

Council: LANE COVE COUNCIL - SYDNEY REGION EAST			
Current LEP: LEP 2009 - gazetted 19 February 2010		Proposed LEP: LEP 2009 – Amendment No.1	
Year: 2011	Planning Proposal no: 1	Council ref: 10086/11	Date: 24 March 2011
Location: Mowbray Rd/ Centennial Av/ Willandra St/ Batten Reserve precinct			
Property description: Miscellaneous – see aerial photograph at AT 1.1			
Council Resolution Date: 6 December 2010		Resolution. No: ESD 484	
Resolution: That the area bounded by Mowbray Rd, Centennial Ave, Willandra St and Stringybark Creek bush reserve be zoned in accordance with Map A tabled at this meeting, including Nos. 1-15 Centennial Ave to be Medium Density Residential R3.			
Summary • Council seeks to return the precinct to its former predominantly low-density zoning applying before LEP 2009 was gazetted, with medium density fronting Centennial Ave (Nos.1-15). Higher densities would remain over existing flats and townhouses on Housing NSW and private properties. • The downzoning is proposed on the grounds of excessive traffic generation, inadequate public transport connectivity, low road network capacity, stormwater runoff, bushfire, topography, gradient and other constraints, distance from shops and community facilities and the need for maximum protection for Batten Reserve's significant environmental character. • The location of alternative residential growth areas to meet the Metropolitan Strategy target of 3,900 is a separate issue for discussion with the community and the Department. It is not an interchangeable issue with the environmental and bushfire safety priority of downzoning this precinct. • However even with the proposed Amendment's reversal of Mowbray's 2,200 dwellings, LEP 2009 would still provide for approximately 2,600 additional dwellings for Lane Cove, meeting two-thirds of the total target. This approach of preparing a Stage 1 LEP for an initial 1-15 year period was agreed to for Lane Cove by the Department in 2008 (letter of 27 June 2008) and staff could address the LEP Panel on such locations. • No DAs for residential flats have been approved for the precinct since LEP 2009 was gazetted. The JRPP has refused one DA on grounds including overshadowing and bushfire issues.			
Background • <u>27 December 2007- 16 March 2008:</u> The DLEP 2007 was exhibited with the precinct zoned Medium Density Residential R3, on the request of the Department of Planning in response to the Housing NSW's proposal to allow redevelopment of its significant land holdings there (letter to Council of 20 April 2005). DLEP 2007 provided the potential set by Do P for 3,300 new dwellings, or 85% of Lane Cove's 25-year target of 3,900 new dwellings. Council had opposed rezoning from low density on grounds of traffic, stormwater runoff, environmental protection for the Reserve, bushfire protection and other constraints (letter to Housing of 7 March 2007). • <u>20 June 2008:</u> Council letter requested s.65 certificate to re-exhibit DLEP 2008 as amended in response to public submissions, deleting the Gordon Crescent section of the precinct (where the Department of Housing owns no properties) from the R3 zone due to its topographical constraints. Housing's updated request that the Mindarie West and Kullah areas should be upzoned to High Density Residential R4 (letter to Council of 4 April 2008) was not supported due to Lane Cove's low supply of townhouses relative to flats. The amended DLEP proposed to provide in total a revised dwelling potential of 2,700 new dwellings (70% of the 25-year target of 3,900), the figure then indicated by the Department as satisfactory for a fifteen-year Stage 1 of the DLEP. • <u>27 June – 25 July 2008:</u> The DLEP 2008 was exhibited as required in the Department's second s.65 certificate, with the whole precinct (including Gordon Crescent) zoned High Density Residential R4, Height 12 metres and FSR 2:1.			

LEP Gateway Submission

- 4 August 2008: Council resolved to submit **DLEP 2008** amended to zone only the western (**Mindarie West**) section High Density **R4**, as a compromise between the Department of Housing and public submissions. The proposed Height was 18 metres with FSR 1.5:1 as recommended in the Hill PDA economic viability study required by the Department to be undertaken.
- 19 February 2010: **LEP 2009** was gazetted with High Density Residential **R4** zoning retained, as exhibited, over the **whole precinct**. The FSR was 2.1:1 with Height 12 metres. The precinct's nett new dwellings (i.e. subtracting existing dwellings) with R4 is 2,200 and the LEP 2009's total potential for the Lane Cove LGA is 4,750 dwellings.
- 6 December 2010: Council resolved to downzone the whole area to predominantly low density (see above).
- 21 December 2010: Meeting with Department of Planning to advise of Council's resolution of 6 December 2010, and discuss bushfire and traffic issues raised by the Rural Fire Service. The resulting Urbanhorizon study of March 2011 did not provide feasible resolution of these issues, confirming Council's concern to return the zoning to its LEP 1987 densities.
- Staging: Lane Cove has consistently acknowledged its 2031 residential target of 3,900. To achieve that and the anticipated 2036 Metropolitan Strategy target without this precinct's 2,200 dwellings, Council intends to identify other sites instead for Stage 2 (the 15-25 year period), as formerly agreed to by the Department in the DLEP's preparation. It is not appropriate to specify alternative sites until these have been endorsed by Council. However staff wish to address the Panel directly on sites indicated already during research undertaken for the DLEP.

			Residential Growth Summary					
	Mowbray zoning			Height where R4	FSR where R4	New dwellings Mowbray	New dwellings LGA	
	<i>Mindarie West</i>	<i>Kullah</i>	<i>Gordon</i>					
DLEP 2007	R3	R3	R3			300	3,300	
DLEP 20 6 08	R3	R3	R2			97	2,700	
DLEP 27 6 08	R4	R4	R4	12m	2:1	2,200	4,750	
DLEP 4 8 08	R4	R2	R2 (1)	18m	1.5:1	500	2,700	
LEP 19 2 10	R4	R4	R4	12m	2.1:1	2,200	4,750	
LEP 6 12 10	E4/ R2	E4/ R2	E4/ R2 (1)			30 (1)	2,580	
Part 3A 150								
Epping Rd: 440 dwgs added								3,020
(1) 1-15 Centennial Av: R3								

PLANNING PROPOSAL

Planning proposal based on: NSW Department of Planning, *A Guide to preparing local environmental plans*, July 2009 - Figure 3 – Matters to be addressed in a planning proposal – including Director-General's requirements for the justification of all planning proposals (other than those that solely reclassify public land).

Part 1: A statement of the objectives or intended outcomes of the proposed local environmental plan

[Act s. 55(2)(a)]: To rezone the area for primarily low density residential housing from the current high density zoning, retaining medium and high density zoning only where located before LEP's gazettal, in order to:-

- (i) minimise the impact of human habitation on the environmental quality of the adjacent Batten Reserve and Stringybark Creek, resulting from increased hard surface stormwater runoff, construction for drainage pipe amplification through the bush valley to Lane Cove River, disturbance of substrata hydrology patterns on sloping topography by excessive excavation,
- (ii) minimise visual impact viewed from the bush reserve
- (iii) facilitate compliance with the NSW Planning for Bush Fire Protection 2006 guidelines, to reduce the risk to human safety and property from the adjacent bushfire prone land,
- (iv) reduce the potential traffic volumes on narrow local roads and Mowbray Road, especially in the event of bushfire evacuation,
- (v) retain family housing close to Mowbray Public School and
- (vi) concentrate urban consolidation in areas closer to substantial shops, transport infrastructure and community facilities, in accordance with the principles of the Metropolitan Strategy for Sydney.

Part 2: An explanation of the provisions that are to be included in the proposed local environmental plan. [Act s. 55(2)(b)]

- (i) amendment of the Lane Cove Local Environmental Plan 2009 Land Zoning Map in accordance with the proposed map shown at **AT 2.1**
- (ii) addition of the Environmental Living E4 Zone Objectives and Land use table (AT 2.2)
- (iii) amendment of the LEP 2009 Floor Space Ratio Map to conform with each zone, with the new E4 zone having the same maximum FSR as for the R2 zone (AT 2.3)
- (iv) amendment of the LEP 2009 Height Map to conform with each zone (AT 2.4).

Part 3: Justification for those objectives, outcomes and provisions and the process for their implementation. [Act s. 55(2)(c)]

A. Need for the planning proposal

1. Is the planning proposal a result of any strategic study or report?

The proposal to reverse the LEP 2009's zoning is in fact based on the absence of a study justifying the R4 zoning. A number of studies are nevertheless relevant to the proposal:-

- (i) NSW Planning for Bush Fire Protection 2006 guidelines
- (ii) Urbanhorizon Pty Ltd, Lane Cove Bushfire Accessibility report, March 2011
- (iii) NSW Ministry for Transport submission on DLEP dated 16 May 2008 (**AT 3**)
- (iv) Council's letter to Department of Planning of 30 September 2009 (**AT 4**)
- (v) Lane Cove Strategic Framework 2007, incorporating Ten Sustainability Criteria.

The proposed downzoning has regard to the constrained road network, bushfire prone land (shown in excerpt from the Lane Cove *Bush Fire Prone Land Map* under the *Rural Fires and Environmental Assessment Legislation Amendment Act 2002* at AT 1.2), steep topography (see contours at AT 1.3)

and lack of bushfire guidelines for high density residential areas, riparian zone affectation and visual impact from the public domain. Concerns have been repeatedly expressed in relation to development applications that development potential may not be viably achievable owing to site constraints, including RFS requirements such as setbacks, indicated by the RFS to be up to 39 metres from the bushland.

The Urbanhorizon study, in particular, indicates that high density zoning and development are dependent on a range of measures, many of which may not be feasible or have not been agreed to by relevant public authorities, including:-

- Rollback mountable kerb to facilitate vehicle operations – not feasible as the ground falls away from the road
- Reducing tree canopy cover in Batten Reserve to 15-30% – the assessment of significance study required by the EP&A Act and DECCW has not been carried out, as detailed in Part C below.
- Mowing the understorey of Batten Reserve, as above
- Police and RTA actions being intrinsic to traffic management in a fire event, but not signed off by them
- Road widening on the north side
- Traffic management measures which have not:-
 - o been detailed in the study
 - o been specified for normal morning peak hour rates, which would be at a conservative estimate 600 vehicles per hour
 - o been estimated for bushfire evacuation conditions
 - o been subject to traffic analysis conducted with the RTA and the adjacent Willoughby LGA.

2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Yes, in particular with the reduction in potential residential density being strengthened by the introduction of the Environmental Living E4 Zone. The E4 zone is made available in the NSW Standard LEP with the objectives to "provide for low-impact residential development in areas with special ecological, scientific or aesthetic values" and "to ensure that residential development does not have an adverse effect on those values". This is as appropriate fronting the Stringybark Creek/ Batten Reserve location, which includes endangered ecological community species e.g. coastal littoral rainforest, as it is in Willoughby Council's area nearby to the north of Mowbray Road - shown in AT 1.4.

3. Is there a net community benefit?

Yes:-

- (i) Property values of downhill sites will not be disadvantaged by loss of amenity from uphill properties e.g. by overshadowing
- (ii) NSW public authorities' infrastructure e.g. bus transport, traffic lights, and Lane Cove and Willoughby local councils' community facilities etc, will be able to be concentrated on existing urban centres including Lane Cove Town Centre, Epping Rd/ Longueville Rd etc. Infrastructure costs will be cost-effective with increased use of those existing facilities by new residents.
- (iii) Avoidance of social impact due to poor access to shops, transport, community and recreation facilities including for lower socio-economic groups in social housing and affordable housing
- (iv) Minimal disturbance of the environmentally sensitive bushland area conserved by the community over decades.
- (v) It is noted that the Department's test of net community benefit states that: "Impacts that simply transfer benefits and costs between individuals and businesses in the community (i.e. transfer effects) should not be included, since they result in no net change in community benefits" (A Guide to Planning Proposal, Page 6). That is, potential costs to developers of the rezoning are not matters for consideration in the test.

B. Relationship to strategic planning framework

4. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

Council has consistently indicated willingness to meet its residential target of 3,900 new dwellings to 2031 under the Draft Inner North Subregional Strategy, and future increases to 2036. However it maintains that these should be located close to shops, transport, community and recreation facilities, rather than at the municipality's furthest end over 1.5 kilometres from Lane Cove Town Centre and three kilometres from Chatswood Centre. This precinct is not required for Lane Cove to meet its Stage 1 15-year target of 2,700 dwellings agreed to by the Department in 2007.

Council's approach and concerns are supported by the Ministry of Transport submission at AT 2.

5. Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?

Yes: DLEP 2008 documentation, community submissions, Lane Cove Strategic Framework/ Ten Sustainability Criteria. These are based on the principles of integrating land use and transport and of environmental conservation. The proposal extends these principles by proposing Environmental Living E4 in the vicinity of the Environmental Conservation E2 zone, complementing the R2 on Mowbray Road.

6. Is the planning proposal consistent with applicable state environmental planning policies?

Yes:-

- (i) **NSW Planning for Bush Fire Protection 2006 guidelines:** These indicate the potential lack of high density development viability given the difficulty of providing asset protection zones and setback requirements of up to 39 metres from bush.
- (ii) **State Environmental Planning Policy No.19 – Bushland in Urban Areas:** Its objectives for bushland include:-
 - o "its value to the community as part of the natural heritage" and
 - o "the management of bushland in a manner which protects and enhances the quality of the bushland and facilitates public enjoyment of the bushland compatible with its conservation".

SEPP 19's objectives would be contradicted by the measures required to satisfy the NSW Bushfire 2006 guidelines, in view of the examples of recommendations in the Department's Urbanhorizon report for a reduction of up to 85% of the tree canopy in Batten Reserve and mowing of the understorey. These typify significant concerns about possible asset protection requirements for future developments if R4 proceeds to development.

- (iii) **Metropolitan Strategy's Draft Inner North Subregional Strategy:** Lane Cove has consistently acknowledged its 2031 residential target of 3,900 additional dwellings. The substantial over-supply of dwellings under LEP 2009 means that, even with the proposed Amendment's reversal of Mowbray's 2,200 dwellings the LEP would still provide for approximately 2,600 additional dwellings for Lane Cove, meeting two-thirds of the total target in a Stage 1 LEP for 1-15 years.

This Stage 1 approach was accepted by the Department in the DLEP's preparation (letter of 27 June 2008). To fulfil the 2031 target and the anticipated 2036 Metropolitan Strategy target, Council was permitted to subsequently identify other

sites for Stage 2 (the 15-25 year period). It is not appropriate to specify alternative sites which have not yet been endorsed by Council. However staff wish to address the Panel directly on potential sites indicated already during research undertaken for the Draft LEP.

In this context, it is noted that a Part 3A application has been submitted to the Minister by the owner of 150 Epping Rd for a mixed use development with 440 residential flats. Council had formerly sought High Density Residential R4 zoning for 150 Epping Rd in the DLEP's two exhibitions, to increase dwelling numbers before the DLEP had been required by the Department to zone the Mowbray precinct to R4. However the Department had required 150 Epping Rd to remain industrial in both DLEP exhibitions.

Although Council resolved on 6 December 2010 that the site's current Light Industrial IN2 zoning should now be retained, having regard to the R4 zoning gazetted for the Mowbray precinct, it acknowledged the possible approval by the Minister of the Part 3A application by recommending a FSR and height for the site should such approval be given. The proposed 440 dwellings would bring the LEP's growth to over 3,000 dwellings.

The location of other residential growth areas as alternatives to the Mowbray precinct, to meet the Metropolitan Strategy target of 3,900, is a separate, subsequent issue for Stage 2 discussions with the community and the Department. That is not an interchangeable issue with the environmental and bushfire safety priorities of immediately downzoning the Mowbray precinct.

7. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

Yes:-

Direction 3.1: Residential Zones

Objectives:-

- (a) to encourage a variety and choice of housing types to provide for existing and future housing needs,
- (b) "to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services", and
- (c) "to minimise the impact of residential development on the environment".

This is not the downzoning of an area already developed for flats and in fact no DA for flats has been approved. It is not a loss of existing dwelling stock and does not adversely affect this Direction's objectives – please see details relating to dwelling targets in 6(iii).

The proposal would reduce the requirement for additional public infrastructure in the precinct, aiming to consolidate demand closer to existing centres, in particular Lane Cove Town Centre's bus interchange, retail and community facilities.

There is significant likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of not proceeding with the proposal – please see details in C.8.

Direction 3.4: Integrating Land Use and Transport

Objectives:-

- (c) "reducing travel demand including the number of trips generated by development and the distances travelled, especially by car".

Residential growth should, as stated above, be located close to shops, transport, community and recreation facilities, rather than at the municipality's furthest end over 1.5 kilometres from Lane Cove Town Centre and three kilometres from Chatswood Centre.

This is particularly the case since affordable housing may now be included in residential flat developments, given that low socio-economic groups have lesser car ownership levels.

Council's approach and concerns are supported by the Ministry of Transport submission at AT 2. Locating growth in the Mowbray precinct does not meaningfully support the Department's long-held principle of integrating land use and transport.

Direction 4.4: Planning for Bushfire Protection

- 5) "A planning proposal must:
- (a) have regard to *Planning for Bushfire Protection 2006*,
 - (b) introduce controls that avoid placing inappropriate developments in hazardous areas".

The *Planning for Bushfire Protection 2006* guidelines indicate the potential lack of high density development viability given the difficulty of providing asset protection zones and setback requirements of up to 39 metres from bush. In relation to the unacceptable potential impact on the adjacent environmentally significant Batten Reserve, please see C. 8 below.

C. Environmental, social and economic impact

8. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

Batten Reserve is zoned Environmental Conservation E2. Impacts would be the result of *not* proceeding with the proposed downzoning - as above, a potential reduction of up to 85% of the tree canopy in Batten Reserve and mowing of the understorey as recommended by Urbanhorizon indicates significant foreseeable damage to the environment, even with lesser bushfire protection measures, as well as impacts due to stormwater, drainage works, altered underground flowpaths etc, on ecologically endangered community species. Council can provide full details of species as required.

The *Guide to Preparing Planning Proposals* states that "if the land affected by the proposal contains habitat of any sort, it will be necessary to carry out an assessment of significance in accordance with section 5A of the EP&A Act and the '*Threatened Species Assessment Guidelines*' " issued by DECC. This study is not required by the downzoning proposal, but instead Council should be given the opportunity urgently to provide appropriate study documentation retrospectively in relation to the Department's application of R4 zoning to the area in LEP 2009. In the absence of consideration of that assessment, the R4 zone should not be prolonged as it may be misleading to developers about the area's potential.

9. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

No.

10. How has the planning proposal adequately addressed any social and economic effects?

Please see Council's letter at AT 3. The area has limited suitability for residential flats with potential affordable housing, seniors living and non-family housing, in view of its relatively poor access to centres, especially for those in low socio-economic levels. The Draft Inner North Subregional Strategy (page 41) recommends the following distances for centres:-

- Town Centres: 800 metres –the Lane Cove Town Centre is 1.5km from the Mowbray area
- Villages: 600 metres –the Lane Cove West shops (the closest) is 1.5km
- Major Centres: 1 kilometre –Chatswood is 3km walking distance away.

In fact there is no Mowbray Road West neighbourhood centre as indicated in the Draft Inner North Subregional Strategy. The few existing shops on Mowbray Road are very limited, dispersed from each other on both sides of Mowbray Road at a total distance of 1.2km apart, and are in two separate LGAs.

D. State and Commonwealth interests

- 11. Is there adequate public infrastructure for the planning proposal?** The proposal would reduce the requirement for additional public infrastructure in the precinct, aiming to consolidate demand closer to existing centres.
- 12. What are the views of State and Commonwealth Public Authorities consulted in accordance with the gateway determination, and have they resulted in any variations to the planning proposal?** (Note: The views of State and Commonwealth Public Authorities will not be known until after the initial gateway determination. This section of the planning proposal is completed following consultation with those public authorities identified in the gateway determination).

As a preliminary indication of support for the proposal, please see AT 2: NSW Ministry for Transport submission on DLEP dated 16 May 2008 expressing concerns at the draft rezoning for high density.

**Part 4: Details of the community consultation that is to be undertaken on the planning proposal.
[Act s. 55(2)(e)]**

- Six weeks public exhibition – advertisement in a local newspaper: This Council consultation policy complies with the general Gateway determination requirement of a minimum of 14 days exhibition.
- Council website
- Display at Council offices
- E-newsletter and hard copy Community Newsletter
- Written notice to relevant stakeholders including public authorities.

Attachments

- AT 1: Mowbray precinct aerial photograph, bushfire prone land, contour graphics and Willoughby Council DLEP excerpt (12412/11)
- AT 2: Mowbray precinct Draft Zoning Map, Environmental Living E4 Zoning Table, Draft FSR Map and Draft Height Map - re draft zoning adopted by Council on 6 December 2010 (12638/11)
- AT 3: NSW Ministry for Transport submission on DLEP of 16 May 2008 (19087/08)
- AT 4: Council letter to the Department of Planning of 30 September 2009 (38474/09)

(& re 12366/11)