

Planning Services

Plan Finalisation Report

Local Government Area: Ku-ring-gai

File Number: IRF17/135

1. NAME OF DRAFT LEP

Ku-ring-gai Local Environmental Plan 2015 Amendment No.16 (draft LEP).

2. SITE DESCRIPTION

The planning proposal applies to land at Middle Harbour Road.

3. PURPOSE OF PLAN

The draft LEP seeks to:

- amend Schedule 5, Part 2 to include the Middle Harbour Road, Lindfield, Conservation Area (item number C42); and
- amend the Heritage LEP Map HER_015 to map the new heritage conservation area.

The proposal will not result in any additional dwellings or jobs.

4. STATE ELECTORATE AND LOCAL MEMBER

Mr Jonathan O'Dea MP is the State Member for Davidson.

The Hon Paul Fletcher MP is the Federal Member for Bradfield.

To the regional planning team's knowledge, neither MP has made any written representations regarding the proposal.

NSW Government Lobbyist Code of Conduct: There have been no meetings or communications with registered lobbyists with respect to this proposal.

NSW Government reportable political donation: There are no donations or gifts to disclose and a political donation disclosure is not required.

5. GATEWAY DETERMINATION AND ALTERATIONS

The Gateway determination issued on 20 October 2016 (**Attachment C**) determined that the proposal should proceed subject to conditions.

On 7 February 2017, Ku-ring-gai Council wrote to the Department of Planning and Environment seeking approval to proceed to exhibition, having reviewed its heritage study and proposal as required by the Gateway determination. The Department approved the amended proposal on 27 February 2017 (**Attachment C1**).

The Gateway determination was altered on 29 September 2017 to extend the time for completion to 27 January 2018 (**Attachment C2**).

6. PUBLIC CONSULTATION

In accordance with the Gateway determination, community consultation was undertaken by Council from 2 June 2017 to 7 July 2017.

A total of 65 submissions (including two petitions) were received from community members. Of these, 36 objected to the proposal and 29 supported the proposal.

Of the two petitions received:

- one supported the proposal and had 56 signatures; and
- the other objected to the proposal and had 65 signatures.

The main issues raised in submissions objecting to the proposal include:

- loss of property value and a reduction in potential buyers;
- loss of development potential;
- the character of the area could be conserved through inclusion as a schedule 3 variation to State Environmental Planning Policy (Exempt and Complying Development Codes) 2008;
- implications of inclusion in a heritage conservation area; and
- lack of evidence to support identified heritage significance.

The above matters are addressed in Council's submissions report (**Attachment E**) and considered in detail in **Attachment E1**, which also addresses an additional submission sent to the Regional Team (see below). As detailed in **Attachment E1**, it is considered that Council has appropriately addressed the matters raised in submissions as the proposal is supported by appropriate heritage assessments. In response to submissions and after undertaking further consideration of the matters raised, Council amended the proposal to have a smaller revised heritage conservation area (**Attachment Revised Boundary**) to better represent the heritage character of the area.

Post-exhibition submission

The Department received a late submission on 23 November 2017 (**Attachments F, F1 and F2**) from a community representative that included two planning consultant letters (prepared by Urbis and DFP Planning) stating the heritage conservation area is not significant enough to warrant heritage listing. The Regional Team visited the site on 4 December 2017 to better understand the submission. The submission was also referred to Council for comment. Council responded on 7 December 2017 (**Attachment F3**).

The Department's consideration of the submission is at **Attachment F4**. The rating of contributory, neutral and detracting items is considered to be a relatively subjective matter, and the Department believes Council is best positioned (through previous heritage listing amendments) to assess local significance.

The community representative further emailed the Department on 11 December 2017 with an additional letter and table of review by Architectural Projects (**Attachment F5**) stating that the revised heritage conservation area does not satisfy Council's original criteria of having more than 50% contributory items in the heritage conservation area.

After reviewing the documentation, the additional information primarily re-states and re-emphasises the earlier findings provided on 23 November 2017, to which Council has already responded. Council's response highlights there is no standard numerical threshold for identifying heritage conservation areas, as a more nuanced and complex assessment is required. Council states that a heritage conservation area is the culmination of many factors including streetscape setting, gardens and street verges, street alignment, subdivision

patterns, visual catchment and vistas and building stock, and this has been demonstrated for the subject area through the Perumal Murphy Alessi Study. This approach is considered appropriate and is supported.

The Regional Team has made a commitment to contact the community representative and advise of the outcome once the Department has finalised this matter.

7. ADVICE FROM PUBLIC AUTHORITIES

Council was required by the Gateway determination to consult with:

- Office of Environment and Heritage (OEH); and
- Rural Fire Service (RFS) (in accordance with section 117 Direction 4.4. Planning for Bushfire Protection).

OEH and RFS raised no objections to the planning proposal (**Attachment D**).

8. POST-EXHIBITION CHANGES

Council has revised the exhibited boundary of the proposed Middle Harbour Road Heritage Conservation Area (**Attachment Exhibited Boundary**), reducing it to a smaller area (**Attachment Revised Boundary**).

Submissions made during the exhibition of the proposal, and verified by Council officers walking the area and reviewing historic documentation, noted part of the proposed area can no longer be considered as significantly intact.

Council has removed these areas from the proposed conservation area. The post-exhibition amendment is supported due to the revised evidence base.

Re-exhibition of the revised proposal is not required as:

- the revised proposal does not identify any additional lots that form part of the conservation area;
- the revised proposal is a reduction in the area proposed to be a conservation area and, therefore, the revised proposal will have a reduced impact; and
- the revised proposal is consistent with the overall objectives of the original proposal.

9. ASSESSMENT

The proposal is supported as it will allow Council to appropriately address heritage considerations in the local area.

Revised Draft North District Plan

The plan was released in October 2017, after the Gateway determination was issued. The proposal is considered consistent with the plan, specifically *Planning Priority N6 – Creating and renewing great places and local centres, and respecting the District's heritage*. The proposal seeks to conserve the area's character and heritage significance, meeting *Action 18 Conserve and enhance environmental heritage* of this planning priority.

Section 117 Directions

The proposal is consistent with all relevant section 117 Directions, except Direction 4.4. Planning for Bushfire Protection. Part of the site lies within bushfire-prone land. RFS was consulted in accordance with the Gateway determination and raised no objection (**Attachment D**). The proposal's inconsistency is justified in accordance with the terms of the Direction.

State environmental planning policies

The proposal is consistent with all relevant SEPPs and deemed SEPPs.

10. MAPPING

The LEP map (**Attachment Map**) and GIS data have been checked by the Department's Regional Team and the ePlanning Team and have been sent to Parliamentary Counsel's Office ready for gazettal.

11. CONSULTATION WITH COUNCIL

Council was consulted on the terms of the draft instrument. Council confirmed on 5 December 2017 that the plan should be made (**Attachment G**).

12. PARLIAMENTARY COUNSEL OPINION


On 7 December 2017, Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at **Attachment PC**.

13. RECOMMENDATION

It is recommended that the Greater Sydney Commission's delegate determine to make the draft LEP because:

- the proposal is consistent with the Gateway determination;
- the proposal is supported by relevant heritage studies;
- Council has been responsive to submissions and appropriately amended the heritage conservation area boundary;
- the proposal is consistent with the Revised Draft North District Plan;
- the proposal is a local planning matter dealing with local heritage significance, where Council is best positioned to consider matters of local heritage significance;
- OEH and RFS raise no objections to the proposal; and
- the proposal will allow Council to appropriately address heritage considerations in the local area.

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