

Planning Services

IRF19/4371

Gateway determination report

LGA	Sutherland Shire
PPA	Sutherland Shire Council
NAME	Clause 6.14 Landscaped Area amendment (0 homes, 0 jobs)
NUMBER	PP_2019_SUTHE_006_00
LEP TO BE AMENDED	Sutherland Shire Local Environmental Plan 2015
ADDRESS	Various sites across LGA
RECEIVED	27 May 2019
FILE NO.	IRF19/4371
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

1. INTRODUCTION

1.1 Description of planning proposal

In relation to certain residential, business, industrial and environment protection zones the planning proposal seeks to amend Clause 6.14 Landscaped areas under Sutherland Shire Local Environmental Plan 2015 (LEP 2015).

The amendment removes the need to rely upon clause 4.6 of LEP 2015 to obtain a variation for the landscape area¹ as a development standard provided that set criteria is satisfied and there is an existing non-compliance for landscaped area.

1.2 Existing planning controls

Clause 6.14 of LEP 2015 seeks to ensure adequate retention of vegetation and maximise permeable areas throughout the Sutherland Shire. Subclause 3 of Clause 6.14 stipulates that development consent may only be granted if development complies with minimum landscape area requirements displayed on the Landscape Area Map under LEP 2015. Minimum landscaped area requirements generally vary between 10%-40% of the total site area², depending on the zone, development type and intensity of development.

¹ 'Landscape area' is defined under Sutherland LEP 2015 as "a part of a site used for growing plants, grasses and trees, but does not include any building, structure or hard paved area."

² 'Site area' is defined under Sutherland LEP 2015 as "the area of any land on which development is or is to be carried out. The land may include the whole or part of one lot, or more than one lot if they are contiguous to each other, but does not include the area of any land on which development is not permitted to be carried out under this Plan."

The clause applies to development in the following zones:

- R2 Low Density Residential
- R3 Medium Density Residential
- R4 High Density Residential
- B5 Business Development
- B6 Enterprise Corridor
- B7 Business Park
- IN1 General Industrial
- IN2 Light Industrial
- IN3 Heavy Industrial
- IN4 Working Waterfront
- E3 Environmental Management
- E4 Environmental living

Clause 6.14(4) states that development consent may be granted when a development is non-compliant with minimum landscaped area requirements by less than 5% if significant trees are to be retained.

1.3 Background

On 23 February 2018, the Minister released the Local Planning Panels Direction – Development Applications. The Direction requires that any development application that contravenes a development standard by more than 10% is to be referred to the local planning panel (LPP). However, if the Secretary allows concurrence to be assumed by Council staff, the panel can delegate these applications to Council staff to determine.

On 3 September 2018, Council wrote to the Department requesting that the Secretary allow concurrence to be assumed by Council staff when a development contravenes the landscaped area development standard where pre-existing non-compliances result in a departure greater than 10%.

Council's request highlighted that in the period following the commencement of the direction (23 February 2018 – 19 June 2018) that 24 development applications were referred to the LPP. Of these 24 applications, nine (37.5%) were due to pre-existing non-compliances.

On 24 September 2018, the Department wrote back to Council and granted a twelve month concurrence. The Department also requested that as part of its LEP review process, Council review its landscaped area development standards to achieve a more permanent solution to having to rely upon the Secretary's concurrence.

1.4 Summary of recommendation

The planning proposal is recommended to proceed subject to conditions as it:

- reduces the need for the Secretary's concurrence where existing non-compliances exist and are not to be further deteriorated;
- will improve the operation and accuracy of Sutherland Shire LEP 2015 by streamlining the planning process for existing minor and justifiable inconsistencies;
- will improve administrative efficiency by reducing the need for Local Planning Panel referrals; and
- does not hinder the application of any statutory or strategic planning frameworks.

The proposal will be required to proceed with conditions as the explanation of provisions will need to be updated prior to public exhibition.

2. PROPOSAL

2.1 Objectives or intended outcomes

Council advises that the intent of the proposal is to introduce flexibility to the landscaped area provisions of Sutherland Shire LEP 2015. The amendments seek to allow for consent to be granted for existing non-compliances for certain types of development under certain criteria without the need for a Clause 4.6 variation.

The objective of the proposal is considered adequate for the purpose of public exhibition and is not required to be updated.

2.2 Explanation of provisions

As discussed, the proposal seeks to amend Clause 6.14 to allow for certain development on sites with existing non-compliances to be assessed without the need for a Clause 4.6 variation.

The amendment will apply to development applications that seek alterations or additions to a dwelling house, or development that is ancillary to a dwelling house.

The amendment will also apply to development for internal alterations, signage and change of uses in relevant employment zones.

The new provision will only allow this type of development to be granted consent without a Clause 4.6 variation for development that does not provide the minimum percentage of required landscape area when it meets the following tests:

- non-compliance with the landscaped area must be both justifiable and pre-existing;
- the proposed development must result in a landscaped area on the site, which is at least the same proportion of site area as the pre-existing landscaped area on the site;
- reasonable effort must have been demonstrated to improve the landscape outcome and tree canopy coverage on the site; and
- the development proposal must achieve all of the related objectives of the following that apply to the site:
 - Clause 6.14 Landscaped areas in certain residential, business, industrial and environment protection zones;
 - Clause 6.9 Limited development on foreshore area;
 - zone E3 Environmental Management; and
 - zone E4 Environmental Living.

It is considered that the draft clause contained in the explanation of provisions should be removed from the planning proposal report prior to public exhibition. The amended explanation of provisions should include a plain English description to assist the community in understanding the proposed changes.

2.3 Mapping

There are no mapping amendments required as part of the planning proposal.

3. NEED FOR THE PLANNING PROPOSAL

The planning proposal is considered to be the best means of achieving its objective and intended outcome. As the amendment is outside the scope of Section 3.22 of the *Environmental Planning and Assessment Act 1979*, a planning proposal is required to amend Sutherland Shire LEP 2015.

As discussed, the Department wrote to Council on 24 September 2018, allowing Council staff to determine these types of development applications under delegation of the Sutherland Shire LPP. The Department also requested that Council review its landscaped area development standards as part of its LEP review. The planning proposal has been prepared in response to this request.

The planning proposal is required to simplify the planning process for sites with existing non-compliances. Sites that were developed prior to the commencement of Clause 6.14 are unlikely to be compliant with the clause's minimum landscaping requirements.

Council advises that in the 2018 calendar year, 89 of the 150 Clause 4.6 variations sought as part of development application for developments in the Shire sought variations to landscape area as required under Clause 6.14. In sum, approximately 60% of all development standards variations sought for DAs last year were for variation to the requirement for landscaped area.

The proposed amendment will allow limited types of development on land with an existing non-compliance to be assessed without the need for a clause 4.6 variation and the Secretary's concurrence, provided that existing total landscaped area is not further eroded by the proposed development.

The other consequence of the proposed amendment will help expedite appropriate development approvals by reducing costs and timing for preparation of Clause 4.6 variation reporting by the proponent for development and by Council in its assessment.

4. STRATEGIC ASSESSMENT

4.1 South District Plan

In March 2018 the Greater Sydney Commission released the South District Plan, which encompasses the Sutherland Shire local government area. The plan seeks to guide strategic planning from the District level into the local government level through its actions surrounding infrastructure, liveability, productivity and sustainability. The planning proposal is considered consistent with the South District Plan with particular reference to the following actions:

- Action 65: Identify and protect scenic landscapes
- Action 69: Expand urban tree canopy in the public realm
- Action 80: Mitigate the urban heat island effect and reduce vulnerability to extreme heat

The proposed amendment is considered consistent with the abovementioned actions as the revised provision will seek to ensure that a reasonable effort has been made to retain existing landscape areas and allow for improved tree canopy coverage on existing non-compliant sites, while not precluding renewal and minor development.

The planning proposal is anticipated to simplify the planning process in relevant cases, whilst also encouraging proponents to improve tree canopy coverage on their sites.

4.2 Local – Sutherland Shire Community Strategic Plan

The planning proposal is minor and mostly administrative in nature and is not anticipated to hinder the application of Council's Community Strategic Plan.

4.3 Section 9.1 Ministerial Directions

1.1 Business and Industrial Zones

The proposal will simplify the planning process for minor development types in several business and industrial zones where landscaped area non-compliances are pre-existing. As the planning proposal does not affect the development potential of land in business and industrial zones, it is considered consistent with the direction.

2.1 Environment Protection Zones:

The planning proposal is consistent with the Direction as it does not seek to reduce the environmental protection standards that apply to land in environment protection zones.

The Direction may be considered inconsistent as it modifies a development standard that applies to environment protection zones. However, the proposed changes to Clause 6.14 only apply to development applications for sites with existing non-compliances and do not allow for the further reduction of landscaped area on these sites.

Additionally, the new provisions ensure that if development consent is to be granted through the amended provision on land in an environment protection zone, that the development meets the objectives of the relevant environment protection zone.

Council considers the continuation to rely on Clause 4.6 variations in this instance to be unacceptable when the option of introducing greater flexibility to the provision is available. Council's approach is considered appropriate and the planning proposal is considered to be the best means of achieving the intended outcomes.

2.2 Coastal Management

The Direction applies as the proposed amendments will affect land within coastal management zones. The proposal is considered consistent with the Direction as it will not affect the development potential of land within coastal management zones and will seek to retain existing levels of vegetation in coastal areas.

3.1 Residential Zones

The proposal will simplify the planning process for alterations, additions and ancillary development for dwelling houses where landscaped area non-compliances are pre-existing. As the planning proposal does not affect the development potential of land in residential zones, it is not considered to hinder the application of the direction but will rather help to simplify the development application process by removing the need for Clause 4.6 variations for landscape area.

4.4 Planning for Bushfire Protection

This Direction applies as the proposed amendments will affect bushfire prone land. The proposal is considered consistent with the Direction as it will not affect the development potential of bushfire prone land. The proposal will simply allow greater flexibility and reduce the administrative burden when assessing sites with pre-existing landscaped area non-compliances.

6.1 Approval and Referral Requirements

The planning proposal is considered consistent with this Direction as it seeks to reduce the administrative requirement for the concurrence of the Secretary or their delegate for certain development where there is an existing non-compliance with Clause 6.14 of LEP 2015.

Development applications for sites with existing non-compliances currently require a Clause 4.6 variation. Although, this does not preclude development consent from being granted, the process includes receiving the concurrence of the Secretary or their delegate.

Council advises that in the 2018 calendar year, 89 of the 150 Clause 4.6 variations in the Sutherland Shire sought to vary the requirement for landscape area. This demonstrates that approximately 60% of clause 4.6 variations in Sutherland are related to landscaped area provisions.

The amendment will allow limited types of development on land with an existing and justifiable non-compliance to be assessed without the need for the Secretary's concurrence.

4.4 State environmental planning policies (SEPPs)

SEPP No 64 – Advertising and Signage

The SEPP is considered relevant as the amended provision will affect signage development in industrial and business zones where existing non-compliances with landscaped area exist.

The proposal is considered to be acceptable as the proposed provisions do not hinder the application of provisions contained within the SEPP.

Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment

The plan is considered relevant as the amended provision will relate to some development types that may occur on land to which it applies. It is considered that the proposed amendments will not have an impact on development outcomes in the Georges River Catchment Area as they are primarily administrative in nature.

5. SITE-SPECIFIC ASSESSMENT

5.1 Social

The proposal is considered to be of minor significance and is administrative in nature, as such there are no anticipated social impacts.

5.2 Environmental

The proposal is not anticipated to have any environmental impacts. The amendment seeks to simplify the planning process for limited types of development on sites with existing landscaped area non-compliances and will not further erode existing landscape area through development.

5.3 Economic

The planning proposal is not anticipated to have any major impacts on the local economy as it is minor in nature. However, the proposal is expected to improve administrative efficiency by removing the burden of seeking variations to Clause 6.14 where non-compliance is pre-existing and not to be exacerbated.

6. CONSULTATION

6.1 Community

Council advises that the proposal will be exhibited in accordance with “A guide to preparing Local Environmental Plans” and will be exhibited for 28 days.

Council advises that it will consult directly with affected and adjoining landowners and the proposal will be advertised in the local paper, local libraries and on Council's website.

Council's approach is considered adequate and a 28 day exhibition period is recommended.

6.2 Agencies

Council advises that it will consult with any nominated agencies following the receipt of a Gateway determination. It is considered that consultation is not required with any state agencies as the proposal is generally minor and administrative in nature.

7. TIME FRAME

Council has provided a project timeline as part of the planning proposal, indicating a 6 month timeframe for completion. Considering the minor nature of the proposal a 6 month timeframe for completion is considered appropriate.

8. LOCAL PLAN-MAKING AUTHORITY

Council has requested authorisation to be the local plan-making authority under section 3.34 of the *Environmental Planning and Assessment Act 1979*.

It is considered that Council should be authorised to be the local plan-making authority as the amendment is minor in nature and is a matter of local planning significance.

9. CONCLUSION

The planning proposal is recommended to proceed as it:

- reduces the need for the Secretary's concurrence where existing non-compliances exist and are not to be further deteriorated;
- will improve the operation and accuracy of Sutherland Shire LEP 2015 by streamlining the planning process for existing minor and justifiable inconsistencies;
- will improve administrative efficiency by reducing the need for Local Planning Panel referrals; and
- does not hinder the application of any statutory or strategic planning frameworks.


The proposal will be required to proceed with conditions as the explanation of provisions will need to be updated prior to public exhibition.

10. RECOMMENDATION

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. The time frame for completing the LEP is to be 6 months from the date of the Gateway determination.
3. Given the nature of the planning proposal, Council should be the local plan-making authority
4. The explanation of provisions must be updated prior to public exhibition to remove references to a draft amendment and ensure that there is a plain English explanation.

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