
PROPOSED AMENDMENT TO THE KPSO TO PERMIT THE CONSTRUCTION OF A EMERGENCY SERVICES FACILITY AT GOLDEN JUBILEE FIELD

EXECUTIVE SUMMARY

PURPOSE OF REPORT:

To seek Council's endorsement to prepare a planning proposal to amend the Ku-ring-gai Planning Scheme Ordinance (KPSO) to make Emergency Services Facilities as permissible development in the Open Space 6(a) Recreation Existing zone, and submit to the NSW Department of Planning for gateway determination.

BACKGROUND:

On 10 November, Council resolved to accept the preferred option to accommodate the Ku-ring-gai State Emergency Service and Bush Fire Brigade, with buildings to be sited at Golden Jubilee Field area. During 2010, Council held meetings and engaged designers to prepare detailed designs for the construction of new headquarters, which was intended to be approved under the Infrastructure State Environment Planning Policy (SEPP). Legal advice confirmed that the Infrastructure SEPP is not applicable to these works as amendments to the SEPP in December 2010 did not include the SES with other emergency services as exempt development.

COMMENTS:

Legal advice provides three (3) options for both Planning and land reservation issues to ensure that works are lawfully constructed and on land that is consistent with the reservation purpose.

RECOMMENDATION:

That Council adopt the planning proposal to amend the Ku-ring-gai Planning Scheme Ordinance and to submit to the Department of Planning for a gateway decision to amend the reservation boundaries.

PURPOSE OF REPORT

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BACKGROUND

In a report to Council on 10 November 2009, it was advised on the planning for a proposed construction of new Emergency Service facilities at Golden Jubilee Park.

- That following a prior examination of possible sites, the preferred site for a new Ku-ring-gai State Emergency Services (SES) Headquarters was at the Golden Jubilee Field, and
- That for the new SES headquarters to be built on the site of the previous headquarters, would require the building of a new Ku-ring-gai Bush Fire Brigade (BFB) building so that both service agencies could co-exist on the same site on stable land.
- That option 9i (**Attachment A1**) was considered to be the best compromise to satisfy both agencies.

From the meeting, Council resolved:

"...that the preferred option for the new Ku-ring-gai Headquarters is Option 9i and that Council's designers be requested to prepare detailed designs for the construction of the new headquarters"

Since that meeting and during 2010, key activities undertaken:

- consultative meetings with the RFS District Manager, RFS (Homebush HQ) Officers', local Brigade members and Council staff to finalise RFS building internal fit out and design;
- engagement of architects by RFS (Homebush HQ) to prepare architectural and engineering drawings for the final design plans and specifications for the construction of the BFB building. This process has been delayed due to the resources within the RFS and reaching consensus on the finalisation of building details;
- consultative meetings with the SES Division Controller, SES members and Council staff to finalise SES internal amenities, room layout and roof design, as well as utility requirements; and
- engagement of architects by Council to amend plans of the SES building.

On 27 July 2010, Council wrote to the RFS seeking confirmation of the actions from a meeting held on 31 March 2009, whereby it was understood the RFS would undertake a check of the "prescribed zone". It was advised at the meeting that combat agencies can approve developments in prescribed zones under the *State Environmental Planning Policy (Infrastructure) 2007* (Infrastructure SEPP), and that a development application was not required.

Under the *Infrastructure SEPP*, the relevant section (Division 6) Clause 48, development permitted without consent states:

(1) Development for the purpose of an emergency services facility may be carried out by or on behalf of a public authority without consent in a prescribed zone. However, such development may be carried out on land reserved under the National Parks and Wildlife Act 1974 only if it is authorised by or under that Act.

Consequently, the process for approval of the Emergency Services Facilities was based on the applicability of provisions under the *Infrastructure SEPP*. As a precaution, in July 2010, a simultaneous check was made to Development and Regulation Department. Advice sought was at to whether the land sits on the 'prescribed zone' as listed in the *Infrastructure SEPP*.

The following is a summary of subsequent consultation and/or brief advices on related issues:

- (i) On 29 July 2010, Development and Regulation Department advised that the land was not in a prescribed zone and recommended the seeking of advice from the Strategy and Environment Department and/or independent legal advice.
- (ii) On 2 August 2010, the Strategy and Environment Department advised:
 - *Infrastructure SEPP* does not apply based on the Director General's official list for equivalent zones under the Ku-ring-gai Planning Scheme Ordinance (KPSO).
 - that the land reservation identified as R91267, on which the existing Bush Fire Brigade is constructed, is a Crown Land parcel, which is reserved for '*Bush Fire Brigade Purposes*'. Council as the trustee has no relevance to the zoning or permissibility of uses.
- (iii) On 3 August 2010, Council commenced enquiries with Norton Rose Solicitors, to seek legal advice regarding the options and recommendations in which to enable Council to carry out the proposed construction of the Emergency Services Facilities on the Crown Land parcel, identified as R91267, and on part R91141 which is reserved for '*Public Recreation*'.

Land identified as R91267 and its relationship with R91141 is shown on **Attachment A2**.

The former SES building was located outside this reservation R91267. The boundaries were supposed to have been revised in 1990 following the construction of the new SES building.

- (iv) Draft advice was received from Norton Rose Solicitors on 17 August 2010 stating:
 - Land on which the Emergency Services Facility is to be built is not within a 'prescribed zone' and as such either Clause 47 or 48 of the *Infrastructure SEPP* apply to these works.
 - Emergency Services works are not a permitted use, without consent, under the categories of development, including the '*Exempt Development*' categories, as stated in column 2 of the zoning table of the Ku-ring-gai Planning Scheme Ordinance for land use zone '*6 Open Space (a) Recreation Existing*'.
 - It was recommended by a confirming email dated 20 August 2010, that contact be made with the Crown Lands Division of the Land and Property Management Authority (LPMA) to confirm the current status of the land. It was noted that the Emergency Service buildings, which were recently demolished, were originally constructed on part of R91141 and the boundaries of R91267 may have been amended at this time.

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- (v) On 24 August 2010, Norton Rose Solicitors was requested to commence enquiries with LPMA to ensure works would be lawfully constructed and on land that is consistent with the reserved purpose.

Council received advice from Norton Rose Solicitors dated 9 December 2010 (**Attachment A3**). It outlines the response from the LPMA. Based on this response, Norton Rose Solicitors proposed recommendations to the Planning and Land Reservation issues.

COMMENTS

The key purpose of seeking legal advice from Norton Rose Solicitors and subsequent information from the LPMA was:

- that Council could be reliant upon both information and recommendations to ensure that works are lawfully constructed and on land that is consistent with the reservation purpose; and
- that the prior involvement of LPMA would be advantageous should the lodgement of a development application be required.

The following is a summary of their recommendations:

Planning issues

On the issue of planning, three (3) options are recommended for consideration by Council to construct the Emergency Services Facilities:

1. Seek to have a plan of management adopted for R91267 and R91141 (under Division 6 of Part 5 of the Crown Lands Act).

This option may result in a lengthy process involved with the need for public exhibition.

2. Investigate existing use rights.

Legal advice noted that it will be necessary to consider the history of the site and construction of the previous buildings to determine whether the existing use rights provisions under the *Environmental Planning and Assessment Act 1979* (EP&A Act) are available. Of relevance, legal advice highlights concerns regarding “abandonment” and lawfulness associated with construction of the SES building on reservation R91141.

In terms of occupancy time, each structure was constructed at different periods. The KBFB building comprised the modification of the existing shed and was extended in 1979. The practical completion of SES building was reached in August 1990. By virtue only for the requirement to vacate and subsequent demolition for Occupational Health & Safety reasons, the SES Building would have remained.

A file search was undertaken on the former SES building. The following information is considered relevant for the possibility of establishing existing use rights:

- Development Application (No 1969/89) for the former SES building: (**Attachment A4**)

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- Letter from the Metropolitan Lands Office, dated 14 February 1990, stating there are no objections, and/or intention to revoke affected parts of the reserve and a new reserve established to encompass both structures. **(Attachment A5)**

Further investigation will be undertaken to establish existing use rights.

3. By amending either the current land use zoning or the permitted uses within the Open Space 6(a) Recreation existing zone that the Emergency Services Facility would be a permitted use on the affected land.

It may be possible to rely upon the emergency services provisions of the *Infrastructure SEPP* to construct the Emergency Services Facility depending on the amended land use/permitted uses.

This would involve submitting the proposal to the Department of Planning for a 'Gateway Determination'. This action is considered by Strategy and Environment and Operations Departments, to be the preferred option in which to meet the planning objectives.

The Ku-ring-gai Planning Scheme Ordinance would be amended to allow Emergency Services Facilities as permissible development which may be carried out only with development consent in the Open Space 6(a) Recreation Existing zone.

A new use would be added to permit Emergency Services Facilities. These would include a building or place (including a helipad) used in connection with the provision of emergency services by any emergency services organisation.

The definitions and terminology would be similar to the NSW (Standard Order)-Standard LEP template. The proposed amendment once made would then be easily translated over into Council's *Principal Local Environmental Plan* due for finalisation/gazettal at the end 2012.

Land Reservation Issues

Norton Rose Solicitors advised Council that they have concerns regarding the works, as currently proposed, are not capable of being implemented at this time. Irrespective of the planning approvals, the proposed works are to be located on the Crown Land parcel identified as R91141 which is reserved for 'Public Recreation'. Therefore, under the *Crown Lands Act*, the proposed development being on / or using any Crown Land reserve must be consistent with the purpose for which it is reserved.

In the view of Norton Rose Solicitors, the current reservation for 'Public Recreation' does not enable the land to be used for emergency services purposes.

However, the following three (3) options were recommended for consideration:

1. To amend the boundaries of R91267 and R91141 by expanding the boundaries of R91267 to cover the whole of the area on which the proposed Emergency Services Works are to be located.

It is noted that a formal survey is not required, but the proposal must designate the boundary site area and its relationship to the two (2) reserves. **(Attachment A6).**

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2. Combine the reserves by revoking R91267 and adding that land to R91141.

Advice has noted that this would require a land assessment which would take time and include an assessment of the environmental impacts.

3. Council and the LPMA could request the Minister for Lands to expand the purpose to the reservation for R 91141 so that it becomes a reserve for both public recreation and emergency services purposes.

Option 1 is considered the preferred option.

GOVERNANCE MATTERS

Resolution of Council on 10 November 2009 resolved that Council adopt a preferred location for the new SES Headquarters. A planning proposal will overcome development and use prohibitions in the Ku-ring-gai Planning Scheme Ordinance.

The project is consistent with Council's adopted *Delivery Program and Operational Plan 2010-2014*. The relocation of the SES is included in the Capital Works Program. It is also consistent with Council's adopted *Community Strategic Plan 2030* by ensuring emergency services are able to respond efficiently to community emergency needs.

Further reports on this project will be presented to Council at each step of the planning making process.

RISK MANAGEMENT

On consideration for planning issues, there is a potential for significant risk due to time delays dependant on the preferred planning process and possible risk of cost associated with delays to relocate SES from the Carlotta Avenue Depot site.

If the new depot is constructed ahead of the new SES/RFS building, then the SES can be located at either the new depot site or the North Turramurra Depot site. The anticipated construction time frame for the new depot is 12 months whereas the timeframe for the construction of the new SES/RFS building is 6 months. Plans for the new buildings for the SES/RFS are almost complete but cannot be finalised until all the planning matters are satisfied.

FINANCIAL CONSIDERATIONS

Funding is currently available in the 2010/11 and 2011/12 budgets for the construction of the SES/RFS building. The funding required for the planning and land use purposes can be covered under the current budget provisions.

SOCIAL CONSIDERATIONS

The SES and BFB perform a key emergency service role for the local government area of Ku-ring-gai and out-of-area, both as combat agencies and supporting agencies to combat various hazards in our environment. As such, a high importance should be to provide adequate operational facilities by residents and stakeholders

ENVIRONMENTAL CONSIDERATIONS

Environmental considerations are taken into account with the planning and design of facilities and review of environmental factors.

COMMUNITY CONSULTATION

Consultation with the RFS and SES has taken place on this matter.

If Council endorses the making of a planning proposal to amend the Ku-ring-gai Planning Scheme Ordinance to make Emergency Services Facilities as permissible development in the Open Space 6(a) Recreation zone, notification will take place in accordance with Council's notification policy.

INTERNAL CONSULTATION

Operations have consulted with both Development & Regulation and Strategy and Environment Departments in the preparation of this report.

SUMMARY

At the meeting on 10 November 2009, Council accepted the new building layout as presented in Option 9i, for the Ku-ring-gai BFB and SES Building, so that both agencies could co-exist on the same site on stable land, at Golden Jubilee Park.

Up until July 2010, the process for approval of Emergency Services facilities proceeded based on applicability of provisions under the *State Environmental Planning Policy (Infrastructure) 2007*, which enabled combat agencies to approve development in 'prescribed zones' and permitted development without consent.

However, advice from Council's Planning Departments and Council's Lawyers, confirmed that:

- land for the proposed buildings is not within a 'prescribed zone' and as such relevant clauses of the *Infrastructure SEPP* are not applicable to works, and;
- Emergency Services works are not permitted without consent under the categories of development, including the 'Exempt Development' categories, stated in column 2 of the zoning table of the Ku-ring-gai Planning Scheme Ordinance for land use zone '6 Open Space (a) Recreation Existing'.

Additional enquiries for information was made with the Crown Lands Division of the LPMA to ensure works are lawfully constructed and on land that is consistent with the reserved purpose.

The preferred option to rectify the zoning, involves preparation of a planning proposal to amend the Ku-ring-gai Planning Scheme Ordinance to make Emergency Services Facilities as permissible development in the Open Space 6(a) Recreation Existing Zone, and submit the Planning Proposal to the NSW Department of Planning for gateway determination.

An issue of land reservation arises stemming from that fact that proposed works are to be located on the Crown Land parcel, identified as R91267, and on part R91141 reserved for 'Public Recreation'.

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To remedy this, the preferred option is to expand the boundaries of R91267 to cover the whole of the area on which the proposed Emergency Services Works are to be located, and apply to the Crown Lands Division of the LPMA.

RECOMMENDATION

- A. That Council prepare a planning proposal in accordance with section 55 of the Environmental Planning and Assessment Act to amend the Ku-ring-gai Planning Scheme Ordinance to make Emergency Services Facilities as permissible development in the Open Space 6(a) Recreation Existing zone.
- B. That Council submit the Planning Proposal to the NSW Department of Planning for a gateway determination.
- C. That the Planning Proposal (subject to Section 73A) and in accordance with the requirements of Section 57 of the *Environmental Planning & Assessment Act* be exhibited for the statutory period.
- D. That a report be brought back to Council at the end of the exhibition period.
- E. That Council seek approval from the Crown Lands Division of the Land and Property Management Authority to amend the reservation boundaries to permit construction of emergency services buildings.

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Attachments:	A1	Layout plan of proposed building works	2011/009470
	A2	Cadastre plan of Golden Jubilee Field area	2011/009473
	A3	Advice letter from Norton Rose, 9 December 2010	2011/009463
	A4	letter to Dept of Lands, 9 January 1990, SES building	2011/010695
	A5	Reply from Dept of Lands, 14 Feb 1990, SES building	2011/010697
	A6	Aerial Photo of existing and proposed reservation extension	2011/009465