

## Planning Services

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### Plan Finalisation Report

**Local Government Area:** Ku-ring-gai

**File Number:** IRF17/22

#### 1. NAME OF DRAFT LEP

Ku-ring-gai Local Environmental Plan 2015 Amendment No 14 (draft LEP).

#### 2. SITE DESCRIPTION

The planning proposal applies to the following 13 deferred areas (**Attachment B1**) under Ku-ring-gai Local Environmental Plan 2015:

- Area 1 – North Turramurra;
- Area 2 – North Wahroonga;
- Area 3 – Warrimoo Avenue;
- Area 4 – Campbell Drive;
- Area 5 – Browns Road – Fox Valley Road – Jordan Avenue;
- Area 6 – Howson Avenue;
- Area 7 – Eastern Arterial Road;
- Area 8 – Parker Avenue – Evans Street;
- Area 9 – Bowen Avenue;
- Area 10 – Ashburton Avenue;
- Area 11 – Boronga Avenue – Gloucester Avenue;
- Area 12 – East Killara; and
- Area 13 – Bradfield Road.

The proposal seeks to incorporate the land into Ku-ring-gai Local Environmental Plan 2015 and apply zonings and development controls that restrict increases in population densities and land uses in these areas due to identified bushfire evacuation risk.

#### 3. PURPOSE OF PLAN

The draft LEP seeks to:

- rezone the above deferred areas (**Attachment B2**) from predominantly residential zones under Ku-ring-gai Planning Ordinance Scheme to a mixture of:
  - E4 Environmental Living;
  - E2 Environmental Conservation;
  - R2 Low Density Residential;

- SP2 Infrastructure;
- RE1 Private Recreation;
- RE2 Public Recreation; and
- B2 Local Centre;
- apply various maximum floor space ratios (FSRs), maximum height of buildings and minimum lot size provisions to the relevant zones within the deferred areas (**Attachment B3**);
- apply a minimum lot size of 1,500m<sup>2</sup> to land proposed to be zoned E4 Environmental Living (note: the proposed E4 zone land use table lists 'secondary dwellings' as permissible with consent);
- insert an additional permitted land use of dwelling house at 20 Kanowar Avenue, East Killara with associated minimum lot size and height of building standards;
- insert several existing local heritage items (as listed in Ku-ring-gai Planning Ordinance Scheme – **Attachment G**) into Schedule 5 of Ku-ring-gai Local Environmental Plan 2015 (pages 23 and 24 of **Attachment B**); and
- rezone 9, 9A and 11–15 Curagul Road, North Turramurra from E3 Environmental Management to E4 Environmental Living (**Attachment B2**).

The primary purpose of the draft LEP is to resolve the deferred status of the 13 areas by including this land in the Ku-ring-gai Local Environmental Plan 2015. The current planning controls that apply to the areas are contained in the Ku-ring-gai Planning Ordinance Scheme (KPSO), which came into effect in 1971.

These areas were originally deferred due to the need to resolve outstanding bushfire issues that required further research and consultation with the community, NSW Rural Fire Service (RFS) and NSW Police.

Ku-ring-gai Council is seeking to limit the number of dwellings and people who may be exposed to bushfire evacuation risks by restricting development through the proposed E4 Environmental zoning and introducing a minimum lot size of 1,500m<sup>2</sup> on E4-zoned land.

Rezoning land to E4 Environmental Living would prohibit land uses that are incompatible with the high evacuation risk of these areas during a bushfire. The E4 Zone and minimum lot size of 1,500m<sup>2</sup> will prevent an increase in residential density by limiting further subdivision within these areas, therefore not increasing the number of people or cars trying to evacuate from an area.

Council has also used other land zonings (E2, R2, SP2, RE1, RE2 and B2) and given appropriate development standards according to the level of bushfire evacuation risk and environmental significance of land across the deferred areas.

### **Additional matters**

#### **9, 9A and 11–15 Curagul Road, North Turramurra**

The three properties are located at the north-eastern end of North Turramurra (Area 1 – **Attachment B2**). Due to a mapping error in the making of the standard instrument LEP, they were not included in the boundary of the North Turramurra deferred area. The properties are zoned E3 Environmental Management under Ku-ring-gai Local Environmental Plan 2015. The planning proposal seeks to amend the zoning of these properties from E3 Environmental Management to E4 Environmental Living, consistent with the proposed zoning for the rest of North Turramurra.

## 20 Kanowar Avenue, East Killara

This site is zoned residential under the KPSO. The planning proposal seeks to zone the site E2 Environmental Conservation due to its high ecological values.

The current residential zoning of the site permits a dwelling house. There is no dwelling or any other structure on the site.

The site is privately owned. To limit Council's exposure to a potential claim under the *Land Acquisition (Just Terms Compensation) Act 1991*, Council had recommended eco-tourist facility be included as a permitted use.

The additional permitted use of eco-tourist facility, limited to 12 persons, would increase the population density of the site. This additional use would be inconsistent with the RFS's advice to not support increases of population densities in evacuation areas.

It is recommended the Greater Sydney Commission's delegate, when making the final plan, amend the additional permitted use from eco-tourist facility to dwelling house. Associated development standard amendments are also recommended to apply a minimum lot size of 30,000m<sup>2</sup> to the 2.8ha site to restrict any future subdivision of the land, and a maximum height of building limit of 9.5m consistent with surrounding height controls.

This will ensure no increase in population density above what is already permissible, limit Council's exposure to a potential land acquisition claim and ensure consistency with the RFS's advice.

Council was consulted regarding the post-exhibition changes to the additional permitted use, minimum lot size and maximum height of building and raised no objection (**Attachment I**).

### 4. STATE ELECTORATE AND LOCAL MEMBER

The sites fall within the Ku-ring-gai and Davidson electorates. Mr Alister Henskens SC MP is the State Member for Ku-ring-gai. Mr Jonathan O'Dea MP is the State Member for Davidson.

The Hon Paul Fletcher MP is the Federal Member for Bradfield.

To the regional planning team's knowledge, no MP has made any written representations regarding the proposal.

<b>NSW Government Lobbyist Code of Conduct:</b> There have been no meetings or communications with registered lobbyists with respect to this proposal.
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<b>NSW Government reportable political donation:</b> There are no donations or gifts to disclose and a political donation disclosure is not required.
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### 5. GATEWAY DETERMINATION

The Gateway determination issued on 27 June 2016 (**Attachment C**) determined that the proposal should proceed subject to conditions.

Council has satisfied the conditions in the Gateway determination (**Attachment C1**).

### 6. PUBLIC CONSULTATION

In accordance with the Gateway determination, community consultation was undertaken by Council from 17 November 2016 to 16 December 2016.

The proposal attracted 145 written submissions. Submissions were received in support of and against the proposal. The submissions raised the following matters:

- lack of a suitable evidence base and justification of the proposal;
- Fox Valley residents opposed the rezonings and loss of development potential;

- general suitability of E4 Environmental Living zoning and development restrictions;
- concerns over the permissibility of secondary dwellings on E4-zoned land;
- incomplete planning process and the ethics of Council; and
- proposed alternative solutions to the proposal.

#### *Concerns over the permissibility of Secondary Dwellings*

Secondary dwellings are already permissible on land zoned for residential (in KPSO) in the deferred areas. The current residential zoning also permits some secondary dwellings to be considered as complying development under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

The application of an E4 zoning that permits secondary dwellings will not increase the existing potential population or level of development within these areas consistent with RFS advice (**Attachment E2**). It is also anticipated that due to the nature of the evacuation areas, requirements for asset protection zones, and secondary dwellings being incorporated in FSR calculations on lots, the development of secondary dwellings will be severely limited in these areas. It is therefore considered satisfactory that secondary dwellings be permitted in the E4 Zone.

#### *All other submission concerns*

The other matters raised in submissions are fully addressed in Council's report (**Attachment F**) and further considered in detail in **Attachment F1**. It is considered that Council has appropriately addressed the matters raised in submissions as the proposed zonings are evidence based (supporting studies and methodologies have been provided by Council) and consistent with the RFS's recommendations regarding bushfire evacuation risk areas.

## **7. ADVICE FROM PUBLIC AUTHORITIES**

Council was required by the Gateway determination to consult with:

- Office of Environment and Heritage;
- Department of Education;
- Roads and Maritime Services;
- Department of Health;
- Fire and Rescue NSW;
- NSW Police Force;
- NSW Rural Fire Service;
- State Emergency Service;
- Ambulance Service of NSW; and
- Sydney Water.

Council consulted with these authorities and received submissions (**Attachment D**) from:

- Office of Environment and Heritage; (no objection)
- Roads and Maritime Services; (no objection)

- Fire and Rescue NSW; (no objection)
- NSW Police Force; (no objection)
- Department of Education; and (proposed alternative zones)
- NSW Rural Fire Service. (detailed submission)

As discussed in **Attachments D1** and **D2**, the matters raised by agencies have been satisfactorily addressed by Council as being either consistent with the agencies' advice or, in the case of the Department of Education, demonstrated a consistent approach to land zoning across Ku-ring-gai.

## 8. POST-EXHIBITION CHANGES

### Minor mapping amendments

Council noted that some sites proposed to be zoned RE1 Public Recreation, RE2 Private Recreation and E2 Environmental Conservation were mistakenly mapped with development standards (height, FSR, lot size). Council resolved at its meeting of 2 May 2017

**(Attachment F)** to remove height of building (HOB), FSR and lot size (LSZ) provisions from the following sites:

- 420 Bobbin Head Road, North Turramurra – Lot 102 DP1134640 – remove HOB and FSR – Zone RE1 Public Recreation;
- 22 St Columbans Green, North Turramurra – Lot 101 DP1134640 – remove HOB and FSR – Zone RE1 Public Recreation;
- 410-412 Bobbin Head Road, North Turramurra – Lots 1-7 DP211722 and Lot 3 DP506214 – remove HOB and FSR – Zone RE2 Private Recreation;
- 61 Miowera Road, North Turramurra – Part of Lot 323 DP752031 – remove HOB – Zone RE2 Private Recreation; and
- 118A Koola Avenue, East Killara – Lot 17 DP241746 – remove HOB, FSR and LSZ – Zone E2 Environmental Conservation.

Council has clarified that no FSR was exhibited for 420 Bobbin Head Road and 22 St Columbans Green **(Attachment E5)**.

The RFS **(Attachment E1)** notes that although residential development is not permitted in zones RE1 and RE2, certain other development types are permitted (e.g. child care centres), therefore removing the proposed development standards in the above areas is a concern as it could result in increased vulnerable population densities.

Council does not apply development standards to RE1, RE2 or E2 zoned land. The removal of the proposed standards is therefore consistent with the Ku-ring-gai Local Environmental Plan 2015 and Ku-ring-gai Local Environmental Plan (Local Centres) 2012.

This change to remove development standards from RE1 and RE2 sites in North Turramurra and E2 land in East Killara is considered appropriate and is supported as none of these standards currently apply to the subject sites or similar land in the LGA.

As the proposed zoning maintains the existing open space provisions, and the sites currently do not have height, FSR and lot size development standards applying to them, it is considered the proposal is consistent with RFS's advice to maintain the 'status quo' on these sites **(Attachment E2)**.

### Amendment to the additional permitted use at 20 Kanowar Avenue, East Killara

This site is part of the East Killara deferred area and has a residential zoning under KPSO. Council has sought to rezone the site E2 Environmental Conservation due to its high

ecological value. The site is undeveloped, owned by the Metropolitan Aboriginal Land Council and identified as an area of extreme bushfire hazard.

The Department of Planning and Environment's LEP practice note PN 09-002 outlines that there are no mandatory permitted uses within the E2 Environmental Conservation Zone, and the uses should protect the high conservation value of the land and avoid adverse effect in relation to natural hazards. LEP practice note PN 09-002 outlines that with the permitted uses chosen for the E2 Zone:

*"Councils should be aware that uses should not be drawn too restrictively as they may, depending on circumstances, invoke the Land Acquisition (Just Terms Compensation) Act 1991 and the need for the Minister to designate a relevant acquiring authority."*

Currently within Ku-ring-gai Local Environmental Plan 2015 the following uses are permitted in the E2 Zone:

- environmental protection works;
- environmental facilities;
- flood mitigation works;
- roads; and
- water storage facilities.

As the site is privately owned, and to limit Council's exposure to a potential claim under the *Land Acquisition (Just Terms Compensation) Act 1991*, Council has recommended that eco-tourist facility also be included as a permitted use for 20 Kanowar Avenue.

The current residential zoning of the site permits a dwelling house. The additional permitted use of eco-tourist facility, even when limited to 12 persons, would increase the population density of the site compared to the current residential permissibility.

The RFS states it does not support increases of population densities in bushfire prone areas. It is considered that Council's proposed eco-tourist facility would be inconsistent with this advice and it is recommended the additional permitted use of eco-tourist facility does not proceed as part of the proposal. To allow an appropriate use of the land while limiting Council's exposure to potential land acquisition, the additional permitted use of dwelling house is recommended on the site. This is consistent with the existing development potential of the site and will ensure consistency with the RFS's advice to not increase population density.

Additional post-exhibition changes to the minimum lot size and height of building controls is required associated with this amendment (the site was not exhibited with these controls). A minimum lot size of 30,000m<sup>2</sup> has been applied to the 2.8ha site to restrict any future subdivision of the land, while a maximum height of building limit of 9.5m has also been applied, consistent with surrounding height controls.

Council was consulted on the post-exhibition changes to the additional permitted use, minimum lot size and maximum height of building and is satisfied with the instrument and post-exhibition changes (**Attachment I**).

### **Amendment to Killara High School, East Killara**

Part of the school site was exhibited as E4 Environmental Living. After a submission made by the Department of Education requested the site be zoned R2 Low Density Residential, Council resolved to rezone the land to SP2 Education Establishments. This post-exhibition amendment is supported as most of the site is already zoned SP2 Educational Establishment (outside the deferred area) and is consistent with the zoning of schools across the LGA.



## **2 Forde Place and 41 Curtain Avenue, North Turramurra**

The land (12m<sup>2</sup>) is a small substation and is proposed to be zoned E4 Environmental Living; however, the minimum lot size of 1,500m<sup>2</sup> was omitted in error from the exhibition. The application of this lot size is considered appropriate as it is consistent with the application of lot size zoning on E4 Environmental Living zoned land in the area and is a minor mapping error.

## **Pre-exhibition amendment to 118a Koola Avenue, East Killara**

The current zoning of the site is public open space under the KPSO, and the planning proposal submitted for Gateway determination proposed the site under Council's care and control be rezoned to E4 Environmental Living in error. Council reviewed the proposal and corrected this error prior to exhibition by amending the proposed rezoning of the existing bushland reserve to E2 Environmental Conservation. The change is supported as it better reflects the bushland reserve status of the site.

## **Re-exhibition of proposal not required**

Re-exhibition of the planning proposal is not considered necessary as:

- the extent of the post-exhibition changes more accurately reflects the development potential of the land;
- changes made to the planning proposal are in response to agency and public submissions or are obvious minor errors; and
- the post-exhibition changes to the sites and the land uses do not alter the overall intent or objectives of the planning proposal.

## **9. ASSESSMENT**

### Revised Draft North District Plan

The plan was released in October 2017, after the Gateway determination was issued.

The proposal is considered generally consistent with the plan, specifically:

- *Planning Priority N5 – Providing housing supply, choice and affordability, with access to jobs and services.* The plan highlights the need to locate housing in the right location, and in Ku-ring-gai's existing centres. The proposal is responsive to this priority by applying zoning controls that will locate housing density in appropriate locations based on land constraints.
- *Planning Priority N16 – Protecting and enhancing bushland and biodiversity and Planning Priority N22 – Adapting to the impacts of urban and natural hazards.* The proposal is consistent with these priorities as it seeks to identify existing bushland and apply the appropriate E zones. The proposal also appropriately rezones land to account for bushfire evacuation risk, reflecting the RFS's recommendations.

### Section 117 Direction 3.1 Residential Zones and section 117 Direction 3.4 Integrating Land Use and Transport.

The Gateway determination and letter issued on 27 June 2016 (**Attachment C**) stated the planning proposal's inconsistencies with these Directions are of minor significance and were agreed to by the Secretary's delegate. No further approval is required in relation to these Directions.

The Gateway determination required that the planning proposal, prior to public exhibition, demonstrate consistency with Directions 2.3 Heritage Conservation, 6.2 Reserving Land for Public Purposes and 4.4 Planning for Bushfire Protection.

### Section 117 Direction 2.3 Heritage Conservation

Council has demonstrated consistency with this Direction by including the required additional information in the proposal.

### Section 117 Direction 4.4 Planning for Bushfire Protection

Due to the nature of the proposal and because many of the areas are identified as bushfire-prone land, consultation with the RFS was required as a Gateway condition.

Council has consulted with the RFS (**Attachments E and E1**). The proposal's inconsistency with this Direction is justified as the proposal has been drafted to be consistent with the advice received from the RFS.

### Section 117 Direction 6.2 Reserving Land for Public Purposes

To satisfy this Direction, Council has consulted with Roads and Maritime Services (RMS). RMS raised no objection to the removal of specific road reservations (**Attachment D**). The amended planning proposal is considered justifiably inconsistent within the terms of this Direction as RMS has confirmed the road reservations are no longer required.

### State environmental planning policies

The draft LEP is consistent with relevant SEPPs and deemed SEPPs.

## **10. MAPPING**

LEP maps (**Attachment Maps**) and GIS data have been checked by the Department's regional team, ePlanning team and Council, and have been sent to Parliamentary Counsel ready for gazettal.

## **11. CONSULTATION WITH COUNCIL**

Council was consulted on the terms of the draft instrument. On 1 November, Council confirmed that it was satisfied with the draft and that the plan should be made, including the regional team's change to the additional permitted use from eco-tourist facility to dwelling house at 20 Kanowar Avenue, East Killara (**Attachment I**).

## **12. PARLIAMENTARY COUNSEL OPINION**

On 20 October 2017, Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made (**Attachment PC**).



### 13. RECOMMENDATION

It is recommended that the Greater Sydney Commission's delegate determine to make the draft LEP because:

- It will resolve 13 deferred areas in the Ku-ring-gai Local Environmental Plan 2015;
- it aims to provide appropriate land-use zonings and associated development standards, recognising high bushfire evacuation risks;
- it is consistent with the Revised Draft North District Plan; and
- the evacuation risk that applies to these areas of Ku-ring-gai justifies the application of the E4 Environmental Living Zone to limit increases in population and vulnerable land uses. This will play an important role in protecting life, limiting property damage and minimising risk to emergency workers during future bushfire incidents.

Endorsed:



27/11/17

**Craig Diss**  
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**Planning Services**