

DEPARTMENT OF PLANNING AND INFRASTRUCTURE SYDNEY REGION WEST PLANNING TEAM REPORT

Local Government Area: Ku-ring-gai

File Number: qA137530

1. NAME OF DRAFT PLAN

Draft Ku-ring-gai Local Environmental Plan (Local Centres) 2012, attached at (**Tag D**).

2. SUBJECT LAND DESCRIPTION

The Planning Proposal applies to land within Ku-ring-gai Local Government Area town centres as shown on the attached maps (**Tag E**). These centres are Roseville, Lindfield, Gordon, Pymble, Turramurra and St Ives.

3. PURPOSE OF PLAN

To facilitate the preparation of an LEP for the Ku-ring-gai town centres in accordance with the Standard Instrument (Local Environmental Plan Order) 2006.

Department's Lobbyist Code of Practice: This code has been complied with. To the best knowledge of the Department, there have been no meetings or communications with registered lobbyists with respect to this draft LEP.

New Government Lobbyists Code of Conduct: In relation to the Lobbyist Code of Conduct there are no records on the Department's Lobbyist Contact Register regarding this matter.

Political Donations Disclosure Statement: No Disclosure statements have been provided.

4. KEY PLANNING AND/OR CONTENTIOUS ISSUES

The key matters addressed by the draft LEP include:

- The Planning Proposal applies to a relatively small area of the Ku-ring-gai local government area (town centres) and is a priority for Council to progress ahead of the Principal Local Environmental Plan (comprehensive LEP) process.
- The purpose of the Planning Proposal is to provide certainty to those who were affected by the Land and Environment Court's decision to declare the former Ku-ring-gai Town Centres Local Environment Plan 2010 invalid. In addition to returning certainty, this Planning Proposal is an opportunity for the Council to review the extent of development previously approved and to better deal with issues such as interface between development areas.
- The draft LEP generally adopts the same zonings as the former Town Centres LEP. The main exception to this is that the capacity for mixed use development within the commercial areas of the centres has been significantly reduced and some specific

sites have been amended. This reduces the potential for urban renewal and revitalization, however, the plan is sufficient, when taken with other relevant plans, to ensure that the LGA can deliver 10,000 dwellings between 2004 and 2031 (which is the relevant agreed target in the 2005 Metropolitan Strategy).

- The draft LEP attached to the Planning Proposal has been submitted in accordance with the drafting approach adopted for the (previous) Town Centres LEP and the further drafting comments provided by the Department more recently (see **Tab F** for details). Council has amended those parts of the written instrument accordingly and it is considered that the draft LEP (**Tag D**) is in a suitable form for Community Consultation under s.56 and 57 of the *Environment Planning & Assessment Act 1979*.

5. CONSIDERATION

As outlined and justified in Section 3 of the Planning Proposal (**Tag C**), the draft Ku-ring-gai Local Environmental Plan (Local Centres) 2012 is consistent with Metropolitan Plan for Sydney 2036, draft North Subregional Strategy, Council's Retail Centres Strategy and Employment Lands Study, State Environmental Planning Policies and section 117 Directions. The draft LEP is considered justifiably inconsistent with S 117 Directions 1.1 Business and Industrial Zones and 3.1 Residential Zones.

Please refer to pages 12 -17 of the Planning Proposal for further details.

Metropolitan, Regional, Sub-regional strategies:

The following strategies are relevant to the draft LEP:

- Metropolitan Plan for Sydney 2036; and
- Draft North Subregional Strategy

Council has considered the draft LEP against the relevant strategic planning framework. The draft LEP is capable of sustaining predicted population and employment growth as identified in the Metropolitan Plan for Sydney 2036 and draft North Subregional Strategy which contains an agreed target of 10,000 additional dwellings in the period from 2004 to 2031.

Refer to pages 12-13 of the Planning Proposal for further detail.

The draft LEP is not considered inconsistent with any action of the Metropolitan Plan for Sydney 2036 or the draft North Subregional Strategy.

In terms of the residential dwelling yields, it should be noted that in 2009 the Department sought independent advice on the likely yield arising from various plans in Kuringai including the former Town Centres Plan. This advice was essentially that the yields estimated by Council were reasonable and, being prudent, taking Council's Low Development Scenario, all plans would provide just over the 10,000 dwelling target. The same report noted that under Council's Medium Development scenario around 12,600 dwellings might be expected.

In terms of this proposed plan, Council has assessed the potential dwelling yield of the draft instrument at pages 30 – 33 of the Planning Proposal and reports that under their Medium Development scenario the potential dwelling yield (alongside other Instruments and existing development) will facilitate approximately a 10,000 dwelling increase which is Council's dwelling target (from 2004 to 2031). This represents around 2,600 less dwellings than the former Town Centres LEP. Council has not re-estimated yields under the Low Development Scenario, however it is understood that under this scenario the total yield from all plans

would now be approximately 8,000 dwellings, which is around 2,000 dwellings less dwellings than under the former Town Centres LEP.

This reduction in dwelling arises mainly from reduction in capacity from mixed use areas which Council appears to have determined as being too excessive for their community. While this is not conducive to re-vitalisation or urban renewal, Council's decision is the outcome of community consultation and consideration and reflects their locally developed vision for the built form in their community. Council has not ruled out all mixed use development. Rather, it has ruled it out in areas where previous plans were considered too excessive or the streetscape was considered to be inconsistent with large scale mixed use development.

Given that the plan keeps Council on track to delivering their agreed target the plan should be considered as generally consistent with the dwelling targets contained in the draft North Subregional Strategy. Should the plan not produce dwellings as quickly as estimated by Council in its Medium Development scenario (and the Low Development Scenario turns out to be more realistic), it would be reasonable for Council to revisit the plans for the commercial areas at a later stage. There is, however, no rush for such action, as the target is a target to 2031 and many other LGAs are taking a staged approach to rezonings over the life of these targets. A review after 5 years of the plan being in place would be reasonable.

In terms of commercial/employment lands, the draft LEP does not substantially increase the amount of land zoned for commercial uses or the commercial floor space capacity of land within the six centres. However, it is considered that it will assist in facilitating additional permanent employment generating activities through increased overall floor space capacity for mixed use development on specific sites.

The draft LEP proposes that for a number of sites (mainly within the Gordon and Turrumurra town centres) which had been zoned B4 Mixed Use zones in the former Town Centres LEP 2010 to be zoned as B2 Local Centre, and to reduce the floor space ratios and height of buildings of these sites. This may reduce the potential commercial yield of these centres and the viability of re-development. However, the draft LEP is being developed in parallel with a planning proposal for Pymble Business Park (outside the boundaries of this LEP) which will partially compensate for these reductions.

It is considered that the up zoning of mixed use sites proposed under the Local Centres LEP combined with the planning proposal for Pymble Business Park will generally address Council's employment targets under the north Subregion Draft Subregional Strategy.

SEPPs

Council has considered the draft LEP against relevant SEPPs (pages 17-20) of the Planning Proposal). The draft LEP is not considered inconsistent with any SEPPs.

Note that the following SEPPs will no longer apply to the local centres if the plan is made:

- SEPP No. 1 – Development Standards;
- SEPP No. 4 – Development Without Consent and Miscellaneous Complying Development;
- SEPP No. 60 – Exempt and Complying Development;

The Department recommends that the Planning Proposal and draft LEP be exhibited with the relevant SEPPs and REPs (deemed SEPPs).

Section 117 Ministerial directions:

Ku-ring-gai Council identifies a number of Section 117 Directions (pages 20-24 and 38-57 of the attached Planning Proposal) that are applicable to this draft LEP. The relevant Section 117 Directions identified by Council are:-

- 1.1 Business and Industrial Zones
- 2.1 Environment Protection Zones
- 2.3 Heritage Conservation
- 3.1 Residential Zones
- 3.3 Home Occupations
- 3.4 Integrating Land Use and Transport
- 4.1 Acid Sulfate Soils
- 4.4 Planning for Bushfire Protection
- 6.1 Approval and Referral Requirements
- 6.2 Reserving Land for Public Purposes
- 7.1 Implementation of the Metropolitan Strategy

Council has identified that the draft LEP is inconsistent with s117 Directions 1.1 Business and Industrial Zones and 3.1 Residential Zones. Council has justified these inconsistencies in a table at pages 38-57 of the planning proposal. These inconsistencies relate to sites which are:-

- being rezoned RE1 and reserved for public open space acquisition,
- Council owned sites being rezoned E2,
- proposed for rezoning to SP2 and reserved for public purposes, and
- proposed for a reduction in residential capacity (either through a downzoning or stricter controls).

The reasons for the inconsistencies with the section 117 Directions 1.1 and 3.1 provided by Council are considered to be generally sound and it is therefore recommended that the Director-General form the view that the inconsistencies are justified in the circumstances.

There has, however, been a considerable amount of consternation from landowners and developers regarding the reduction in dwelling capacity for some sites and submissions have been received by the Department outlining arguments against Council's s117 justifications. Given the plan's overall implementation of Government strategy and increase in capacity, it is not considered necessary or appropriate to intervene in Council's decision making on these particular sites. However, it is recognised that the decision by Council to proceed with a downzoning in many cases was not the subject of detailed analysis by Council staff but was decided by Councillors at the time of resolution in response to community concerns. In this light it is proposed that Council be requested to pay particular attention to any submissions they receive for sites that have been downzoned to ensure that Council is satisfied that any final zoning and controls represent a viable and reasonable set of controls for that land in accordance with the growth strategies for the relevant town centre.

Interface Planning:

Concerns regarding issues such as residential amenity of the interface properties, streetscape and ecological integrity of the precinct, have previously been raised by local residents whose properties adjoin proposed R4 High Density Residential zones. Council has considered these concerns and resolved to address these concerns principally via the use of an interface zone (R3 Medium Density Residential) in the draft Principal LEP.

6. OTHER RELEVANT MATTERS

Environmental Study:

Council was not required to carry out an environmental study as the draft LEP covers established urban areas and no critical habitat or threatened species will be affected. However, Council was required to provide the necessary supporting information when submitting its draft LEP. Council has addressed these matters in its *Biodiversity and Riparian Lands Study*, *Ku-ring-gai Principal LEP Draft background Study (2011)* and *Managing Bushfire Risk, Now and into the Future – Draft Background Study (2011)*.

Local Strategy:

The planning proposal is considered consistent with Council's *Community Strategic Plan* which was adopted by Council on 13 October 2009. This Strategic Plan is based around the following principle activity areas:-

- Community development
- Urban environment
- Natural environment
- Planning and development civic leadership and corporate services
- Financial sustainability

The draft LEP is considered to be generally consistent with Council's local strategies.

Heritage Issues: Yes.

There are 7 State and 182 local heritage items identified in Schedule 5 of the draft LEP. The draft LEP also identifies 17 Heritage Conservation Areas.

The Planning Proposal will need to be forwarded to the Office of Environment and Heritage as part of the agency consultation process.

Exclusion of Provisions and/or Land: Yes.

As discussed previously, the Ku-ring-gai Local Environment Plan (Local Centres) 2012 only applies to lands located within the town centres. The remaining land in the Ku-ring-gai Local Government Area will be covered by their existing Ku-ring-gai Planning Scheme Ordinance 1971 until the gazettal of the Ku-ring-gai Comprehensive LEP.

Changes from the previous Ku-ring-gai Town Centres LEP 2010

As noted above, the draft LEP is largely based on the previously approved Town Centres LEP. The details of the key differences between the former plan and the current proposed draft plan are outlined below:

Key changes to planning controls:-

Masada Precinct, Lindfield - R4 High Density Residential to R2 Low Density Residential
The Masada Precinct is bounded by Treatts Road, Wolseley Road and the North Shore Railway line and consists of the North Shore Synagogue and the Masada Infants and

Primary School sites as well as a number of privately owned single detached houses. Prior to the former Town Centres LEP being made, the Ku-ring-gai Planning Panel had proposed an R2 zone for the site following its assessment process and consideration of public submissions. The previous Minister amended the Ku-ring-gai Town Centres Local Environmental Plan 2010 so that the Masada Precinct was zoned R4 High Density.

Ku-ring-gai Council considers that the R2 Low Density Residential zone is suitable for the Masada Precinct and it is proposed to exhibit the planning proposal as such.

Various residential sites in Gordon and Turramurra - R4 High Density Residential to R3 Medium Density Residential and R3 Medium Density Residential to R2 Low Density Residential.

The larger of these sites are mainly in Gordon and Turramurra and include a reduction in floor space ratios (FSR) and heights of buildings (HOB). The greatest variation is a reduction in FSR from 3.5:1 to 2.0:1 and a reduction in HOB from 32.5m to 20.5m.

It is worth noting that there is also some upzoning in the Gordon town centre (for example it is proposed to increase the HOB for The Gordon Centre from 26.5m to 38.5m).

Various commercial sites in Gordon and Turramurra - B4 Mixed Use to B2 Local Centre

The change in the business zoning of certain sites, mainly within Gordon and Turramurra, impacts the potential dwelling yield of the planning proposal as for example, residential flat buildings are not permitted within the B2 zone. There is also a reduction in FSR and HOB.

R2 Low Density Residential to SP2 Infrastructure

Certain sites (mainly schools) which were zoned R2 in the previous Town Centres LEP 2010 are now zoned Special Uses.

Pymble Business Park

This site has been excluded from the Local Centres LEP as it is being developed in parallel with a separate planning proposal for the area. A Gateway Determination for this planning proposal was issued on 20 February 2012.

Changes to the provisions within the draft plan:-

The new LEP has been updated to reflect the 2011 changes to the SI Order. In addition, a range of minor drafting edits were suggested by the Department and these have been included by Council. A table showing the difference in the local provisions as previously provided to the Department and those incorporated within the current version of the draft plan is at Tag F.

7. DIRECTOR-GENERAL IS SATISFIED THAT THE DRAFT LEP HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 33A OF THE ACT

***Is the instrument adequate?* Yes**

The draft LEP submitted by Council is based on the former Ku-ring-gai Local Environmental Plan (Town Centres) 2010 which was approved by Parliamentary Counsel on 1 December 2009. An earlier version of the draft Instrument was been reviewed by the Regional Team, Planning Operations Coordination and the Legal Services Branch and all requested drafting issues were addressed by Council prior to submission of the draft written instrument.

It is, however, noted here that there are some elements of the draft LEP for which, in other circumstances, the Department may have sought more variations. However, as one of the aims of this LEP is to rapidly replace the void left by the invalidation of the Town Centres Plan it has been agreed that Council would be able to retain clauses and approaches that had been agreed and included in the Parliamentary Counsel version of the former Plan, where it remained legally possible to do so. This approach means that additional time is not spent by Council considering the benefits of adopting new model clauses or re-arguing approaches to certain issues. The key elements in this regard are as follows:

Model clauses – The former published plan utilized model clauses as at the time of publishing but some of these – such as natural resources clauses – have since been amended. The proposed draft LEP contains the former clauses, and not the updated clauses.

Schedule 1 – The former published plan contained 32 items in Schedule 1, the majority of which allow dual occupancies as Council has not adopted a low density zone which permits dual occupancies. The current proposed LEP continues this approach with 28 Schedule 1 items.

Development Control style clauses – The former published plan contains a number of clauses regarding minimum site width and depth which might usually be transferred to a Development Control Plan. The current plan also contains these clauses in the same form that Parliamentary Counsel had previously drafted.

Notwithstanding the above, it is noted that Parliamentary Counsel may seek to make changes to these clauses when the plan is presented for finalization. It is considered that there are no provisions which Parliamentary Counsel would consider not legally enforceable and that the types of changes that the Parliamentary Counsel may seek to make to some local provisions are not the type of changes which change the substance of the clauses. For example, nomenclature changes or the positioning of certain provisions. Therefore, the attached letter to Council contains the standard paragraph notifying Council that the LEP may be subject to amendments by Parliamentary Counsel at the appropriate stage.

Local clauses (additional to those in the SI template)

Additional local clauses incorporated into the written instrument:

- 1.9A Suspension of covenants, agreements and instruments
- 2.8 Temporary Use of Land
- 5.3 Development on land intended to be acquired for a public purpose
- 6.1 Minimum lot size and street frontages for multi dwelling housing and residential flat building
- 6.2 Ground floor business, office and retail premises in business zones
- 6.3 Minimum building street frontage in business zones
- 6.4 Location of sex services premises
- 6.5 Biodiversity protection
- 6.6 Riparian land and waterways
- 6.7 Earthworks
- 6.8 Stormwater and water sensitive urban design

- Schedules 1 Additional permitted uses
- Schedule 2 Exempt Development
- Schedule 3 Complying Development
- Schedule 4 Classification and reclassification of public land
- Schedule 5 Environmental Heritage

Are the map(s) adequate?

The maps prepared by Council are considered acceptable for consultation purposes, however, the maps have not been assessed by the Department's Planning Operation Coordination unit. Following public exhibition and consultation, Council will be required to ensure that the maps meet the Department's *Standard Technical Requirements for LEP Maps* and it is likely that amendments will be required to ensure consistency with the Standard Instrument Amendment Order 2011.

The following maps form part of the draft LEP:

- Floor Space Ratio Map
- Height of Buildings Map
- Commercial Premises - Height of Buildings Map
- Land Application Map
- Land Reservation Acquisition Map
- Land Zoning Map

Has the draft plan been prepared in accordance with the Standard Instrument under section 33A of the EP&A Act 1979? Yes

8. BACKGROUND

Consultations with Government Agencies

Consultation is required with the following public authorities as a minimum concurrent to community consultation under section 56(2)(d) of the EP&A Act:

- Office of Environment and Heritage (Heritage Office)
- Transport for NSW (including RTA, Transport NSW and Railcorp)
- NSW State Emergency Service
- Sydney Water
- Rural Fire Service
- NSW Police
- Telstra
- Dept of Housing
- Origin (Integral Energy)
- Member for Ku-ring-gai - Mr Barry O'Farrell, MP
- All adjoining local councils

Community Consultation

Council recommended that the Planning Proposal be considered in the "All other planning proposals" category and publicly exhibited for 28 days which is consistent with the Department of Planning and Infrastructure's *"A Guide to Local Environmental Plans"*.

Overall adequacy of the proposal: Yes

The Planning Proposal is consistent with the guidelines and no additional information is required.

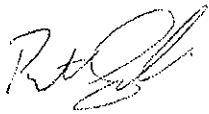
Land use tables

The Land use Tables submitted by Council are generally considered to be appropriate. Changes made to the land use table have been discussed earlier, and are detailed at **Tag F**.

Mandatory provisions

Council has included the mandatory provisions of the Standard Instrument in the draft LEP introduced on 13 July 2011 amendment.

ENDORSED:



20 April 2012

**REGIONAL DIRECTOR
SYDNEY WEST REGION**