



PCU51353

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New South Wales Government
Department of Planning and Infrastructure

Mr Tim Archer A/ Regional Director
Sydney Region East
Planning Operations and Regional Delivery
Level 3 4-6 Bligh Street
Sydney NSW 2000

Department of Planning
Received
17 FEB 2014
Scanning Room

10 2 2014

Dear Mr Archer

Rezoning of Unformed Road

Regarding: **E/P 75 Agenda MMC 3 12 2013** Mosplan reference BE. 01
Wyargine Point – Response to Notice of Motion

I mailed the following documents to your office on 2 12 2013 and to date have not received acknowledgement nor a reply. I would greatly appreciate a communication from your department noting receipt .

Please contact me if you require further information

Paul Delprat

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Mr Tim Archer A/ Regional Director
Sydney Region East
Planning Operations and Regional Delivery
Level 3 4-6 Bligh Street
Sydney NSW 2000

2 12 2013

Dear Mr Archer

Rezoning of Unformed Road

Regarding: **E/P 75 Agenda MMC 3 12 2013** Mosplan reference BE. 01
Wyargine Point – Response to Notice of Motion

Please find enclosed a letter of objection that I have submitted to Mosman Municipal Council regarding the proposed rezoning by council of our sole street frontage; unformed Stanton Road.

The rezoning is listed on the council agenda to be determined at the Council Meeting of 3 12 2013

For your convenience I also enclose copies of the relevant pages on the agenda

Please contact me if you require further information

Paul Delprat

Paul Delprat
22B Burran Avenue,
Mosman 2088.
Tel. 99602460

The General Manager,
Ms. Veronica Lee
Mosman Municipal Council,
Mosman Square
Spit Junction
2 12 2013

Regarding: **E/P 75 Agenda MMC 3 12 2013** Mosplan reference BE. 01
Wyargine Point – Response to Notice of Motion

Dear General Manager,

My family is deeply concerned.
We object strongly to this action by Mosman Council

This Item on the council agenda recommends the proposed rezoning of unformed Stanton Road, adjacent to our property, 22B Burran Avenue.

We object to this precipitous action which has the effect of preventing us from achieving proper vehicular access at any point over the entire length of our sole frontage, unformed Stanton Road.

It has been established in a recent court case that unformed Stanton Road is a public road and my property has a legal right to access over it. This was part of a determination by the Land and Environment Court regarding our recent application; (Blakeney v Mosman Council, Citation 2013 NSW LEC 100), in which we attempted to achieve access. We lost in this case, on points of merit regarding the form and design of the access. There were no legal points preventing a further application, which is currently in train.

This case followed a catalogue of admitted Council delays and inexplicable errors dating from our initial "Approval in Principal" in 1993. Twenty years would surely make this one of the longest longest running Development Application in the history of NSW. This in itself surely warrants an examination by The Department of Planning.

There is no need for this rezoning. In our opinion and advice this action is unfair, and inequitable.

Paul Delprat

It is of note that we received no notice by mail or any other means from council regarding this item. This is in the face of its direct bearing on my property which is mentioned in the report.

Copy to NSW Dept of Planning and Infrastructure

EP/75

Wyargine Point - Response to Notice of Motion

Circulations



**Planning &
Infrastructure**

Contact: Sandy Shewell
Phone: (02) 8575 4115
Email: sandy.shewell@planning.nsw.gov.au
Postal: GPO Box 39 SYDNEY NSW 2001

Ms Veronica Lee
General Manager
Mosman Council
PO Box 211
SPIT JUNCTION NSW 2088

Dear Ms Lee

On 22 October 2013 you wrote to request inclusion of the unformed area of Stanton Rd at Wyargine Point in the *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005* (Harbour SREP) and *State Environmental Planning Policy 19 – Bushland in Urban Areas* (Bushland SEPP).

As you would be aware the new Planning Bill 2013 was introduced into the NSW parliament on 22 October 2013. This legislation will provide for a new world class planning system for NSW that is simpler, strategic, more certain and focussed on improving outcomes for the community.

The new planning reforms will include a review of the Government's planning policies such as existing SREPs and SEPPs, including the Bushland SEPP and Harbour SREP. As part of the new reforms NSW Planning Policies will be prepared for the State, including a policy on environment and heritage which will address sensitive environmental and heritage areas. This review will include mandatory public exhibition during preparation of the draft policies, which will provide Mosman Council an opportunity to have input into all of the NSW Planning Policies.

I have forwarded your request to the appropriate area within the Department for early consideration.

If you have any further enquiries about this matter, I have arranged for Ms Sandy Shewell of the Department's Sydney East Planning Teams to assist you. Ms Shewell can be contacted on 02 8575 4115.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Tim Archer".

8.11.13

Tim Archer
A/ Regional Director
Sydney Region East
Planning Operations and Regional Delivery

Bligh Street Office: Level 3, 4-6 Bligh Street, Sydney NSW 2000
Telephone: (02) 9228 6111

GPO Box 39 Sydney NSW 2001
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10. ENVIRONMENT AND PLANNING DEPARTMENT REPORTS

EP/75 Wyargine Point - Response to Notice of Motion

MOSPLAN REF: BE.01

REPORT BY: Manager Urban Planning

SUMMARY

Report in response to a Notice of Motion on Wyargine Point

OFFICER'S RECOMMENDATION

The Acting Director Environment and Planning recommends that Council review the zoning of bushland areas currently zoned RE1 Public Recreation with a view to preparing a planning proposal to rezone suitable land to E2 Environmental Conservation.

BACKGROUND

The purpose of this report is to respond to Part E of a Notice of Motion (NM/20) submitted by Councillor Bendall at the meeting of 3 September 2013, where it was resolved in part:

"That Council:

- E. Generate a report for the December 2013 or earlier meeting incorporating the plan envisaged in C and produce planning proposals to*
- a. To include the unformed area of Stanton Rd that was the subject of the dispute, in the Sydney Regional Environmental Plan (Sydney Harbour catchment) 2005 as articulated in point 31 of the Judgement and the Foreshore Scenic Protection Area under the REP.*
 - b. To facilitate the area being included in SEPP 19 Bushland in Urban Areas.*
 - c. To consider re- zoning the unformed section of Stanton Rd to E2 in recognition of the spirit of this motion, thus protecting the area and its surrounds for future generations, recognising its environmental, heritage, ecological potential, and value to the residents of Mosman."*

NB The part of the resolution that refers to C is being dealt with separately.

REPORT

The unformed area of Stanton Road to which this resolution applies, is located adjacent 22B Burran Avenue and Wyargine Reserve. The area contains a mixture of native trees, exotic species and weeds as well as a natural watercourse that has been modified to facilitate its drainage function and a public pathway and stairs. This area of land is owned by Council and is zoned RE1 - Public Recreation under Mosman Local Environmental Plan 2012.

Sections a. and b. of Part E of the resolution refer to the production of planning proposals to amend:

- Sydney Regional Environmental Plan (REP) (Sydney Harbour Catchment) 2005
- State Environmental Planning Policy (SEPP) 19 - Bushland in Urban Areas

The *Environmental Planning and Assessment Act 1975* includes provision for planning proposals to be prepared to amend local environmental plans. They are not the mechanism for amending State policy. The Sydney REP and SEPP referred to above are both State policies and any amendments can only be initiated and undertaken by the State.

A letter was sent to the Department of Planning and Infrastructure on 22 October 2013 advising of Council's resolution and a response was received on 8 November 2013 (copy attached). The Department of Planning and Infrastructure advises that new Planning Policies will be prepared as part of the new planning system, including one on environment and heritage which will address sensitive environmental and heritage areas. Council will be given the opportunity to input into all new NSW Planning Policies and Council's request has been forwarded to the appropriate area within the Department.

Potential rezoning of unformed Stanton Road

Section c. of Part E of the resolution requires consideration of rezoning the unformed area of Stanton Road to E2 Environmental Conservation. The site is currently zoned RE1 Public Recreation which allows a limited range of land uses albeit more than the E2 zone, notably allowing "roads".

There are a number of sites in Mosman that have the E2 zoning, including Lawry Plunkett Reserve, parts of Reid Park, Parriwi Reserve, the rear part of Balmoral Park, parts of Sirius Park and Wyargine Reserve. This zoning recognises the need to protect areas of high ecological, scientific, cultural or aesthetic values and this is reflected in the objectives for the zone.

The zoning of the subject site has a complicated and lengthy history going back to 1998 when it was first zoned 7(a) Environment Protection (Bushland). Prior to that it was unzoned, like all roads in Mosman.

In the preparation of Council's current Mosman Local Environmental Plan (MLEP 2012), Council investigated the potential to zone a number of unmade roads to E2 – Environmental Conservation in recognition of their environmental significance. A comprehensive analysis of the unmade roads and other areas of open space was undertaken to consider the significance of the bushland. To provide evidentiary support a Flora and Fauna Survey was undertaken by expert consultants in 2007. The study's description of the subject site was:

"A Cosmopolitan plant community occurs over the majority of the subject site from the edge of the made Stanton Road up to the lower section of the east-west pathway of unmade Fairfax Road and over the drainage line. A cosmopolitan plant community is described in the current survey as 'Generally a mix of weed infestations, native and exotic plantings, and regrowth native vegetation including occasional native trees. As a result of the adjacent residential development the original native vegetation of the Cosmopolitan plant community has mostly been cleared. The present plant community is characterised by occasional regrowth native trees, planted non-locally endemic native tree species, planted locally endemic shrubs and groundcovers and exotic horticultural plantings in encroaching garden beds. Weed density is high in this plant community and herbaceous annual and perennial weeds are present in the groundcover stratum. In summary the overall quality of bushland of the subject site is low to moderate.'"

The draft Mosman LEP 2007 that was adopted by Council for exhibition zoned the subject site E2 with an additional permitted use to allow "pedestrian and vehicular access". This approach was applied to five sites that were proposed to be zoned E2 that adjoined residential properties

requiring vehicular access across the unmade road. This draft plan was submitted to the Department of Planning in July 2007 for approval to exhibit. The subsequent granting of approval to exhibit by the Department was conditional upon the subject site (and the other identified road reserves) being zoned RE1 Public Recreation. Following the exhibition period and considerable community objection to the Department's position the Department agreed to allow the reinstatement of an environment protection zone to land previously so zoned, with the exception of the subject site.

It is considered that there are four options for zoning the subject site:

1. Retain the existing RE1 Public Recreation zoning

The objectives of the RE1 zone are:

- To enable land to be used for public open space or recreational purposes
- To provide a range of recreational settings and activities and compatible land uses
- To protect and enhance the natural environment for recreational purposes
- To protect and enhance areas of ecological, scientific, cultural and aesthetic values
- To maintain and provide visual open space links to a diversity of public and private spaces and facilities as an integral part of the open space system
- To recognise the visual, aesthetic and amenity importance of bushland

These objectives not only provide for recreational uses but also recognise the importance of RE1 land for protecting bushland and the natural environment. Council owns the subject site and is the consent authority thus ensuring another level of protection regarding any future development on the site.

2. Rezone the site E2 Environmental Conservation with provision to allow vehicular and pedestrian access

The objectives of the E2 Environmental Conservation zone are:

- To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values
- To prevent development that could destroy, damage or otherwise have an adverse effect on those values
- To conserve native plant and animal species through the maintenance of suitable habitats
- To contribute to the scenic quality of Mosman and Sydney Harbour

This approach would be consistent with Council's intention five years ago and consistent with the existing situation in MLEP2012 in which the road reserve zoned E2 that adjoins 14 Amaroo Crescent (known as 3 Windward Avenue) has provision to allow a "road" for the purpose of access to that property.

3. Rezone the site E2 Environmental Conservation

This option would have the effect of prohibiting any vehicular access over the site. It would be inconsistent with the zoning of road reserves adjoining residential land where the reserve provides access. It would however, recognise the particular topographical features of the subject site and the impact of development on the site.

4. Undertake a co-ordinated review of the need to rezone RE1 land, including unmade roads

In the preparation of the current MLEP 2012 it was proposed to rezone a significant number of sites to E2. Rather than focussing on just one site, a broader, co-ordinated approach to

planning for the future use and protection of Mosman's bushland assets would ensure a better planning outcome. Planning proposals are a reasonably resource hungry process. The land in question does not appear to be under immediate threat. If this option was pursued it could be included in the work program within MOSPLAN at the next review in early 2014.

Conclusion

It is considered that if Council wanted to pursue the preparation of a planning proposal to afford some of its bushland a higher level of protection under the LEP then Option 4 above should be proceeded with.

Recommendation endorsed by General Manager.

ATTACHMENTS

Circulations

- Response from the NSW Department of Planning and Infrastructure