



Robert McKinlay (9710 0187)

17 April 2019



Andrew Watkins - Sydney Region East
Planning Services
NSW Planning & Environment
GPO Box 39
Sydney NSW 2001

Dear Mr Watkins

RE: Planning Proposal SSLEP2015 Minor Amendments: Clauses, Zoning and Development Standards 2018

[In response, please quote File Ref: 2018/323614]

On 4 January 2019, Planning Proposal SSLEP2015 Minor Amendment: Exempt and Complying Development 2018 was submitted to the NSW Department of Planning for a Gateway Determination. On 4 March 2019, the Department issued a request for further information or an amended planning proposal in relation several issues.

In accordance with the Department's request Council submits the attached amended planning proposal with the requested information.

The following documents are provided in support of the submission:

- Planning Proposal – SSLEP2015 Minor Amendment – Clauses, Zoning and Development Standards 2018 v 2
- DPE Planning Proposal Information Checklist – Clauses, Zoning and Development Standards 2018
- Council and Local Planning Panel Business Papers and Minutes
 - PLN007-17 (Council and Planning Committee meeting business papers and minutes)
 - PLN028-18 (Council and Planning Committee meeting business papers and minutes)
 - PLN037-18 (Council and Planning Committee meeting business papers and minutes)
 - PLN041-18 (Council and Planning Committee meeting business papers and minutes)
 - SSLPP057-18 (Local Planning Panel meeting business papers and minutes)
- Draft Amended SSLEP2015 map sheets

- Annotated memo from the GM supporting submission of the Planning Proposal for a Gateway Determination.
- Arborists Reports and Vegetation Studies to support changes to the Terrestrial Biodiversity – Environmentally Sensitive Land Mapping
- Plans of Subdivision at the following locations as evidence of boundary redefinitions:
 - 10 Gunnamatta Road, Cronulla
 - 25 Kangaroo Point Road, Kangaroo Point

Further, a table is provided below listing the matters raised by the Department in the request for further information with a summary response and an indication of how the proposal has been amended or augmented.

Table of Requests and Changes
<p><u>Consistency with Strategic Planning Frameworks:</u> <i>The planning proposal states that as the proposed amendments are minor and generally administrative in nature, that it does not need to address consistency with the Greater Sydney Region Plan and South District Plan.</i></p> <p><i>This will need to be rectified for the proposal to be considered adequate with particular reference to the intent to rezone industrial land at 1770-1776 Princes Highway, Waterfall, as this is inconsistent with the retain and manage approach to industrial lands contained within the South District Plan</i></p> <p>The planning proposal has been amended to better address <i>The Greater Sydney Region Plan: A Metropolis of Three Cities</i> and the <i>South District Plan</i>.</p> <p>The <i>South District Plan</i> advises the following action relevant to this matter: “39. <i>Retain and manage industrial and urban services land, in line with the Principles for managing industrial and urban services land, in the South District by safeguarding all industrial zoned land from conversion to residential development, including conversion to mixed-use zones. In updating local environmental plans, councils are to conduct a strategic review of industrial lands.</i>”</p> <p>This action is intended to protect industrial lands from encroachment by other urban purposes such as retail and residential. The expected outcome of action 39 is that industrial lands will be retained and remain available to support industrial and urban services land uses.</p> <p>It is agreed that the rezoning of industrial land at 1770-1776 Princes Highway, Waterfall is not consistent with the “<i>retain and manage approach</i>” of the <i>South District Plan</i>.</p> <p>However, this land has already been gazetted as National Park and therefore there is no possibility that it will be used for an industrial or urban services purpose. This land was gazetted as part of the National Parks Estate in 2016 (page 983, NSW Government Gazette No 32 of 29 April 2016 available at this link https://gazette.legislation.nsw.gov.au/so/download.w3p?id=Gazette_2016_2016-32.pdf).</p> <p>The subject land is an uncleared, undeveloped land parcel located between the Princes Highway and the Illawarra Line Railway. The land contains bushland (Sydney South Exposed Sandstone Woodland). Given that the subject land is already a part of the National Parks Estate, it is not available for industrial and urban services uses despite the current zoning. Retaining the industrial zoning on this site will not achieve the objectives of <i>South District Plan</i> action 39.</p>

If the Department of Planning wishes to make this parcel available for industrial and urban services land uses, it should seek to reverse the inclusion of this land parcel in the National Parks Estate. Council seeks to rezone this land to reflect its status as National Park under the Department's Practice Note: PN 09-002 Environment Protection Zones which states: ***"E1 National Parks and Nature Reserves This zone is for existing national parks, nature reserves and conservation areas and new areas proposed for reservation that have been identified and agreed by the NSW Government."***



Foreshore Building Line Map Changes:

In relation to the foreshore area amendments, it is understood that the Foreshore Areas to be removed from the map may be invalid as there is no corresponding foreshore building line. However, further justification is required as to why a foreshore building line should not be added, as opposed to removing the foreshore area.

A desktop review shows that land particularly at Shell Point that is to be removed from the map provides a vegetative buffer between industrial uses and waterways. The retention and validation of the foreshore area on this land would align with the objectives of Clause 6.9 Limited Development on the Foreshore. As such, further justification with particular reference to this issue is required.

Additional justifications provided:

The IN4 Working Waterfront zone applied to this area was specifically intended to facilitate industrial activities that require direct access between the land and the waterway.

The IN4 Working Waterfront zone was applied as per Department Practice Note PN 11-002 *"This zone is generally intended for industrial and maritime uses that require waterfront access. The zone could be applied to small commercial fishing or other ports, as well as other maritime industrial uses. A special purpose zoning may be more appropriate for large commercial port facilities."*

The standard instrument LEP defines *foreshore area* to mean “the land between the foreshore building line and the mean high water mark of the nearest bay or river.” For example, some water near Shell Point has been identified as a mapped foreshore area, however, this area does not have a corresponding mapped foreshore building line. As a result this foreshore area may not have any effect.

Clause 6.9 *Limited development on foreshore area* specifically seeks to limit development within the foreshore area. It is considered that this clause acts against the intent of the IN4 zone objectives (retain and encourage waterfront industrial and maritime activities).

The preferred mechanism to facilitate IN4 working waterfront development is to remove the foreshore area where it is not adjacent to a foreshore building line. Council’s approach is similar to other Councils who apply the IN4 zone and do not apply a Foreshore Area/Foreshore Building line in that location – see Hornsby HLEP2013 (maps 15 and 25), Ryde LEP2014 (map 6). In this location, the strategic priority of protecting the coast and waterways must be balanced against the strategic function and intent of the IN4 working waterfront zone.

Amendments to Clause 4.1A and 4.1B:

It is understood that the intent of the existing subclause 4.1A(3)(b) sought to ensure that the minimum dimension requirements under Clause 4.1A for dual occupancies on E3 zoned land was to apply, unless the dual occupancy was built before the commencement of the Sutherland Shire LEP 2015.

The statement of objectives and intended outcomes state that the proposal seeks to:

“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”

And

“Clarify that despite I, 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 June 23, 2015”

If Council were to proceed with the prohibition of subdividing dual occupancies in the E3 zone, there would be no need to impose the minimum dimension requirements on dual occupancies built after 23 June 2015, as the subdivision would be prohibited. Can you please clarify which of the above options Council wishes to proceed with?

If Council wishes to proceed with the prohibition of subdividing dual occupancies in E3 zones lawfully erected after 23 June 2015, further justification will be required, this should include;

- ***The intent and reason for the prohibition.***
- ***The number of dwellings to be affected by the proposed amendment.***

The plan 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 somewhat contradictory (see clause 4.1A(3)(c)). To resolve this ambiguity it is recommended that the prohibition on strata subdivision of new dual occupancies in zone E3 be relocated to clause 4.1B.

The intent is to ensure that strata subdivision of new dual occupancies in zone E3, as intended through Amendment 9, is subject to the minimum lot size dimensions.

Background to the clause:

At its commencement (23 June 2015) the Sutherland Shire Local Environmental Plan 2015 greatly limited development for the purpose of dual occupancies in the E3 Environmental Management zone - the most sensitive environmental zone.

Dual Occupancies were (and remain) prohibited under the land use table for the E3 zone. Permissibility for Dual occupancies within the zone is instead facilitated through an Additional Permitted Use in clause 27 of Schedule 1 of the plan applying to Area "B" on the LEP's APU map sheets. The APU clause only applies if one of the dwellings to form the dual occupancy is an existing lawful dwelling in the foreshore area, which had been in existence for at least 3 years prior to the commencement of the Plan and formed part of the existing character of the waterfront. The LEP only allowed strata subdivision if the lots met the minimum dimensions – 2 strata lots with these dimensions are difficult to achieve on waterfront lots. This was a deliberate action by Council to constrain the subdivision of such dual occupancies.

In making SSLEP2015, Council considered that subdivision of such dual occupancies in zone E3 was not appropriate, as individual ownership is likely to lead to demands for further intensification of the waterfront dwelling and further environmental impacts in these sensitive locations along the foreshore. The waterfront areas of the Shire are often very steep, heavily vegetated, bushfire prone and highly valued for water views and direct waterfront access. Historically iterative & cumulative subdivision of waterfront lots in these areas has contributed to conflicts from loss views, impacts on vegetation and increasing intensity of development along the foreshore which has diminished its natural beauty and character in some places. Consequently, the first version of SSLEP2015 applied the minimum lot dimensions to such subdivisions – these dimensions that are very difficult to achieve on waterfront lots and essentially create a 'prohibition'.

The conditional permissibility of the APU, and difficulty in achieving subdivision standards, reflected Council's desire to restrict further intensification of sensitive waterfront areas whilst allowing property owners to potential to develop a new more accessible dwelling outside the foreshore area. The existing "boat houses" and other waterfront dwellings which contributed to the character of the area could remain without requiring demolition. Prior to SSLEP2015 Council did not permit dual occupancy in these areas, and should an owner want a larger house, the waterfront cottage was required to be demolished (see SSLEP2006 cl.18 (3)(ii)).

Clause 4.1A (minimum subdivision lot sizes), as original made, also did not feature any exemptions for other types of subdivision or development. Hence, these minimum dimension requirements unintentionally frustrated all Torrens Title subdivision of dual occupancies in residential zones, and strata subdivisions of dual occupancies and residential flat buildings or commercial properties. Subsequently Council pursued amendments to the plan which were intended to eliminate these conflicts, but intended to retain the effective 'prohibition' on subdivision of dual occupancies in the E3 zone.

- Amendment No. 2 gazetted on 9/10/2015 provided an exemption from clause 4.1A for subdivision of Dual Occupancies in zones R2, R3 & R4 generally, and for strata subdivision of dual occupancies in zone E4.
- Amendment No. 4 gazetted on 28/07/2017 provided a further exemption from clause 4.1A for "*subdivision of lots in a strata plan or community title scheme*" which was intended to overcome difficulties in subdivision of residential flat buildings, townhouses, commercial and mixed use buildings.

Following these amendments, Council resolved to allow a small number of properties in the E3 zone, with two constructed dwellings on their land at the time SSLEP2015 commenced to strata subdivide. These properties had two dwellings as they had not yet demolished their waterfront cottage as required by a condition of development consent. Amendment No. 9 gazetted on 04/08/2017 was intended to allow some flexibility and the strata subdivision of these existing 'dual occupancies' in the E3 zone. The amendment intended to facilitate strata subdivision of only existing (constructed prior to 23 June 2015) dual occupancies in the E3 zone that do not meet the minimum lot dimensions, without providing such concessions for new dual occupancies. Again, the intention in Amendment 9, was not to allow the strata subdivision of new dual occupancies.

However the general exemption for strata subdivision introduced in Amendment No. 9 is not clear (see clause 4.1A(3)(c)). This drafting anomaly was further compounded by changes made to the Standard Instrument on 20 April 2018 concerning strata subdivision.

The current intent is to maintain the continued limitation on subdivision of new dual occupancies in zone E3 as intended through Amendment 9.

This may be best achieved by transferring the 'effective prohibition' on subdivision of new dual occupancies in zone E3 from Clause 4.1A into clause 4.1B. In addition to clarifying the operation of Clause 4.1A, this change would also have the effect of consolidating the requirements for subdividing of dual occupancies in zones E3 and E4 (both environmental zones into clause 4.1B which will improve the legibility of the LEP.

It is Council's view that the current drafting of Clause 4.1A, whilst somewhat anomalous, applies the minimum lot dimensions to the strata subdivision of new dual occupancies. However this should be better drafted. The proposed change therefore has no impact.

Since the introduction of SSLEP2015 only six development applications in the E3 zone for a new dual occupancy or alteration of an existing dual occupancy have been approved or are pending a determination. They are listed below:

Application	Decision	Description	Primary Property	Suburb
DA16/0843	Approved	Construction of additional dwelling to form a detached dual occupancy	171 Fowler Road	ILLAWONG
DA17/0806	Approved	Construction of additional dwelling to create detached dual occupancy	135 Bunarba Road	GYMEA BAY
DA17/1817	Approved	Demolition of existing garages, construction of a second dwelling to form a detached dual occupancy, construction of 2 detached garages, and associated landscape and engineering works	50 Kangaroo Point Road	KANGAROO POINT
DA18/1045	Approved	Alterations and additions to existing dual occupancy and 2 lot strata subdivision	30 Bruce Avenue	CARINGBAH SOUTH
DA19/0081	Pending	Construction of a new dwelling and retention of the an existing waterfront dwelling to create a dual occupancy with two lot strata title subdivision	149 Fowler Road	ILLAWONG

DA19/0093	Pending	Construction of a single dwelling to create a dual occupancy	13 Bonnet Avenue	COMO
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In the same period, a further two applications have sought to subdivide an existing dual occupancy with no other works. In both cases the existing dual occupancy was constructed prior to the gazettal of SSLEP2015 and would be unaffected by the proposed change.

Application	Decision	Description	Primary Property	Suburb
DA17/1085	Approved	Strata subdivision of an existing dual occupancy	31B Oyster Bay Road	OYSTER BAY
DA18/0951	Approved	Strata subdivision of an existing dual occupancy	86 Prices Circuit	WORONORA

Mapping:

It is recommended that the mapping contained within the planning proposal is updated to reference the mapping sheets that are to be amended. It is also recommended that Council update the maps to better portray the surrounding area, including road names etc.

Context mapping with aerial photography, boundary of changes and labels for each mapping change has been provided.

Amendments that require further evidence:

To proceed with the assessment of the proposal can Council please provide evidence of the following:

- ***Resurveying and changes to the Mean High Water Mark at the following sites:***
 - ***10 Gunnamatta Road, Cronulla***
 - ***25 Kangaroo Point Road, Kangaroo Point***
- ***The acquisition of land by the relevant agencies in relation to the removal of sites from the Land Reservation Acquisition Map***
- ***The studies undertaken that reveal that no Endangered Ecological Communities are present on lands that are proposed to be removed from the Terrestrial Biodiversity Map***

- Survey plans of subdivision are attached to this letter for the listed properties.
- Land ownership details are noted in the planning proposal. Changes to the land reservation and acquisition map are proposed for each effected property.
- Arborist reports or vegetation studies are provided with this letter and are summarised for each site or group of sites in the planning proposal.

Additional Recommendations:

- ***Investigate the need to also update the Heritage Map and Flood Planning Map for land at 25 Kangaroo Point Road, Kangaroo Point.***
- ***The reference to Clause 6.22 that is to be amended in all FSR Sheets should also occur for the Height of Building Map. Clause 6.21 also applies to the Height of Buildings Map which also incorrectly refers to Clause 6.22***

- 25 Kangaroo Point Road, Kangaroo Point
 - Heritage changes to this property are being progressed as part of a separate planning proposal which will proceed to Council for confirmation in May 2019 and then on to Gateway Determination.

- Flood mapping changes will not be pursued at the request of Council's flood engineers. Council is currently undertaking a review of flood mapping in Council's LEP and DCPs at this time.
- References to Clause 6.22 will be corrected on all FSR and HOB map sheets

Should you have any further queries, please do not hesitate to contact me on 9710 0187 or by email at rmckinlay@ssc.nsw.gov.au

Yours sincerely,

A handwritten signature in black ink, appearing to read 'R. McKinlay', written in a cursive style.

Robert McKinlay - Environmental Planner