



Business Paper

Shire Strategic Planning Committee

Monday, 30 November 2020

6:30pm

Council Chambers,
Level 2, Administration Building,
4-20 Eton Street, Sutherland

SUTHERLANDSHIRE

ORDER OF BUSINESS

- 1. OPENING OF MEETING AND WEBCAST STATEMENT**
- 2. ACKNOWLEDGEMENT OF COUNTRY**
- 3. APOLOGIES**
- 4. DISCLOSURES OF INTEREST**
- 5. CONFIRMATION OF MINUTES OF THE PREVIOUS MEETINGS**
- 6. PRESENTATIONS**
- 7. REPORTS FROM OFFICERS**
 - PLN051-20 SSLEP2015 Refresh Planning Proposal (pg 3)
 - PLN052-20 Local Housing Strategy Stage 1 - Refresh of Housing Strategy 2014 (pg 11)
- 8. QUESTIONS OF WHICH NOTICE HAS BEEN GIVEN**
- 9. CONSIDERATION OF BUSINESS IN CLOSED SESSION**
- 10. CONFIDENTIAL REPORTS FROM OFFICERS**

PLN051-20 SSLEP2015 REFRESH PLANNING PROPOSAL

Attachments: Appendix A (under separate cover) [⇒](#) and Appendix B [↓](#)

EXECUTIVE SUMMARY

- Council is adopting a two stage approach to meet the requirement to update Sutherland Shire Local Environmental Plan 2015 (SSLEP2015) to align with the Local Strategic Planning Statement, the South District Plan and the broader strategic planning framework of Greater Sydney and the State Government.
- Stage 1 (a 'refresh' of SSLEP2015) is to include actions to give effect to the Green Grid and align with plans for the ANSTO campus, and includes a minor changes to improve the operation of SSLEP2015. It also includes recent decisions that require amendments to the LEP.
- Major planning matters requiring strategic policy decisions such as housing, employment and centre precinct plans will be included in Stage 2.
- The Sutherland Shire Local Planning Panel has supported the draft Planning Proposal and have provided comments in relation to other potential changes which can be considered in the housing strategy, as part of the comprehensive LEP review, or as future DCP provisions .

REPORT RECOMMENDATION

THAT:

1. The report, including the SSLEP2015 Refresh Planning Proposal (Attachment A) and the advice of the Sutherland Shire Local Planning Panel (Attachment B), be received and noted.
2. The SSLEP2015 Refresh Planning Proposal be referred to the Department of Planning, Industry and Environment for a Gateway Determination, seeking delegation to make the plan.
3. The Chief Executive Officer be given delegated authority to make any amendments that are required by the Gateway Determination before the draft planning proposal is exhibited.
4. Subject to a positive Gateway Determination, the Planning Proposal be publicly exhibited in accordance with the conditions of the Gateway Determination and Council's engagement policies.

PURPOSE

The purpose of this report is to amend the Sutherland Shire Local Environmental Plan 2015 (SSLEP2015) to better align it with the Local Strategic Planning Statement (LSPS) and address minor, uncontroversial planning matters.

BACKGROUND

Sutherland Shire Council's LSPS sets out its 20 year vision for how the local planning framework will respond to the priorities set in the Community Strategic Plan and the South District Plan. The South District Plan requires that Council update the Local Environment Plan (LEP) to reflect the LSPS and the rest of the Strategic Planning Framework by June 2021. At its meeting of 9 December 2019 Council resolved ([PLN039-19](#)) to pursue a two stage approach to updating the LEP. This report provides Council with the mechanism to commence Stage One.

DISCUSSION

The Planning Proposal has been drafted to address the following planning issues:

Zoning of ANSTO Campus

The ANSTO Precinct is identified in the South District Plan and the Sutherland Shire Local Strategic Planning Statement as an Innovation Precinct. This reflects the intention of ANSTO to develop a research and innovation precinct, a graduate institute, and technology park. To reflect the intent of the ANSTO Collaboration Area the SP1 Special Activities zoning of the campus will be retained, but the specific purpose is proposed to be amended from "Research and Technology" to 'Innovation Precinct'. This simply broadens permissible uses in line with the recently adopted ANSTO Place Based Strategy.

Give Statutory Effect to the Sutherland Shire Green Grid

Sutherland Shire's Green Grid ([PLN012-19](#)) is a long term vision for the area to facilitate a co-ordinated network of high quality green spaces, tree-lined streets and pathways. Council's LSPS at Action 19.1 requires Council to "*incorporate Green Grid into LEP and DCP provisions*". Including a Green Grid local provision in the LEP will ensure that landscaping and frontage works will contribute to retaining and enhancing canopy cover and facilitating and prioritising pedestrian and cycle links. The clause will not stop development. It will simply empower Assessment Officers to achieve outcomes along key movement corridors.

Improve Water Quality by Applying the Stormwater Controls in Clause 6.4 to all Zones

Council's LSPS states that Clause 6.4 of the SSLEP2015 will be amended to expand its application to all relevant zones in the LGA. The application of the clause to all zones will ensure that development will ensure more developments must take measures to protect the water quality and health of the Shire's waterways and beaches. This amendment was requested by Sydney Water.

Retain more Vegetation in the E4 Zone through Changes to Complying Development

SSLEP2015's complying development provisions allow dwelling houses and ancillary development in the E4 Environmental Living zone. Vegetation can be removed under these provisions where it is within 3m of the development, or less than 6m high. The clause was originally drafted "and" rather than "or". As currently drafted the provisions allow clearing of minor vegetation anywhere on the site whether it is relevant to the proposed development or not. The current provisions also facilitate removal of large canopy trees without assessment by Council. Council's intent was that only minor vegetation close to the footprint of the development would be removed. Any other tree or vegetation could be removed only with a separate permit which would allow Council's tree management officers to make an expert assessment. It is therefore proposed to correct the drafting of this provision to achieve Council's original intent.

Add Exemptions to Subdivision Clauses to Facilitate Closing Roads Under the Roads Act 1993

Clauses 4.1 and 4.1A apply minimum lot area and lot dimension requirements for subdivision and are intended to prevent land fragmentation, preserve the character of suburban areas and achieve planned residential densities. However, these clauses can also prohibit the subdivision of land for the closure of roads. The planning proposal provides exemptions to clauses 4.1 and 4.1A of SSLEP2015 that will facilitate subdivisions associated with the closure of a road.

Remove Clause 4.1C – Minimum Lot Sizes for Land Containing Secondary Dwellings

Clause 4.1C, duplicates the effect of clause 2.6(2) which is a mandatory provision of the Standard Instrument Local Environmental Plan. Removal of clause 4.1C will reduce the complexity of SSLEP2015 without affecting development outcomes.

Add Objectives to Clause 4.1E to better Describe Council's Intent

Clause 4.1E sets the minimum lot sizes for dual occupancies and multi dwelling housing in the R2 Low Density Residential zone. Land and Environment Court cases have highlighted the importance of objectives in interpreting clauses. The current objective in this clause does not fully describe Council's intent so the following object is proposed to be added to Clause 4.1E *"(b) To maintain the character of the streetscape created by low density development within a landscaped context."*

Remove Flood Planning Mapping from SSLEP2015

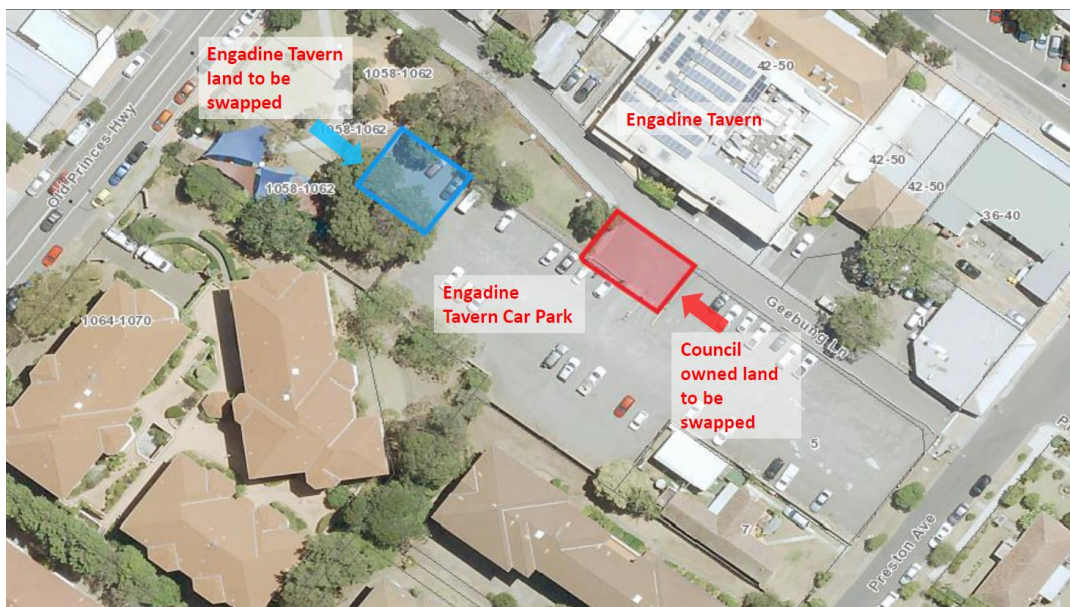
Council has adopted a number of Flood Risk Management Policies and Flood Hazard Maps for the catchments of the Sutherland Shire. The maps are under constant review and amendments are made when new information is available. As a result the Flood Hazard Map more accurately reflects the flood planning level than the 'Flood Planning Map' contained in SSLEP2015. The statutory process associated with LEP amendments are such that it cannot be updated quickly enough. Removing the flood maps from the LEP will ensure the most up to date flood mapping is used.

Remove Clause 6.10 and Associated Mapping in Response to SEPP (Coastal Management) 2018

The NSW Government introduced the Coastal Management Act 2016 and accompanying SEPP (Coastal Management) 2018 to replace the previous Coastal Protection Act 1979 and SEPP 71. The new coastal zone applies to all major waterways and foreshores of the Sutherland Shire, including all of the foreshore affected by clause 6.10 of the SSLEP2015. Given the SEPP and Act apply, clause 6.10 and associated mapping is superfluous and should be deleted.

Rezone Land to Facilitate a Land Swap Agreement at Geebung Lane in Engadine

On 15 October 2018, Council resolved ([SER033-18](#)) to enter in to a draft Voluntary Planning Agreement (VPA) with Engadine Tavern Project Pty Ltd to exchange a portion of Council owned road on Geebung Lane for a portion of land at 5 Preston Avenue. To reflect this change in ownership and subsequent use, the park extension (5 Preston Avenue - Lot 6 DP 232490) will be rezoned from B3 Commercial Core to RE1 Public Recreation with removal of development standards. The road closure portion will retain the B3 commercial core zoning, but have development standards consistent with the adjoining land.



Minimum Lot Size Requirement for Boarding House Developments

Boarding Houses are a type of residential accommodation which is a permissible use in zones R2, R3, R4, B1, B2, B3, B4 and SP3. Boarding houses may resemble a dwelling house, townhouses, shop top housing or an apartment building depending upon the zone and site. Recent development applications have shown that proposed boarding houses are rarely compatible with existing local character on small lots. Consequently the planning proposal will introduce a minimum lot size of 800m² for the development of Boarding Houses (as per Council Minute No. 302, PLN037-19).

Add a Savings Clause for Applications Lodged but Not Determined

The planning proposal includes a savings provision to ensure that any development application lodged prior to the commencement of these changes is not affected by them.

Rezoning to Recognise a new Council Reserve at 168 Oak Road, Kirrawee.

The planning proposal includes zone and development standards changes to reflect the acquisition of 168 Oak Road, Kirrawee (Lot 33 in DP 590492) for a new public reserve. The property is currently zoned R2 Low Density Residential and this will be changed to RE1 Public Recreation in recognition of its intended purpose, along with other consequential changes to the mapping of the site to align the development controls applicable to the site with the development controls applicable to land zoned RE1 Public Recreation.

Amend Clause 5.6 Architectural Roof Features to Limit the Clause to Specified Prescribed Zones.

Clause 5.6 is based on an optional model clause designed to encourage architectural diversity and interest in buildings by providing flexibility in the height limits imposed on buildings in specified higher density zones (R4, B2, B3, B5, B6, IN1, IN2 & IN3). In SSLEP2015, the drafting of the clause does not limit it to the intended prescribed zones. It is also noted that the B4 Mixed Use zone is not included the list of prescribed zones despite also being a higher density zone. Consequently amendments to this clause are sought to only apply it to the prescribed zones only and add B4 mixed use as a prescribed zone.

Correct a Zoning Anomaly on a Portion of the Former Church Site at 1R Waterfall Road, Heathcote.

The property at 1 Rosebery Street, Heathcote commenced use as a church in the 1980s. In 2000 the church extended their carpark through the purchase of a small (44m²) portion of adjacent land to the rear of the property (Lot 10 DP 1014211) which has the separate address 1R Waterfall Road, Heathcote. At the introduction of SSLEP2015 the zone of this lot was transferred to E2 Environmental Conservation, but the rest of the former church site was zoned R2 Low Density Residential. It is therefore proposed that the zoning anomaly be corrected by changing the zone and other mapping of Lot 10 DP 1014211 to be consistent with the rest of the former church site.

Clarify Clause 6.9 to Ensure Rebuilt Dwellings must not Extend further into the Foreshore Area.

Clause 6.9 of SSLEP2015 limits development in the foreshore area to protect the natural and aesthetic qualities of this area. The clause recognises that in the past some homes were constructed on the foreshore and provides exceptions to allow them to be rebuilt, altered and extended. The current drafting of the clause is problematic because it specifically limits the expansion of dwellings in the foreshore area by extension or alteration, but does not limit the expansion of these dwellings when they are rebuilt. The clause will be amended to correct this inconsistency.

Local Planning Panel Advice

Planning Proposals are required to be referred to the Local Planning Panel for Advice. The Sutherland Shire Local Planning Panel considered this matter on 3 November finding that the Planning Proposal has sufficient strategic merit to warrant referral to the Minister for Planning for a Gateway Determination under Section 3.34 of the Environmental Planning and Assessment Act 1979.

The Panel also took the opportunity to provide more general advice to Council. In relation to the zoning of ANSTO, the Panel questioned whether the Special Use zone would make it more difficult to ascertain permissible land uses. However, it also acknowledged that this is largely academic given the ANSTO exemption from State land use restrictions. As the future land uses on the site will not be decisions for Council and will be guided by the ANSTO Place Based Strategy. As such the Special Use zone is an appropriate classification.

The Panel supported the introduction of a minimum lot size for boarding houses and suggested that Council should consider a minimum lot size for residential flat buildings. This is valuable advice that should be explored as part of the next comprehensive Housing Strategy.

The Panel found merit in clarifying aspects of rebuilding in the foreshore area and suggested that consideration be given to also controlling volumetric bulk in the foreshore area. This advice is best considered as part of Council's next comprehensive review of the LEP.

The Panel supported the removal of flood mapping from the LEP, but stressed the need for this information to be readily available. This will be achieved through up to date flooding maps on Council's website.

The Panel's full advice can be read in Attachment B.

RESOURCING STRATEGY IMPLICATIONS

Management of Council's LEP is conducted within the existing budget and resources of the Strategic Planning Unit.

COMMUNITY ENGAGEMENT

No community engagement has yet been undertaken. Council cannot formally exhibit the planning proposal until it receives a Gateway Determination which will also provide the minimum requirements for the exhibition. Community engagement is expected to include:

- Public exhibition of the planning proposal on Council's Join the Conversation website for 28 days with the opportunity for members of the public to prepare submissions in response.
- Publication of an advertisement in a local newspaper prior to the exhibition commencing.
- Exhibition of the planning proposal and supporting documentation at the Sutherland Shire Council Administration Building.

- Notification letters will be distributed to the owner and neighbours of each property that is affected by a property specific mapping or heritage change.

STRATEGIC ALIGNMENT

This report contributes to the delivery of Our Community Plan - Outcome 6 "A liveable place with a high quality of life". It specifically delivers on the following:

Delivery Program (2017-2022) Deliverables	Operational Plan 2020/21
6B Manage new and existing development within a robust and effective framework	6B.21.05 Local Environmental Plan Review submitted to Gateway

POLICY AND LEGISLATIVE REQUIREMENTS

The Environmental Planning and Assessment Act requires Council to submit all Planning Proposals for a Gateway Determination before placing them on public exhibition. A Ministerial Direction requires that Local Planning Panels must provide advice to Council on the merits of a Planning Proposal before a decision is made as to whether it is to be submitted for Gateway Determination. In this case the Local Planning Panel has provided positive advice.

CONCLUSION

The purpose of this Planning Proposal is to amend the Sutherland Shire Local Environmental Plan 2015 to better align it with policy directions set by the Sutherland Shire Local Strategic Planning Statement. The opportunity has also been taken to make other minor amendments to address outstanding issues or improve the workings of the plan.

The changes contained in the Planning Proposal have strategic merit because they address shortcomings or anomalies within the LEP, better align the LEP with the LSPS, or make changes that will delivered improved local planning outcomes.

RESPONSIBLE MANAGER

The manager responsible for the preparation of this Report is the Manager of Strategic Planning, Mark Carlon.

File Number: 2020/365616

Sutherland Shire Local Planning Panel

3 November 2020

SSLPP065-20 Planning Proposal - SSLEP2015 Refresh
File Number: 2020/365616

No one spoke for or against the proposal.

REPORT RECOMMENDATION

That the Planning Proposal has sufficient strategic merit to warrant referral to the Minister for Planning and Public Spaces under Section 3.34 Environmental Planning and Assessment Act 1979 for Gateway determination.

REASON FOR RECOMMENDATION:

- The Planning proposal arises from an anticipated process associated with a Local Strategic Planning Statement, and operational/implementation issues experienced with the current LEP;
- Issues and potential implementation solutions can be considered and addressed in the detailed process of community and State Government engagement ahead.

In terms of comments on matters of detail, the Panel makes the following observations:

- The appropriate zoning for the ANSTO site (Special Uses or B5/B6) be considered, balancing considerations related to the intended uses and desire for consistent planning provisions across the LGA and State, versus designation of the Federal land as a unique use. It may be difficult to ascertain what permitted uses are within the proposed Special Uses zone, although this may be academic given Federal exemption from State land use restrictions;
- A minimum lot size for boarding houses may have merit in the R2 zone. From an implementation perspective, whether as part of this process or subsequently, a minimum lot size for Residential Flat Buildings is also worthy of consideration;
- Clarifying aspects related to rebuilding within the Foreshore Area has merit. Consideration should also be given to regulating not just the building footprint beyond the Foreshore Building Line, but also volumetric bulk extensions in the foreshore area;
- The removal of flood mapping is understood, due to procedural difficulties of amending a statutory map. However, Council should ensure the flood mapping is easily accessible through an E-Plan overlay and/or Council's website.
- The Panel agrees with the other specific considerations in the planning proposal.

VOTES:

The recommendation was unanimous.