

THE HILLS SHIRE COUNCIL

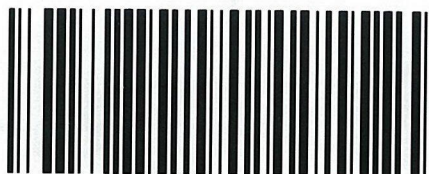
3 Columbia Court, Baulkham Hills NSW 2153
PO Box 7064, Baulkham Hills BC NSW 2153

Telephone +61 2 9843 0555
Facsimile +61 2 9843 0409

DX 9966 Norwest

Email council@thehills.nsw.gov.au
www.thehills.nsw.gov.au

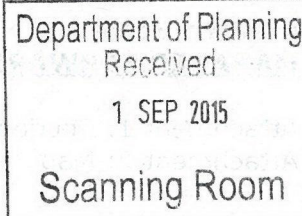
ABN No. 25 034 494 656



PCU061356

24 August 2015

Ms Rachel Cumming
Director, Metropolitan Delivery (Parramatta)
Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001



Our Ref: 3/2015/PLP

Dear Ms Cumming,

Section 73A request for Additional Permitted Uses Map for 160-162 Excelsior Avenue, Castle Hill.

On 17 July 2015 Amendment 26 to The Hills LEP 2012 was made, however due a drafting error the map and map reference associated with this amendment are not included in The Hills Shire Local Environmental Plan 2012.

Amendment 26 consists of an additional permitted use of a child care centre at 160-162 Excelsior Avenue, Baulkham Hills.

Parliamentary Counsel advised that as the text in the opinion did not contain a reference to the Additional Permitted Uses Map, the map cannot be made. Council provided the map and specified that there is a map amendment during the process and with the request for opinion; however Parliamentary Counsel did not include the text reference to the map in the opinion.

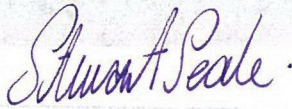
There is now an inconsistency in The Hills Shire Local Environmental Plan, as all the other Additional Permitted Uses have the reference to the map and an Item Number.

Council has concerns about the role of Parliamentary Counsel in the making of the plan. In this instance, they drafted an opinion that won't give effect to the Planning Proposal as intended and described to them in our request. This error was not picked up until the amendment was about to be made and we had very limited time to make a decision about how to proceed. Once we had reviewed everything and determined that postponing the amendment to rectify the error was the best way forward, the system wasn't able to be stopped.

The text reference for this amendment, consistent with the other Additional Permitted Uses in The Hills LEP 2012 Schedule 1 and the map should be included under the 'expedited amendments of environmental planning instruments' (Section 73A) provisions of the Act.

Should you require further information please contact Stewart Seale, Manager Forward Planning on 9843 0260.

Yours faithfully



Stewart Seale
MANAGER FORWARD PLANNING

Attachment 1: Section 73A EP&A Act Submission

Attachment 2: Map



Section 73A EP&A Act Submission

Part A. Council to complete

Subject:

The Hills Local Environmental Plan 2012 (Amendment No. 33)

Lots 1 and 2, DP 562533, 160-162 Excelsior Avenue, Castle Hill

Report requesting the making of amending local environmental plan under section 59 and section 73A.

Background:

The Hills LEP 2012 (Amendment No. 26) facilitates the amalgamation and expansion of an existing child care centre at 162 Excelsior Avenue onto the adjoining lot (160 Excelsior Avenue). The outcome was to be achieved by an amendment to Schedule 1 'Additional Permitted Uses' and the associated Additional Permitted Uses Map to permit the use of land at 160-162 Excelsior Avenue, Castle Hill (Lots 1 and 2 DP 562533) for the purposes of a child care centre, with development consent.

On 28 April 2015 **The Hills Council** considered a report on the proposal and resolved:

'A planning proposal to amend Schedule 1 'Additional Permitted Uses' of The Hills Local Environmental Plan 2012 to permit a child care centre at 160-162 Excelsior Avenue, Castle Hill (Lots 1 and 2, DP 562533) proceed to finalisation.'

The Plan was made under Council's delegation on 6 July 2015, following the receipt of an Opinion from Parliamentary Counsel on 5 June 2015. The Section 59 report was forwarded to the Department for notification of the amendment on 9 July 2015. Amendment 26 was made on 17 July 2015.

Amendment 26 was made and notified incorrectly, without the intended reference to the Additional Permitted Uses Map in Schedule 1 – Additional Permitted Uses, and without the associated Additional Permitted Uses Map on which it was meant to be shown as "Item 5".

Prior to the notification, Parliamentary Counsel and Parliamentary Counsel Geographic Information Systems (PCO GIS) advised that the Additional Permitted Uses map and map reference in Schedule 1 – Additional Permitted Uses associated with this amendment would not form part of the amendment, since text in the Parliamentary Counsel Opinion did not contain a reference to the Additional Permitted Uses Map. This occurred despite Council providing the map and specifying that there was a map amendment during the planning proposal process and in the request to Parliamentary Counsel for opinion (*Part 2 Explanation of the Provisions in the planning proposal*).

The amendment has therefore resulted in an inconsistency in The Hills LEP 2012, since all other Additional Permitted Uses make reference to the associated map and a particular Item Number.

Given that the intended amendment to the Additional Permitted Uses map, and reference to the map in Schedule 1, was described in the planning proposal, adopted by Council, forwarded to Parliamentary Counsel and the Department as part of the planning proposal process, this matter should be rectified under the 'expedited amendments of environmental planning



Section 73A EP&A Act Submission

instruments' (Section 73A) provisions of the Act.

Why there is a need for the amendment:

The amendment is required to correct a minor error associated with the notification of The Hills LEP 2012 Amendment No. 26 in which an intended reference to the Additional Permitted Uses (specifically Item 5) in Schedule 1 – Additional Permitted Uses was omitted from the notified plan, together with the identification of the subject land on the associated Additional Permitted Uses Map.

What the amendment does:

The amendment will:

- Insert a reference to "Item 5" in clause 1AB Use of certain land at Excelsior Avenue, Castle Hill, Schedule 1 – Additional Permitted Uses of The Hills LEP 2012; and
- Identify Lots 1 and 2, DP 562533, 160-162 Excelsior Avenue, Castle Hill on the Additional Permitted Uses Map as "Item 5".

Why the amending plan is suitable to be made in accordance with section 73A:

The Hills LEP 2012 (Amendment 26) was incorrectly notified without reference to the Additional Permitted Uses Map and Item Number in Schedule, and was therefore notified without the associated map.

The related planning proposal stated the following under Part Two - Explanation of Provisions:

"Amendment to Schedule 1 'Additional Permitted Uses' and the associated Additional Permitted Uses Map to permit the use of land at 160-162 Excelsior Avenue, Castle Hill (Lots 1 and 2 DP 562533) for the purposes of a child care centre with development consent."

The Opinion issued by Parliamentary Counsel on 5 June 2015 did not accurately reflect the detail provided above. It is therefore considered that an amendment to rectify this error can reasonably be made in accordance with section 73A of the EP&A Act 1979 since it:

- (a) will correct an obvious error in the principal instrument;
- (b) is minor and inconsequential in nature; and
- (c) since it will have no adverse impact on the environment or adjoining land.

The council requests that the Minister agree to make draft **The Hills Local Environmental Plan 2012 (Amendment No.)**

Signed:

Date:

Name:

Position:

On behalf of:

(Name of council)



Section 73A EP&A Act Submission

Part B. Department of Planning use only

Date of referral to LEP Review Panel: (Insert date)

Department position:

Parliamentary Counsel opinion:

Recommendation:

It is recommended that the Minister:

- (a) under sections 59 and section 73A of the *Environmental Planning and Assessment Act 1979* make tagged 'B')
(Name of LEP)
- (b) authorise the Department to advise council of the Minister's decision.

Date:

Signed: Name:

Position:
for Director-General