

## Planning Services

IRF19/4110

### Gateway determination report

<b>LGA</b>	Sutherland Shire Council
<b>PPA</b>	Sutherland Shire Council
<b>NAME</b>	Minor Housekeeping Amendments – Clauses, Zoning and Development Standards
<b>NUMBER</b>	PP_2019_SUTHE_002_00
<b>LEP TO BE AMENDED</b>	Sutherland Shire Local Environmental Plan 2015
<b>ADDRESS</b>	Various sites within the local government area
<b>DESCRIPTION</b>	Various sites within the local government area
<b>RECEIVED</b>	17 April 2019
<b>FILE NO.</b>	IRF19/4110
<b>POLITICAL DONATIONS</b>	There are no donations or gifts to disclose and a political donation disclosure is not required
<b>LOBBYIST CODE OF CONDUCT</b>	There have been no meetings or communications with registered lobbyists with respect to this proposal

## 1. INTRODUCTION

### 1.1 Description of planning proposal

The planning proposal seeks to undertake housekeeping amendments to the Sutherland Shire Local Environmental Plan (LEP) 2015 (SSLEP 2015). This includes a series of amendments to the written provisions and maps to rectify issues identified by Council staff, certifiers and residents since the commencement of the plan.

### 1.2 Site description

The proposed amendments will apply to various sites throughout the Sutherland Shire local government area.

### 1.3 Existing planning controls

The existing planning controls as they relate to the proposed amendments to the written provisions are provided in **Table 1**. The existing planning controls as they relate to mapping are provided in **Table 2**.

### 1.4 Summary of recommendation

The planning proposal has merit and should proceed with condition because it:

- will improve the operation and accuracy of the Sutherland Shire LEP 2015; and
- is generally consistent with applicable state and regional planning frameworks.

## 2. PROPOSAL

---

### 2.1 Objectives or intended outcomes

The purpose of the planning proposal is to amend the Sutherland Shire LEP 2015 to address a range of minor issues identified in the operation of the plan (refer to **Table 1** and **Table 2**). The objectives of the proposed amendments to the written provisions are:

- Amend Clause 6.14 to reflect the repeal of LEP Clause 5.9 and 5.9AA following the introduction of State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017.
- Amend Clause 4.1B to clarify that strata subdivision of dual occupancies in Zone E3 is not permissible, unless the dwellings comprising the dual occupancy were lawfully erected on or before 23 June 2015.
- Allow exhibition homes and exhibition villages in the R2 Low density residential zone, R3 Medium density residential zone as permitted with consent and as an additional permitted use at the Ridgeway Estate (310 New Illawarra Road, Barden Ridge).
- Amend the drafting of Clause 4.1A to address issues which have arisen in the operation of the clause and through amendments to the Standard Instrument LEP following Land and Environment Court decisions as follows:
  - Clarify that the minimum lot dimension requirements are not imposed on strata or community title subdivision.
  - Clarify that despite the point above, that the minimum dimension requirements are imposed on strata subdivision of a dual occupancy in zone E3 unless the dwellings comprised in the dual occupancy were lawfully erected on or before 23 June 2015.
  - Clarify that the minimum dimension requirements do not apply to stratum subdivision undertaken as part of multi-occupancy and mixed-use buildings.

The objectives of the proposed mapping amendments are to:

- Remove lots within the following properties from the Environmentally Sensitive Land – Terrestrial Biodiversity Layer because investigations have demonstrated that they do not have endangered ecological communities or vegetation which requires special protection:
  - 284-286 Taren Point Road, Caringbah
  - 89-91 Willarong Road, Caringbah
  - 93 Willarong Road, Caringbah
  - 551 President Avenue, Sutherland
  - 54 Belmont Street, Sutherland
  - 130 Flora Street, Sutherland
  - 507, 511 & 515-521 President Avenue, Sutherland
  - 84-88 Glencoe Street, Sutherland

- 103-105, 110, 112, 114, 116, 118 & 120 Flora Street, Sutherland
- Rezone land at 150 Old Illawarra Road, Barden Ridge from B1 Neighbourhood Centre to RE1 Public Recreation for use as a public park and make consequential changes to remove redundant development standards.
- Rezone lands recently gazetted as National Park to the E1 National Parks and Reserves zone and make consequential changes to remove any redundant development standards.
- Correct a zoning anomaly on waterfront land at 4 Hazel Place, Burraneer to correct zoning to match the adjacent land.
- Adjust the zoning and other relevant LEP maps to correct mapping anomalies which result from survey changes to the shape and extent of the following properties:
  - 25 Kangaroo Point Road, Kangaroo Point,
  - 10 Gunnamatta Road, Cronulla.
- Adjust the zoning and other relevant LEP maps to correct mapping anomalies at 111 Princes Highway, Sylvania.
- Correct a reference on all FSR and HOB maps from SSLEP 2015 clause “6.22” to “6.21” to ensure it refers to the correct LEP clause.
- Remove land from the Land Reservation and Acquisition maps which has already been acquired by the relevant public authority.
- Adjust the mapped zoning boundary and other mapping for the public park at the South Village Development in Kirrawee.
- Remove the property at 145 Woronora Road, Engadine from the application of the Landscape Area map as it has been rezoned to the SP2 infrastructure zone and the relevant clause no longer applies.
- Amend the Foreshore area map to remove the foreshore area at Shell Point and Kurnell where it is not associated with a foreshore building line in accordance with the intent of LEP Clause 6.9.

## 2.2 Explanation of provisions

**Table 1** provides an explanation of the proposed amendments to the written provisions in the LEP.

**Table 1 LEP provisions, current and proposed planning controls and Department assessment**

Part 6 Local Provisions	
<b>LEP Provision:</b>	6.14 Landscaped areas in certain residential, business, industrial and environment protection zones
<b>1. Current planning controls</b>	
<p><i>“(4) Despite subclause (3), development consent may be granted to development even though the percentage of the site consisting of landscaped areas is up to 5% less than the percentage shown on the Landscape Area Map in relation to the land if:</i></p> <p><i>(a) there is a tree on the site to which clause 5.9 applies, and...”</i></p>	
<b>2. Description of current planning controls</b>	
<p>This clause specifies the minimum percentage of site area that is required to consist of landscaped area in the certain land use zones. Subclause 6.14(4) seeks to provide flexibility for variations to the minimum landscaped area requirements under clause 6.14 subject to the preservation of significant trees.</p>	
<b>3. Council comment</b>	
<p>Clause 6.14 implements a minimum landscaped area requirement in specific residential and employment zones across the Sutherland Shire. Subclause 4 was intended to provide flexibility for variations to the minimum landscaped area requirement if a significant tree on the site would be preserved. Tree protection was previously implemented through clauses 5.9 and 5.9AA of the standard instrument LEP, but these clauses were repealed on the introduction of <i>State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017</i>. The reference to clause 5.9 within clause 6.14 was not amended when the repeal occurred. Reference should be made to <i>State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017</i>.</p>	
<b>4. Proposed planning controls</b>	
<p>Amend Clause 6.14 to reflect the repeal of LEP Clause 5.9 and 5.9AA following the introduction of <i>State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017</i>. Council have proposed an amended provision (refer to <b>Appendix A</b>).</p>	
<b>5. Department assessment</b>	
<p>Subclause 6.14(4) intends to provide flexibility for variations to the minimum landscaped area requirements under clause 6.14 subject to the preservation of significant trees. This was previously implemented through reference to Clause 5.9 and 5.9AA of the Standard Instrument LEP.</p> <p>Clauses 5.9 and 5.9AA have been repealed and replaced by the <i>State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017</i>, as a result subclause 6.14(4) no longer operates. To restore the original intent of the subclause, the reference to Clause 5.9 should be replaced with a reference to the <i>State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017</i>.</p> <p>The amendment is considered reasonable, however, the Department of Planning and Environment are currently undertaking consequential changes to the LEP following the repeal of clauses 5.9 and 5.9AA. As part of these changes, the clause 6.14 would be updated. Therefore, this amendment should not proceed as part of this planning proposal.</p>	

## Part 4 Principal development standards

### LEP Provision:

4.1A Minimum subdivision requirements in certain residential and environment protection zones

### 1. Current planning controls

*“(1) Development consent must not be granted for the subdivision of land in Zone R2 Low Density Residential, Zone R3 Medium Density Residential or Zone R4 High Density Residential, unless each lot resulting from the subdivision will have:*

- (a) a minimum width of 15 metres at the building line, and*
- (b) a minimum depth of 27 metres.*

*(2) Development consent must not be granted for the subdivision of land in Zone E3 Environmental Management or Zone E4 Environmental Living unless each lot resulting from the subdivision will have:*

- (a) a minimum width of 18 metres at the building line, and*
- (b) a minimum depth of 27 metres.*

*(3) This clause does not apply in relation to the following:*

- (a) the subdivision of a lot in Zone R2 Low Density Residential, Zone R3 Medium Density Residential or Zone R4 High Density Residential if there is a dual occupancy on the lot and one of those dwellings will be situated on each lot resulting from the subdivision,*
- (b) the strata subdivision of a dual occupancy on land in Zone E3 Environmental Management (if the dwellings comprised in the dual occupancy were lawfully erected on or before 23 June 2015) or Zone E4 Environmental Living,*
- (c) the subdivision of lots in a strata plan or community title scheme.”*

### 2. Description of current planning controls

Clause 4.1A outlines the minimum dimensions required to subdivide land on land zoned R2 Low Density Residential; R3 Medium Density Residential; R4 High Density Residential; E3 Environmental Management; and E4 Environmental Living.

Subclause 4.1A(3)(a) ensures that the minimum subdivision requirements do not apply to dual occupancies in the applicable residential zones. 4.1A(3)(b) ensures that the strata subdivision of dual occupancy's in the applicable Environmental Protection zones that were constructed before 23 June 2015 are also exempt from the application of Clause 4.1A. The subclause also ensures that dual occupancies built after this date are subject to the minimum dimension requirements under Clause 4.1A.

Additionally, subclause 4.1A(3)(c) also seeks to exempt any other form of strata or community title subdivision from the application of Clause 4.1A in the relevant zones.

### 3. Council comment

#### **Issue 1- Strata subdivision and community title subdivision**

Subclause (3)(c) uses a form of words “...lots in a strata plan or community title scheme” which was intended to provide an exemption from the effect of clause 4.1A for subdivision of any land into lots in a strata plan, such as the strata subdivision of a residential flat building on an existing torrens title lot, where each dwelling becomes a separate lot within the strata plan.

A recent court case interprets this language to refer to only the subdivision of existing strata lots in a strata plan. Clause 4.1 of the Standard Instrument LEP was subsequently amended at 4.1(4) to adopt a new form of words to restore the original intent. However, clause 4.1A of the SSLEP 2015 was not amended. Clause 4.1A should be redrafted to enable strata subdivision and community title subdivision as originally intended, through the use of wording as has since been employed in clause 4.1(4).

#### **Issue 2 – Strata subdivision of new dual occupancies in zone E3**

Clause 4.1A currently allows the strata subdivision of existing (pre 23 June 2015) dual occupancies in the E3 zone without meeting the minimum lots size dimensions (see clause 4.1A(3)(b)). The subdivision of new dual occupancies in the E3 zone, unless they meet the minimum lot size dimensions, is not permitted. However, the clause, as drafted, is contradictory (see clause 4.1A(3)(c)).

The intent is to ensure that strata subdivision of new dual occupancies in zone E3, is subject to the minimum lot size dimensions. It is recommended that the prohibition on strata subdivision of new dual occupancies in zone E3 be relocated to clause 4.1B.

#### **Issue 3 - Stratum subdivisions in mixed use buildings**

The minimum dimension requirements in clause 4.1A were not intended to prevent the creation of stratum subdivisions in large scale developments. Stratum subdivisions are frequently used in mixed use development as an intermediate subdivision step to separate commercial and residential volumes of the building prior to strata subdivision. These volumes need to be defined very flexibly across multiple levels to accommodate small building elements such as risers, lift shafts and stairwells which may in part or whole not be compatible with the minimum dimension requirements of clause 4.1A. Clause 4.1A should be drafted to ensure that the requirements of the clause do not apply to stratum subdivisions in mixed use buildings.

### 4. Proposed planning controls

Amend the drafting of Clause 4.1A to clarify its intention and address three issues which have arisen in the operation of the clause and through amendments to the Standard Instrument LEP following Land and Environment Court decisions. Council have proposed an amended provision (refer to **Appendix A**).

#### **1. Strata subdivision and community title subdivision**

Clarify that the minimum lot dimension requirements are not imposed on strata or community title subdivision.

#### **2. Strata subdivision of new dual occupancies in zone E3**

Clarify that despite 1, above, that the minimum dimension requirements are imposed on strata subdivision of a dual occupancy in zone E3 unless the dwellings comprised in the dual occupancy were lawfully erected on or before 23 June 2015.

#### **3. Stratum subdivisions in mixed-use building**

Clarify that the minimum dimension requirements do not apply to stratum subdivision undertaken as part of multi-occupancy and mixed-use buildings.

## 5. Department assessment

### 1. Strata subdivision and community title subdivision

Subclause 4.1(4) of the *Standard Instrument – Principal Local Environmental Plan* utilised similar wording to Clause 4.1A of SSLEP 2015 and has recently been the subject of an NSW Land and Environment Court (LEC) hearing. The LEC decision *DM & Longbow Pty Ltd v Willoughby City Council [2017] NSWLEC 173* found that the subclause only applied to the subdivision of existing strata lots in a strata plan.

It is considered reasonable to redraft Clause 4.1A to ensure that Strata, Community Title and Stratum subdivisions are not prevented, as the intent of the Clause was not to prevent these types of subdivision.

### 2. Strata subdivision of new dual occupancies in zone E3

Clause 4.1A sets out minimum dimensions for subdivision of land in Zone E3 Environmental Management and Zone E4 Environmental Living. The clause does not apply to:

- the strata subdivision of a dual occupancy on land in Zone E3 Environmental Management if the dwellings were constructed prior to 23 June 2015 or Zone E4 Environmental Living; and
- the subdivision of lots in a strata plan or community title scheme.

Council have determined that this clause is not clear and does not reflect the intent that strata subdivision of new dual occupancies on land zoned E3 Environmental Management is permitted should they meet the minimum lot dimensions.

To resolve this, Council propose to relocate the prohibition on strata subdivision of new dual occupancies on land zoned E3 Environmental Management (unless the dwellings were constructed prior to 23 June 2015) to clause 4.1B. Refer to the proposed amended provision under Clause 4.1B.

### 3. Stratum subdivisions in mixed-use building

The clause as it is currently worded applies the minimum dimension requirements for stratum subdivision which consequently prevents the creation of stratum subdivisions in large scale developments.

Council intends to amend the clause to clearly state that it does not apply to any of the following:

- any land by the registration of a strata plan or strata plan of subdivision under the Strata Schemes Development Act 2015;
- any land by any kind of subdivision under the Community Land Development Act 1989; and
- any building by any kind of stratum subdivision under the Conveyancing Act 1919.

This proposed amendment is considered reasonable; however Council should amend the planning proposal to clearly state the intent and allow the Parliamentary Counsel to draft an appropriate clause.



## Part 4 Principal development standards

### LEP Provision:

4.1B Minimum lot sizes for strata subdivisions of dual occupancies in Zone E4

### 1. Current planning controls

*“(1) The objectives of this clause are as follows:*

- (a) to limit the impacts associated with increased residential density (because of development resulting in dual occupancies) on land in Zone E4 Environmental Living,*
- (b) to maintain the amenity and character of land in that zone,*
- (c) to prevent the cumulative fragmentation of land in that zone.*

*(2) Development consent may be granted for the strata subdivision of a dual occupancy on a lot of land (an original lot) in Zone E4 Environmental Living if:*

- (a) the size of the original lot is not less than the minimum lot size shown on the Lot Size Map in relation to the land, or*
- (b) the dwellings comprised in the dual occupancy were lawfully erected on or before 23 June 2015.”*

### 2. Description of current planning controls

Clause 4.1B seeks to mitigate the impacts of increased residential density in the E4 Environmental Living zone. The provision ensures that development consent may only be granted if the subdivision of a dual occupancy meets the requirements shown on the Minimum Lot Size Map.

Additionally, development consent may be granted for the subdivision of a dual occupancy that was lawfully erected on or prior to the commencement of the Sutherland Shire LEP 2015 on 23 June 2015.

### 3. Council comment

It was intended that development for the purposes of dual occupancies would be limited in zones E3 Environmental Management and E4 Environmental Living. Development of new Dual Occupancies is permissible in zone E4 through an Additional Permitted Use clause in Schedule 1 of the LEP, and strata subdivision of these dual occupancies is only permissible where the original lot is at least the same size as the mapped minimum lot size for subdivision on the site. These limitations are implemented through Clause 4.1B.

Similarly, the development of dual occupancies in Zone E3 is limited to where one dwelling is a waterfront dwelling in the foreshore area (Schedule 1 Additional Permitted Uses Clause 27). Council intended that subdivision of dual occupancies in Zone E3 could only occur if the two dwellings were already constructed at 23 June 2015. The prohibition on strata subdivision of newer dual occupancies in zone E3 was implemented indirectly through clause 4.1A. The purpose is not clearly stated in the clause title and further clarity is required to ensure that 4.1A(3)(c) is read in the context of 4.1A(3)(b) (i.e. 4.1A(3)(c) does not prevail).

It is recommended to amend Clause 4.1B to include the requirements for strata subdivision of dual occupancies in both zones E3 and E4. This change will ensure that the requirements for strata subdivision of dual occupancies in zones E3 and E4 are stated clearly in a single clause, which will be easier to interpret and allow for resolution of drafting issues in clause 4.1A.



<b>4. Proposed planning controls</b>	
Amend Clause 4.1B to clarify that strata subdivision of dual occupancies in Zone E3 is not permissible, unless the dwellings comprising the dual occupancy were lawfully erected on or before 23 June 2015. Council have proposed an amended provision (refer to <b>Appendix A</b> ).	
<b>5. Department assessment</b>	
<p>Clause 41.B currently applies to land within Zone E4 Environmental Living. It aims to prohibit the strata subdivision of dual occupancy unless the lot meets the minimum lot size requirements, or if the dwellings were constructed prior to 23 June 2015.</p> <p>Council intends to prohibit the strata subdivision of a dual occupancy on land within Zone E3 Environmental Management unless the dwellings were constructed prior to June 2015.</p> <p>While this proposed amendment is considered reasonable, the intent of the proposed amended provision is not clearly stated without the inclusion of the draft clause. Council should amend the planning proposal to clearly state the intent and allow Parliamentary Counsel to draft an appropriate clause.</p>	
<b>LEP Provision:</b>	<b>Land Use Table</b>
<b>1. Current planning controls</b>	
<b>Zone R2 Low Density Residential</b>	
<p>3 Permitted with consent</p> <p><i>Bed and breakfast accommodation; Boarding houses; Centre-based child care facilities; Community facilities; Dual occupancies; Dwelling houses; Environmental protection works; Flood mitigation works; Group homes; Health consulting rooms; Home businesses; Home industries; Multi dwelling housing; Oyster aquaculture; Places of public worship; Pond-based aquaculture; Recreation areas; Respite day care centres; Roads; Semi-detached dwellings; Seniors housing; Tank-based aquaculture</i></p>	
<b>Zone R3 Medium Density Residential</b>	
<p>3 Permitted with consent</p> <p><i>Attached dwellings; Bed and breakfast accommodation; Boarding houses; Centre-based child care facilities; Community facilities; Dual occupancies; Dwelling houses; Environmental protection works; Flood mitigation works; Group homes; Home businesses; Home industries; Hostels; Multi dwelling housing; Neighbourhood shops; Oyster aquaculture; Places of public worship; Recreation areas; Respite day care centres; Roads; Semi-detached dwellings; Seniors housing; Shop top housing; Tank-based aquaculture</i></p>	
<b>2. Description of current planning controls</b>	
Not applicable	
<b>3. Council comment</b>	
The current controls do not permit 'Exhibition homes' or 'Exhibition villages' in R2 Low Density Residential and R3 Medium Density Residential zones.	

#### 4. Proposed planning controls

Permit exhibition homes and exhibition villages with development consent in the R2 Low density residential zone and R3 Medium density residential zone.

#### 5. Department assessment

Under the Sutherland Shire LEP 2015 both the R2 Low Density Residential and R3 Medium Density Residential zones utilise closed zoning. This means that any land use definition that is not listed as “permitted with consent” is a prohibited use in the zone. Council wishes to alleviate the prohibition of Exhibition Homes and Exhibition Villages in the two residential zones.

Both residential zones are considered to be suitable for the proposed land uses and no objection to the amendment is raised.

#### LEP Provision: Schedule 1 – Additional Permitted Uses

##### 1. Current planning controls

Not applicable

##### 2. Description of current planning controls

Not applicable

##### 3. Council comment

The current controls do not permit ‘Exhibition homes’ and ‘Exhibition villages’ at the Ridgeway Estate (310 New Illawarra Road, Barden Ridge). The land at the Ridgeway Estate is zoned E4 Environmental Living.

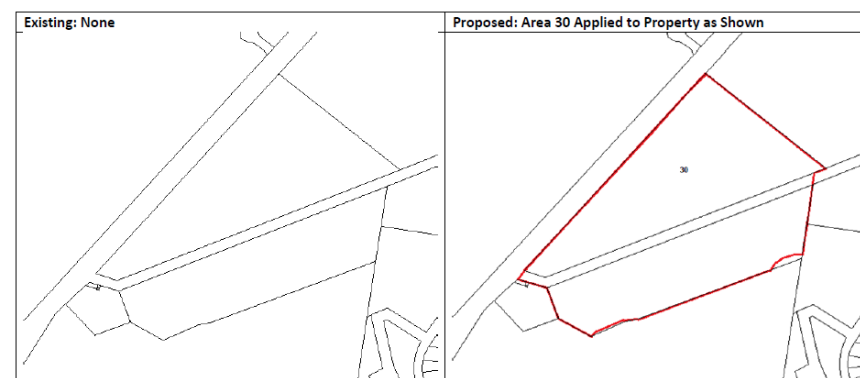
#### 4. Proposed planning controls

Permit ‘Exhibition homes’ and ‘Exhibition villages’ with development consent on land at the Ridgeway Estate (310 New Illawarra Road, Barden Ridge) under a new clause in Schedule 1 Additional permitted uses.

This provision includes an update to the Additional Permitted Uses map as shown below.

#### 5. Mapping

##### Map sheet APU 001A and APU 003



### Department assessment

The land at 310 New Illawarra Road, Barden Ridge is zoned E4 Environmental Living, therefore the amendment to allow Exhibition Homes and Exhibition Villages as permissible with consent in R2 and R3 zones will not allow this type of development on this land.

The site was approved by Council for residential subdivision on 14 December 2016 (DA15/1448) and subdivision works have since commenced. As such, permitting the uses is considered appropriate as the site is expected to develop into a new residential community.

Additionally, Council has advised that it does not wish to rezone the land to R2 Low Density Residential or R3 Medium Density Residential to permit the use. This is because the site is identified on the Bushfire Prone Land Map. The existing E4 zoning is utilised to protect surrounding environmentally sensitive areas, control density and minimise risk to life and property that is subject to natural or man-made hazards. The existing zoning is considered appropriate for the site and the additional permitted use will not hinder the intent of the zone.

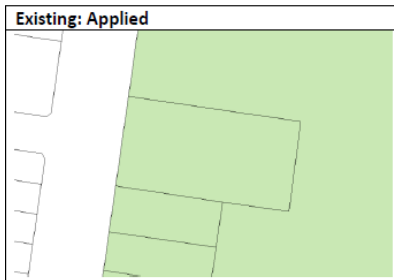
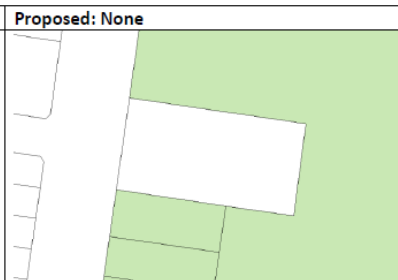
The Additional Permitted Uses map will be required to be updated to reflect the written amendment to Schedule 1 to permit Exhibition Homes and Exhibition Villages at 310 New Illawarra Road, Barden Ridge.

The amendment is considered reasonable and no objection is raised.

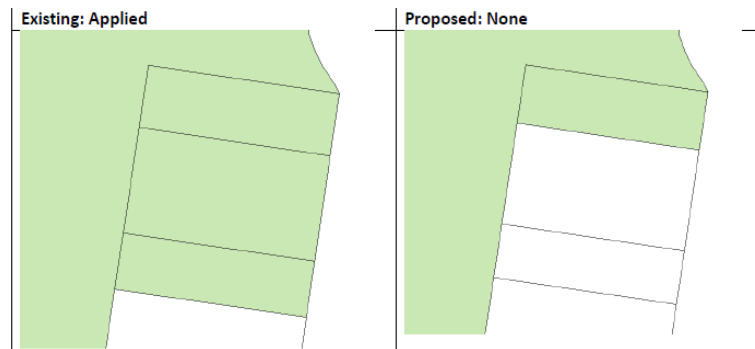
## 2.3 Mapping

**Table 2** provides an explanation of the proposed amendments to the LEP maps.

**Table 2 LEP mapping, current and proposed planning controls and Department assessment**

LEP Map: Terrestrial Biodiversity (BIO_006 and BIO_005A)	
1. Current planning controls	
The table below provides a list of properties that are currently subject to the Environmentally Sensitive Land – Terrestrial Biodiversity Layer.	
Address	Lot/DP
284-286 Taren Point Road, Caringbah	Lot 2 DP 230381
89-91 Willarong Road, Caringbah	Strata Plan 81485
93 Willarong Road, Caringbah	Lot 1 DP 655508
551 President Avenue, Sutherland	Lots 1, 2, 3, 5, 6, 7, 8, 9, 10 in Section 44 of DP 802; Lots 1 & 2 DP 326496; Lots A & B DP 449596; Lot 1 DP 881766; and Lot 1 DP 1015888
54 Belmont Street, Sutherland	Lot 1 DP 1015890
130 Flora Street, Sutherland	Lot 4 DP 15941
507, 511 & 515-521 President Avenue, Sutherland	Strata Plan 94756; Lot 1 DP 1231961; and Strata Plan 55354
84-88 Glencoe Street, Sutherland	Strata Plan 64905
103-105 Flora Street, Sutherland	Strata Plan 41980
110, 112, 114, 116, 118 & 120 Flora Street, Sutherland	Lots A & B in DP 431965; and Lots 1, 2, 3 & 4 in DP 324080
2. Council comment	
The properties listed above have not been identified as having endangered ecological communities or vegetation which requires special attention.	
3. Proposed planning controls	
Remove lots listed in the table above from the Environmentally Sensitive Land – Terrestrial Biodiversity Layer because investigations have demonstrated that they do not have endangered ecological communities or vegetation which requires special protection.	
4. Mapping	
<b>284-286 Taren Point Road, Caringbah – Lot 2 in DP 230381 – BIO_006</b>	
Existing: Applied	Proposed: None
	

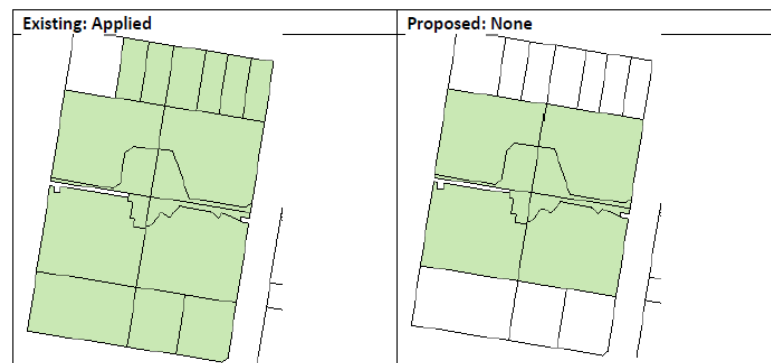
**89-91 Willarong Road, Caringbah - Strata Plan 81485 and 93 Willarong Road, Caringbah - Lot 1 in DP 655508 – BIO 006**



**551 President Avenue, Sutherland, 54 Belmont Street and Sutherland 130 Flora Street, Sutherland – BIO 005A**



**507, 511 & 515-521 President Avenue, Sutherland and 110, 112, 114, 116, 118 & 120 Flora Street, Sutherland – BIO 005A**



**103-105 Flora Street, Sutherland and 84-88 Glencoe Street, Sutherland – BIO 005A**



## 5. Department assessment

The Terrestrial Biodiversity Map operates as a flag to development assessment officers and applicants to investigate existing vegetation on the site as part of the planning process.

The proposed amendments are supported as:

- the sites are already developed for residential and educational purposes;
- the requirements under Clause 6.5 are unnecessary on land that does not contain Endangered Ecological Communities; and
- the identification on the Terrestrial Biodiversity Map precludes the use of some forms of complying development.

Council advises that investigations have been carried out on the relevant sites by a qualified professional that has confirmed that no Endangered Ecological Communities (EECs) are present. The planning proposal includes a series of reports, emails and memos (listed below) that support the removal of these sites from the Terrestrial Biodiversity Map. It is recommended that Council prepare a single consolidated report that summarises the findings and recommendations prior to exhibition.

Each of the proposed amendments are supported by the following documents and site visits:

- **284-286 Taren Point Road, Caringbah** - A letter regarding the site (DM Clarke Botanical Consulting Services, 2016) confirmed the site does not contain Sydney Turpentine Ironbark Forest (STIF).
- **89-91 Willarong Road, Caringbah** - Report by Dr Treegood (2017) outlined a strategy for tree retention and removal. The vegetation identified does not represent a STIF community.
- **93 Willarong Road, Caringbah** - Report by Allied Tree Consultancy (2016) outlined a strategy for tree retention and removal. The vegetation identified does not represent a STIF community.
- **551 President Avenue, Sutherland (St Patrick's College, Sutherland)** - EcoLogical (2018) confirmed that the site's vegetation does not fall within the definition of a STIF community. This was confirmed during a site visit by Council's environmental scientists.
- **54 Belmont Street, Sutherland (St Patrick's College, Sutherland)** - EcoLogical (2018) confirmed that the site's vegetation does not fall within the definition of a STIF community. This was confirmed during a site visit by Council's environmental scientists.
- **130 Flora Street, Sutherland (St Patrick's College, Sutherland)** - EcoLogical (2018) confirmed that the site's vegetation does not fall within the definition of a STIF community. This was confirmed during a site visit by Council's environmental scientists.
- **507, 511 & 515-521 President Avenue, Sutherland** – The planning proposal states that during a site visit (17 July 2018) by Council's environmental scientists, it was confirmed that the site's vegetation does not represent a STIF community. The supporting report does not clearly state that these sites should be removed from the Terrestrial Biodiversity Map.
- **84-88 Glencoe Street, Sutherland** - During a site visit (17 July 2018) by Council's environmental scientists, it was confirmed that the site's vegetation does not represent a STIF community.
- **103-105, 110, 112, 114, 116, 118 & 120 Flora Street, Sutherland** - The planning proposal states that during a site visit (17 July 2018) by Council's environmental scientists, it was confirmed that the site's vegetation does not represent a STIF community. The supporting report does not clearly state that 110, 112, 114, 116, 118 & 120 Flora Street should be removed from the Terrestrial Biodiversity Map.

**LEP Map:****Land Zoning (LZN\_003), Height of Building (HOB\_003) and Floor Space Ratio (FSR\_003)****1. Current planning controls**

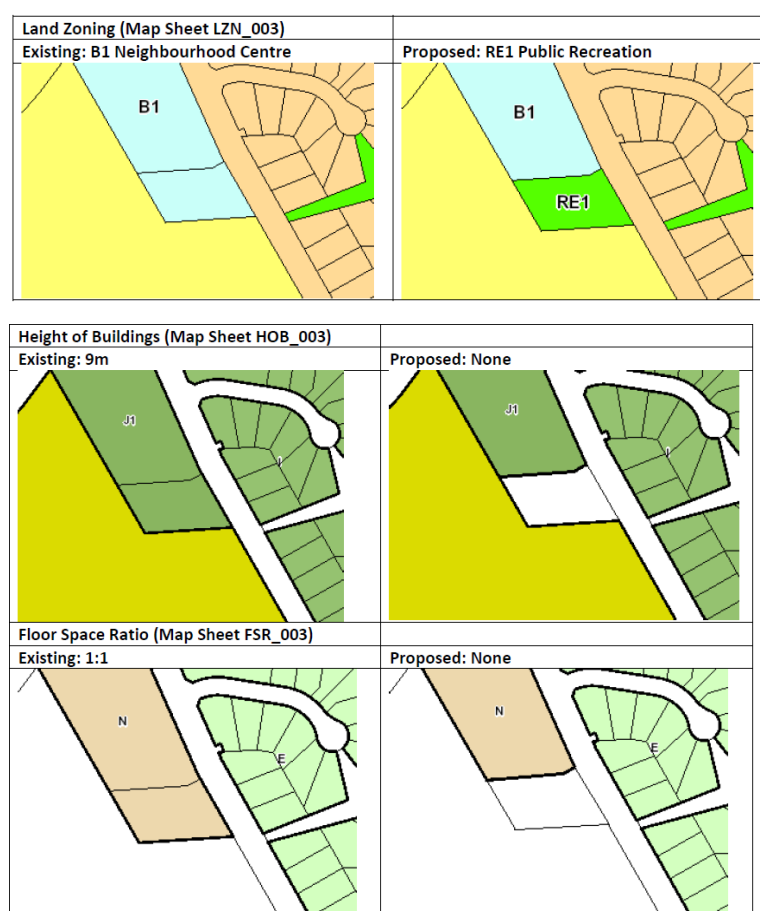
Land at 150 Old Illawarra Road, Barden Ridge is zoned B1 Neighbourhood Centre (LZN\_003), has a height of 9m (HOB\_003) and a floor space ratio of 1:1 (FSR\_003).

**2. Council comment**

Land at 150 Old Illawarra Road, Barden Ridge is currently used as a public park. The mapped planning controls do not reflect this.

**3. Proposed planning controls**

Rezone land at 150 Old Illawarra Road, Barden Ridge for use as a public park and make consequential changes to remove redundant development standards.

**4. Mapping****5. Department assessment**

This proposed amendment is supported because Council own the land and the proposed zoning reflects the current land use as a public park.



**LEP Map:**

Land Zoning (LZN\_001B), Height of Building (HOB\_001B), Floor Space Ratio (FSR\_001B), Lot Size (LSZ\_001B) and Landscape Area (LSA\_001B)

**1. Current planning controls**

The properties listed below are within the boundary of the Heathcote National Park.

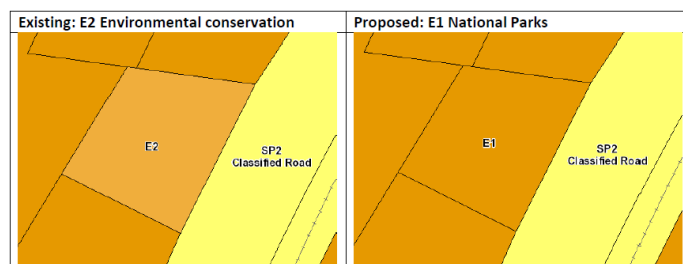
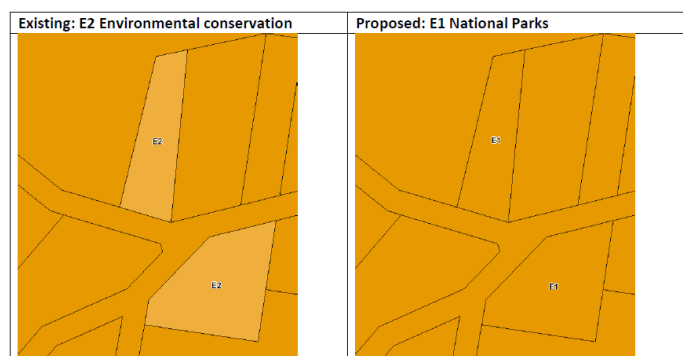
Address	Lot/DP	Current control
1535-1547 Princes Highway, Waterfall	Lot 439, DP752033	E2 Environmental Conservation
42-60 Eckersley Road, Waterfall	Lot 723, DP752033	E2 Environmental Conservation
1-5 Mirang Road, Waterfall	Lot 728, DP752033	E2 Environmental Conservation
1865R Princes Highway, Waterfall	Lots 888 & 942, DP752033	E2 Environmental Conservation
1770-1776 Princes Highway, Waterfall (and Kummera St Road Reserve)	Lot 1, DP1030102	IN1 General Industrial
1643 Princes Highway, Waterfall	Lot 1, DP1030112	RE1 Public Recreation

**2. Council comment**

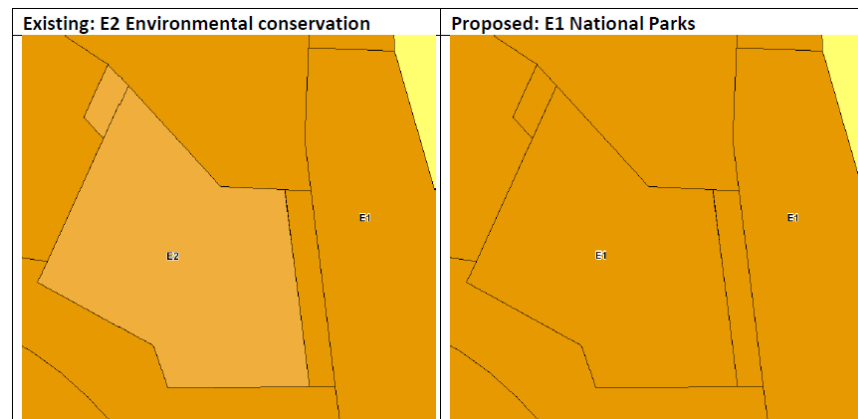
The current zoning of the properties listed above does not reflect their actual land use as a National Park. These properties were gazetted as part of the National Parks Estate (page 983, NSW Government Gazette No 32 of 29 April 2016).

**3. Proposed planning controls**

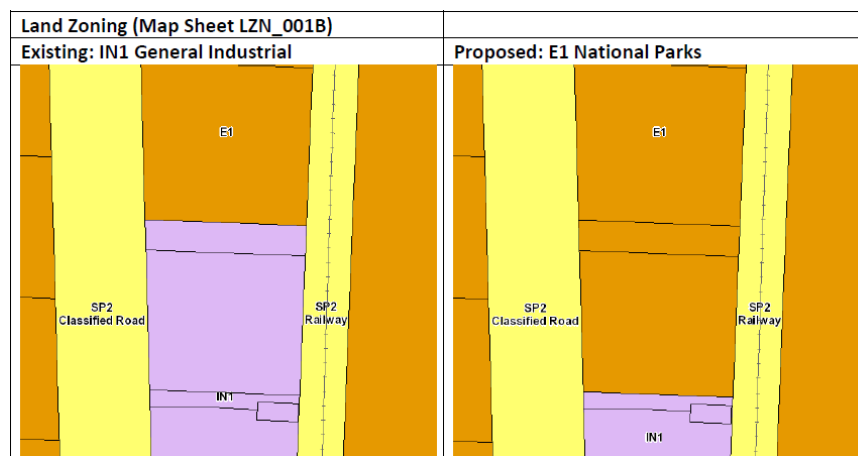
Rezone lands recently gazetted as National Park to the E1 National Parks and Nature Reserves zone and make consequential changes to remove any redundant development standards.

**4. Mapping****1535-1547 Princes Highway, Waterfall – Lot 439 in DP 752033 – LZN\_001B****42-60 Eckersley Road, Waterfall – Lot 723 in DP752033 and 1-5 Mirang Road, Waterfall – Lot 728 in DP752033 – LZN\_001B**

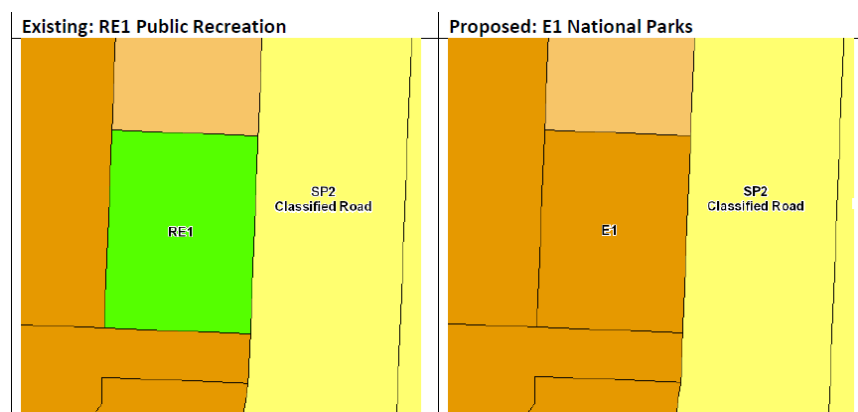
**1865R Princes Highway, Waterfall – Lots 888 & 942 in DP752033 – LZN 001B**

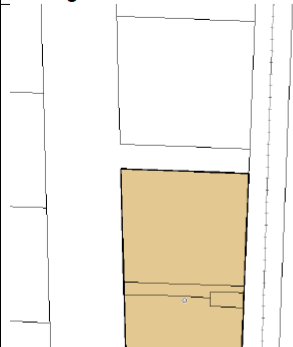

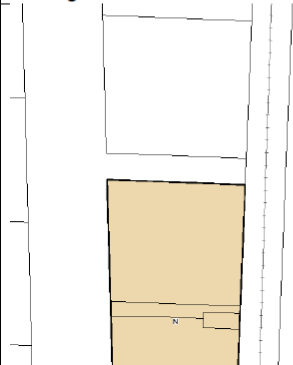
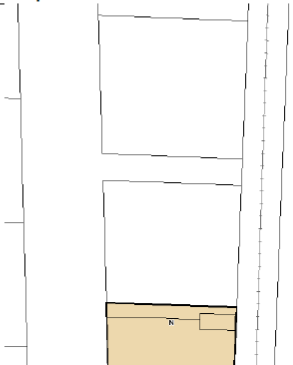
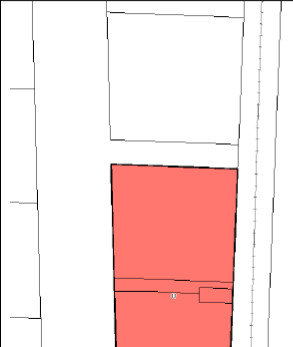

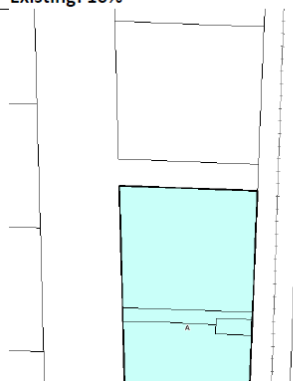
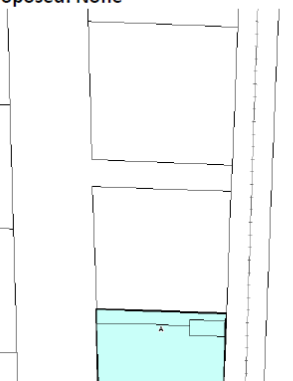


**1770-1776 Princes Highway, Waterfall – Lot 1 in DP 1030102**



**1643 Princes Highway, Waterfall – Lot 1 in DP 1030112 – LZN 001B**



<b>Height of Buildings (Map Sheet HOB_001B)</b> Existing: 16m		<b>Proposed: None</b>	
			
<b>Floor Space Ratio (Map Sheet FSR_001B)</b> Existing: 1:1		<b>Proposed: None</b>	
			
<b>Lot Size (Map Sheet LSZ_001B)</b> Existing: 1000m <sup>2</sup>		<b>Proposed: None</b>	
			
<b>Landscaped Area (Map Sheet LSA_001B)</b> Existing: 10%		<b>Proposed: None</b>	
			

## 5. Department assessment

The planning proposal is required to reflect the National Parks Estate, NSW Government Gazette No. 32 (Page 683). The Gazette identified the sites listed in Table 1 as part of Heathcote National Park.

The amendment is also required to remove development standards at 1770-1776 Princes Highway, Waterfall to reflect the site's listing as a National Park.

Kummera Street Road reserve (strip of land to the north of Lot 1 in DP 1030102) was not gazetted as National Park. However, the Department supports the rezoning in accordance with the Department's practice note on zoning for infrastructure in LEPs which states that roads should be zoned the same as adjoining land. This is consistent with other Council-managed roads within National Parks. Furthermore, due to the location, shape and current state (uncleared native vegetation) of the land it is unlikely the land would be suitable for an industrial use.

LEP Map: Land Zoning (LZN\_008A)

### 1. Current planning controls

Lot J in DP 12558 at 4 Hazel Place, Burraneer is zoned W2 Recreational Waterways.

### 2. Council comment

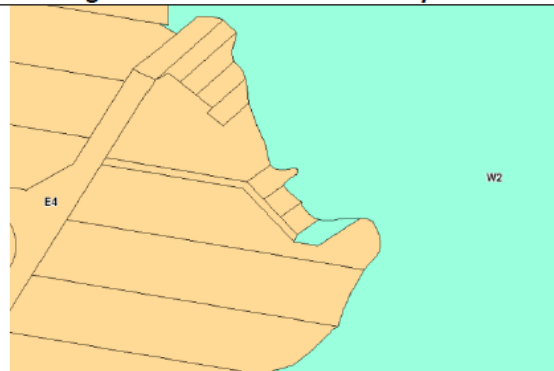
The current zoning of Lot J in DP 12558 at 4 Hazel Place, Burraneer does not reflect its land use and is not consistent the zoning of other lots at 4 Hazel Place, Burraneer.

### 3. Proposed planning controls

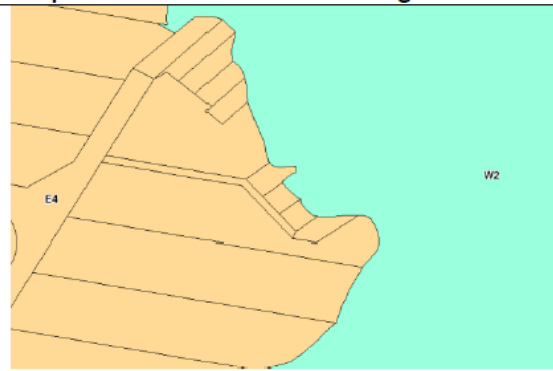
Correct a zoning anomaly on waterfront land at 4 Hazel Place, Burraneer to correct zoning to match the adjacent land.

### 4. Mapping

Existing: W2 Recreational Waterways



Proposed: E4 Environmental Living



## 5. Department assessment

Council advises that part of the land at 4 Hazel Place, Burraneer was inadvertently rezoned during a previous mapping amendment. This anomaly was not identified until after the previous amendment was gazetted.

Land use permissibility in the W2 zone is much more restrictive than the existing E4 zone which applies to the rest of the property. The proposal simply seeks to rectify the administrative error and reinstate the appropriate zoning.

This proposed mapping amendment is supported.

### LEP Map:

Land Zoning (LZN\_006 & LZN\_008A), Height of Building (HOB\_006 & HOB\_008A), Floor Space Ratio (FSR\_006 & FSR\_008A), Lot Size (LSZ\_006 & LSZ\_008A), Landscaped Area (LSA\_006 & LSA\_008A), Additional Permitted Uses (APU\_006), Natural Landform (LFM\_006 & LFM\_008A), Foreshores of Port Hacking, Georges River, Woronora River and Botany Bay (FDV\_006), Foreshore Building Line (FBL\_006)

## 1. Current planning controls

The current mapping of a small section of 25 Kangaroo Point, Kangaroo Point (Lot 1 in DP 1218171) is inconsistent with the majority of the lot.

A sliver of land adjacent to 10 Gunnamatta Road (Lot 1 in DP 1030102), that lies within Port Hacking, is mapped with the same controls as 10 Gunnamatta Road.

## 2. Council comment

The current zoning of 25 Kangaroo Point, Kangaroo Point (Lot 1 in DP 1218171) does not align with the lot boundary. The current zoning of land adjacent to 10 Gunnamatta Road (Lot 1 in DP 1030102) that lies within Port Hacking does not reflect its land use as a waterway. The mapping should be rectified.

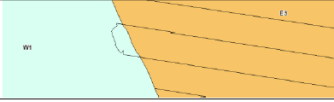


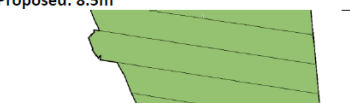
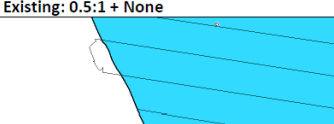
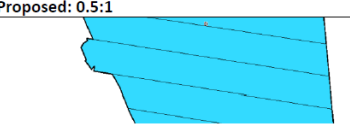
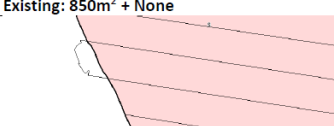
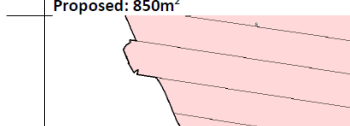
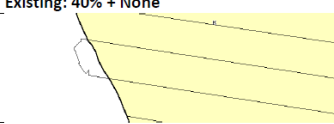
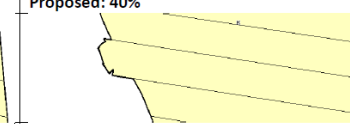
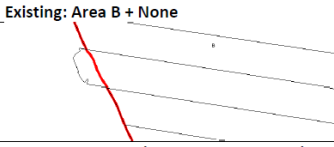
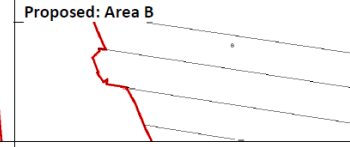


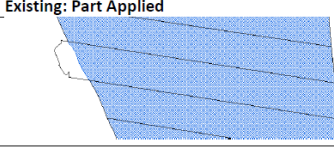
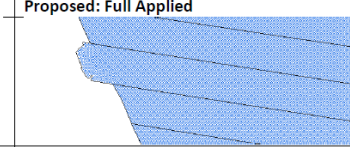


## 3. Proposed planning controls

Adjust the zoning and other relevant LEP maps to correct mapping anomalies which result from survey changes to the shape and extent of the following properties:

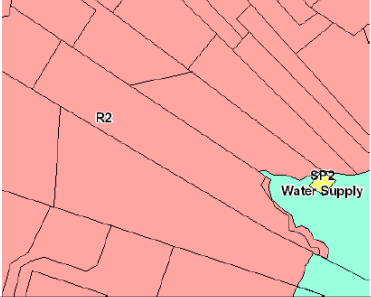
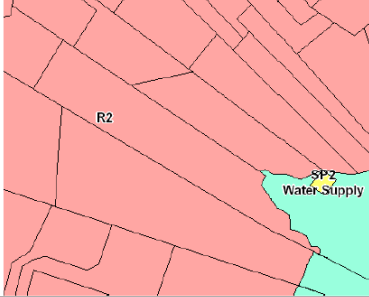
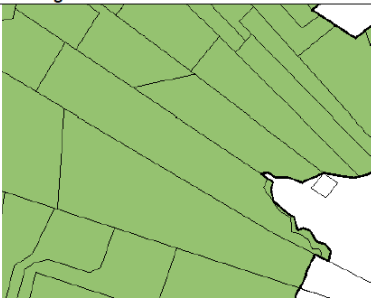
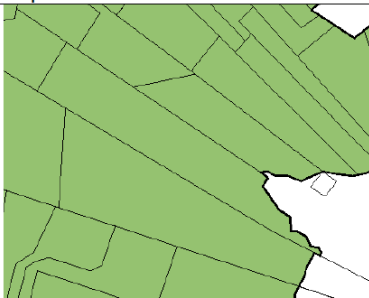
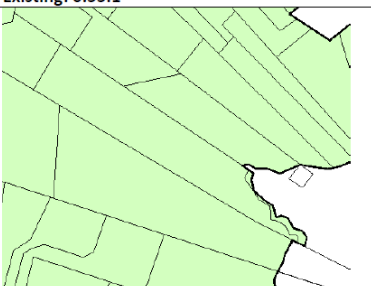
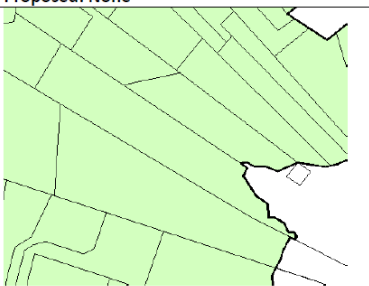
- a. 25 Kangaroo Point Road, Kangaroo Point,
- b. 10 Gunnamatta Road, Cronulla.

## 4. Mapping

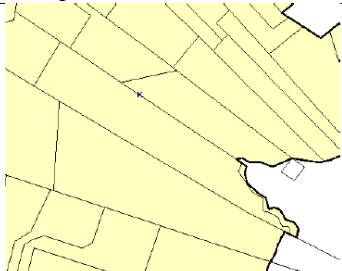
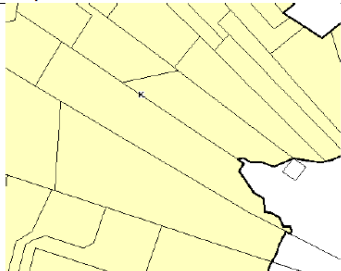
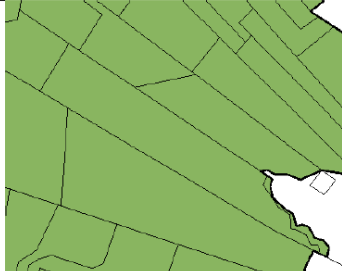
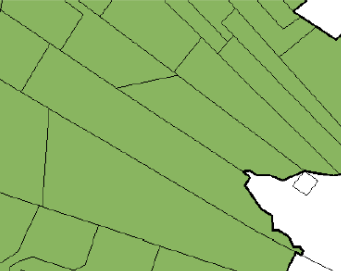
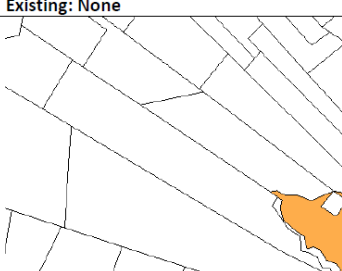
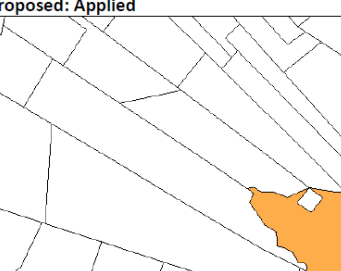
### 25 Kangaroo Point Road, Kangaroo Point – Lot 1 in DP 1218171

Land Zoning (Map Sheet LZN_006)	
Existing: E3 Environmental Management + W1 Natural Waterways	Proposed: E3 Environmental Management
	
Height of Buildings (Map Sheet HOB_006)	
Existing: 8.5m + None	Proposed: 8.5m
	
Floor Space Ratio (Map Sheet FSR_006)	
Existing: 0.5:1 + None	Proposed: 0.5:1
	
Lot Size (Map Sheet LSZ_006)	
Existing: 850m <sup>2</sup> + None	Proposed: 850m <sup>2</sup>
	
Landscaped Area (Map Sheet LSA_006)	
Existing: 40% + None	Proposed: 40%
	
Additional Permitted Uses (Map Sheet APU_006)	
Existing: Area B + None	Proposed: Area B
	
Natural Landform (Map Sheet LFM_006)	
Existing: Part Applied	Proposed: Full Applied
	
Foreshores of Port Hacking, Georges River, Woronora River and Botany Bay (Map Sheet FDV_006)	
Existing: Part Applied	Proposed: Full Applied
	
Foreshore Building Line (Map Sheet FBL_006)	
Existing: Part Applied below Foreshore Building Line	Proposed: Full Applied below Foreshore Building Line
	

**10 Gunnamatta Road, Cronulla – Lot 100 in DP 1229591**

<b>Land Zoning (Map Sheet LZN_008A)</b>	
Existing: R2 Low density residential	Proposed: W2 Recreational waterways
	
<b>Height of Buildings (Map Sheet HOB_008A)</b>	
Existing: 8.5m	Proposed: None
	
<b>Floor Space Ratio (Map Sheet FSR_008A)</b>	
Existing: 0.55:1	Proposed: None
	



<b>Lot Size (Map Sheet LSZ_008A)</b>	
Existing: 500m <sup>2</sup>	Proposed: None
	
<b>Landscaped Area (Map Sheet LSA_008A)</b>	
Existing: 35%	Proposed: None
	
<b>Natural Landform (Map Sheet LFM_008A)</b>	
Existing: None	Proposed: Applied
	

## 5. Department assessment

### *25 Kangaroo Point Road, Kangaroo Point*

Council has advised that the site has recently been resurveyed leading to a change in its mean high-water mark. This has increased the extent of the lot. Mapping changes are required to ensure the land is now appropriately zoned and consistent development standards apply to land that was formerly outside the lot boundary.

As part of a revised planning proposal Council has provided surveying plans of subdivision for the site. The plans demonstrate a reduction in the mean high-water mark that corresponds with the proposed mapping changes. As such, the proposed amendment is supported as it simply seeks to make a minor mapping correction.

### *10 Gunnamatta Road, Cronulla*

Council has advised that the site has recently been resurveyed and has seen changes to the site's lot boundary due to a change in the mean high-water mark. This has reduced the extent of the lot. Mapping changes are required to ensure the water is now appropriately zoned and consistent development standards apply to water that was formerly within the lot boundary.

As part of the planning proposal, Council has provided survey plans of subdivision for the site, demonstrating the subsequent change to the mean high-water mark. As such, the proposed amendment is supported as it simply seeks to make a minor mapping correction.

**LEP Map:**

Land Zoning (LZN\_006), Height of Building (HOB\_006), Floor Space Ratio (FSR\_006), Landscaped Area (LSA\_006) and Additional Permitted Uses (APU\_006)

**1. Current planning controls**

The mapping for part of 111 Princes Highway, Sylvania (Lot 55 in DP 1215725) is not consistent with the majority of the lot.

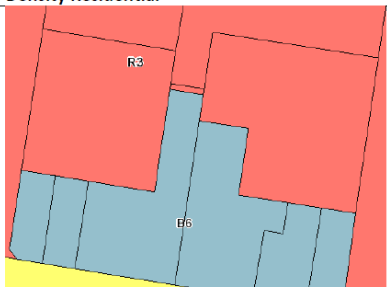
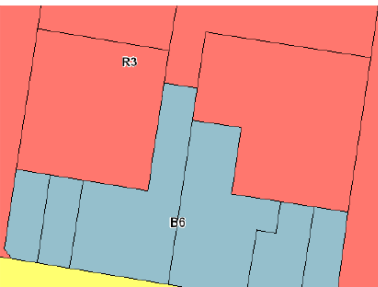
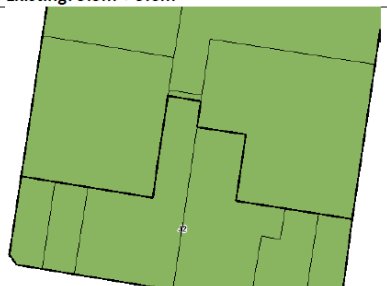
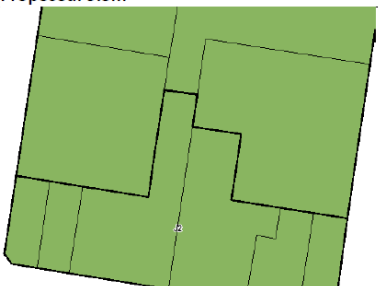
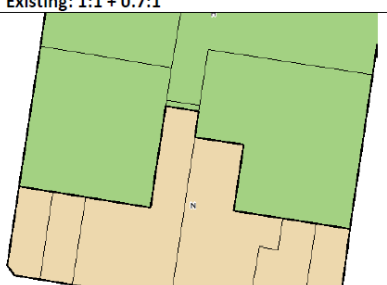
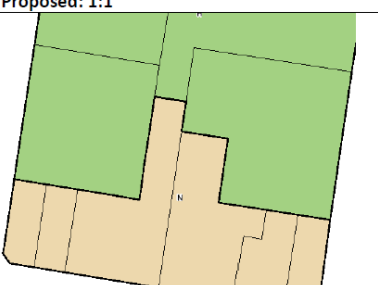
**2. Council comment**

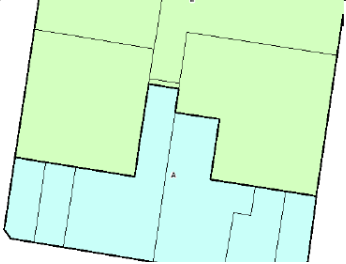


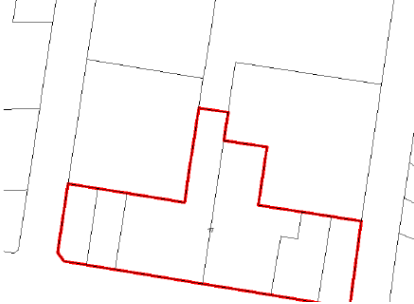
The current mapping of part of 111 Princes Highway, Sylvania (Lot 55 in DP 1215725) should be rectified to reflect the lot to which it relates.

**3. Proposed planning controls**

Adjust the zoning and other relevant LEP maps to correct mapping anomalies at 111 Princes Highway, Sylvania.

**4. Mapping**

<b>Land Zoning (Map Sheet LZN_006)</b> Existing: B6 Enterprise Corridor + R3 Medium Density Residential	<b>Proposed: B6 Enterprise Corridor</b>
	
<b>Height of Buildings (Map Sheet HOB_006)</b> Existing: 9.5m + 9.0m	<b>Proposed: 9.5m</b>
	
<b>Floor Space Ratio (Map Sheet FSR_006)</b> Existing: 1:1 + 0.7:1	<b>Proposed: 1:1</b>
	

<b>Landscaped Area (Map Sheet LSA_006)</b> <b>Existing: 10% + 30%</b>		<b>Proposed: 10%</b>
		
<b>Additional Permitted Uses (Map Sheet APU_006)</b> <b>Existing: Area 17 + None</b>		<b>Proposed: Area 17</b>
		
<b>5. Department assessment</b>		
<p>Council advises an administrative error has occurred which has resulted in the site having split zoning and inconsistent development standards. For instance, 98% of the site is zoned B6 Enterprise Corridor and 2% R3 Medium Density Residential. The same split applies to development standards for the site.</p> <p>The planning proposal seeks to make these changes to reduce the complexity of the sites zoning and apply consistent development standards across the site. This proposed mapping amendment is supported.</p>		
<b>LEP Map:                      Floor Space Ratio (all) and Height of Building (all)</b>		
<b>1. Current planning controls</b>		
<p>All Floor Space Ratio and Height of Building maps reference clause 6.22 Location of sex services premises.</p>		
<b>2. Council comment</b>		
<p>Reference should be made to clause 6.21 Caringbah Medical Precinct. All FSR and HOB maps should be amended to change reference from clause 6.22 to 6.21.</p>		
<b>3. Proposed planning controls</b>		
<p>Correct a reference on all FSR and HOB maps from SSLEP 2015 clause “6.22” to “6.21” to ensure it refers to the correct LEP clause.</p>		

#### 4. Department assessment

The correction is required to validate the operation of Clause 6.21 Caringbah Medical Precinct and Subclause 6.21(2) which refers to land identified as "Area 7" on the Height of Buildings Map and Floor Space Ratio Map. The description of Area 7 on the FSR and height of buildings maps currently refers to Clause 6.22 Location of Sex Services Premises. The amendment is required to ensure that the description of Area 7 refers to the correct clause of Sutherland Shire LEP 2015. This proposed mapping amendment is supported.

#### 3F LEP Map Land Reservation Acquisition (LRA\_001F)

##### 1. Current planning controls

The table below lists the properties that are currently mapped on the Land Reservation Acquisition map.

Address	Lot/DP
167 Forest Road, GyMEA	Lot 54, DP 9303
159 Sylvania Road, Miranda	Lot 7, DP12683;
Railway Corridor at Como Parade, Como	Lot 195, DP1215612;
531-533 Woronora River Frontages, Barden Ridge	Part Lot 241, DP8755; & Part Lot 240A, DP18174
2 Mawarra Avenue, Miranda	Lot 15, DP27544
1R & 2R Gidji Road, Miranda	Lots 2 & 3, DP1211461
112/1R & 97/1R The Esplanade, Sylvania	Lots 180 & 183, Section B, DP12157
159R-185R Woronora Crescent, Como	Lot 1, DP1194852

##### 2. Council comment

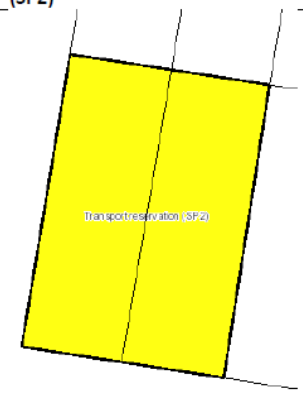
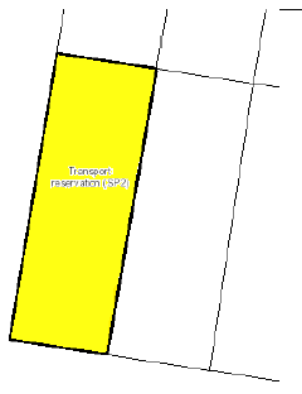
The properties listed in the table above have been acquired by public authorities and therefore should no longer be mapped on the Reservation Acquisition map.

##### 3. Proposed planning controls

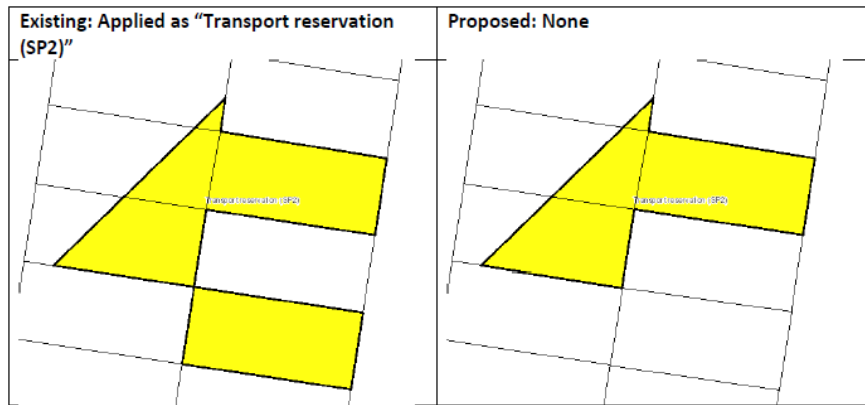
Remove land from the Land Reservation and Acquisition maps which has already been acquired by the relevant public authority.

##### 4. Mapping

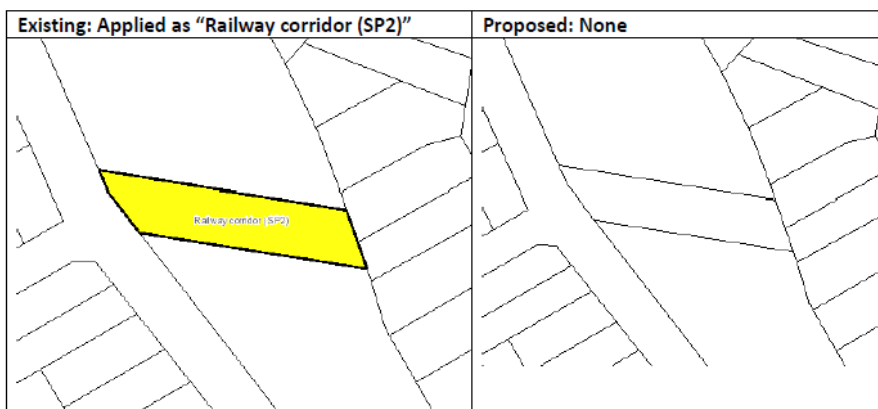
###### 167 Forest Road, GyMEA – LRA\_001F

Existing: Applied as "Transport reservation (SP2)"	Proposed: None
	

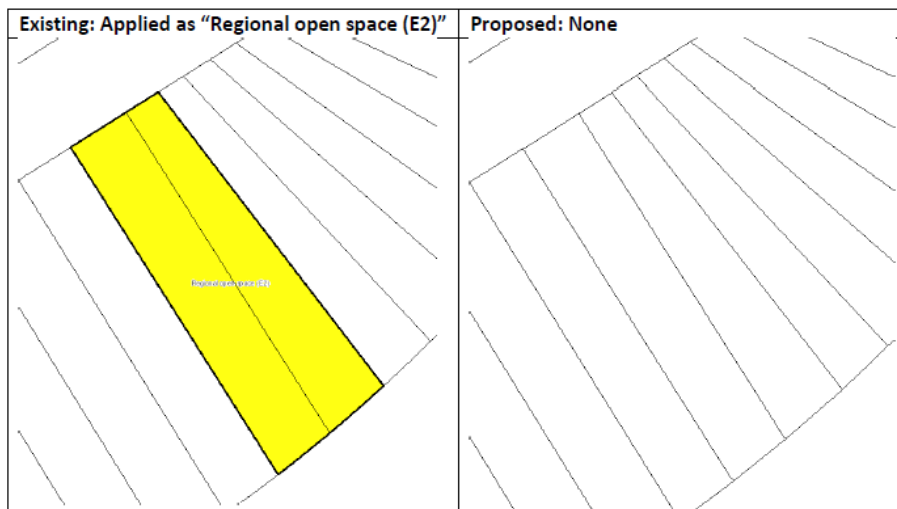
**159 Sylvania Road, Miranda – LRA 006A**



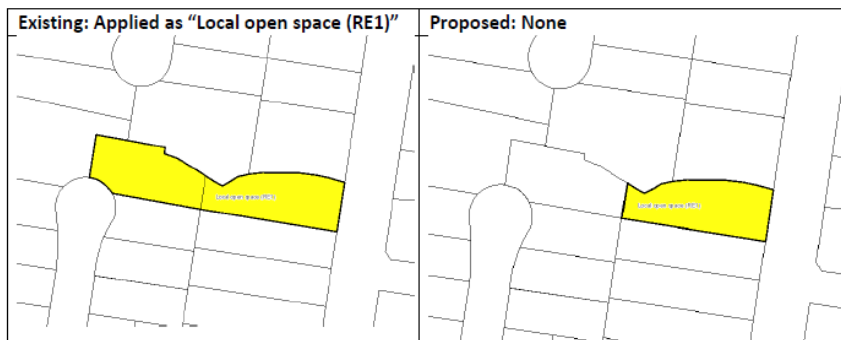
**Railway Corridor at Como Parade, Como – LRA 005**



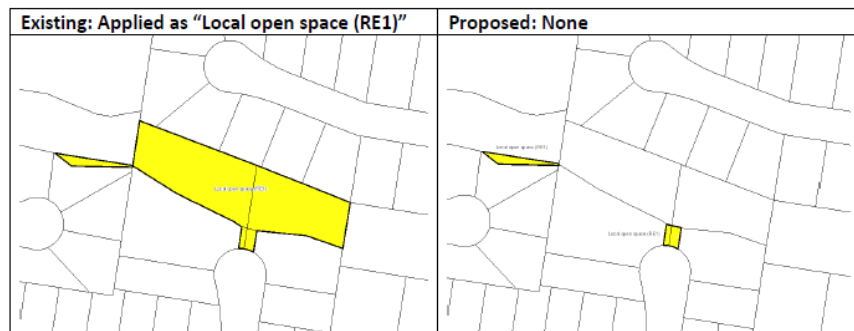
**531-533 Woronora River Frontages, Barden Ridge – LRA 001D**



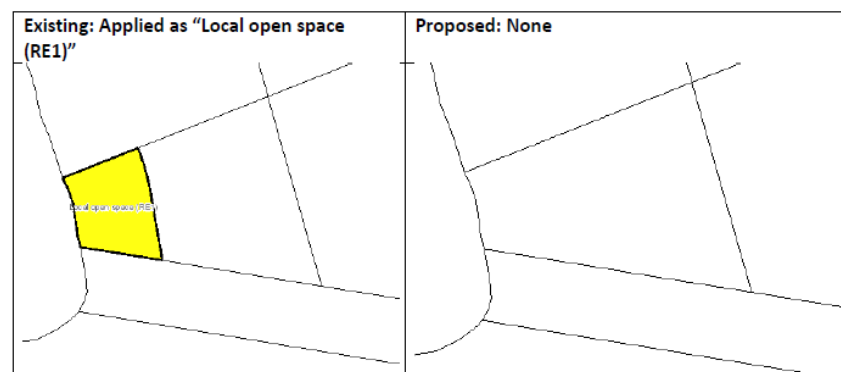
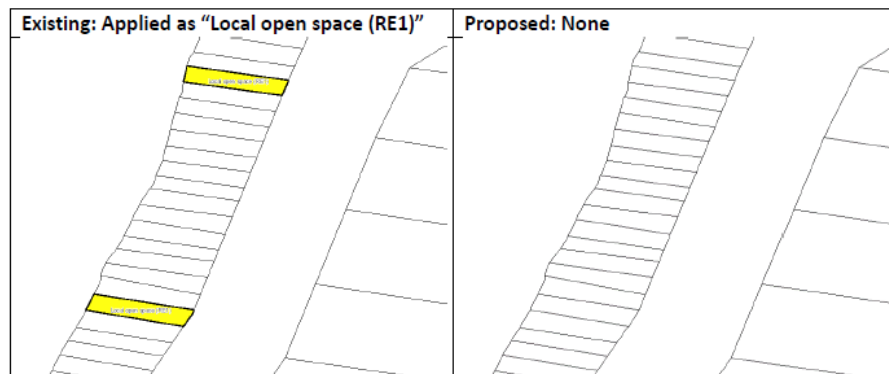
**2 Mawarra Avenue, Miranda – LRA 006A**



**1R & 2R Gidji Road, Miranda – LRA 006A**



**112/1R & 97/1R The Esplanade, Sylvania – LRA 006**



## 5. Department assessment

Council advises that the properties that are proposed to be removed from the Land Reservation Acquisition Map have been acquired by the relevant authorities. Council has not provided evidence as part of the planning proposal that the relevant properties have been acquired.

The amendments are supported should Council provide evidence of the relevant acquisitions the amendment as part of the public exhibition period.

## LEP Map

## Land Zoning (LZN\_005A) and Floor Space Ratio (FSR\_005A)

### 1. Current planning controls

The Land Zoning and Floor Space Ratio maps for 580 Princes Highway, 31 and 39 Flora Street, 6 Kiln Road, 1 Village Place, Kirrawee (Lots 1,2,4 & 5 DP 1215830 & SP98216) and 45 Flora Street, Kirrawee (Lot 1 DP 1242067) are not consistent with the lot boundaries.


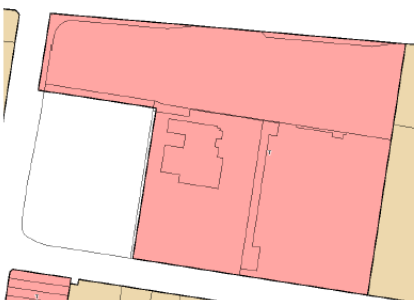
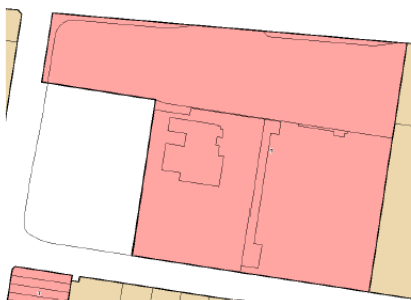
### 2. Council comment

The current mapping does not reflect the actual boundary for the public Park at the South Village Development in Kirrawee. The mapping should be rectified.

### 3. Proposed planning controls

Adjust the mapped zoning boundary and other mapping for the public Park at the South Village Development in Kirrawee.

### 4. Mapping

<b>Land Zoning (Map Sheet LZN_005A)</b> Existing: B4 Mixed Use + RE1 Public Recreation on all properties	<b>Proposed: RE1 Public Recreation on 45 Flora Street; B4 Mixed Use on 580 Princes Highway, 31 &amp; 39 Flora Street, 6 Kiln Road and 1 Village Place.</b>
	
<b>Floor Space Ratio: (Map Sheet FSR_005A)</b> Existing: 2:1 applied to part of all properties	<b>Proposed: 2:1 applied to 580 Princes Highway, 31 &amp; 39 Flora Street, 6 Kiln Road and 1 Village Place. No FSR Limit applied to 45 Flora Street.</b>
	



## 5. Department assessment

Council advises that zoning boundaries for the site were determined prior to the site's final Part 3A Major Development project determination. During the design process for the site the property boundaries in relation to the public park component of the site have shifted out of alignment with the zoning boundaries.

The amendment is required to realign the zoning and floor space ratio control boundaries with the altered lot boundaries. This proposed amendment is supported.

**LEP Map:**                      **Landscaped Area (LSA\_001A)**

### 1. Current planning controls

The land at 145 Woronora Road, Engadine (Lot B in DP 2659) is zoned SP2 Infrastructure and is mapped on the Landscaped Area map.

### 2. Council comment

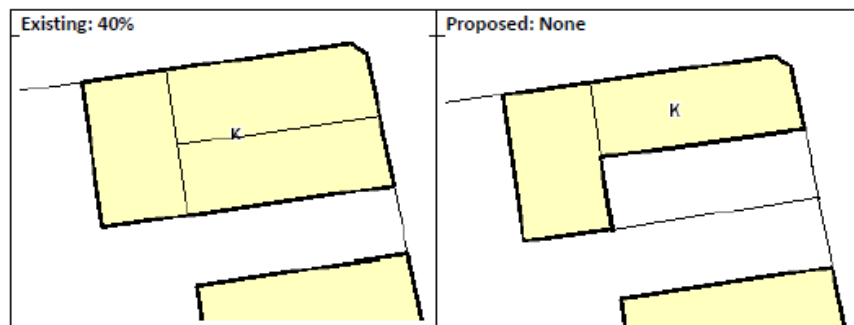
The Landscaped Area map does not apply to land zoned SP2 Infrastructure.

### 3. Proposed planning controls

Remove the property at 145 Woronora Road, Engadine from the application of the Landscape Area map as it has been rezoned to the SP2 infrastructure zone and the relevant clause no longer applies.

### 4. Mapping

Landscaped Area (Map Sheet LSA\_001A)



## 5. Department assessment

The subject site was rezoned from E4 Environmental Living to SP2 Special Infrastructure alongside the commencement of Sutherland Shire LEP 2015. The amendment is supported as the minimum landscaping controls under Clause 6.14 do not apply to land in an SP2 zone. The amendment is supported as it seeks to provide clarity and avoid future confusion should a development application be lodged for the site.

**LEP Map: Foreshore Building Line Map (FBL\_006, FBL\_007 and FBL\_010)**

**1. Current planning controls**

The Foreshore Building Line map shows a foreshore building line and foreshore area. The foreshore area should only apply to land adjacent to the foreshore building line.

**2. Council comment**

There are two areas where foreshore area is mapped where it is not adjacent to the foreshore building line. These areas are at Shell Point (FBL\_006) and Kurnell (FBL\_007).

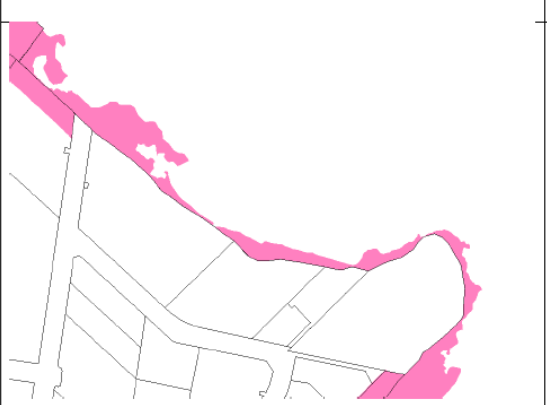
**3. Proposed planning controls**

Amend the Foreshore area map to remove the foreshore area at Shell Point and Kurnell where it is not associated with a foreshore building line in accordance with the intent of LEP Clause 6.9.

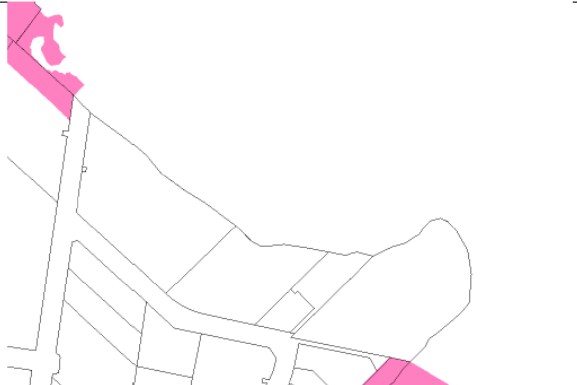
**4. Mapping**

**Shell Point (FBL\_006)**

Existing: Applied regardless of Foreshore Building Line

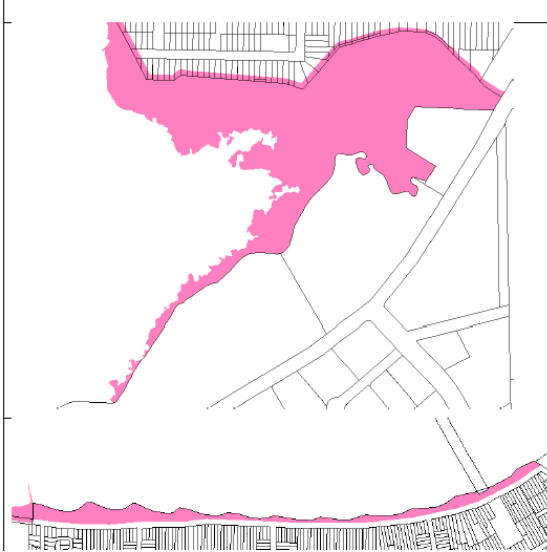


Proposed: Applied only when connected to a mapped Foreshore Building Line

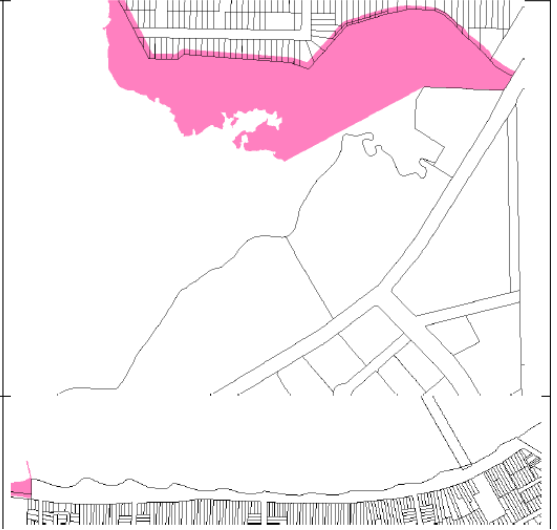


**Kurnell (FBL\_007 and FBL\_010)**

Existing: Applied regardless of Foreshore Building Line



Proposed: Applied only when connected to a mapped Foreshore Building Line



## 5. Department assessment

Council seeks to remove the identified lands at Shell Point and the Kurnell Peninsula from the foreshore area map as they do not have a corresponding foreshore building line.

The definition for “foreshore area” in the Sutherland LEP states;

*“foreshore area means the land between the foreshore building line and the mean high water mark of the nearest bay or river”.*

The identification of the land on the foreshore area map ensures the application of Clause 6.9 Limited development on foreshore area. However, due to the lack of a foreshore building line applying to the identified sites, it is possible that the application of the clause at the subject sites becomes invalid. The amendment seeks to clarify this issue by ensuring that subject land’s identification as foreshore area corresponds with the existing foreshore building line.

Council advises that the land at Shell Point contains one of the last IN4 Working Waterfront zones in the Greater Sydney Region and provides strategically important employment land. Council also advises that the anticipated future direction for the land is to allow for additional water-based development and industrialisation of the foreshore in this area. Council acknowledges the need to protect the environmental sensitivity of the foreshore area. However, Council advises that the proposed amendment is essential for the continuation of maritime industry and services in the precinct.

It is considered that as the land has a history of industrial uses, the land is considered appropriate for these particular uses. Council’s future intent for the land is hindered by the mapping anomaly.

The foreshore areas identified for removal are mapped as coastal wetlands and proximity area for coastal wetlands under the *State Environmental Planning Policy (Coastal Management) 2018*. Furthermore, mangroves are protected under the *Fisheries Management Act 1994*. Therefore, the Department supports this proposed amendment to fix mapping anomalies given the vegetation is protected by other legislative mechanisms.

It is recommended that Council provide further discussion on the intent of this proposed amendment prior to public exhibition to provide certainty on the intended future use of the land.

## 3. NEED FOR THE PLANNING PROPOSAL

The planning proposal is needed to address issues in the Sutherland Shire LEP 2015 identified by Council officers, Certifiers and members of the public.

**Table 1** and **Table 2** provide an assessment by the Department of each of the proposed amendments to the written provisions and the mapping.

The planning proposal is the only means to solve the issues identified and achieve the intended outcomes.

## 4. STRATEGIC ASSESSMENT

---

The planning proposal intends to improve the functionality of the Sutherland Shire LEP 2015, and correct minor errors in wording and mapping. The proposed amendments are administrative and minor.

### 4.1 State – Greater Sydney Region Plan

In March 2018 the Greater Sydney Commission released the Greater Sydney Region Plan – *A Metropolis of Three Cities*. The plan provides a strategic framework to coordinate and manage Sydney's growth. The plan contains objectives for the Greater Sydney Region over the next 40 years and informs the actions and directions of the District Plans. The planning proposal is administrative and minor in nature and does not inhibit the future implementation of the planning priorities in the Plan.

### 4.2 District - South District Plan

The planning proposal is administrative and minor in nature and does not directly address the directions and planning priorities outlined in the South District Plan. However, the planning proposal does support the plan's direction to create the conditions for a stronger economy by simplifying the planning approval process for certain development.

The planning proposal is considered generally consistent with the planning priorities of the South District Plan. There is some inconsistency with Planning Priority S10 – Retaining and Managing Industrial and Urban Services Land.

The South District Plan implements a retain and manage approach to industrial and urban services land. This seeks to retain the existing areas and locations of industrial zoned land. The Plan seeks to safeguard industrial lands from competing pressures with particular reference to residential and mixed-use developments.

The proposed rezoning's pertaining to land at 1770-1776 Princes Highway and Kummera Street Road Reserve, Waterfall seek to rezone land from IN1 General Industrial to E1 National Parks and Nature Reserves. The proposed amendment is technically inconsistent with the Plan's 'retain and manage approach'.

The land at 1770-1776 Princes Highway was gazetted as National Parks Estate in 2016, prior to the release of the South District Plan in March 2018. As the land has been gazetted under the National Parks Estate and the rezoning simply seeks to align the zone with the land use, this inconsistency is considered justified.

The land known as Kummera Street Road Reserve was not gazetted as National Parks Estate and therefore the planning proposal remains inconsistent with this planning priority. This inconsistency is justified because the proposed rezoning is in accordance with the Department's practice note on zoning for infrastructure in LEPs which states that roads should be zoned the same as adjoining land. This is consistent with other Council-managed roads within National Parks. Furthermore, due to the location, shape and current state (uncleared native vegetation) of the land it is unlikely the land would be suitable for an industrial use.

The Greater Sydney Commission were consulted on this topic and agree that the inconsistency is justified.

### 4.3 Local – Community Strategic Plan: Our Community Plan

Council advises that the proposed amendments are considered consistent with its Community Strategic Plan, particular Goal 2.2.3 “*Encourage responsible urban planning which balances with environmental sustainability*”.

The proposal is considered consistent as it seeks to improve the operation of the Sutherland Shire LEP 2015.

### 4.4 Section 9.1 Ministerial Directions

The planning proposal’s consistency with Section 9.1 Ministerial Directions is outlined in Table 3.

**Table 3 Consistency with Section 9.1 Ministerial Directions**

Section 9.1 Ministerial Direction	Consistency
1.1 - Business and Industrial Zones	<p>The direction applies to the following amendments:</p> <ul style="list-style-type: none"><li>• Zone boundary alignment at 111 Princes Highway, Sylvania</li><li>• Zone boundary alignment at 580 Princes Highway, 1 Village Place, 39 and 45 Flora Street, Kirrawee (South Village Development)</li><li>• Rezone land at 1770-1776 Princes Highway, Waterfall and Kummera Street road reserve from IN1 to E1</li></ul> <p>Two amendments seek to make minor boundary adjustments and propose negligible increases to business zoned land to align with relevant property boundaries. The two amendments are considered consistent with the direction as they seek to retain existing business zones and does not reduce the potential floor space area to be used for employment generating land uses.</p> <p>However, the amendment to rezone land at 1770-1776 Princes Highway, Waterfall and Kummera Street road reserve from IN1 General Industrial to E1 National Parks and Nature Reserves is technically inconsistent with the following terms of the direction:</p> <p>(4) A planning proposal must:</p> <p>(b) retain the areas and locations of existing business and industrial zones</p> <p>(d) not reduce the potential floor space area for industrial uses in industrial zones</p> <p>The land at 1770-1776 Princes Highway was gazetted as National Parks Estate in 2016, prior to the release of the South District Plan in March 2018. As the land has been gazetted under the National Parks Estate and the rezoning simply seeks to align the zone with the land use, this inconsistency is considered justified.</p> <p>The land known as Kummera Street Road Reserve was not gazetted as National Parks Estate and therefore the planning proposal remains inconsistent with this planning priority. This inconsistency is justified because the proposed rezoning is in accordance with the Department’s practice note on zoning for infrastructure in LEPs which states that roads should be zoned the same as adjoining land. This is consistent with other Council-managed roads within National Parks. Furthermore, due to the location, shape and current state (uncleared native vegetation) of the land it is unlikely the land would be suitable for an industrial use.</p>

Section 9.1 Ministerial Direction	Consistency
2.1 - Environment Protection Zones	<p>The planning proposal is mostly consistent with the terms of the direction as it seeks to ensure greater protective measures for lands that have been gazetted as National Parks under the <i>National Parks and Wildlife Act 1974</i>.</p> <p>Council advises that the planning proposal may depart from the terms of the direction in a minor nature as it seeks to remove several properties from the Terrestrial Biodiversity Map. The proposed amendment is considered to be inconsistent with term (5) of the Direction:</p> <p><i>“A planning proposal that applies to land within an environmental protection zone or land otherwise identified for environmental protection purposes in an LEP must not reduce the environmental protection standards that apply to the land (including by modifying the development standards that apply to the land)”</i></p> <p>Council advises that this inconsistency should be considered justified as the sites are already developed and all onsite vegetation has been confirmed not to contain any Endangered Ecological Communities (EECs). Council has provided documentation demonstrating that the sites do not contain EECs, as such the amendments are considered appropriate as they simply make mapping corrections.</p> <p>The alternative of retaining the properties on the map with the knowledge that they do not contain EECs undermines confidence in the LEP map layer and will lead to unnecessary studies being undertaken should a development application be lodged.</p> <p>It is considered that the minor inconsistency with the direction is justified.</p>
2.2 - Coastal Management	<p>This planning proposal gives effect to the objectives and mandatory outcomes of the direction because it:</p> <ul style="list-style-type: none"> <li>• Does not seek to affect the management of coastal areas of NSW.</li> <li>• Does not seek to make changes which are relevant to the Coastal Management Act 2016, NSW Coastal Management Manual, NSW Coastal Design Guidelines 2003 or any Coastal Zone Management Plan under the former Act.</li> </ul> <p>The proposed amendment to the Foreshore Building Line Map impacts land mapped as coastal wetlands and within the proximity area for coastal wetlands. The Department does not consider the removal of the foreshore area map from these areas as facilitation of development on sensitive coastal land, therefore the planning proposal is consistent with this direction.</p>

Section 9.1 Ministerial Direction	Consistency
3.1 - Residential Zones	<p>The direction applies to the following amendments</p> <ul style="list-style-type: none"> <li>• Zone boundary alignment 111 Princes Highway, Sylvania</li> <li>• Zone boundary alignment 580 Princes Highway, 1 Village Place, 39 and 45 Flora Street, Kirrawee (South Village Development)</li> <li>• Land use table amendment to allow exhibition homes and exhibition villages as permissible with consent in R2 and R3 zones.</li> </ul> <p>In relation to 111 Princes Highway, Sylvania the direction applies as the amendment seeks to alter an existing residential zone boundary. The proposal seeks to amend a mapping anomaly that has seen the relevant lot inadvertently zoned 98% B6 Enterprise Corridor and 2% R3 Medium Density Residential. The amendment is considered consistent with the direction as it will not impact the potential residential density of the land as; the rezoning covers a negligible part of land that will not alter the site's development potential and multi-dwelling housing is permissible with consent in the B6 Enterprise Corridor zone.</p> <p>The direction applies to the boundary adjustment amendment at the South Village development in Kirrawee as it seeks to alter an existing B4 mixed use zone comprising of retail and residential uses. The alteration is considered justified as the existing boundaries were determined prior to the developments final approval and do not align with the final land use boundaries. The minor adjustment is not anticipated to result in additional development or reduce the potential for residential density on the site.</p> <p>The amendment to allow exhibition homes and exhibition villages as permissible with consent in R2 Low Density Residential and R3 Medium Density Residential zones requires consideration under the direction as it will affect land within existing residential zones.</p> <p>Council advises that exhibition homes and villages are time limited land uses which transition into normal residential dwellings at the expiry of their development consent periods and reductions in density are temporary. However, the standard instrument definition captures the use "whether or not it is intended to be sold as a private dwelling after its use for those purposes is completed".</p> <p>Despite this the uses are considered to be appropriate for the zones and are commonly found to be permissible with consent in other Local Environmental Plans. Any potential inconsistency is considered minor and justified.</p>



Section 9.1 Ministerial Direction	Consistency
4.3 Flood Prone Land	<p>The direction applies to the following amendments:</p> <ul style="list-style-type: none"> <li>• Amend land use map 25 Kangaroo Point Road, Kangaroo Point (W1 to E3)</li> <li>• Amend land use map 4 Hazel Place, Burraneer (W2 to E4)</li> <li>• Amend land use map 10 Gunnamatta Road, Cronulla (R2 to W2)</li> </ul> <p>The amendments seek to make minor mapping adjustments to correct mapping anomalies at 25 Kangaroo Point Road, Kangaroo Point and 4 Hazel Place, Burraneer. The sites are currently zoned W1 Natural Waterways and W2 Recreational Waters and are proposed to be rezoned to E3 Environmental Management and E4 Environmental Living, respectively.</p> <p>Under the direction a planning proposal must not permit a significant increase in the development potential of land that is flood prone. The proposed E3 and E4 zones are considered substantially less restrictive than the W1 and W2 zonings that currently apply. As such the lift in development potential would be considered technically inconsistent with the direction.</p> <p>Additionally, land at 10 Gunnamatta Road seeks to rezone land from R2 Low Density Residential to W2 Recreational Waters. This rezoning would be considered inconsistent under the terms of the direction as it stipulates that flood prone land must not be rezoned from residential uses.</p> <p>The direction allows for a planning proposal to be inconsistent with the terms of the direction, should the provisions that be inconsistent be of minor significance. As the amendments only seek to make mapping corrections the inconsistencies are considered justified as they are minor in nature.</p>
4.4 - Planning for Bushfire Protection	<p>The direction applies to all planning proposals that will affect land which is mapped as bushfire prone.</p> <p>The proposed amendments are not considered to increase the risk to life or property on bushfire prone land as the changes are minor and administrative in nature.</p>
6.2 Reserving Land for Public Purposes	<p>One of the objectives of this direction is to facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition.</p> <p>The planning proposal seeks to remove land from the Land Reservation and Acquisition map because Council have stated the land has been acquired. Therefore the planning proposal is consistent with this direction.</p>
6.3 Site Specific Provisions	<p>The direction applies to the amendment to permit Exhibition Homes and Exhibition Villages as an additional permitted use at 310 New Illawarra Road, Barden Ridge.</p> <p>Although the planning proposal also seeks to permit the above uses in R2 Low Density Residential and R3 Medium Density Residential Zones it would be considered unreasonable to rezone the site to permit the uses. As discussed, the site is currently zoned E4 Environmental living as it is located on bushfire prone land and is in an environmentally sensitive area. Rezoning the site would permit much higher densities and undermine the current protective measures applying to the site.</p> <p>Although the amendment imposes a new development standard on the site, it is not restrictive in nature and does not impose a new principal development standard that is not already contained within the Sutherland Shire LEP 2015. Therefore the inconsistency with this direction is justified.</p>

## 4.5 State environmental planning policies (SEPPs)

The planning proposal is consistency with the State Environmental Planning Policies provided in **Table 4**.

**Table 4 Consistency with State Environmental Planning Policies**

SEPP	Consistency
SEPP No 19 – Bushland in Urban Areas	The planning proposal is considered consistent with the SEPP as it seeks to recognise the recent expansion of Heathcote National Park. Council has satisfied its obligations under Clause 10 of the SEPP as it has given general regard to the aims of the policy by retaining land that has been recognised as National Parklands.
SEPP (Vegetation in Non-Rural Areas) 2017	The planning proposal gives effect to the SEPP under Clause 6.14 by replacing the reference to the repealed Standard Instrument LEP clauses that were replaced by the SEPP. The proposal does not hinder the application of the SEPP.
Greater Metropolitan Regional Environmental Plan No 2—Georges River Catchment	The planning proposal does not seek to amend the development potential of land within the Georges River Catchment, therefore it is consistent with the aim of the SEPP to protect the environmental qualities of the Georges River.

## 5. SITE-SPECIFIC ASSESSMENT

---

The planning proposal is generally administrative and minor in nature, as such the proposed changes are unlikely to result in environmental, social or economic impacts.

## 6. CONSULTATION

---

### 6.1 Community

Council has advised that the proposal will be publicly exhibited for a minimum of 28 days in accordance with *'A Guide to Preparing Local Environmental Plans'*.

Council advises that the planning proposal will be advertised in the local newspaper, at local Council buildings and Council's website. Council also advises that it intends to write to all affected and adjoining landowners.

A 28-day exhibition period is considered appropriate and no objection is raised regarding the proposed exhibition methods.

### 6.2 Agencies

Council should consult with relevant public agencies in relation to the removal of lands from the Land Reservation and Acquisition map, after the receipt of a Gateway determination.

## 7. TIME FRAME

---

Council has provided a project timeline that anticipates a 6-month timeframe for completion following receipt of a Gateway determination.

A 6-month timeframe is considered to be appropriate and will be outlined in the conditions of the Gateway determination.

## **8. LOCAL PLAN-MAKING AUTHORITY**

---

Council has advised that it would like to exercise its functions as Local Plan-Making authority.

As the proposal simply seeks to make minor amendments and correct administrative errors, it is considered that Council should be the Local Plan-Making authority.

## **9. CONCLUSION**

---

The planning proposal has merit and should proceed subject to conditions as it:

- The planning proposal will improve the operation and accuracy of the Sutherland Shire LEP 2015.
- Is generally consistent with applicable state and regional planning frameworks

The planning proposal will be required to be updated prior to public exhibition to:

- include simplified explanations of the intent of the proposed amendments to the written provisions and remove any draft clauses
- include a consolidated ecology report which supports the removal of lots from the Terrestrial Biodiversity Map;
- include justification for why the land known as Kummera Street road reserve should be rezoned to E1 National Parks and Nature Reserves;
- include evidence that land proposed to be removed from the Land Reservation and Acquisition Map has been acquired by a public authority;
- include clarification of the intended future use of land which is proposed to be removed from the foreshore area map; and
- provide all supporting information in the form of appendices that are referenced throughout the planning proposal.

## **10. RECOMMENDATION**

---

It is recommended that the delegate of the Secretary:

1. agree that any inconsistencies with section 9.1 Directions [1.1 – Business and Industrial Zones; 2.1 – Environment Protection Zones; 3.1 – Residential Zones; 4.3 Flood Prone Land; and 6.3 Site Specific Provisions] are minor or justified.

It is recommended that the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. The planning proposal should be made available for community consultation for a minimum of 28 days.
2. Consultation is required with the relevant public authorities to confirm the removal of land from the Land Reservation and Acquisition Map:
3. The time frame for completing the LEP is to be 9 months from the date of the Gateway determination.
4. Given the nature of the planning proposal, Council should be the local plan-making authority.
5. The planning proposal should be updated prior to public exhibition to:

- include simplified explanations of the intent of the proposed amendments to the written provisions and remove any draft clauses;
- remove the proposed changes to clause 6.14 to reflect the consequential changes being undertaken as a separate LEP;
- include a consolidated ecology report which supports the removal of lots from the Terrestrial Biodiversity Map;
- include justification for why the land known as Kummera Street road reserve should be rezoned to E1 National Parks and Nature Reserves;
- include evidence that land proposed to be removed from the Land Reservation and Acquisition Map has been acquired by a public authority;
- include clarification of the intended future use of land which is proposed to be removed from the foreshore area map; and
- provide all supporting information in the form of appendices that are referenced throughout the planning proposal.

**Kris Walsh**  
**Acting Team Leader,**  
**Eastern and Southern District**

**Laura Locke**  
**Acting Director**  
**Eastern and Southern District**  
**Greater Sydney, Place and**  
**Infrastructure**

Assessment officer: Benjamin Reid  
 Planning Officer, Eastern and Southern District  
 Phone: 8275 1061

## Appendix A – Proposed amended provisions

LEP Provision:	<b>Part 6 Local Provisions</b>  6.14 Landscaped areas in certain residential, business, industrial and environment protection zones	
Council's suggested amended provision	<p><i>(4) Despite subclause (3), development consent may be granted to development even though the percentage of the site consisting of landscaped areas is up to 5% less than the percentage shown on the Landscape Area Map in relation to the land if:</i></p> <p><i>(a) there is a tree on the site to which State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 applies, and</i></p> <p><i>(b) the consent authority is satisfied that:</i></p> <p><i>(i) the tree makes an important contribution to the character or amenity of the locality, or</i></p> <p><i>(ii) the species of tree is indigenous to the local area and listed as a threatened species under the Threatened Species Conservation Act 1995, or</i></p> <p><i>(iii) the tree is important habitat for native fauna, or</i></p> <p><i>(iv) the tree is important to the maintenance of biodiversity in the environment of the locality, or</i></p> <p><i>(v) the tree is part of remnant bushland, or</i></p> <p><i>(vi) the tree forms a notable visual element in the landscape of the locality, or</i></p> <p><i>(vii) the tree is botanically unique in or rare to the local area (whether the species of tree is native or exotic).</i></p>	
LEP Provision:	<b>Part 4 Principal development standards</b>  4.1A Minimum subdivision requirements in certain residential and environment protection zones	
Council's suggested amended provision	<p><b><u>4.1A Minimum subdivision requirements in certain residential and environment protection zones</u></b></p> <p><i>(1) Development consent must not be granted for the subdivision of land in Zone R2 Low Density Residential, Zone R3 Medium Density Residential or Zone R4 High Density Residential, unless each lot resulting from the subdivision will have:</i></p> <p><i>(a) a minimum width of 15 metres at the building line, and</i></p> <p><i>(b) a minimum depth of 27 metres.</i></p> <p><i>(2) Development consent must not be granted for the subdivision of land in Zone E3 Environmental Management or Zone E4 Environmental Living unless each lot resulting from the subdivision will have:</i></p> <p><i>(a) a minimum width of 18 metres at the building line, and</i></p> <p><i>(b) a minimum depth of 27 metres.</i></p> <p><i>(3) This clause does not apply in relation to any of the following:</i></p> <p><i>(a) the subdivision of a lot in Zone R2 Low Density Residential, Zone R3 Medium Density Residential or Zone R4 High Density Residential if there is a dual occupancy on the lot and one of those dwellings will be situated on each lot resulting from the subdivision, or</i></p> <p><i>(c) the subdivision of any land by the registration of a strata plan or strata plan of subdivision under the Strata Schemes Development Act 2015, or</i></p> <p><i>(d) the subdivision of any land by any kind of subdivision under the Community Land Development Act 1989, or</i></p> <p><i>(e) the subdivision of any building by any kind of stratum subdivision under the Conveyancing Act 1919.</i></p>	

LEP Provision:	<p><b>Part 4 Principal development standards</b></p> <p>4.1B Minimum lot sizes for strata subdivisions of dual occupancies in Zone E4</p>
Council's suggested amended provision	<p><b>4.1B Requirements for strata subdivisions of dual occupancies in Zones E3 and E4</b></p> <p>(1) The objectives of this clause are as follows:</p> <ul style="list-style-type: none"> <li>(a) to limit the impacts associated with increased residential density (because of development resulting in dual occupancies) on land in Zones E4 Environmental Living and E3 Environmental Management,</li> <li>(b) to maintain the amenity and character of land in these zones,</li> <li>(c) to prevent the cumulative fragmentation of land in these zones.</li> </ul> <p>(2) Development consent may only be granted for the strata subdivision of a dual occupancy on a lot of land (an original lot) in Zone E4 Environmental Living if:</p> <ul style="list-style-type: none"> <li>(a) the size of the original lot is not less than the minimum lot size shown on the Lot Size Map in relation to the land, or</li> <li>(b) the dwellings comprised in the dual occupancy were lawfully erected on or before 23 June 2015.</li> </ul> <p>(3) Development consent may only be granted for the strata subdivision of a dual occupancy on a lot of land in Zone E3 Environmental Management if the dwellings comprised in the dual occupancy were lawfully erected on or before 23 June 2015.</p>