

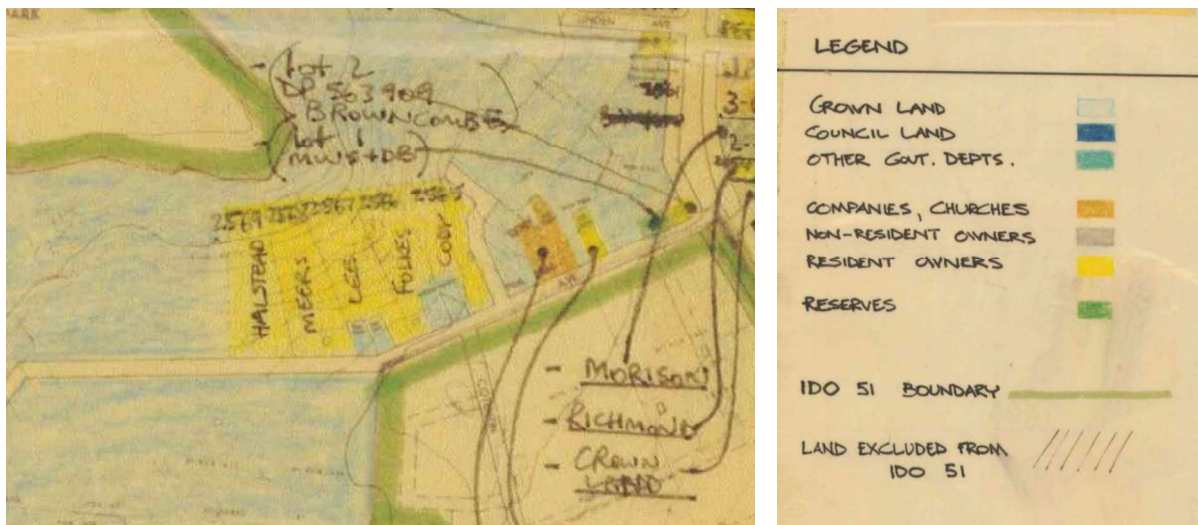
NON-COMPLIANCE: Housing Density

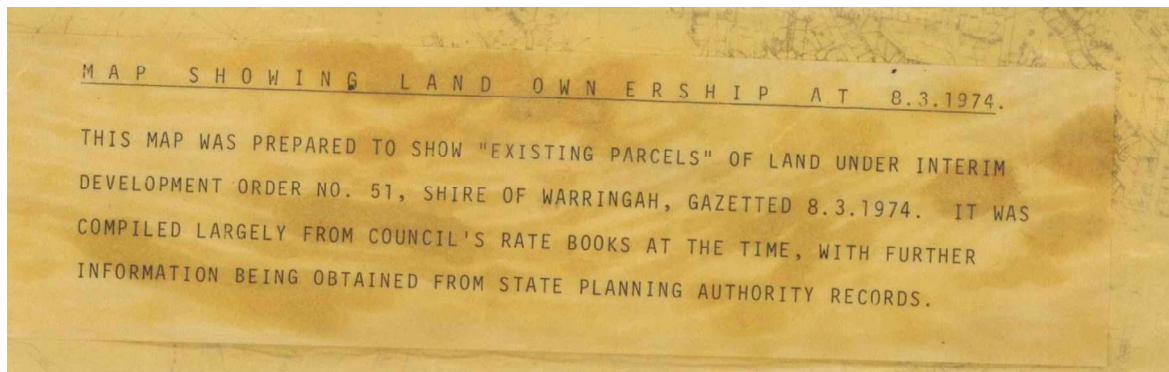
The WLEP 2000 provides the following built form standards pertaining to housing density (number added):

- i. *The maximum housing density is 1 dwelling per 20 ha of site area, except:*
- ii. *where this standard would prevent the erection of one dwelling on an existing parcel of land, being all adjacent or adjoining land held in the same ownership on 8 March 1974 and having a combined area of not less than 2 ha, and*
- ii. *However, consent may be granted for development that will contravene these housing density standards but, if by more than 10 per cent, only with the concurrence of the Director.*
- iii. *The matters which shall be taken into consideration in deciding whether concurrence should be granted are:*
- iv. (a) *whether non-compliance with the development standard in issue raises any matter of significance for State or regional environmental planning, and*
- v. (b) *the public benefit of maintaining the planning controls adopted by this plan.*

There are additional notes in the standard which discuss how to calculate housing density, but these need not be reproduced for this report.

The standard is prescriptive in that the housing density standard for this development has an exception provision as per (ii) above. This relates to the background and history section of this report in the former half as the subject site and the adjoining Lot 2616 DP 752038, known as 10-12 or 12 Wyatt Avenue, were held in the same ownership at the specified date, as per the below reproduced map:





The two sites shown to be in the same ownership at 8 March 1974 are very similar in shape and size, and have a total approximate area of 4,596 square metres (or 0.45 HA).

It is also prudent to establish that recent Caselaw clarified that each room in a boarding house can be defined as a 'domicile' (therefore dwelling) as previously discussed under the SEPP BASIX section of this report.

Refer SHMH Properties Australia Pty Ltd v City of Sydney Council

Accordingly, for the purpose of the housing density assessment, the subject site is proposed to accommodate 27 dwellings.

Despite the two adjoining sites being in the same ownership at 8 March 1974 the combined area is lesser than 2HA, and accordingly the exception provisions of the control do not apply.

Therefore, the calculable variation to the housing density standards is 85.1%, being 27 dwellings on 0.229 HA.

Given that this quantum of variation is greater than 10%, the concurrence of the 'Director' (Minister of Planning or their delegates) is required, should the application be found worthy of support by the NBLPP.

The standard contains two matters for consideration for the Director in determining whether to grant concurrence or not, being:

(a) whether non-compliance with the development standard in issue raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the planning controls adopted by this plan.

It is not for Council to determine whether or not concurrence should be granted, however the WLEP 2000 lacks any objective assessment when considering the variation to the housing density standard other than the above. It is therefore warranted to address the two matters for consideration.

Whether non-compliance with the development standard in issue raises any matter of significance for State or regional environmental planning.

There are no known environmental planning instruments that would consider the variation request to be detrimental to any matter of significant for State of regional planning and therefore, the development satisfies this requirement.

The public benefit of maintaining the planning controls adopted by this plan.

The WLEP 2000 is 18 years old at the time of writing this report and, comparative to other similar environmental planning instruments, is outdated.

There are several matters that establish that there is no discernible public benefit in maintaining the planning controls adopted by this plan:

- Any form of residential development on this land would be contrary to the housing density standard and therefore if the control were to be strictly enforced, the land would be undevelopable.
- The site is bound by land to the south that is zoned for R2 Low Density Residential development pursuant to the Warringah Local Environmental Plan 2011. Each of these R2 sites located some 20m away could accommodate a boarding house development of the same scale as the proposal.
- The development provides housing for essential workers and for alternate housing choices. The need for affordable housing in the Northern Beaches is in the public interest and need not be justified in this report.
- The development complies with the DFC of the C8 Locality.
- The development has no unreasonable or adverse impact upon adjoining land.

Therefore, it can be surmised that there is public benefit in the development itself, and that strictly maintaining the housing density development standard is contrary to the public benefit and stagnates the ability to development the site.

Accordingly, the variation sought to the housing density standard is supported in this particular circumstance.

If the NBLPP is of the mind to approve this application, concurrence must be sought by the Director for the variation to the housing density standard prior to consent being issued.