



# **Planning Proposal for Reclassification of Council owned land Dunara Reserve Point Piper**

Public Hearing Report

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## Executive Summary

The Planning Proposal applies to Lot 11 in DP 27451 which is known as Dunara Reserve Point Piper (the site). The site is approximately 400m<sup>2</sup> in area.

The site is owned by Woollahra Municipal Council and is classified as community land under the *Local Government Act (LG Act) 1993*. The site is dedicated as a public reserve under Section 50(5) of the *LG Act 1993* and is zoned R2 Low Density Residential under Woollahra Local Environmental Plan 2014 (WLEP).

On 24 August 2015, Woollahra Municipal Council resolved:

- A. *THAT Council prepare a planning proposal to amend Schedule 4: Classification and reclassification of public land in Woollahra Local Environmental Plan 2014 (Woollahra LEP 2014) to reclassify the land known as Dunara Gardens from “community land” to “operational land “with the intention of disposing of the land.*
- B. *THAT a further report be brought forward to Council on the findings of the public consultation including the public hearing and submissions.”*

The Planning Proposal received a Gateway Determination from the NSW Department of Planning and Environment (DP&E) to proceed on 20 July 2017.

The Planning Proposal was publicly exhibited from 9 August 2017 to 8 September 2017 and re-exhibited from 25 October 2018 to 24 November 2017. According to the Council’s records 125 property owners were individually notified during both public exhibitions.

The reclassification of the site from “community land” to “operational land” requires the holding of a Public Hearing, in accordance with the *Environmental Planning and Assessment Act (EP&A Act) 1979* and the *LG Act 1993*.

Notification of the Public Hearing occurred in the *Wentworth Courier* on 14 February 2018 and those people who had made submissions to the Planning Proposal were notified in writing by the Council.

Stuart McDonald, Director of SJB Planning, was appointed as an independent Chair to undertake the Public Hearing. This document comprises the report of the Public Hearing in accordance with Section 29 of the *LG Act 1993* and Section 57 of the *EP&A Act*.

The terms of reference for preparing, conducting and reporting on the Public Hearing are as follows:

- (1) *Examine the Planning Proposal and exhibition documentation.*
- (2) *Consider submissions made to the exhibition.*
- (3) *Conduct a public hearing under section 57 of the EP&A Act.*
- (4) *Provide a report to Council on the appropriateness of the reclassification in the planning proposal. The report is to include—*
  - *a copy of all written submissions made to the hearing;*
  - *a summary of all oral submissions made to the public hearing;*
  - *an assessment of the written and verbal submissions made to the public hearing;*
  - *specific comments to adequately inform the Council when it makes a decision under section 58 of the EP&A Act in relation to the Planning Proposal; and*
  - *recommendations, based on considering issues raised in submissions, on whether—*

1. *further investigations should be undertaken and, if so, their nature and scope;*
2. *the Planning Proposal should proceed:*
  - (i) *in the exhibited version; or*
  - (ii) *subject to alterations;*
3. *the Planning Proposal should not proceed.”*

The Public hearing was conducted from 2:00pm – 5:30pm on 14 March 2018 at the Woollahra Council Chambers.

The key issues arising from both the verbal and written submissions made to the Public Hearing are generally the same as those raised in submissions to the exhibition (and re-exhibition). These are:

- Concerns regarding the land classification process and procedural/legal issues, including existence of a “Trust”;
- Status of the land having been dedicated to the Council as a result of the 1956 subdivision of the “Dunara” Estate;
- Heritage status of the land both in the context of the State Heritage Item at nearby 10 Dunara Gardens and a local heritage item (tree) on the land;
- Loss of public open space and public access and use of the site;
- The land is not adequately presented as a public reserve;
- Ecological value of the land and the substantial trees located thereon;
- Ongoing maintenance costs not onerous to the Council;
- Benefits of the land extend beyond just the adjoining neighbours;
- Land should stay in public ownership in order to protect the trees; and
- There is no Plan of Management (PoM) for Dunara Reserve.

All issues raised are discussed in more detail in later sections of this report.

This report records the matters raised during the course of the Public Hearing, it is not a word for word account or verbatim minutes. A summary of the verbal submissions made is included as Attachment 3 to this report. Included at Attachment 4 are the written submissions received during the exhibition period prior to the Public Hearing sessions at the Council Chambers.

The report notes that during the public exhibition and the re-exhibition of the Planning Proposal there occurred a technical omission with the exhibition material. In short any public exhibition of a planning proposal should occur in accordance with the *NSW Department of Planning and Environment LEP Practice Note – Classification and reclassification of public land through a local environmental plan*, 5 October 2016. The Practice Note requires that a copy of the practice note is to be included in the public exhibition material, but this did not occur. This procedural issue is discussed in Section 5. This technical omission was brought to the Council’s attention, with the Council subsequently obtaining legal advice as to whether that failure “invalidates the public exhibition process” and whether further public exhibition (and potentially a second public hearing) is required. The Council’s legal advice is that the Council’s failure to include the Practice Note in the publicly exhibited materials does not invalidate the public exhibition process. Accordingly, the advice is that a further public exhibition period or public hearing is not required.

The recommendation of this Report is that the Planning Proposal for the reclassification of the site from “community land” to “operational land” proceed.

# 1.0 The Site

Details of the site, reproduced from the Planning Proposal documentation prepared by the Council, is included below:

*“The site is located at the intersection of Wentworth Road and Dunara Gardens in Point Piper as shown in Figure 1, Figure 2 and Figure 3 below. Irregular in shape, the site area is approximately 402m<sup>2</sup> and falls approximately 4m to the southeast.*

*To the west, the site has a narrow access of approximately 2.7m to Wentworth Road, which provides limited pedestrian access. To the north the site adjoins Dunara Gardens, the private road to the former Dunara estate. To the east the site adjoins No.9 Dunara Gardens and to the south the site adjoins No. 1 Wentworth Street.”*



Figure 1: Local Area Map

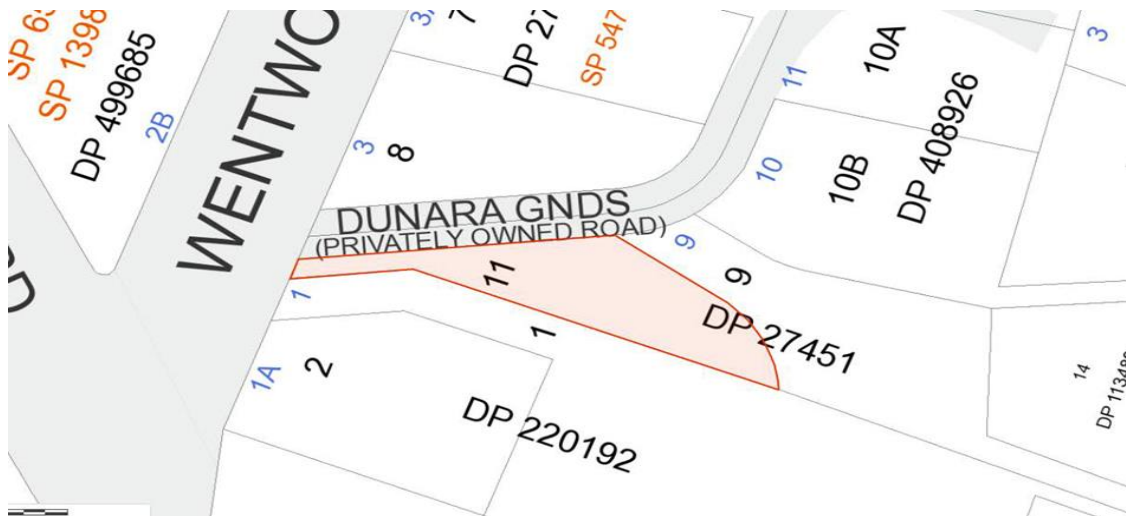


Figure 2: Site Map



Figure 3: Site Aerial

*“The site contains a range of exotic and native trees including a mature Cook Pine which is local heritage item No 277 in Woollahra LEP 2014 (see Figure 4 & 5). There are no threatened species, populations or ecological communities.*

*The site contains no structures, and the size, shape and topography of the land restricts the construction of a building for community use. The small frontage to Wentworth Road (see Figure 7) provides limited access, and from the public domain it does not visually present as a piece of public land.”*

### 1.1 Recent History of the Site and “Dunara”

Dunara Reserve located on Lot 11 is a residue of the previously existing Dunara Estate, being both the house “Dunara” and the associated gardens.

On 25 June 1956, Dunara Estate was subdivided into 11 lots. Lot 11 is noted on the deposited plan as, “Public Garden and Recreation Space”. The site was transferred unencumbered to Council on 15 July 1957 pursuant to Section 340A of the LG Act 1919 as part of the subdivision of the Dunara Estate.

The heritage listing included in WLEP is:

Cook Pine	Dunara Gardens	Lot 11, DP 27451	Local Item	Item number 277
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The heritage listing for the nearby “Dunara” included in WLEP is:

“Dunara” – house and interiors	10 Dunara Gardens	Lot 10B, DP 408926	State Item	Item number 276
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The State Heritage listing of “Dunara” includes:

*“Statement of Significance*

*Dunara is the oldest remaining house in Point Piper. It is historically significant particularly for its associations with Dorothea McKellar - as her birthplace and for its association with the influences on her artistic development, including her education, cultural environment and the surrounding landscape. Architecturally the house is an excellent example of a well-crafted Victorian residence of the period (built c 1883). It is a two-storey stuccoed brick house with slate roof and fine cast iron verandah and balcony, retaining much of its original detail intact and which past and present owners have maintained in a sympathetic manner. (Heritage Branch report, 1987).*

*The stables have been partially demolished and the servants' wing likewise has been separated from the house and converted into another dwelling. The entrance hall is particularly fine, having delicately carved shell motif cedar door head trims to doors opening off it and with Minton tiles.”*

Due to the narrow and restricted frontage to Wentworth Street, including the location of significant vegetation fronting Wentworth Street there exists limited opportunities for active use of the space. Some perimeter hedge planting fronting Dunara Gardens, a private road bordering the northern boundary of the Reserve, has been, as advised by Council officers, undertaken without Council approval or support.

## 2.0 Background to Planning Proposal

On 10 June, 2014 the Council adopted the following Notice of Motion:

*“That a report be brought to Council within the next three months assessing the land known as Dunara Reserve Point Piper, with a view to rezone the land in order for it to be put up for sale.”*

The Council’s Community and Environment Committee considered a report on “Dunara Reserve Point Piper” at its meeting on 10 August 2015. The Council officers report to the Committee included the following assessment:

*“Dunara Gardens provides little to no recreation value for the community. The reclassification of the site would allow Council to dispose of the land, removing the economic burden of managing the site and the potential public safety risk. The funds from the disposal can be used to provide or upgrade other Council services and infrastructure which will benefit the broader community.....*

*Dunara Gardens is currently classified as community land. Restrictions on community land prevent the site from being disposed of. However, these restrictions do not apply to operational land therefore we propose to recommend the site is reclassified as ‘operational land’.*

*Should the planning proposal be approved, the Council would then have the opportunity to dispose of the site through Expressions of Interest or Tenders.”*

On 24 August 2015, Woollahra Municipal Council resolved:

- “A. THAT Council prepare a planning proposal to amend Schedule 4: Classification and reclassification of public land in Woollahra Local Environmental Plan 2014 (Woollahra LEP 2014) to reclassify the land known as Dunara Gardens from “community land” to “operational land” with the intention of disposing of the land.*
- B. THAT a further report be brought forward to Council on the findings of the public consultation including the public hearing and submissions.”*

The Planning Proposal received a Gateway determination from the NSW DP&E to proceed on 20 July 2017.

The Planning Proposal was publicly exhibited from 9 August 2017 to 8 September 2017 and re-exhibited from 25 October 2018 to 24 November 2017. According to the Council’s records 125 property owners were individually notified during both public exhibitions. An extract of the location of the properties notified is included below in Figure 4.

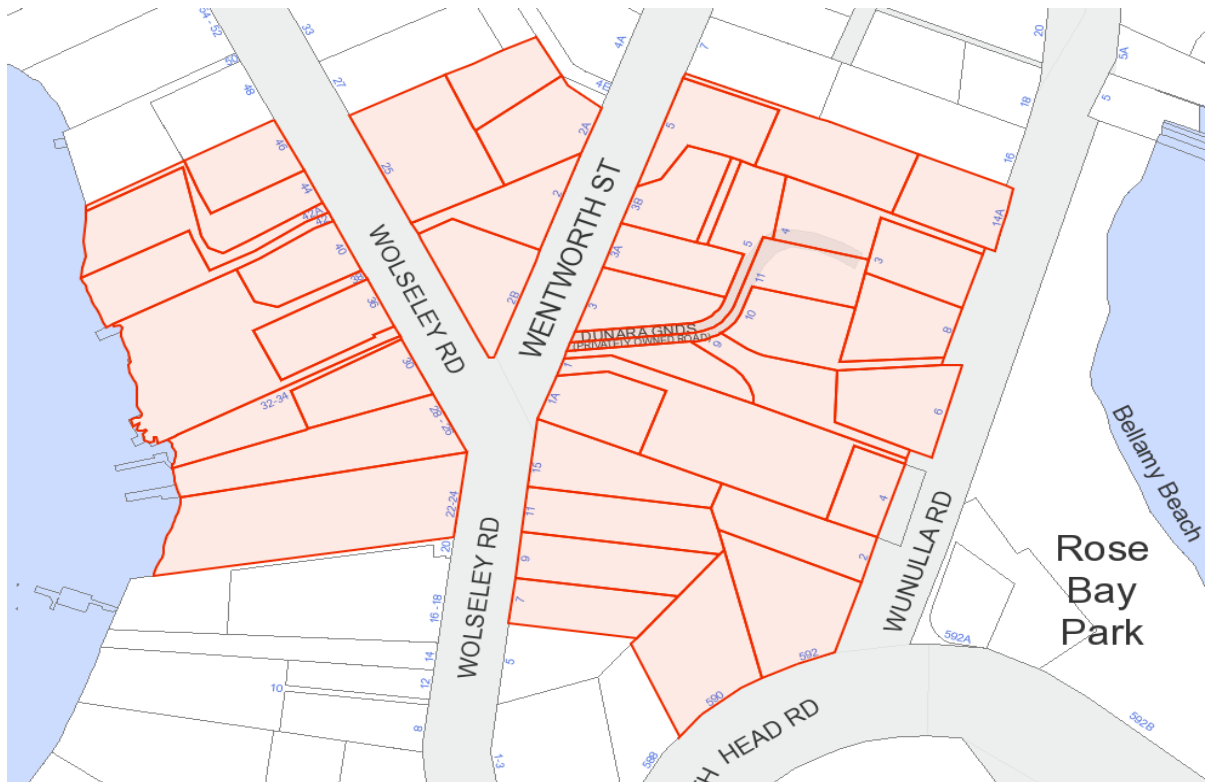


Figure 4: Extent of notification area for the public exhibition of the Planning Proposal

The exhibitions occurred at the Council Customer Services Area. A copy of the Planning Proposal and supporting material was also available on the Council's website.

Council received 25 submissions during the first exhibition period, 32 new submissions during the re-exhibition period as well as 11 submissions from people who commented during the original exhibition. A late written submission was received after the Public Hearing.

Copies of the submissions to the Planning Proposal were provided to the Chair for information and have been read and considered in the preparation of this report.

## 3.0 The Public Hearing

### 3.1 Information Relied Upon

- Report to the Community and Environment Committee 10 August 2015 – Dunara Reserve Point Piper;
- Council Resolution of 24 August 2015 regarding Dunara Reserve Point Piper;
- Planning Proposal Dunara Reserve Point Piper;
- Public exhibition material, including Planning Proposal, appendices etc.;
- Certificate of Title Lot 11 DP 26451;
- Site Survey, S.J. Dixon Surveyors Pty Ltd, date 06/07/2018 (sic);
- Gateway Determination 20 July 2017;
- Woollahra Municipal Council “Significant Trees in Public Parks” heritage inventory sheet – Cook Pine, Dunara Gardens, Point Piper;
- NSW Office of Environment and Heritage, heritage inventory sheet – “Dunara”, 10 Dunara Gardens;
- NSW Office of Environment and Heritage, heritage inventory sheet – Cook Pine and Morton Bay Fig, 1 Wentworth Avenue Point Piper;
- Extract of Council Meeting Minutes 9 July 1956 – subdivision approval 3 Wentworth Street Point Piper;
- Engineer’s Report 30 May 1956 - Subdivision Application No 3 Wentworth Street Point Piper;
- Extract of residential land zoning of Dunara Reserve 1951-2018;
- All written submissions to both exhibitions of the Planning Proposal;
- Verbal submissions made to the public hearing;
- Material handed up by submitters at the public hearing;
- Planner’s Report – Reclassification of Dunara Reserve, February 2018;
- Plan of Management 1996 - Local Parks;
- Woollahra Local Environmental Plan 2014 (WLEP);
- *NSW Department of Planning and Environment LEP Practice Note – Classification and reclassification of public land through a local environmental plan*, 5 October 2016; and
- *NSW Department of Local Government Practice Note No. 1 – Public Land Management, 2000.*

Dunara Reserve was inspected on 27 February 2018.

### 3.2 Terms of Reference for Preparing, Conducting and Reporting on the Public Hearing

The terms of reference for preparing, conducting and reporting on the public hearing are as follows:

- “(1) Examine the Planning Proposal and exhibition documentation.*
- (2) Consider submissions made to the exhibition.*
- (3) Conduct a public hearing under section 57 of the EP&A Act.*
- (4) Provide a report to Council on the appropriateness of the reclassification in the planning proposal.*  
*The report is to include—*

- a copy of all written submissions made to the hearing;
- a summary of all oral submissions made to the public hearing;
- an assessment of the written and verbal submissions made to the public hearing;
- specific comments to adequately inform the Council when it makes a decision under section 58 of the EP&A Act in relation to the Planning Proposal; and
- recommendations, based on considering issues raised in submissions, on whether—
  1. further investigations should be undertaken and, if so, their nature and scope;
  2. the Planning Proposal should proceed:
    - (i) in the exhibited version; or
    - (ii) subject to alterations;
  3. the Planning Proposal should not proceed.”

### 3.3 Overview of the Proceedings

Under section 29 (public hearing into reclassification) of the *LG Act 1993*:

- (1) A council must arrange a public hearing under section 57 of the *EP&A Act* in respect of a Planning Proposal under Part 3 of that *EP&A Act* to reclassify community land as operational land, unless a public hearing has already been held in respect of the same matter as a result of a determination under Section 56 (2) (e) of that *EP&A Act*.
- (2) A council must, before making any resolution under Section 32, arrange a public hearing in respect of any proposal to reclassify land as operational land by such a resolution.

Council is required to hold a Public Hearing for the reclassification of Dunara Reserve as a Public Hearing into this matter has not previously been held. The Public Hearing is required to be held before the Council makes any final decision regarding the land reclassification.

The general administration of the Public Hearing was undertaken by Council officers. Notice was given in the *Wentworth Courier* on 14 February 2018. Those people that had made written submissions to the Planning Proposal were individually notified of the Public Hearing and invited to make written submissions to the Public Hearing and/or register to speak. Copies of the letter are included as Attachment 1 to this report. Further, the notification letter invited recipients to access the Council’s website to view a Council “Planner’s Report” detailing submissions received in relation to the exhibited Planning Proposal. The Planners Report is included at Attachment 2.

The Chair of the Public Hearing undertook a site inspection, including the surrounding area, accompanied by Council officers on 27 February 2018.

The public session of the Public Hearing was held between 2:00pm – 5:30pm at the Woollahra Municipal Council Chambers. The Hearing was chaired by Stuart McDonald, a person independent of the Council as required under the *LG Act 1993*. The Chair’s role was to ensure that every interested person had an opportunity to present their views and to document these views, as well as provide a report to the Council with recommendations.

At the outset of each session of the Public Hearing the following comments and explanations were made by the Chair:

- Introduction and outline of the format of the hearing.
- Explanation of the role of the Chair – to listen to the issues, comments and concerns raised – the role was not to provide an opinion on the merits or otherwise of the reclassification during the course of the public sessions.
- The Chair is independent of Council and has no personal or professional interest in the outcome.

- Notes would be taken to assist the Chair to ensure an accurate representation of views expressed but formal minutes would not be taken and the proceedings would not be recorded in any form. Council officers would be assisting with the administration of the proceedings and preparation of notes.
- The Chair had inspected the site and the surrounding area and reviewed the written submissions received to both the Hearing and to the Planning Proposal, as well as the background material prepared by the Council for the exhibition.
- The importance of allowing each person to express their opinion without interruption.
- Any person who was present who had not previously registered was also given the opportunity to speak and requested to provide their names to staff.
- An overview of the area under consideration for planning change and broadly what was being proposed.

Details of Council officers present are listed below in Table 1.

Attachment 3 details the 11 speakers who attended the hearing.

Presenters were requested to keep submissions to a maximum of 10 minutes and requested that only one (1) person speak at one (1) point in time. By and large the 10 minute limit was observed.

Details of the verbal submissions including the presenters are included at Attachment 3.

At the close of each session participants were thanked for their time and advised that:

- A report would be prepared;
- The report is a public document and would be available as soon as practicable after Council receiving it;
- This matter will be reported back to Council and the Council officers would further advise of the timeframe; and
- Participants would be advised in writing when the matter was to be reported and the availability of the report.

All submissions made at the Public Hearing oppose the reclassification. All written submissions, with the exception of one (1) in support, oppose the reclassification.

The following representatives of the Council and SJB Planning were present:

Name	Role/Position	Company
Stuart McDonald	Chair	SJB Planning
Kelly McKellar	Strategic Planner	Woollahra Municipal Council
Anne White	Team Leader Strategic Planning	Woollahra Municipal Council

Table 1: List of representatives at public hearing held 14 March 2018

## 4.0 Summary and Discussion of Submissions

### 4.1 Overview

A total of 11 people made submissions in person at the Hearing. The list of speakers and the matters raised is provided at Attachment 3.

The submissions, all of which opposed the reclassification, are summarised below:

- Concern regarding the land classification process and procedural issues, including legal questions regarding the process and the existence of a trust;
- Significance of the land dedication as part of the 1956 subdivision;
- Loss of public open space, community owned land, and public access and use of the site;
- Value as open space is not only for active or passive use but includes the visual prominence of the site and trees viewed from surrounding area;
- Intended or potential removal of trees, with trees more likely to be protected if land is maintained in public ownership;
- Heritage significance of the heritage listed tree on the site and the nearby State heritage item "Dunara"; and
- Ongoing Council maintenance will not be significant expenditure of public money.

Each of the above issues is discussed below.

### 4.2 Residents and Other Submissions and Key Issues Discussion

#### 4.2.1 Concern regarding the land reclassification and other procedural/legal issues

- The land was dedicated as public open space as a requirement at the time of the 1956 subdivision approval and should not be reclassified and sold.
- The land is held in trust by the Council and while it may be legally possible to discharge the trust, morally the Council should not discharge the trust.
- There are legal flaws in the preparation and reporting of the Planning Proposal that invalidates the matter as reported to the Minister and the Minister's decision to proceed to Gateway.
- There is no valid PoM for Dunara Reserve as it is referred to as "Dunara Gardens" in the *Plan of Management 1996 - Local Parks*. A valid PoM is a pre-requisite for changing the nature and use of land under the *LG Act 1993*.

#### Discussion in response

- The Council has obtained legal advice dated 25 September 2017, summarised below:
  - The Reserve is likely to be held in trust for a public purpose given the circumstances of its dedication to Council. This does not prevent the reclassification of the land by way of a Local Environmental Plan (LEP), via a Planning Proposal process.
  - The LEP which reclassifies the Reserve can provide that, upon the reclassification of the Reserve is freed from trusts. The Planning Proposal currently does this.

- There is no impediment to the reclassification of the reserve and whether or not there is a PoM is not relevant.
- In my opinion it is open to the Council to reclassify the previously dedicated land via the planning proposal process. If the land is reclassified to operational land, then the Council has identified that it may be sold.
- Subsequent to the legal advice, and as a result of the public hearing process, I have identified a technical omission associated with the exhibition material associated with the Planning Proposal. This issue is further discussed in Section 5 of this report.

#### 4.2.2 Loss of public open space, community owned land, community value of the land and trees, and public access and use of the site

- The land is a community asset and should not be reclassified and sold.
- There is limited public open space in the highly urbanised area of Point Piper.
- Increasing population in the Woollahra local government area will need access to more open space, not less.
- The site should be better available to the public and could be improved with signage.
- The large and significant trees on the site that are visible from Rose Bay and other areas results in a wider public benefit. It is not correct to state that the only beneficiaries of the land are the immediate neighbours.
- While not highly accessible or used for active recreation the site is still valuable as public open space.
- Provides trees and substantial planting whereas the private residential properties within Dunara Gardens do not have capacity for substantial planting.

#### Discussion in response

A number of the written submissions and some of the verbal submissions emphasised that, contrary to the information contained in the report to the Community and Environment Committee on 10 August 2015 and the Planning Proposal, the site is used by, and provide a benefit to, the wider community, and is not limited to the immediate neighbours.

As summarised above, submitters advised that the land is used by some children for play; is used by some walkers for shade and protection; provides trees and substantial planting whereas the private residential properties within Dunara Gardens do not have capacity for substantial planting; and that some of the trees are visible from a wide area including Rose Bay.

Having inspected the site and noting the lack of accessibility I would question the extent of and availability for use for general play and activity, including passive use. As shown in the figures below the site has a very narrow and restricted public access of approximately 2.7m to Wentworth Street. Physical access is also restricted by vegetation, to the point of being obstructed. Even allowing for the potential removal of the low palm tree shown in Figure 6 below, access is then restricted by more substantial vegetation and uneven and sloping land.

There is no alternative public access to the site, other than the narrow Wentworth Street frontage. The road bordering the site fronting Dunara Gardens estate is a private road. There is no Council or public access from the privately owned road. Following a request by me to the Council's Strategic Planning section, I am advised that the Council's Property Section commissioned a land title search in April 2018 to establish whether there is any right-of-way over the private road that benefits the Council/public, thereby allowing more practical access to the site. The advice provided to me by the Council's Strategic Planning section is that the title search that was undertaken confirmed that there is no right of access across/from the private road. If members of the public are accessing the subject site via Dunara Gardens private road then they are doing so by trespassing on private land.





Figure 5: The subject site is shown in red shading above. The narrow 2.7m access to Wentworth Street can be seen, as can the private road to the north of the site.



Figure 6: Photograph of the 2.7m wide Council and public access to the site from Wentworth Street. This is the only legal access to the site.

In my opinion there is very limited if any opportunity for any active use of the site, including children's play or even passive use. The site, including the very substantial trees, among them the heritage listed Cook Pine, does provide a visible parcel of passive green space – landscaping containing some substantial trees and vegetation. I also note that this landscape character may exist regardless of public or private ownership.

I also acknowledge that the Council's expert technical officers, including the Team Leader Open Space and Recreation Planning, Manager of Open Space Trees and Director of Technical Services have advised the

elected Council (report to the Council's Community and Environment Committee 10 August 2015) that the site:

- Is unsuitable for use as public open space due its position amongst private dwellings and its topography.
- Has a small frontage to Wentworth Road of approximately three metres (2.7m) and does not provide appropriate access or passive surveillance into the site.
- Presents as part of a private estate rather than public land and members of the public would be hard pressed to recognise it as a public asset, let alone be inclined to enter and use the site for public recreation.
- Currently only offers benefits to the properties immediately adjoining the site.

Further to the above comments, the opinions expressed in submissions regarding the lack of substantial landscaping and trees in private properties within the private Dunara Gardens estate is not a matter that should be given any weight in assessing the strategic planning merit of the Planning Proposal. Property owners have made decisions to purchase and live in the location. If they desire more generous private gardens and tree cover then alternative property options are available to them.

#### 4.2.3 Protection of trees

- The protection of the trees, including the Cook Pine heritage item is served by maintaining Council ownership and community land classification.
- The protection of the trees cannot be guaranteed if the land is sold.

#### Discussion in response

An extract of the site survey is included below in Figure 7 and which identifies 11 trees on the site (T3 and T6 are located on No 1 Wentworth Street), confirming that it is heavily vegetated, particularly through the widest section of the site.

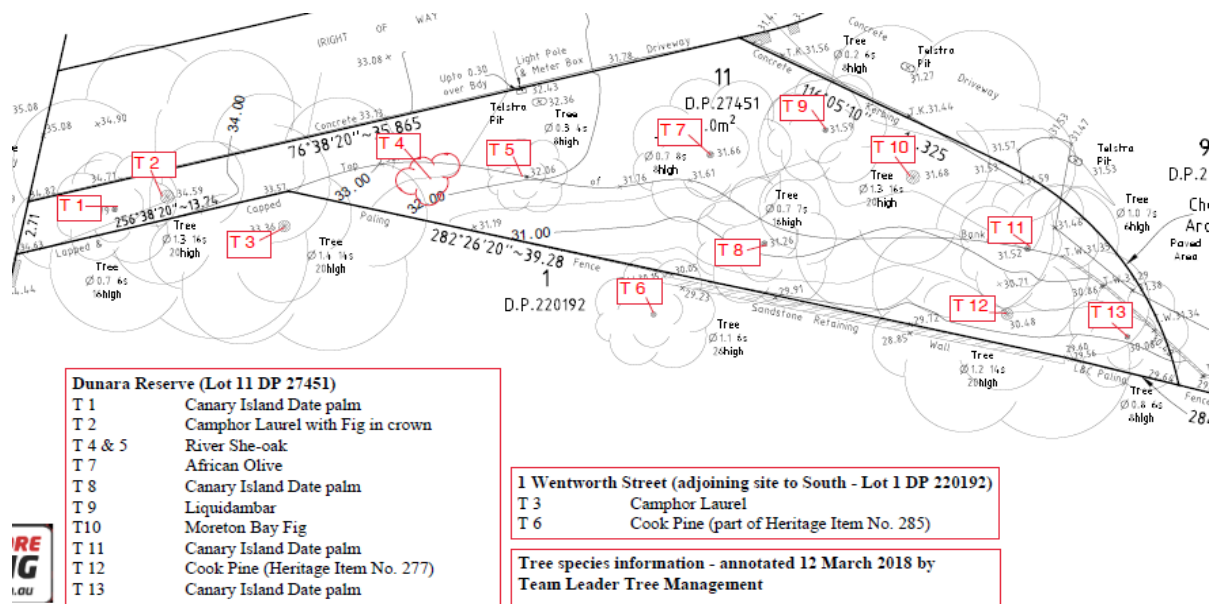


Figure 7: Extract of survey identifying trees on the site.

The Cook Pine (T12 in Figure 7 above) is a heritage item and is protected by the heritage provisions contained within WLEP regardless of land ownership. The Cook Pine and indeed all relevant trees within the

reserve are also protected by the Council’s tree preservation order. These controls are in place regardless of the land classification and ownership.

There are two (2) trees, a Cook Pine and a Moreton Bay Fig, located on private land adjoining at No 1 Wentworth Street that are also local heritage items. The status and protection of these trees on private land is no different to the status and protection on Dunara Reserve.

The subject site is zoned R2 Residential Low Density, and has been zoned for residential purposes since the 1950s as identified in the table included in Figure 8 below.

**Land zoning 1951-2018**  
**Dunara Reserve, Point Piper (Lot 11 in DP 2741)**

Instrument	Zoning	Status
Woollahra LEP 2014	R2 Low density residential	Current
Woollahra LEP 1995	Zone No 2 (a)—(Residential "A" Zone)	Past
Woollahra Planning Scheme Ordinance (1972)	Zone No 2 (a)—(Residential "A" Zone)	Past
County of Cumberland Planning Scheme Ordinance (1951)	Living Areas	Past

Figure 8: History of residential zoning

If the site were to be reclassified and sold then there may be that some future application for some form of residential development on the land and this may include the proposed removal of some trees. Any future use and works on the land would require development consent. As is the case with the adjoining property at No. 1 Wentworth Street, the residential use of the property could occur in conjunction with the retention and protection of the Cook Pine and other trees.

Because of the constrained access to the site in particular and the awkward and unusual shape and configuration, together with the existence of a number of substantial trees, it will be a challenging prospect as a stand-alone residential development site, although many challenging sites in inner Sydney have proven capable of being developed.

**4.2.4 Heritage significance of the heritage listed tree on the site and the nearby State heritage item “Dunara”;**

Discussion in response

The proposed reclassification does not alter the heritage status of the heritage listed Cook Pine or the relationship of the site to 10 Dunara Gardens. The existing relationship was established as a result of the 1956 subdivision and subsequent residential development of Dunara Gardens. If the site were to be sold and some form of residential development were to be proposed, including alteration to the existing landscape character and tree removal, then the heritage impact and acceptability would be determined at that time. In my opinion it is not reasonable or rational to assume the acceptability or otherwise of possible heritage impact.

The Heritage Council of NSW wrote to the Council on 4 September 2017 and the Chair, Stephen Davies, presented to the public hearing. The Heritage Council notes that the reserve may have local heritage value as well as a contributory value to the Dunara State heritage item. The 4 September 2017 letter includes:

*“I would welcome discussion with Council over its consideration for additional Local Environmental Plan listing of the Reserve as a landscape heritage item and consideration of possible State Heritage Register listing as an extension of Dunara’s existing, limited SHR curtilage.”*

Some submissions suggested that in order to protect the trees and the heritage status of the land then it should remain in public ownership. At the public hearing Mr Davies expressed the opinion that, if in private ownership, there would be significant pressure on the site and that the best way to protect the heritage of the site would be to keep it in public ownership, rather than have a private owner looking to do something with the land. In addition, Mr Davies expressed the opinion that the opportunities for development of the site are very low so questioned the potential disposal.

In my opinion a property does not have to be in public ownership in order to for its heritage significance to be recognised and protected. No 10 Dunara Gardens is a State heritage items in private ownership. The Cook Pine and Moreton Bay Fig trees at 1 Wentworth Street are local heritage items on private property. Having said this, it is also acknowledged that the residential development of both of these sites occurred prior to any heritage listing, i.e. the residential potential was realised free of any contemporary heritage controls, which have been imposed more recently.

Separately to the Planning Proposal and Public Hearing process, the Council at its meeting on 12 March 2018 resolved:

*“THAT Council requests staff to prepare and submit a report including a heritage assessment and draft heritage inventory sheet for Dunara Reserve to Urban Planning Committee to facilitate consideration of Dunara Reserve (and its elements) being:*

- 1. Included in the Woollahra Local Environmental Plan as a heritage item; and*
- 2. Listed as a heritage item of state significance on the NSW Heritage Register.”*

The above investigations and consideration by the Council will proceed separately to the process being followed with the Planning Proposal and Public Hearing.

Whatever the outcome of the analysis arising from the Council resolution of 12 March, I am of the opinion that the subject site does not have to remain classified as community land in order that its heritage status is recognised and protected but do accept that protection may be more readily achieved whilst the land is in public ownership without any expectation of some form of residential development on the land.

#### **4.2.5 Ongoing Council maintenance will not be significant expenditure of public money**

##### Discussion in response

A number of submissions questioned that justification put forward by Council officers that the ongoing maintenance of the reserve is a poor use of Council’s resources as there is no tangible and obvious community benefit. Submitters suggested that, in any event, the expenditure is minimal in the context of the Council’s discretionary annual expenditure.

It is apparent that many residents who have made submissions have difficulty in accepting that a public reserve that has been in existence for more than 60 years and was established for the express purpose of public open space, is now considered to provide no obvious community benefit and that Council officers have formed the opinion that ongoing public expenditure is not justified. In short, it is not clear to the local community why the Council considers that the ongoing responsibility for, and stewardship of, the public land is no longer a focus for the Council.

I note that the exhibited Planning Proposal identifies that, should the site be sold or leased long-term, the revenue generated could be used for public open space upgrades in the local government area such as the Redleaf foreshore upgrade, Rose Bay Pedestrian Trail and Guilfoyle Park upgrade and that these facilities are in proximity to the residents of the whole of Point Piper.

As mentioned earlier in this Report, the Council’s expert technical officers have recommended that there is a case for a different focus for the expenditure of Council’s resources and while public representations to the

Planning Proposal exhibitions and the Public Hearing suggest that this case has not been adequately made, the current stage of the Council's consideration is whether or not to reclassify the land. Consideration of whether or not Council sells or leases the land and invests the return in other programs will be a consideration at a later stage and in the context of the whole of the Council's expenditure program.

#### 4.2.6 Public access

- The land is not adequately presented as a public reserve

#### Discussion in response

As detailed above, the site has extremely limited accessibility and usefulness for active or even passive recreation. Changes to the planting at the Wentworth Street frontage would be required in order to accommodate a pedestrian access point and some form of signage, in the event that the Council wishes to change the presentation of the reserve.

#### 4.2.7 Ecological value

- Ecological value of the land and the substantial trees located thereon.
- The site provides habitat for flora and fauna and is important in the Woollahra Biodiversity Conservation Strategy.
- May be within the flight corridor of the endangered powerful owl

#### Discussion in response

The Planning Proposal documentation does not place any emphasis on the site having inherent ecological value. Notwithstanding, as with the heritage status/value of the site, any ecological value does not change as a result of the reclassification and potential disposal.

## 5.0 LEP Practice Note – Classification and reclassification of public land through a local environmental plan

The NSW Department of Planning and Environment LEP Practice Note – Classification and reclassification of public land through a local environmental plan, 5 October 2016, provides guidance on classifying and reclassifying public land through a local environmental plan (LEP). This practice note emphasises the need for councils to demonstrate strategic and site specific merit, includes a comprehensive information checklist and clarifies issues arising for public reserves and interests in land. A copy is included at Attachment 6.

The practice note identifies (among other things) that the classification and reclassification of public land is fundamental to transparency in relation to a council's strategic asset management; and that a Planning Proposal to classify or reclassify public land will need to be prepared in accordance with the practice note.

Under the heading Community Consultation the practice note states:

*“Community Consolation*

*Planning proposals to reclassify public land are to be publicly exhibited for at least 28 days.*

*A copy of this practice note is to be included in the public exhibition materials”*

Council's officers have advised that a copy of the practice note was not included in the public exhibition materials during the two (2) exhibition periods.

During the public exhibitions the Council did provide the following information to the community with regard to the Practice Note:

- Appendix 1 - information checklist for proposals to classify or reclassify public land through an LEP taken from practice note 16-001' references the Practice Note in the title and addresses the matters to be considered for reclassification.
- A public notice explaining each step of the reclassification process in correspondence to residents and submitters, on Council's public website and in the local newspaper.
- A link to the DP&E website for further information. The Practice Note is also located on that website.

It is also noted that a copy of the Practice Note was provided as part of advertising the Public Hearing.

In summary, there has been a technical omission from the Planning Proposal exhibition. It is not possible to be certain regarding the impact of this omission on the public understanding of the proposal or how it may have impacted/influenced the submissions, however having considered all of the written submissions arising from the exhibitions as well as the submissions to the Public Hearing it is my opinion that the public had a clear understanding of the proposal and the process.

This technical omission was brought to the Council's attention, with the Council subsequently obtaining legal advice as to whether that failure “invalidates the public exhibition process” and whether further public exhibition (and potentially a second public hearing) is required. The Council's legal advice is that the Council's failure to include the Practice Note in the publicly exhibited materials does not invalidate the public exhibition process. Accordingly, the advice is that a further public exhibition period or public hearing is not required.

## 6.0 Conclusion

In accordance with the terms of reference for conducting and reporting on the Public Hearing, the Planning Proposal and exhibition material has been examined and all submissions made to the exhibition and the staff report on submissions have been considered in preparing this report.

The Public Hearing session provided the opportunity for 11 speakers to present. There was some material handed up at the Public Hearing supporting the verbal presentations.

The matters raised in the submissions were consistent with community comments provided during public consultation.

My summary of the circumstances relating to Dunara Reserve include:

- The site, having been dedicated to the Council in 1957 as *Public Garden and Recreation Space* has functioned to some extent for that purpose for approximately 60 years.
- Council officers responsible for the management of public open space have formed the opinion that the site is an underutilised piece of public land that does not benefit the wider community; that the site currently offers benefits only to the immediately adjoining properties; and that the ongoing maintenance of the site is a poor use of Council's resources.
- Council officers have recommended the reclassification of the land. The possible sale or long term lease may provide the opportunity for the Council to use the funds to improve services and infrastructure in the local government area, including useable open space in the vicinity.
- The site does not present to the general public as a public reserve, has restricted access and has very limited if any opportunity for any active use of the site, including children's play or even passive use.
- Further constraints associated with the site include a lack of access from the adjoining private road, an awkward and unusual shape and heavy vegetation.
- The heavy vegetation includes some large and prominent trees, including a local heritage item in the form of a Cook Pine.
- The heritage and ecological value of the land would not change as a result of reclassification.

The written submissions, with one (1) exception, and the speakers at the public hearing, are opposed to the reclassification and disposal of the land for a wide range of reasons as detailed in the report. With regard to the heritage issues raised I have noted in this Report that the Council at its meeting on 12 March 2018 resolved:

*"THAT Council requests staff to prepare and submit a report including a heritage assessment and draft heritage inventory sheet for Dunara Reserve to Urban Planning Committee to facilitate consideration of Dunara Reserve (and its elements) being:*

1. *Included in the Woollahra Local Environmental Plan as a heritage item; and*
2. *Listed as a heritage item of state significance on the NSW Heritage Register."*

The above investigations and consideration by the Council will proceed separately to the process being followed with the Planning Proposal and Public Hearing.

Whatever the outcome of the analysis arising from the Council resolution of 12 March I am of the opinion that the subject site does not have to remain classified as community land in order that its heritage status is

recognised and protected but do accept that protection may be more readily achieved whilst the land is in public ownership without any expectation of some form of residential development on the land.

In my opinion, and based on the information available to me through the Public Hearing process, the Council's expert technical officers have given consideration of the community value and usefulness of the site and, on balance, the officers have concluded that the land has limited capacity to be useful as a public asset and that it is not in the broader public interest to maintain the community classification of the land. In my opinion this is a reasonable position to have reached and there are no matters raised during the public hearing process that would prevent the Council from proceeding with the reclassification to operational land.

The various procedural and legal issues raised in submissions and at the Public Hearing have been referred by the Council for legal advice and based in this advice I understand that there is no procedural or legal barrier to the Council proceeding with the Planning Proposal.

As identified in Section 5 of this Report there has been a technical omission from the Planning Proposal exhibition. It is not possible to be certain regarding the impact of this omission on the public understanding of the proposal or how it may have impacted/influenced the submissions, however having considered all of the written submissions arising from the exhibitions as well as the submissions to the Public Hearing it is my opinion that the public had a clear understanding of the proposal and the process.

Given the technical omission this matter was brought to the Council's attention and the Council then sought legal advice regarding the statutory process. The Council's legal advice is that the Council's failure to include the Practice Note in the publicly exhibited materials does not invalidate the public exhibition process. Accordingly, the advice is that a further public exhibition period or public hearing is not required.



## 7.0 Recommendation

The recommendation of the report is that the Planning Proposal for the reclassification of the site from “community land” to “operational land” proceed as exhibited.