

Planning Services

IRF18/6559

Gateway determination report

LGA	Ku-ring-gai
PPA	Ku-ring-gai Council
NAME	Consolidate Ku-ring-gai Local Environmental Plan 2015 (0 dwellings, 0 jobs)
NUMBER	PP_2018_KURIN_005_00
LEP TO BE AMENDED	Ku-ring-gai Local Environmental Plan 2015 Ku-ring-gai Local Environmental Plan (Local Centres) 2012 Ku-ring-gai Planning Scheme Ordinance 1971
ADDRESS	All land in the Ku-ring-gai local government area
DESCRIPTION	All land in the Ku-ring-gai local government area
RECEIVED	22 November 2018 – additional and final information received from Council on 19 March 2019 to allow the proposal to proceed to Gateway
FILE NO.	IRF18/6559
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

The planning proposal seeks to consolidate Ku-ring-gai Council's three environmental planning instruments into a single local environmental plan (LEP). The consolidation will be achieved by amending the Ku-ring-gai LEP 2015.

1.2. Site description

The proposal applies to the entire Ku-ring-gai local government area (LGA) except for a deferred area (see below). The following instruments currently apply to the LGA:

- Ku-ring-gai LEP (Local Centres) 2012, which applies to six local centres: Turramurra; Pymble; Gordon; Lindfield; Roseville; and St Ives (Figure 1, next page);
- Ku-ring-gai LEP 2015, which applies to the remainder of the LGA (Figure 2, page 3), except for deferred areas 14 and 15; and
- Ku-ring-gai Planning Scheme Ordinance 1971, which applies to the deferred land under the Ku-ring-gai LEP 2015:
 - Deferred Area 14 – 14 Woonona Avenue, Wahroonga - 'The Briars', and forms part of this planning proposal (Figure 3, page 3); and
 - Deferred Area 15 – Killara Golf Course is subject to a separate planning proposal (PP_2017_KURIN_005_00), which received a Gateway

determination on 5 December 2017. The proposal was placed on public exhibition from 3 May to 31 May 2018. It is anticipated that the proposal will be finalised prior to the completion of this planning proposal and will apply Standard Instrument land-use zonings to Area 15 – Killara Golf Course and be incorporated into the Ku-ring-gai LEP 2015 accordingly.

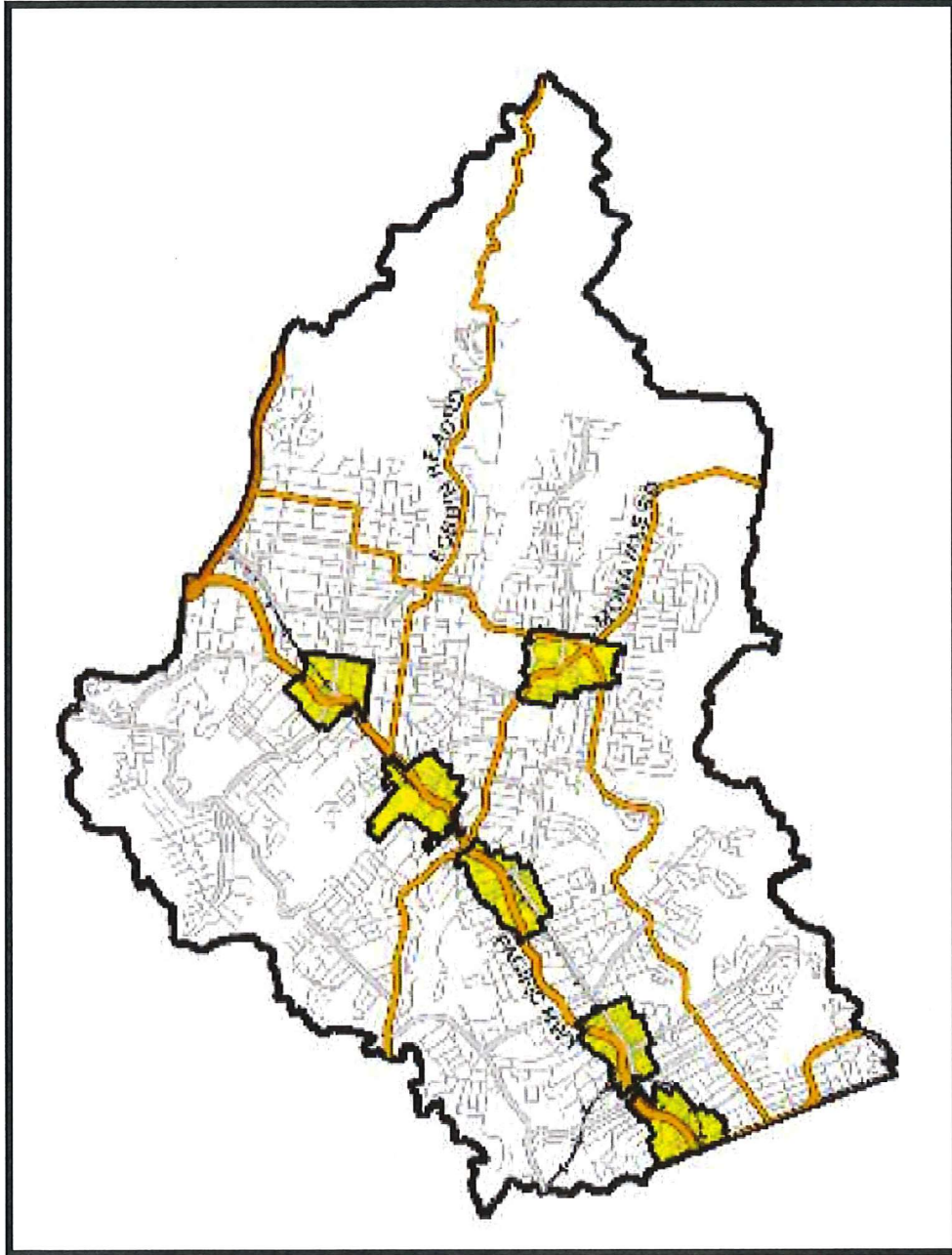


Figure 1: Land to which the Ku-ring-gai LEP (Local Centres) 2012 applies (highlighted in yellow).

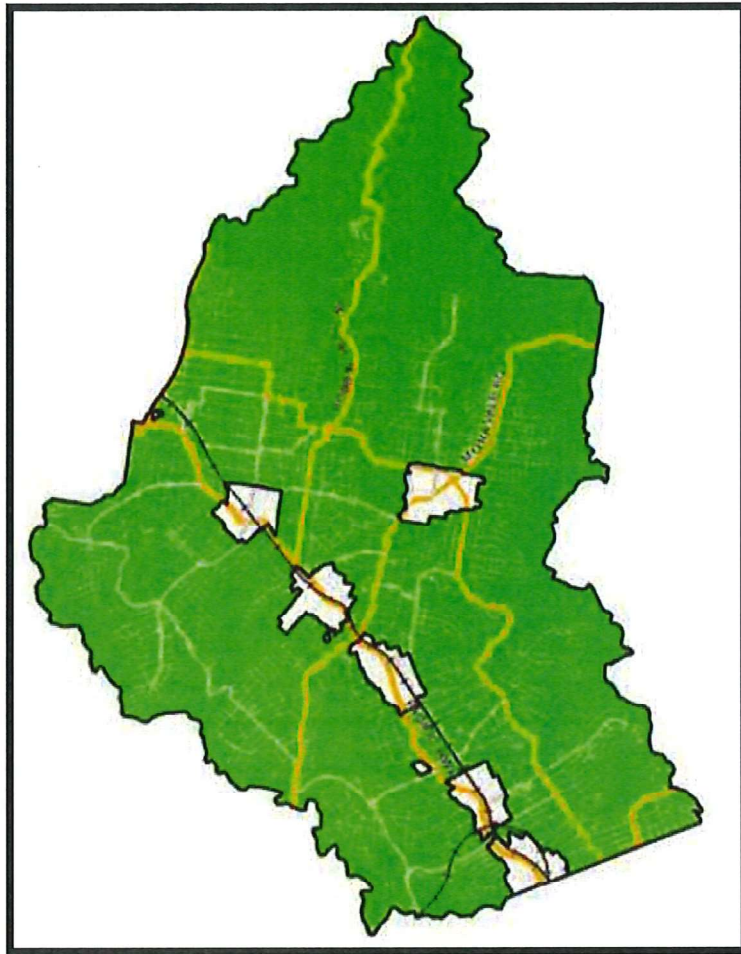


Figure 2: Land to which the Ku-ring-gai LEP 2015 applies (highlighted in green).

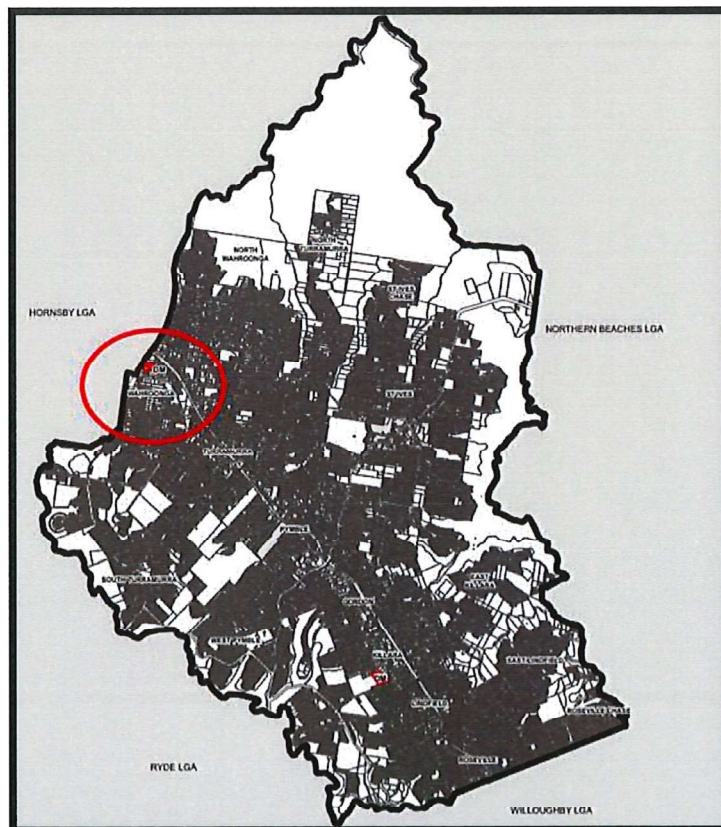


Figure 3: Deferred Area 14 – The Briars (circled in red).

1.3. Existing planning controls

The Ku-ring-gai LEP (Local Centres) 2012 (gazetted in January 2013) and the Ku-ring-gai LEP 2015 (gazetted in March 2015) contain clauses, land-use zonings and definitions consistent with the Standard Instrument (Local Environmental Plans) Order 2006.

Ku-ring-gai Planning Ordinance Scheme 1971 predates the *Environmental Planning and Assessment Act 1979* and is a non-standard environmental planning instrument.

1.4. Summary of recommendation

It is recommended that the proposal proceeds with conditions.

The amending plan will make minor corrections and merge three local environmental planning instruments into a single LEP for the Ku-ring-gai LGA. This will remove inconsistencies, reduce complexity and provide a consistent approach to land-use planning in the local planning system.

2. PROPOSAL

2.1. Objectives

The proposal comprises five objectives:

Objective 1 – Consolidation of environmental planning instruments

The planning proposal seeks to consolidate Ku-ring-gai's three local environmental planning instruments into a single LEP by amending the Ku-ring-gai LEP 2015 and repealing the Ku-ring-gai Planning Scheme Ordinance 1971 and the Ku-ring-gai LEP (Local Centres) 2012.

Objective 2 – Correct mapping errors

The proposal seeks to resolve zoning, height of building, floor space ratio (FSR), minimum lot size, acid sulfate soils and heritage mapping errors applying to 109 sites.

Objective 3 – Resolve deferred matter 'The Briars'

The proposal seeks to resolve the remaining deferred matter Area 14 'The Briars' under the Ku-ring-gai Planning Scheme Ordinance 1971 by rezoning the area to R4 High Density Residential and R2 Low Density Residential, allowing these Standard Instrument zones to apply to the site.

Objective 4 – Remove land reservations

The proposal seeks to remove local road and open space reservations that are considered by Council to be an unfunded liability.

Objective 5 – Amend heritage listings

The proposal seeks to insert four new heritage items and correct several heritage listing descriptions to more accurately protect and maintain heritage conservation in the locality.

The objectives of the proposal are clear and do not require amendment before community consultation.

2.2. Explanation of provisions

The planning proposal (**Attachment A**) contains the following explanation of provisions relating to each objective of the planning proposal:

Objective 1 – Consolidation of environmental planning instruments

The planning proposal seeks to consolidate Ku-ring-gai's three LEPs into a single LEP by amending the Ku-ring-gai LEP 2015.

The following LEPs will be consolidated:

- Ku-ring-gai LEP (Local Centres) 2012;
- Ku-ring-gai Planning Scheme Ordinance 1971; and
- Ku-ring-gai LEP 2015.

Ku-ring-gai LEP (Local Centres) 2012

The planning proposal seeks to incorporate model provisions and clauses from the Ku-ring-gai LEP (Local Centres) 2012 into the Ku-ring-gai LEP 2015.

A detailed comparison table of each clause from both instruments, and corresponding justification relating to each clause amendment, has been provided by Council (**Attachment A2**).

The mapping provided for the proposed amendments for the Ku-ring-gai LEP (Local Centres) 2012 is not satisfactory for community exhibition. A Gateway condition has been included to ensure the mapping provided includes existing and proposed maps to enable a clear comparison.

Ku-ring-gai Planning Scheme Ordinance 1971

The planning proposal seeks to incorporate Deferred Area 14 'The Briars' under the Ku-ring-gai LEP 2015 by applying the appropriate Standard Instrument zoning and other planning provisions.

The mapping provided under Part 4 of the planning proposal is sufficiently clear to enable a site comparison for the proposed LEP map changes.

Objective 2 – Correct mapping errors

The proposal lists 109 sites that require LEP mapping amendments.

A detailed table of site-specific mapping amendments is provided with the proposal and clearly compares the mapping errors to be amended.

Objective 3 – Resolve deferred matter 'The Briars'

The proposal seeks to zone land known as Area 14 'The Briars' under the Ku-ring-gai Planning Scheme Ordinance 1971 from a residential zone to R4 High Density Residential and R2 Low Density Residential under the Standard Instrument Ku-ring-gai LEP 2015.

Pages 15–16 of the planning proposal (**Attachment A**) contain a table of street addresses and the proposed zoning and development controls for the deferred area under the Ordinance.

However, the table does not identify the current zoning of the deferred area. To allow a clear comparison between existing and proposed controls, a Gateway condition has been drafted requiring the table in the proposal to be updated to include:

- all property addresses and lot and DP descriptions that form the deferred area; and
- the current zoning of the deferred land (i.e. Ku-ring-gai Planning Scheme Ordinance zones) and any associated development standards.

Objective 4 – Remove land reservations

The proposal seeks to remove the following local road and open space reservations from the relevant maps in Part 4 of the proposal:

- Holford Crescent, Gordon – local road reservation;
- 33 Moree Street, Gordon – local road reservation; and

- part of 11, 23 and 25 Glen Road, Roseville – local open space reservation.

Objective 5 – Amend heritage listings

The proposal (**Attachment A** – pages 16 and 17) lists several amendments to Schedule 5 (Environmental heritage) and to the heritage maps under the Ku-ring-gai LEP 2015 as follows:

- list Turramurra, Lindfield, Pymble and Roseville train stations as new items of local heritage significance and amend the Ku-ring-gai LEP 2015 heritage mapping accordingly. These stations are listed on the section 170 NSW State Agency Heritage Register and so are already identified as having heritage significance;
- amend the item name for the following:
 - heritage item No I656 from 'Robyn Hill' to 'Tarquinia'; and
 - heritage item I1101 from 'Broadway Wahroonga' to 'The Broadway, remnant Telford type roadway' and amend the address to 'The Broadway and Muttama Street';
- amend the lot and DP number of heritage item I815 at 5 Womerah Street, Turramurra from Lot 3 DP 31561 to Lot 4 DP 31561;
- remove or adjust heritage listings in cases where the subdivision of heritage items has been approved and new dwellings have been constructed on newly created lots; and
- remove the following items of local heritage significance from Schedule 5 (Environmental heritage) and associated maps:
 - 2A Pibrac Avenue, Warrawee;
 - 2B Pibrac Avenue, Warrawee;
 - 46 Water Street, Wahroonga;
 - 8 Laurel Avenue, Turramurra;
 - 7a Fairway Avenue, Pymble;
 - 62 Livingstone Avenue, Pymble; and
 - 7 Womerah Street, Turramurra.

Proposed removal of a special-use zone

The Department notes that the proposal seeks to rezone and amend the relevant planning controls for a small portion of land zoned SP2 Educational Establishment at 62 Rosedale Road, Gordon. This portion of land was sold by the Department of Education and is now privately owned. The zone and relevant planning controls are proposed to be amended to be consistent with the privately owned residential allotment.

As the Department of Education has sold this property, consultation with that Department is not necessary.

Notification

To ensure that all property owners affected by this proposal are made aware of the proposed amendments, a gateway condition has been drafted requiring Council to notify individual property owners during the public exhibition period.

2.3. Mapping

The proposal includes:

- some minor mapping amendments; and
- consolidation of the mapping under the following into the Ku-ring-gai LEP 2015:
 - the six local centres in Ku-ring-gai under the Ku-ring-gai LEP (Local Centres) 2012; and
 - deferred Area 14 – 14 Woonona Avenue, Wahroonga, known as ‘The Briars’, under the Ku-ring-gai Planning Scheme Ordinance 1971.

The mapping for these minor amendments and deferred Area 14 is considered satisfactory.

Ku-ring-gai LEP (Local Centres) 2012

The proposal includes the mapping for the six local centres as follows:

- maps showing no mapped provisions (i.e. white) under the Ku-ring-gai LEP 2015; and
- the proposed mapped provisions under the Ku-ring-gai LEP 2015 for these centres.

To ensure a clear comparison of all existing maps and the proposed mapping for the six local centres, a Gateway determination condition has been included requesting that the proposal be updated prior to public exhibition to include the following:

- existing maps under the Ku-ring-gai LEP (Local Centres) 2012; and
- a map tile reference number.

3. NEED FOR THE PLANNING PROPOSAL

A planning proposal is the only mechanism available to achieve the objectives of the proposal, including the consolidation of all planning controls into a single environmental planning instrument, the resolution of deferred matters, the correction of mapping errors and changes to heritage conservation. The proposal has merit and should proceed subject to conditions.

4. STRATEGIC ASSESSMENT

4.1. Greater Sydney Region Plan

The Greater Sydney Region Plan is the relevant regional plan applying to the Ku-ring-gai LGA.

The proposal gives effect to the objectives of the plan, specifically:

- Objective 13 – Environmental heritage is identified, conserved and enhanced;
- Objective 39 – A collaborative approach to city planning; and
- Objective 40 – Plans refined by monitoring and reporting.

Objective 13 – Environmental heritage is identified, conserved and enhanced

The proposal gives effect to Objective 13 as it seeks to conserve and enhance heritage in part by managing and monitoring the cumulative impacts of development on heritage values and by listing new items and correcting minor errors to ensure heritage values are protected, up to date and accurate.

To ensure heritage values are duly considered, the Gateway determination includes a condition requiring the proposal to be forwarded to the Office of Environment and Heritage – Heritage Division for consideration.

Objective 39 – A collaborative approach to city planning and Objective 40 – Plans refined by monitoring and reporting

As Council is required to give effect to the objectives and priorities of the Greater Sydney Region Plan through its LEP, it is considered important to consolidate Ku-ring-gai's local planning process by reducing the number of environmental planning instruments to enable a more efficient place-making approach. Having a single LEP in place before undertaking further strategic work will help avoid complications and result in a more effective and accurate LEP.

4.2. North District Plan

The North District Plan is the relevant district plan applying to the Ku-ring-gai LGA.

The proposal gives effect to the following North District Plan Planning Priority:

Planning Priority N6 – Creating and renewing great places and local centres, and respecting the District's heritage

The proposal seeks to identify, conserve and manage items of heritage value across the LGA by listing new items and updating the heritage schedule under the Ku-ring-gai LEP 2015. These amendments seek to ensure accuracy and include the application of zoning and development standards compatible with State Heritage Item 'The Briars' for deferred Area 14.

The Gateway determination includes a condition requiring the proposal to be forwarded to the Office of Environment and Heritage – Heritage Division for consideration.

Planning Priority N16 – Protecting and enhancing bushland and biodiversity

The proposal seeks to remove a 'local open space' acquisition reservation and E2 Environmental Conservation zone applying to part of allotments at 11, 23 and 25 Glen Road, Roseville. To the south and west the sites adjoin E2-zoned land owned by Council, which forms part of the Blue Gum Creek Reserve.

The proposal justifies the removal of the acquisition reservation and the E2 Environmental Conservation zone as it states it poses an unfunded liability for Council (refer to pages 18 and 19, **Attachment A**). The removal of the E2 zone is not supported by an ecological study or a Council divestment report.

Rezoning the land could potentially result in an adverse impact on an environmentally sensitive area, which does not give effect to this priority of the North District Plan.

This planning priority recognises the importance of protecting bushland areas and biodiversity and investing in connected bushland corridors. The priority states that strengthening the protection of bushland in the north district will be best achieved by retaining connected bushland corridors and protecting remnant vegetation as large connected areas.

The portion of the subject land zoned E2 Environmental Conservation and subject to the reservation acquisition adjoins land to the south and west zoned E2 and owned by Council, which forms part of the Blue Gum Creek Reserve.

The retention of the E2 Environmental Conservation zone is the best way to protect the site's vegetation and riparian land and the broader creek reserve and bushland corridor. Council has not provided adequate justification to warrant the removal of the E2 zone and the acquisition reservation.

To ensure this proposal gives effect to Planning Priority N16, it is recommended that the acquisition responsibility and E2 Environmental Conservation zone be retained and this site is to be removed from the proposal prior to public exhibition. The Gateway determination has been conditioned accordingly.

Where Council can provide adequate justification on planning grounds, such as a supporting ecological study, demonstrating how the environmental attributes of the site will not be compromised by the application of the E4 zone, it may seek an altered Gateway determination or undertake a separate planning proposal.

A detailed discussion on the removal of the acquisition responsibility and the E2 Environmental Conservation zone is provided in section 4.42 of this report below.

4.3. Local

The planning proposal is considered consistent with Council's strategic planning framework.

4.4. Section 9.1 Ministerial Directions

The planning proposal is consistent with all applicable section 9.1 Directions, except for the following:

4.41 Direction 1.1 Business and Industrial Zones

This Direction applies as the proposal affects land in business zones.

The proposal is seeking to transfer land zoned B2 Local Centre, B4 Mixed Use and B5 Business Development under the Ku-ring-gai LEP (Local Centres) 2012 to the Ku-ring-gai LEP 2015.

A detailed comparison table of each clause of both instruments, and corresponding justification relating to each clause amendment, has been provided by Council in Appendix B of the proposal (**Attachment A2**).

The proposal is not seeking to reduce the amount of land zoned for business purposes but instead seeks to ensure business zones and associated development controls are included in a single comprehensive LEP.

There is no business or industrial-zoned land within Area 14 'The Briars' and there is no industrial-zoned land under the Ku-ring-gai LEP (Local Centres) 2012.

This Direction requires that the creation of these zones is to be in accordance with an endorsed strategy. While this is not the case, this inconsistency is considered to be of minor significance.

4.42 Direction 2.1 Environment Protection Zones

This Direction seeks to protect and conserve environmentally sensitive areas. The proposal affects the LGA where a series of environmental zonings and protection measures apply.

The proposal seeks to rezone land zoned E1 National Parks and Nature Reserves and E2 Environmental Conservation (pages 26 and 27 of **Attachment A**). The proposal also seeks to remove a 'local open space' acquisition reservation applying to land at 11, 23 and 25 Glen Road, Roseville (Figure 4, page 11).

An overview of the proposed removal or reduction of environmental zonings and provisions is provided in Table 1, below:

Table 1: Proposed environmental zoning changes

	Address	Lot	Existing zoning	Proposed zoning	Reason
1	11 Glen Road, Roseville	Lot 6 DP 12001	Part E4 and Part E2	E4	The acquisition reservation poses an unfunded liability for Council. Environmental

					protection will be maintained by the application of a 10,000m ² minimum lot size and the retention of terrestrial biodiversity and riparian land provisions.
2	23 Glen Road, Roseville	Lot 9 DP 17798	Part E4 and Part E2	E4	As above
3	25 Glen Road, Roseville	Lot 8 DP 17798	Part E4 and Part E2	E4	As above
4	28 Cliff Avenue, North Wahroonga	Lots 1 & 2 DP 509676	Part RE1 and Part E2	Increase the portion of land zoned RE1 and reduce the portion of the site zoned E2	A reduction in E2-zoned land and the expansion of RE1-zoned land is proposed to allow Scouts Australia to continue to operate on the site as a permissible use. This will also ensure consistency with other Scout/Guide halls in bushland settings across the LGA.
5	169 Warrimoo Ave, St Ives (Aurora Drive)	Lot 1 DP 270318	E2	E4	This site is privately owned and is not subject to an acquisition reservation. The proposed E4 zone and development standards would be consistent with the remainder of the site.
6	460 Mona Vale Road, St Ives	Part Lot 2816 DP 728428	E1	E3	This site is now in private ownership and is part of a larger lot in the Northern Beaches LGA. Rezoning the site to E3 will ensure consistency with the adjoining zoning under the Warringah LEP.

The proposal justifies these proposed rezonings on the basis that the sites were incorrectly zoned when Council prepared its Standard Instrument and translated zonings from the Ku-ring-gai Planning Scheme Ordinance to Ku-ring-gai LEPs 2012 and 2015. The changes in zone for sites 4, 5 and 6, identified in Table 1, are considered minor and seek to ensure zonings are consistent with land uses and tenure. These are recommended to be supported.

It is considered that the consistency of the planning proposal with this Direction is unresolved until consultation with the NSW National Parks and Wildlife Service and the Office of Environment and Heritage (OEH) is complete and advice from these agencies can be considered.

Items 1, 2 and 3 identified in Table 1 are discussed as follows.

Land at 11, 23 and 25 Glen Road, Roseville

The land is subject to acquisition by Council and comprises three part lots. Each lot is privately owned with a dwelling house (refer to Figure 4, overleaf).

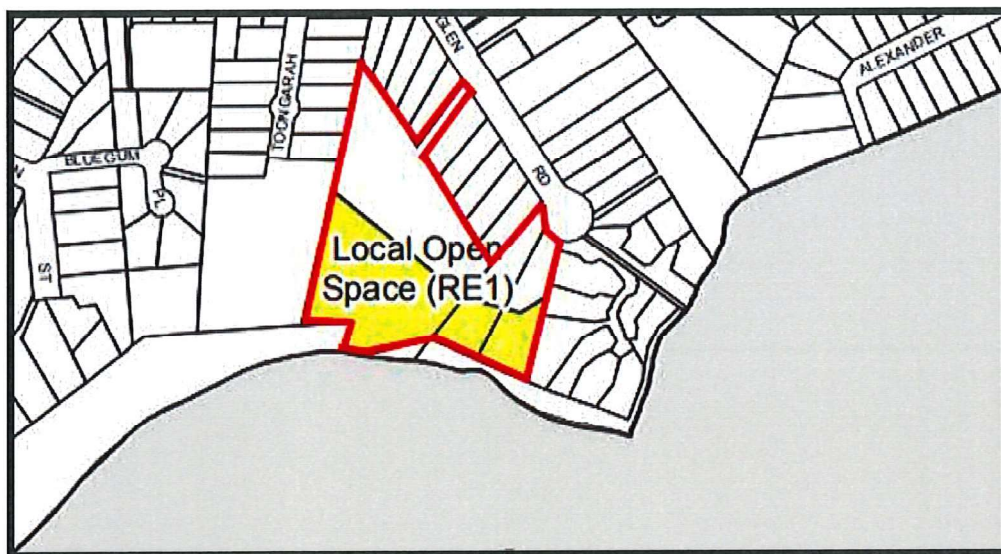


Figure 4: Land reservation acquisition map for land at 11, 23 and 25 Glen Road, Roseville.

The allotments are zoned part E4 Environmental Living and part E2 Environmental Conservation (Figure 5).

The portion of the site with the acquisition provision is zoned E2 Environmental Conservation, comprises bushland identified as Sydney Sandstone Gully Forest and is undeveloped. A minimum lot size (MLS) of 1500m² applies to the E4 Environmental Living portion of the site, while the E2 Environmental Conservation-zoned land does not have an MLS.

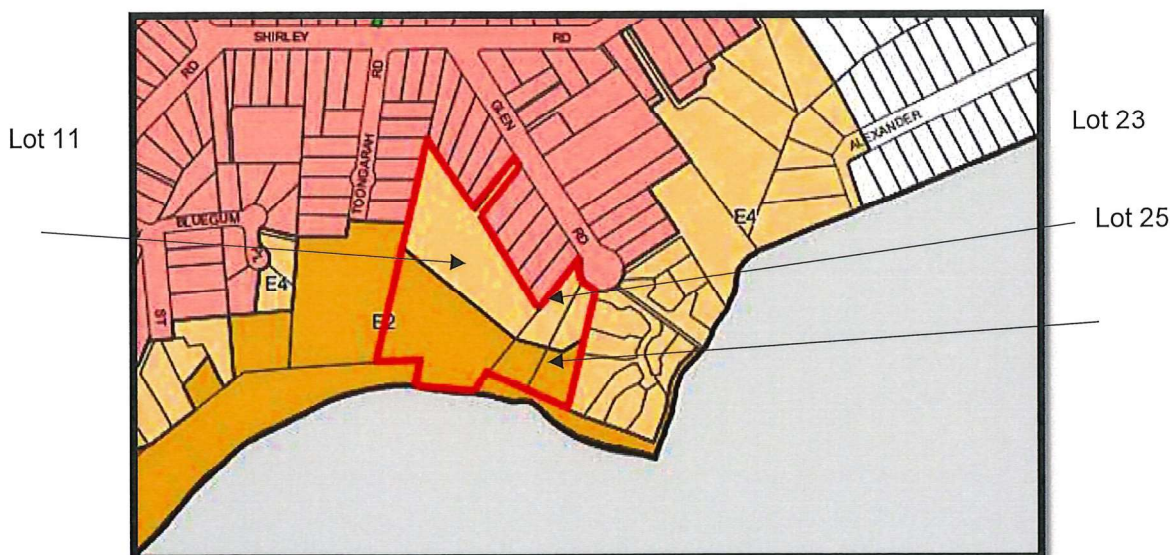


Figure 5: Land zone map for land at 11, 23 and 25 Glen Road, Roseville.

The land is identified as containing terrestrial biodiversity, riparian land (category 1) and acid sulfate soils (class 5) and adjoins bushland owned by Council on the southern and western boundaries, which is zoned E2 Environmental Conservation and forms part of the Blue Gum Creek Reserve (Figure 6).

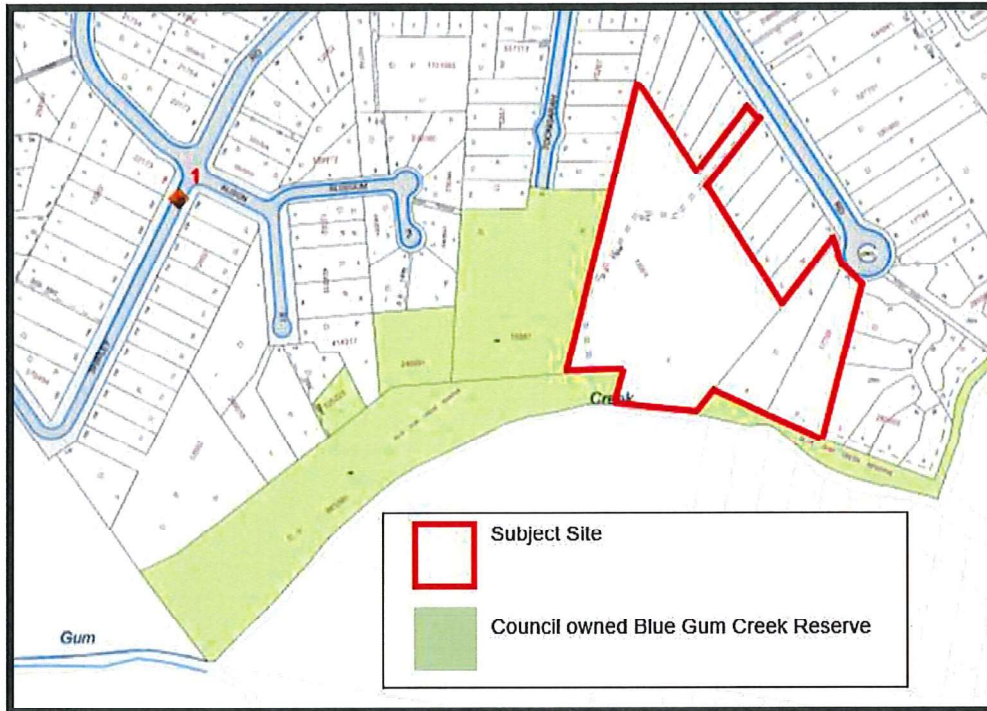


Figure 6: Map showing Council-owned Blue Gum Creek Reserve.

The proposal seeks to undertake the following for the land at 11, 23 and 25 Glen Road, Roseville:

- remove the acquisition provision pertaining to part of the site;
- rezone the portion of the site zoned E2 Environmental Conservation to E4 Environmental Living;
- apply an MLS of 10,000m² across each allotment;
- apply an FSR of 0.2:1 across each allotment;
- apply a height of building of 9.5m across each allotment; and
- retain the terrestrial biodiversity, riparian land (category 1) and acid sulfate soils (class 5) provisions that apply to part of each allotment.

Council's justification

The Ku-ring-gai Contributions Plan 2010 collects contributions towards the acquisition of open space. However, funds cannot be used for the acquisition of bushland. Council states this represents an unfunded liability for Council.

Council notes that the E2 Environmental Conservation zone, which applies over part of the site, is restrictive and may make Council subject to future compensation claims under the *Land Acquisition (Just Terms Compensation) Act 1991*.

To resolve this issue and prevent the fragmentation of the bushland on this site, Council is seeking to rezone the E2 Environmental Conservation portion of the site to E4 Environmental Living and apply, or retain, the development standards as listed above.

The Department sought further planning justification from Council, which advised as follows (**Attachment D**):

- the acquisition of these sites for local open space was transferred from the Ku-ring-gai Planning Scheme Ordinance. Under the Ordinance, all open space was zoned 6a.

Under this zone, there was no distinction between local open space for parks and open space for environmental conservation;

- the sites are in an area ranked as Priority 6 in Council's Open Space Acquisition Strategy, which is a low-level priority. Land to the north is zoned R2 Low Density Residential, land to the east is zoned E4 Environmental Living and land to the south and west is zoned E2 Environmental Conservation. Current planning provisions indicate that very little, if any, higher-density development is planned for the surrounding area; and
- the removal of the 'local open space' acquisition provision for the site will not result in additional development potential on the lots. The lots will retain the same environmental purpose and function because Council is proposing a 10,000m² MLS and is not proposing to change the biodiversity or riparian mapping on the sites.

Department comment

The proposed removal of the acquisition reservation and E2-zoned portion of the site raises the following issues:

- the loss of development potential on Lot 6 DP 12001, 11 Glen Road, Roseville because of the increase in the MLS provision;
- a lack of justification based on planning merit to support the removal of the 'Local Open Space (RE1)' acquisition reservation;
- the Ku-ring-gai Open Space Acquisition Strategy 2006 identifies Roseville as being of lower priority for acquisition. However, the strategy does provide that there is strong community support for protecting the environment and reducing bushland fragmentation and identifies Roseville as being an area with a shortage of open space; and
- the ongoing protection of the vegetation on the site, as well as the loss of connectivity and management, because of fragmented ownership.

Loss of development potential

Council intends to apply an E4 Environmental Living zone to 11, 23 and 25 Glen Road, Roseville, which are partly zoned E2 Environmental Conservation and E4 Environmental Living, thus removing the E2 zone, and apply an MLS of 10,000m² to each allotment.

An MLS of 1500m² applies to the E4-zoned portion of each site. The uses permitted with consent, in addition to those permitted in the E2 zone, include dwelling houses and secondary dwellings.

Council considers that imposing the proposed MLS would not allow the subdivision of land for dwelling houses and for a secondary dwelling.

The area of lots 23 and 25 Glen Road is approximately 2,800m² per lot. Further subdivision of these lots would not be possible under the current part E4 zoning and 1,500m² MLS or the proposed E4 zone and 10,000m² MLS.

The lot at 11 Glen Road, Roseville is a battle-axe lot, approximately 16,700m² in size. The site comprises a dwelling house, swimming pool and tennis court. The lot is zoned part E2 Environmental Conservation and part E4 Environmental Living. The rear portion of the site is vegetated and adjoins the Council-owned E2-zoned Blue Gum Creek Reserve along the southern and western boundaries. The land is partly subject to terrestrial biodiversity and riparian overlays.

The part of the property at 11 Glen Road zoned E4 comprises an area of 8,195m², has a maximum building height of 9.5m, an FSR of 0.2:1 and an MLS of 1,500m².

Under the existing control, it is theoretically possible to subdivide that part of the property to achieve five allotments, each with one dwelling entitlement. However, it is acknowledged that owing to site constraints, there is reasonable certainty that this yield would not be achieved.

The application of the 10,000m² MLS would ensure the site cannot be subdivided, preventing further development and fragmentation of the site. The continued retention of the E2 zone would similarly restrict development on the environmentally sensitive portion of the land.

Removal of acquisition reservation

Part of the subject land is identified as land reserved for acquisition by Council for Local Open Space (RE1). Council is seeking to rezone the site E4 Environmental Living with an MLS of 10,000m² and remove the acquisition layer because it poses an unfunded liability for Council.

As stated, the subject land comprises three allotments, each with a dwelling house and ancillary development. Each lot is privately owned. The rear portion of the site comprises riparian land and terrestrial biodiversity and forms part of the Blue Gum Creek Reserve. The subject land also adjoins Council-owned E2-zoned land, which also forms part of the reserve.

The need for an acquisition authority is dependent on the zoning and uses permitted on the land. Should the land uses permitted under a zone be so minimal, for example, under an E2 zone, then the continued imposition of acquisition provisions is warranted. It is considered that the funding mechanism for acquisition is a matter for the acquisition authority and should not determine an appropriate land zone. Consequently, removing the E2 zoning and protecting the vegetation requires further consideration by Council. The removal of the E2 zone may be supported if an ecological study can provide adequate justification.

Protection of the vegetation on the site

The E2 Environmental Conservation zone seeks to protect, manage and restore areas of high ecological value and prevent development that could destroy, damage or otherwise have an adverse effect on those values. The zone objectives are to:

- protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values; and
- prevent development that could destroy, damage or otherwise have an adverse effect on those values.

To achieve these objectives, the E2 zoning under the Ku-ring-gai LEP 2015 is restrictive, with most land uses including dwelling houses prohibited.

The objectives of the E4 Environmental Living zone are to:

- provide for low-impact residential development in areas with special ecological, scientific or aesthetic values;
- ensure that residential development does not have an adverse effect on those values;
- ensure development does not result in further fragmentation of ecological communities, biodiversity corridors or other significant vegetation or habitat;
- minimise direct and indirect risks to life, property and the environment from bushfire events;

- ensure development in this zone on land that adjoins land in the E1 National Parks and Nature Reserves zone or E2 Environmental Conservation zone is compatible with the objectives of those zones; and
- enable other land uses that provide facilities or services to meet residents' daily needs.

As discussed, part of the allotments at 11, 23 and 25 Glen Road, Roseville are zoned E2, are undeveloped and comprise bushland identified as Sydney Sandstone Gully Forest. The rear portion of the lots is also subject to terrestrial biodiversity and riparian land environmental protection provisions.

The removal of the E2 Environmental Conservation zone is not supported by an ecological report. Council asserts that the site will continue to enjoy the same environmental protection it currently has because Council proposes to apply an MLS of 10,000m² to prevent subdivision on the site and it is not proposing to change the biodiversity or riparian mapping.

While the above is acknowledged and the provision of a 10,000m² MLS will protect environmental attributes of the site, the removal of the E2 zoning will allow other uses permitted with consent on the site. This is considered to be inconsistent with the objectives of section 9.1 Direction 2.1 Environment Protection Zones to protect and conserve environmentally sensitive areas.

Without evidence that the environmentally sensitive attributes of the site will not be compromised, it is not possible to ascertain whether the E4 zone is appropriate for the land.

To ensure this proposal is consistent with this Direction, a Gateway condition has been included requiring Council to remove the proposed amendments for these allotments from the planning proposal.

As discussed in section 4.2 of this report, where Council can provide adequate justification on planning grounds that is supported by an ecological study demonstrating how the environmental attributes of the site will not be compromised by removing the E2 Environmental Conservation zone and applying the E4 zone, it may seek an altered Gateway determination or proceed with a separate planning proposal.

4.43 Direction 2.3 Heritage Conservation

This Direction seeks to conserve environmental heritage by ensuring heritage items are accurately represented and adequately protected. This is proposed to be achieved by correcting or adjusting heritage listing details contained under Schedule 5 (Environmental heritage) of the Ku-ring-gai LEP 2015.

The heritage significance of State Heritage Item 'The Briars' was considered when preparing and proposing zoning and development controls for the adjoining land to ensure these were respectful of the heritage attributes of 'The Briars'. A detailed assessment can be found in Council's report of 11 September 2018 (pp. 43-51, **Attachment A1**).

The Gateway determination includes a condition requiring the proposal to be forwarded to OEH's Heritage Division for comment. Consistency with this Direction will be determined following Council's consideration of OEH's comments.

4.44 Direction 3.1 Residential Zones

This Direction applies as the proposal affects land in residential zones. The consolidation process is generally a like-for-like transfer of land uses and relevant development controls from under either the Ku-ring-gai Planning Scheme Ordinance 1971 or the Ku-ring-gai LEP (Local Centres) 2015 to the Ku-ring-gai LEP 2015.

No amendments are proposed to the land-use table under the Ku-ring-gai LEP 2015 for R1 General Residential or R5 Large Lot Residential Land-zoned land as the Ku-ring-gai LEP (Local Centres) 2012 does not contain these zones.

No changes are proposed to the land-use table under the Ku-ring-gai LEP 2015 for R3 Medium Density Residential-zoned land as the two land-use tables are identical. The following changes are proposed to the Ku-ring-gai LEP 2015 R2 Low Density Residential and R4 High Density Residential zones:

Table 2: Proposed residential zoning changes

Zone	Ku-ring-gai LEP (Local Centres) 2012	Ku-ring-gai LEP 2015	Outcome
R2 Low Density Residential	Secondary dwellings are not listed as development permitted with consent	Lists secondary dwellings as permitted with consent	SEPP (Affordable Rental Housing) 2009 permits secondary dwellings with consent on land zoned R2. The amendment seeks to retain the R2 Low Density Residential land-use table under the Ku-ring-gai LEP 2015 as this will not result in any changes to permitted or prohibited land uses.
R4 High Density Residential	Seniors housing is listed as development permitted with consent	Seniors housing is not listed as development permitted with consent	SEPP (Housing for Seniors and People with a Disability) 2004 permits seniors housing on any land where dwelling houses and residential flat buildings are permitted. The amendment seeks to retain the R4 High Density Residential land-use table under the Ku-ring-gai LEP 2015 as this will not result in any changes to permitted or prohibited land uses.

The proposal seeks to rezone residential-zoned land to a series of alternative zonings through map corrections (**Attachment A** – pages 11 to 15 and 25 to 26 and Part 4 mapping).

Council's justification for the rezoning of residential land was that this land was incorrectly zoned when Council prepared its Standard Instrument and translated zonings from the Ku-ring-gai Planning Scheme Ordinance to the Ku-ring-gai LEPs 2012 and 2015.

These changes are generally minor and seek to remove inconsistencies and improve the accuracy of the LEP. Consequently, any inconsistency with Direction 3.1 Residential Zones is considered to be of minor significance.

4.45 Direction 4.4 Planning for Bushfire Protection

This Direction seeks to protect life, property and the environment from bushfire hazards by discouraging the establishment of incompatible land uses in bushfire-prone areas and encouraging sound management of these areas.

The proposal seeks to rectify mapping errors and provide consistency in zoning and planning controls for several sites that are identified as bushfire-prone land. The proposed changes will not affect the development potential of these sites.

A Gateway condition requiring referral to the NSW Rural Fire Service has been included to ensure consistency with this Direction.

4.46 Direction 6.2 Reserving Land for Public Purposes

This Direction seeks to facilitate the provision of public services and facilities by reserving land for public purposes, or alternatively facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition.

Council has identified three sites where land is no longer required for public purposes. Council is the nominated acquisition authority and seeks to remove these sites from the LEP land acquisition map. The sites are:

- Holford Crescent, Gordon (identified for a local road reserve);
- part 11, 23 and 25 Glen Road, Roseville (identified for a local open space); and
- 33 Moree Street, Gordon (identified for a local road reserve).

33 Moree Street, Gordon

This site was acquired by Council, making an acquisition requirement unnecessary. The removal of the reservation is supported.

Holford Crescent, Gordon

The planning proposal advises that the road reservation in Holford Crescent was carried over from the Ku-ring-gai Planning Scheme Ordinance to the Ku-ring-gai LEP 2015 during the conversion process. The Ordinance included a clause that would require the landholder to construct the identified road as part of any future subdivision. However, an equivalent clause was not possible. Council is now required by the *Environmental Planning and Assessment Act 1979* to seek contributions via a contributions plan or by entering into a voluntary planning agreement.

This work is not identified in a current contributions plan, and the land identified as a road reserve represents an unfunded liability for Council. The Council report (**Attachment A1**, page 59) states it would be difficult to justify the inclusion of the cost of acquisition in a future contributions plan due to the small number of landholders who would benefit from the infrastructure. As such, Council is proposing to remove the reservation.

The land identified as land reserved for a local road reserve is located at the rear of eight allotments (Figure 7). Each lot comprises a dwelling house and ancillary structures and has access to Ryde Road or Holford Crescent. The proposal seeks to rezone the SP2 Infrastructure-zoned land to R2 Low Density Residential. The proposed R2 zone is consistent with the surrounding development. It is not anticipated that the rezoning will result in any negative planning outcomes and the rezoning is supported.

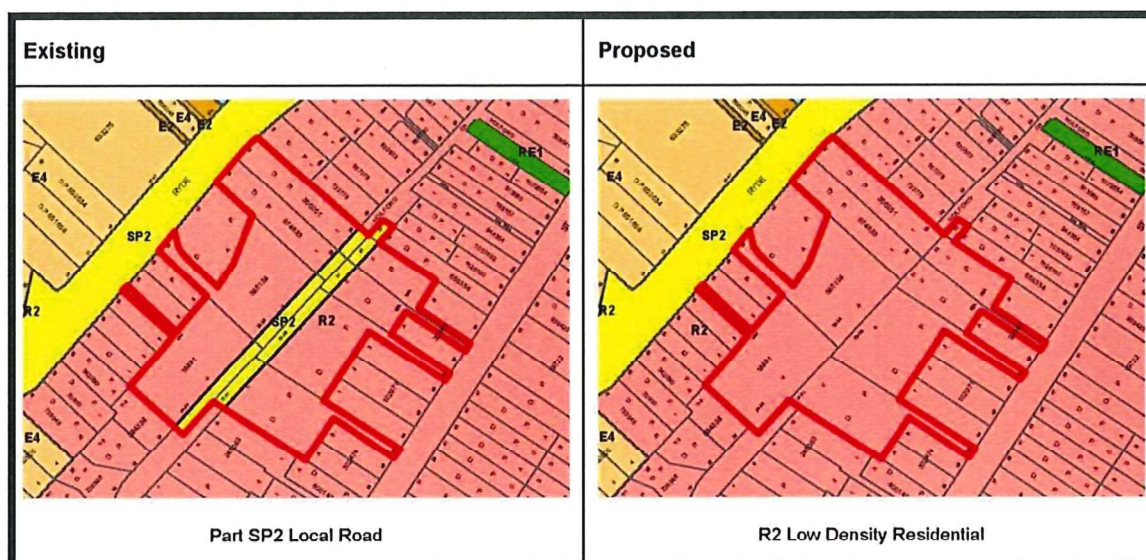


Figure 7: Existing and proposed zoning on land in Holford Crescent, Gordon.

11, 23 and 25 Glen Road, Roseville

The removal of the acquisition reservation over part of 11, 23 and 25 Glen Road, Roseville (identified for local open space) has been discussed in detail in section 4.42 of this report.

4.5. State environmental planning policies (SEPPs)

The proposal is consistent with all relevant SEPPs.

5. SITE-SPECIFIC ASSESSMENT

5.1. Social and economic

The proposal will not directly provide any additional jobs or dwellings. The planning proposal is therefore not anticipated to have adverse social or economic impacts.

The consolidation of planning instruments and the correction of mapping errors will reduce the complexity for the community and proponents in the development application process, ensuring that more transparent, accurate and efficient planning decisions are made.

5.2. Environmental

Except for a small deferred area, the planning proposal affects the entire Ku-ring-gai LGA, which incorporates a range of environmentally protected land. Subject to matters discussed in this report, the proposal is not anticipated to adversely impact on environmental attributes.

To ensure the proposal is satisfactory for environmental and heritage issues, referral to OEH is recommended as a Gateway condition.

6. CONSULTATION

6.1 Community

A 28-day community consultation period is considered appropriate for the planning proposal.

6.2 Agencies

It is recommended that the following agencies be consulted:

- NSW Rural Fire Service – prior to exhibition to ensure consistency with section 9.1 Direction 4.4. Planning for Bushfire Protection;

- Transport for NSW (Sydney Trains) – to ensure concurrence from the agency regarding proposed further heritage conservation of railway stations;
- Roads and Maritime Services – to ensure rezoning of ‘The Briars’ for high-density residential development is supported by the road network and the recommended removal of local road reserves is appropriate;
- OEH – to ensure the rezoning of E2 Environmental Conservation-zoned land to various zones is appropriate;
- OEH (Heritage Division) – regarding the impacts of the proposed R4 High Density Residential zoning on ‘The Briars’ and state-listed railway stations; and
- NSW National Parks and Wildlife Service – to ensure the rezoning of environmentally zoned land to alternative zones is appropriate.

7. TIME FRAME

An 18-month time frame for the plan to be made is considered appropriate to enable Council to complete community and state agency consultation and reconcile any issues associated with the preparation of a consolidated Standard Instrument.

8. LOCAL PLAN-MAKING AUTHORITY

Council has requested to be authorised as the local plan-making authority. Due to the complexity of the planning proposal, its application over the Ku-ring-gai LGA and the anticipated departmental assistance required for Standard Instrument drafting, it is recommended that authorisation not be granted.

9. CONCLUSION

The planning proposal is supported to proceed with conditions. The proposal will simplify and standardise the local planning controls applying to the LGA and correct a series of errors.

Gateway conditions have been included to ensure issues relating to heritage, environmentally zoned land and the removal of a land acquisition reservation are appropriately addressed.

10. RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. agree that any inconsistencies with section 9.1 Directions 1.1 Business and Industrial Zones and 3.1 Residential Zones are minor or justified; and
2. note that the consistency with section 9.1 Directions 2.1 Environment Protection Zones, 2.3 Heritage Conservation, 4.4 Planning for Bushfire Protection and 6.2 Reserving Land for Public Purposes remains unresolved.

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. Consultation is required with the following public authorities:
 - NSW Rural Fire Service;
 - Transport for NSW;
 - Transport for NSW – Sydney Trains;
 - Roads and Maritime Services;
 - Office of Environment and Heritage;
 - Office of Environment and Heritage – Heritage Office; and
 - NSW National Parks and Wildlife.
3. The time frame for completing the LEP is to be 18 months from the date of the Gateway determination.
4. Given the nature of the planning proposal, Council should not be authorised to be the local plan-making authority to make this plan.
5. Council should update the table 'Deferred Area 14 – Proposed amendments to KLEP 2015' on page 15 of the proposal prior to public exhibition to include:
 - (a) all addresses, lot and DP descriptions that form the deferred area – Area 14 'The Briars'; and
 - (b) the current zoning and development standards under the Ku-ring-gai Planning Scheme Ordinance 1971.
6. To ensure a clear comparison of the existing mapped planning controls and the proposal mapped controls for the six local centres under the Ku-ring-gai LEP (Local Centres) 2012 and Ku-ring-gai LEP 2015, Council is to amend the proposal prior to public exhibition to include the existing mapped controls under the Ku-ring-gai LEP (Local Centres) 2012 and map tile references and map key.
7. Council must delete all 's.117' references and replace with 's. 9.1' in the proposal.
8. Council must include planning justification in the comments section for the proposed action to be taken in respect of Holford Crescent, Gordon where it appears in the Minister's section 9.1 Directions schedule (page 29 of the proposal) and the SEPP schedule of the proposal (pp. 23/24).
9. Under the Minister's section 9.1 Directions schedule – 6.2 Reserving Land for Public Purposes – of the proposal (pp. 28/29), Council must include the proposed amendments for the creation and/or removal of land zoned for public purposes that have not been addressed in this schedule and indicate the ownership of the land and whether an acquisition authority is required.
10. The proposed removal of the acquisition layer and E2 Environmental Conservation zone at 11, 23 and 25 Glen Road, Roseville is not considered to be consistent with section 9.1 Direction 2.1 Environment Protection Zone and Planning Priority N16 of the North District Plan and is not supported. Council is to remove the proposed amendments for these allotments from the planning proposal.

11. Each property owner affected by the proposed amendments must be individually notified of any change that applies to their land during the public exhibition period.



Angela Hynes
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9/05/2019

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Supported:



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Gateway Determination

Planning proposal (Department Ref: PP_2018_KURIN_005_00): to consolidate Ku-ring-gai's local environmental planning instruments into a single local environmental plan.

I, the Executive Director, Regions at the Department of Planning and Environment, as delegate of the Minister for Planning and Public Spaces, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the Ku-ring-gai Local Environmental Plan (LEP) 2015 to consolidate Ku-ring-gai's local environmental planning instruments into a single LEP should proceed subject to the following conditions:

1. Prior to public exhibition, Council is to amend the planning proposal as follows:
 - (a) update the table 'Deferred Area 14 – Proposed amendments to KLEP 2015' on page 15 of the proposal to include:
 - I. all addresses, lot and DP descriptions that form the deferred area – Area 14 'The Briars'; and
 - II. the current zoning and development standards under the Ku-ring-gai Planning Scheme Ordinance 1971;
 - (b) amend the proposal to include the existing mapped controls under the LEP (Local Centres) 2012 with map file references and provide a map key;
 - (c) remove the proposed amendments for 11, 23 and 25 Glen Road, Roseville;
 - (d) delete all 's.117' references and replace with 's. 9.1';
 - (e) include planning justification in the comments section for the proposed action to be taken in respect of Holford Crescent, Gordon where it appears in the Minister's section 9.1 Directions schedule (page 29 of the proposal) and the SEPP schedule of the proposal (pp. 23/24); and
 - (f) under the Minister's section 9.1 Directions schedule – 6.2 Reserving Land for Public Purposes – of the proposal (pp. 28/29), include the proposed amendments for the creation and/or removal of land zoned for public purposes that have not been addressed in this schedule and indicate the ownership of the land and whether an acquisition authority is required.

2. The revised planning proposal is to be forwarded to the Department for review and approval prior to exhibition.
3. Public exhibition is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:
 - (a) the planning proposal must be made publicly available for a minimum of **28 days**; and
 - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of *A guide to preparing local environmental plans* (Department of Planning and Environment 2016).
4. Each property owner affected by the proposed amendments must be individually notified of any change that applies to their land during the public exhibition period.
5. Consultation is required with the following public authorities/organisations under section 3.34(2)(d) of the Act and/or to comply with the requirements of relevant section 9.1 Directions:
 - NSW Rural Fire Service;
 - Transport for NSW;
 - Transport for NSW – Sydney Trains;
 - Transport for NSW – Roads and Maritime Services;
 - Office of Environment and Heritage;
 - Office of Environment and Heritage – Heritage Division and
 - NSW National Parks and Wildlife Service.


Each public authority/organisation is to be provided with a copy of the planning proposal and any relevant supporting material and given at least 21 days to comment on the proposal.

Council is to consult with the NSW Rural Fire Service in accordance with section 9.1 Direction 4.4 Planning for Bushfire Protection and, if necessary, update consistency with this Direction prior to public exhibition.

6. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).

7. The time frame for completing the LEP is to be **18 months** following the date of the Gateway determination.

Dated 13th day of May 2019.


Stephen Murray
Executive Director, Regions
Planning Services
Department of Planning and Environment

Delegate of the Minister for Planning and
Public Spaces