 1	930m ²
Lot 2	1000m ²
Lot 3	660m ²

Proposed Lots 2 and 3 are to obtain vehicular access off the existing concrete ramp which provides access to the adjoining residence to the north across the unmade portion of Wingadal Place.

Lot 1 is to make use of the existing driveway to 2 Wingadal Place, however. No accurate survey has been provided to demonstrate this.

Drawings Numbered SD2, dated 9/12/88, prepared by Warren Firkin Pty Ltd indicate a proposal for a dwelling to be erected on each new allotment. The proposed dwellings require lodgement of development applications. The proposals for the dwellings should, in no manner, be endorsed or otherwise approved as part of the proposed subdivision. Their sole purpose is to demonstrate the potential for development of the allotments.

The layout of the proposed lots is attached as Annexure 1.

7. DESCRIPTION OF THE SITE

The site is generally triangular in shape with frontages to Double Bay and the unmade portion of Wingadal Place.

Wingadal Place is unmade from a point approximately adjacent to the existing driveway of the site down to Mean High Water Mark. A pathway provides pedestrian access to the waterfront and the Scots College boatshed.

The site contains dense vegetation which includes several mature fig trees as well as several species of noxious plants. I consider the dense vegetation to be an important component of the Point Piper foreshore in this location. The significant trees on the site should be protected and preserved.

















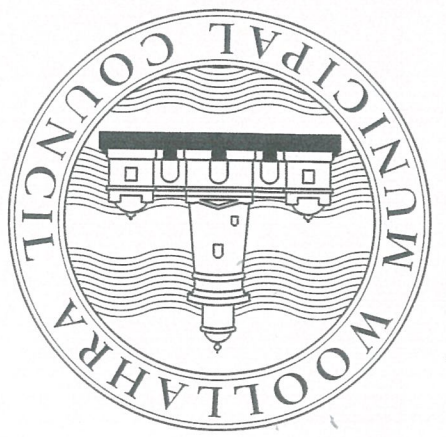












Woollahra Municipal Council

Biodiversity Conservation Strategy

2015 - 2025



2. What is Biodiversity?

Biodiversity or biological diversity is defined as:

"The variety of all living things, including plants, animals and micro-organisms, the genes they contain, and the ecosystems of which they form a part. It is not static, but is constantly changing. It is increased by genetic change and evolutionary processes and reduced by processes such as habitat degradation, population decline, and extinction."

(Taken from National Strategy for the Conservation of Australia's Biological Diversity (Department of Environment (then DEST) 1996)

The concept of biodiversity emphasises the interconnectedness and interdependence of all life on earth and can be considered at three levels:

- Genetic diversity - the variety of genetic information that is contained in all living things and that varies within and between the populations of organisms making up single species or wider groups
- Species diversity - the variety of species on earth
- Ecosystem diversity - the variety of the earth's habitats, ecosystems and ecological processes

2.1 Ecosystem Services

Urban biodiversity contributes significantly to the quality of life for urban dwellers by providing a range of ecosystem services. Ecosystem services are defined as the physical, cultural, spiritual and economic benefits people derive from ecosystems. Examples of how urban biodiversity can provide ecosystem services to the residents of Woollahra include (Pearson et al 2007):

- **Carbon sequestration:** urban trees remove carbon dioxide from the air and act as a sink by storing carbon in their biomass
- **Air pollution removal:** in particular ozone, nitrogen dioxide and sulphur dioxide by large street trees and other vegetation
- **Microclimate regulation:** vegetation and waterway areas reduce the heat island effect; trees also keep cities warmer in winter by blocking wind and reducing wind speed
- **Flood regulation:** vegetated areas can store large quantities of water and slow water movement, thus reducing flood damage
- **Noise abatement:** vegetation belts act as barriers for traffic noise along roads
- **Recreational values:** natural areas are highly valued for opportunities to play and exercise
- **Aesthetic values:** natural areas provide attractive surroundings, increase property values, promote tourism, and may even shape the cultural identity of urban localities
- **Educational values:** easily accessible natural areas provide numerous opportunities for nature study, research and environmental education through field trips and excursions.

Superb Fairy-wren occurrence Eastern Suburbs, Sydney

Renée Ferster Levy
(work in progress)

- Superb Fairy-wren observation (individual or group)
- ✗ Location surveyed with no Superb Fairy-wrens



Superb Fairy-wrens



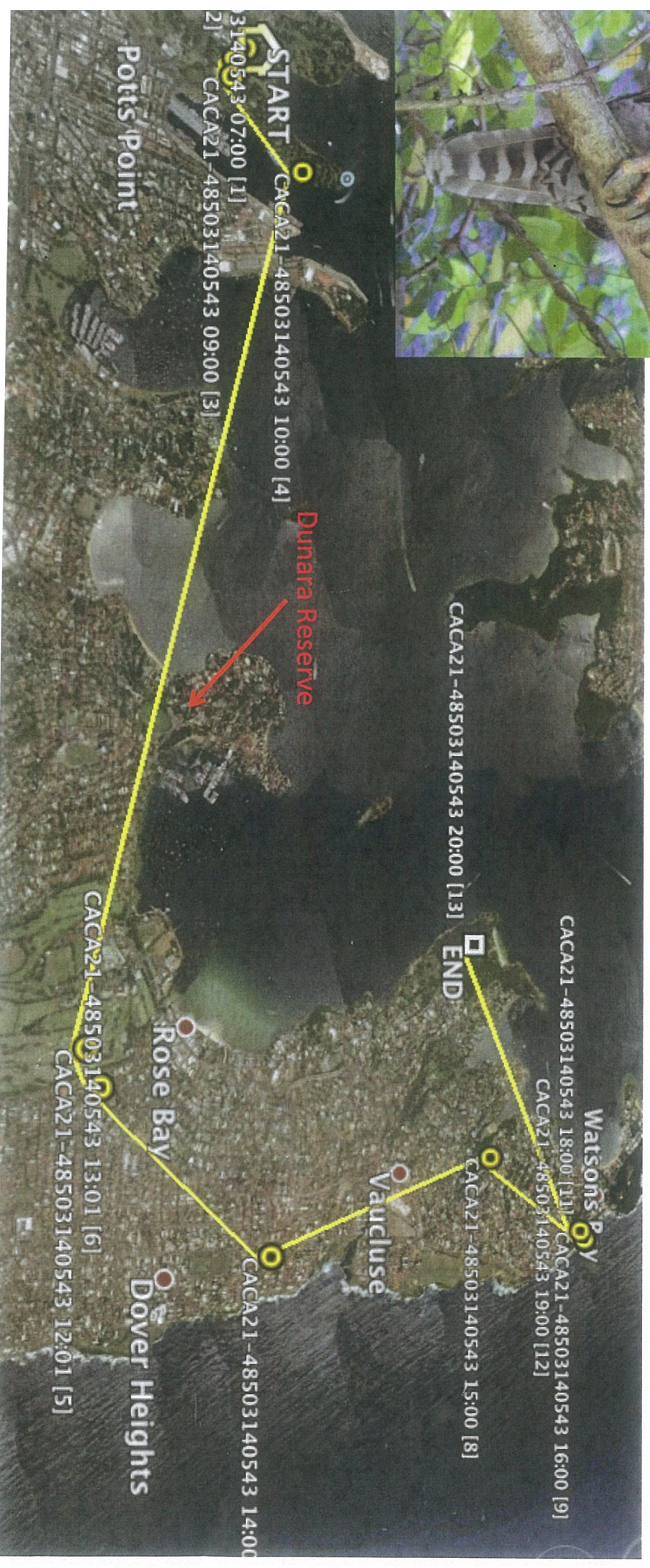


Powerful Owl *Ninox strenua* - a Threatened Species

This is Australia's largest owl, with a wingspan of 1.35m, which has a limited distribution along the east coast. It is dependent on mature trees for roosting in by day, and trees with large hollows to nest in; and to provide habitat for its food - large species, like Brushtail and Ringtail Possums, Flying Foxes and birds. The Powerful Owl is listed as Vulnerable in NSW.

A research project of BirdLife Australia included the satellite tracking of a few individual Owls, and the map below shows the actual track of one Powerful Owl on 31 May 2016 which roosted in the Botanical Gardens, and whose flight path passed within ~100m of Dunara Reserve. Please note that there was a 2 hour period between the nearest points, so it would likely have landed at other spots in between, and sites with suitable landing and hunting spots are limited. There were other journeys with a similar flight path recorded by the satellite tracking.

Retaining remnant patches of mature vegetation is crucial in an otherwise built-up area, for species like the Powerful Owl and its prey, without which it would not survive. Woollahra Council has a responsibility to ensure it retains this important habitat, as clearly shown in its own Biodiversity Conservation Strategy 2015-2025.





Wildlife Corridors

Wildlife Corridors

- ▬▬▬▬ Wildlife Corridors within Woollahra
- ▬▬▬▬ Wildlife Corridors to City of Sydney
- ▬▬▬▬ Wildlife Corridors to Waverley

Key Habitat Areas

- Managed by Council
- Not Managed by Council

Local Habitat Areas

- Locally Significant Habitat
- Complementary Habitat

- Habitat areas outside of Woollahra

- LGA Boundary



Woollahra Municipal Council provides this map for information and communication purposes only. No warranty can be given that this map is free from errors or omissions. All users of this map are responsible for assessing the relevance and accuracy of the information. Aerial photo 2014

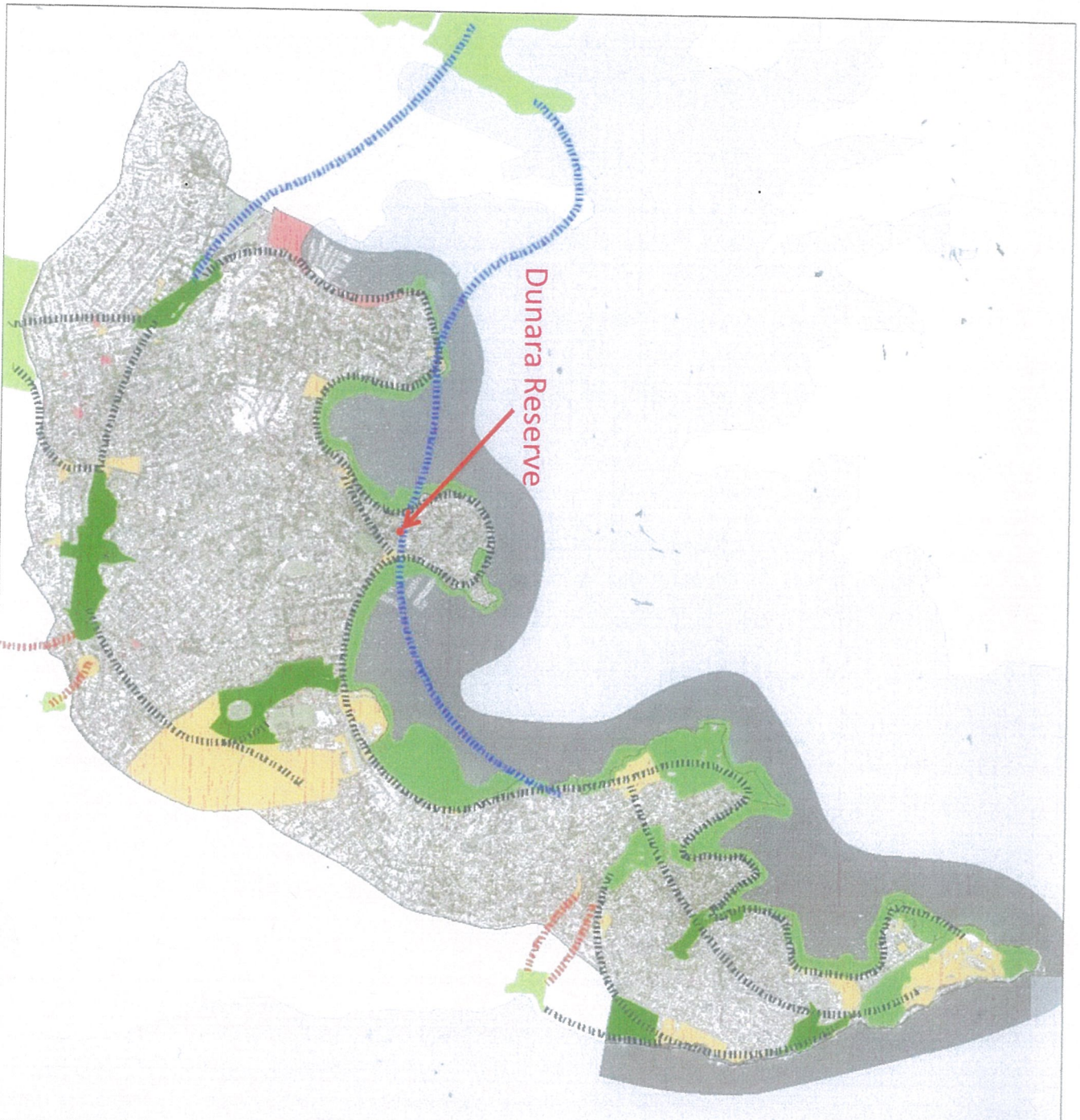


Figure 8-2. Habitat Areas and Wildlife Corridors

From Woollahra Council's Biodiversity Conservation Strategy 2015-2025, Map of Wildlife Corridors, with Dunara Reserve superimposed showing it is clearly in a defined corridor between Woollahra Council and the City of Sydney (see over).

8.3 Wildlife Corridors

The term “Wildlife Corridor” refers to connections between habitat areas across a landscape allowing the movement of animals and the transfer of plants through seeds and pollen. Ecological connectivity is vital to the long-term viability of native fauna species and remnant vegetation, and is recognised as one of the most effective tools available for conserving biodiversity and preparing landscapes for the impacts of climate change (Department of Environment (then DSEWPaC), 2012).

The important functions of wildlife corridors include (Smith and Smith 2009):

- Ensuring outbreeding and genetic exchange between flora and fauna populations that may otherwise become extinct in the long-term
- Allowing re-colonisation of habitat areas by fauna and flora that have become locally extinct from events such as fire, disease or poor breeding success
- Providing a route for the dispersal of young animals and a guiding pathway across an alien habitat for birds and bats including migratory and nomadic species.

Although much of Woollahra is comprised of fragmented patches of habitat isolated by a highly urbanised environment, some connectivity between Key Habitat Areas remains and there is potential to improve and progressively restore connectivity between them by establishing wildlife corridors through selective revegetation of public open space, and changing work practices. Landscape elements that contribute to wildlife corridors in urban environments include parks, golf courses, street trees and gardens that provide habitat.

The wildlife corridors within Woollahra are mapped using the presence of open space and to a lesser extent, street trees as “stepping stones” between Key Habitat Areas (shown in Figure 8-1 and Figure 8-2).

Due to the presence of barriers such as busy roads and developed infrastructure generally only birds and bats are likely to use these wildlife corridors to move between Key Habitat Areas. A number of these species are threatened and perform important ecological functions such as cross-pollination, seed dispersal and insect control.