

Planning Proposal
For
Unformed Stanton Road



February 2014

1.0 Introduction

This Planning Proposal relates to a site comprising the unformed section of Stanton Road Reserve which is located close to the foreshore of Middle Harbour in Mosman. The site has an area of approximately 1,250m² and adjoins Wy-ar-gine Reserve and No.22B Burran Avenue. The Planning Proposal seeks to rezone the site from RE1 – Public Recreation to E2 – Environmental Conservation, which is consistent with the zoning of the adjoining Wy-ar-gine Reserve.

The site is owned by Council and contains a cosmopolitan plant community 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. The site also contains a natural watercourse that has been modified to facilitate its drainage function and a public pathway and stairs which provide pedestrian access to Edwards Beach.

1.1 Background

The site may be culturally significant due to its association with providing a means of access to Edwards Beach and Wy-ar-gine Reserve. Records and documents confirm that public use of the unformed road had commenced prior to 1920¹. The *Aboriginal Heritage Study of the Mosman Local Government Area* (2005) does not identify the site as containing any item of Aboriginal heritage, however, the surrounding area including Wy-ar-gine Reserve and Balmoral Beach are identified as containing items of Aboriginal heritage.

The site was previously zoned 7(a) Environmental Protection (Bushland) under the provisions of Mosman Local Environmental Plan 1998. In the preparation of draft Mosman LEP 2007, Council sought to have the site as well as the adjoining Wy-ar-gine Reserve zoned E2 – Environmental Conservation. The subsequent granting of approval for exhibition by the Department of Planning and Infrastructure (the Department) was conditional upon the subject site and the adjoining Wy-ar-gine Reserve 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 environmental protection zone to Wy-ar-gine Reserve but not the subject site.

At various times over the past 20 years, the owner of an adjoining site (No.22B Burran Avenue) has sought development consent to provide vehicular access to the rear of his site over the unformed section of Stanton Road (the subject site). While the property at 22B Burran Avenue lacks any frontage to a formed public road, it has the benefit of a right of way over adjoining land at 24 Burran Avenue. The right enjoyed over the latter property not only includes a right of general passage but also includes a right to park motor vehicles using or associated with No.22B Burran Avenue².

The most recent Development Application (8.2012.63.1) lodged for the provision of vehicular access through unformed Stanton Road was refused by Council on 20 November 2012. The applicant appealed this decision to the Land and Environment Court (*Blakeney v Mosman Council* (No 2) (2013) (NSWLEC 100)). The Court dismissed the appeal on 11 July 2013 (Refer to Attachment 3 for copy of this judgment).

^{1,2} *Blakeney v Mosman Council* (No 2) (2013) (NSWLEC 100)

Council at its meeting of 3 December 2013 considered a report (refer to Attachment 4) on Wy-ar-gine Point in response to a Notice of Motion and resolved:

That

- A. 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 as outlined in option 4 of the report*
- B. Council liaise with relevant stakeholders in identification and preparation of the planning proposals outlined in A*
- C. Council concurrently prepare a Planning Proposal for rezoning unformed Stanton Rd E2 Environmental conservation to rationalize zoning on Wy-ar-gine reserve as outlined in option 3, and update its Flora and Fauna survey examining both current and future potential of the site.*
- D. Council include in the proposal in C, the historic and cultural significance of the site.*
- E. A progress report be prepared for the April 2014 meeting with an update on progress of the matters raised in C*
- F. Council note the correspondence from the Department of Planning in regard to the inclusion of the Wy-argine reserve in the SREP and make further inquiries to the Department in light of the stalled progress of the Planning Bill."*

2.0 Objectives or Intended Outcomes

The objective or intended outcome of the Planning Proposal is to provide a greater level of protection to an area of potentially high ecological, social and aesthetic values and to prevent development that could have an adverse effect on those values.

3.0 Explanation of Provisions

The site is currently zoned RE1 – Public Recreation under the provisions of Mosman LEP 2012. To achieve the intended outcome it is proposed to amend Mosman LEP 2012 Land Zoning Map to rezone the subject site to E2 – Environmental Conservation.

4.0 Justification

Section A - Need for the Planning Proposal

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

A local government area wide Flora and Fauna Survey was undertaken in 2006. An updated Flora and Fauna Survey which focused on the subject site was undertaken in February 2014 (refer to Attachment 2). This report found that the proposed E2 – Environmental Conservation zone is the most appropriate zoning for the site.

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

The Planning Proposal is the best means of achieving the intended outcome as it will ensure that the site is protected from development and allow for appropriate vegetation management to be undertaken. The Vegetation Management Plan 2004 (VMP) which applies to the site acknowledges that a proposed driveway is under consideration and that works should not be undertaken until the future of the land's tenure has been decided. Given that the Land and Environment (Blakeney v Mosman Council (No 2) (2013) (NSWLEC 100)) has refused the development application for a driveway, it is now appropriate to consider a change in zoning to E2-Environmental Conservation, to reflect this decision.

Further, rezoning the site to E2-Environmental Conservation would provide a consistent approach to the zoning of potentially environmentally significant bushland by applying the same zoning as the adjoining Wy-ar-gine Reserve.

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

The Planning Proposal is consistent with the Sydney Metropolitan Strategy, specifically *Objective 23 - Protect, enhance and rehabilitate our biodiversity*. This objective identifies the following policies:

"Land and waterways of high conservation and biodiversity value will be protected;

Fragmentation of habitat will be avoided and green corridors will connect habitats; and Opportunities to maintain, rehabilitate and/or create new habitats will be encouraged"

Actions to achieve these policies include:

- *protecting and conserving Sydney's high conservation lands; and*
- *regenerating degraded bushland*

The Planning Proposal will assist in achieving these policies and actions as it presents an opportunity to facilitate the protection and regeneration of an area of bushland. The attached updated Flora and Fauna Survey (2014) notes that:

"Following the Land and Environment Court's decision, and if Council's proposed zoning change goes ahead, the future of the Lot will be secure and further vegetation management actions can be implemented under the VMP. With an increase in works across the subject site it is likely that further native species will regenerate from seed, seedlings will become established and natural regeneration will be augmented with revegetation. All of which will improve the ecological health of the site."

The draft Inner North Subregional Strategy in Section E2.2 – *Protect Sydney's Unique Diversity of Plants and Animals*, identifies that *"bushland reserves still support significant terrestrial and aquatic biodiversity, close to urban development that must be protected."*

Further, E2.21 identifies that *"this draft Subregional Strategy complements existing State Government initiatives to protect biodiversity by promoting strategic assessment of biodiversity values early in the planning process. Biodiversity values include threatened species, populations and ecological communities, and their habitats."*

As detailed in the attached updated Flora and Fauna Survey (2014), *"the proposed change in zoning is considered appropriate to protect, manage and restore the area and its ecological and aesthetic values. Future development would be prevented, native flora and fauna and their habitats supported by the subject site and the adjacent Reserve would be conserved and the scenic quality of the area will be enhanced."* Therefore, the Planning proposal is consistent with aims and objectives of the draft Inner North Subregional Strategy.

4.4 Is the planning proposal consistent with a council's local strategy or other local strategic plan?

The Planning Proposal is consistent with Mosman's Community Strategic Plan (Mosplan) 2013-2023 <http://www.mosman.nsw.gov.au/council/plans/MOSPLAN>

The Plan identifies 10 year strategies which include:

*"2. Preserve and enhance biodiversity on both public and private land, including Mosman's urban forests, bushland, reserves, open space, beaches, intertidal zone and the marine environment."*³

The Planning Proposal will facilitate the preservation and enhancement of biodiversity of public bushland by applying an E2 – Environmental Conservation zoning to the subject site.

³ Mosplan, pg 142

4.5 Is the planning proposal consistent with applicable State Environmental Planning Policies?

The Planning Proposal is consistent with State Environmental Planning Policies (SEPP's). Refer to Attachment 1.

State Environmental Planning Policy 19 – Bushland in Urban Areas (SEPP 19) applies to the Mosman Local Government area includes the following aims and objectives:

- (1) The general aim of this Policy is to protect and preserve bushland within the urban areas referred to in Schedule 1 because of:*
 - (a) its value to the community as part of the natural heritage,*
 - (b) its aesthetic value, and*
 - (c) its value as a recreational, educational and scientific resource.*
- (2) The specific aims of this policy are:*
 - (a) to protect the remnants of plant communities which were once characteristic of land now within an urban area,*
 - (b) to retain bushland in parcels of a size and configuration which will enable the existing plant and animal communities to survive in the long term,*
 - (c) to protect rare and endangered flora and fauna species,*
 - (d) to protect habitats for native flora and fauna,*
 - (e) to protect wildlife corridors and vegetation links with other nearby bushland,*
 - (f) to protect bushland as a natural stabiliser of the soil surface,*
 - (g) to protect bushland for its scenic values, and to retain the unique visual identity of the landscape,*
 - (h) to protect significant geological features,*
 - (i) to protect existing landforms, such as natural drainage lines, watercourses and foreshores,*
 - (j) to protect archaeological relics,*
 - (k) to protect the recreational potential of bushland,*
 - (l) to protect the educational potential of bushland,*
 - (m) to maintain bushland in locations which are readily accessible to the community, and*
 - (n) to promote the management of bushland in a manner which protects and enhances the quality of the bushland and facilitates public enjoyment of the bushland compatible with its conservation.*

The Planning Proposal is consistent with these aims and objectives as it will protect bushland within the urban area of Mosman and protect habitats for native flora and fauna, as detailed in the attached updated Flora and Fauna Survey (2014).

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (the Harbour SREP) also applies to the Mosman Local Government area and this includes the following aims:

- (1) This plan has the following aims with respect to the Sydney Harbour Catchment:*
 - (a) to ensure that the catchment, foreshores, waterways and islands of Sydney Harbour are recognised, protected, enhanced and maintained:*
 - (i) as an outstanding natural asset, and*
 - (ii) as a public asset of national and heritage significance,*
 - for existing and future generations,*
 - (b) to ensure a healthy, sustainable environment on land and water,*
 - (c) to achieve a high quality and ecologically sustainable urban environment,*
 - (d) to ensure a prosperous working harbour and an effective transport corridor,*

- (e) to encourage a culturally rich and vibrant place for people,*
- (f) to ensure accessibility to and along Sydney Harbour and its foreshores,*
- (g) to ensure the protection, maintenance and rehabilitation of watercourses, wetlands, riparian lands, remnant vegetation and ecological connectivity,*
- (h) to provide a consolidated, simplified and updated legislative framework for future planning.*
- (2) For the purpose of enabling these aims to be achieved in relation to the Foreshores and Waterways Area, this plan adopts the following principles:*
 - (a) Sydney Harbour is to be recognised as a public resource, owned by the public, to be protected for the public good,*
 - (b) the public good has precedence over the private good whenever and whatever change is proposed for Sydney Harbour or its foreshores,*
 - (c) protection of the natural assets of Sydney Harbour has precedence over all other interests.*

The Planning Proposal is consistent with these aims as it will help to ensure that the catchment of Sydney Harbor is protected as a natural asset by ensuring the rehabilitation of remnant vegetation and ecological connectivity.

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

The Planning Proposal is not inconsistent with any relevant Ministerial Directions (s.117 directions). Refer to Attachment 1.

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

The Planning Proposal would not adversely affect critical habitat or threatened species but may assist in the conservation of threatened species found in the adjoining Wy-ar-gine Reserve by limiting development on the subject site and providing a buffer zone between Wy-ar-gine Reserve and the adjoining residential development.

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

The Planning Proposal would assist in minimising potential environmental effects by restricting development on the land.

4.9 Has the planning proposal adequately addressed any social and economic effects?

The Planning Proposal would not result in any significant social or economic effects.

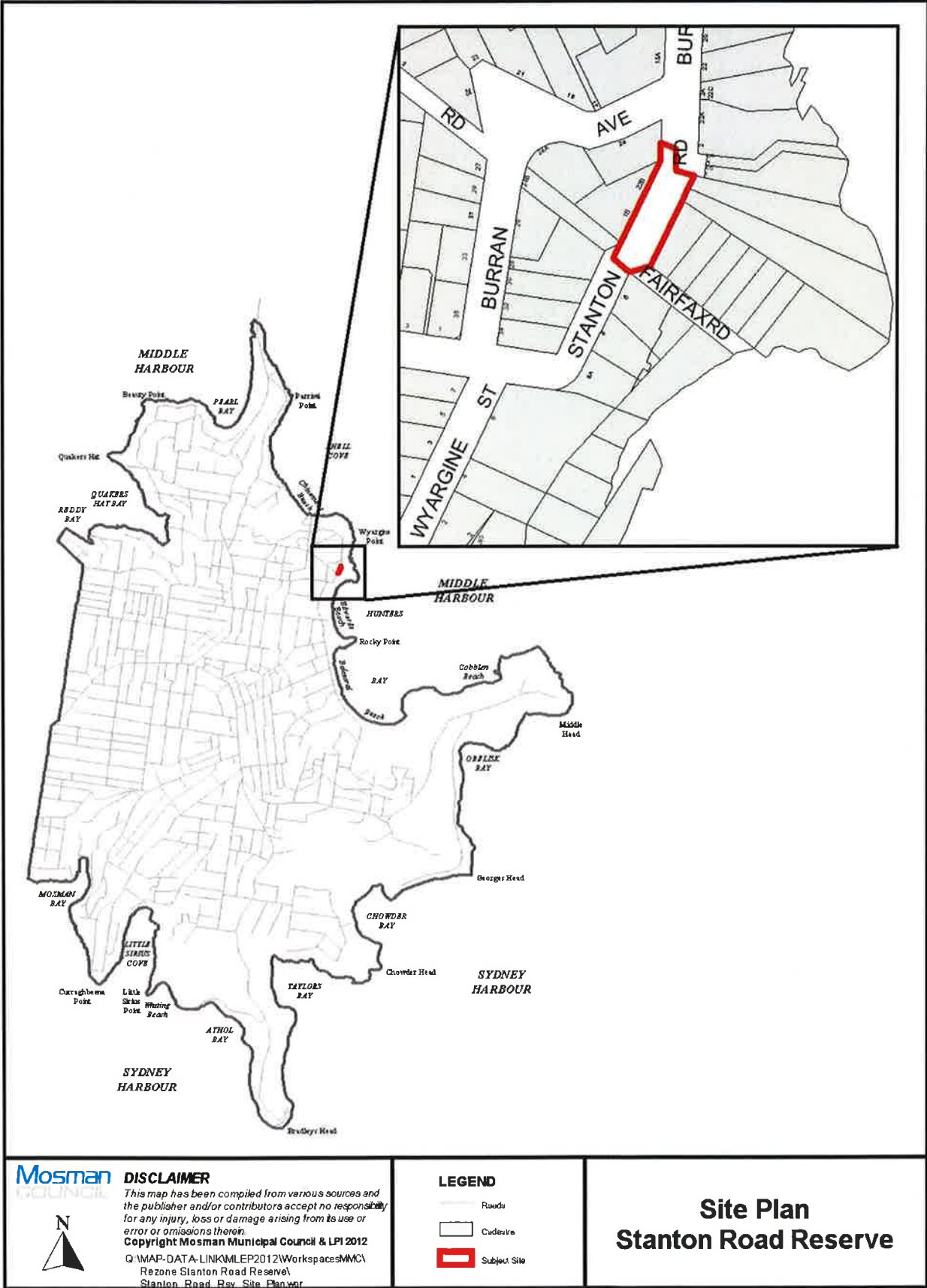
4.10 Is there adequate public infrastructure for the planning proposal?

The Planning Proposal would not require changes to public infrastructure.

4.11 What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

No consultation has been carried out at this stage and it is considered that State or Commonwealth Public Authorities would not need to be consulted due to the local nature of this proposal.

Part 5 – Mapping





Mosman
COUNCIL



DISCLAIMER

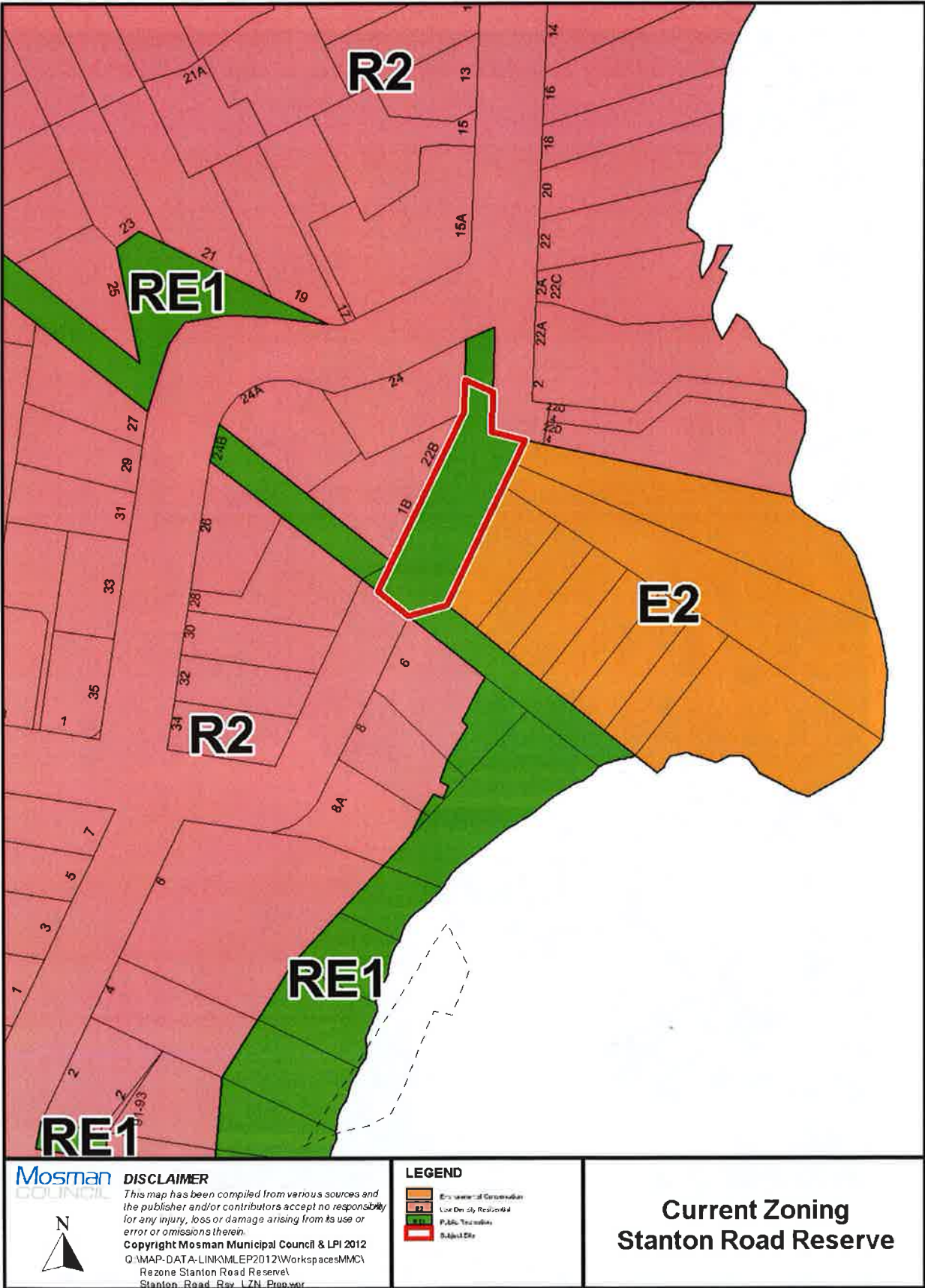
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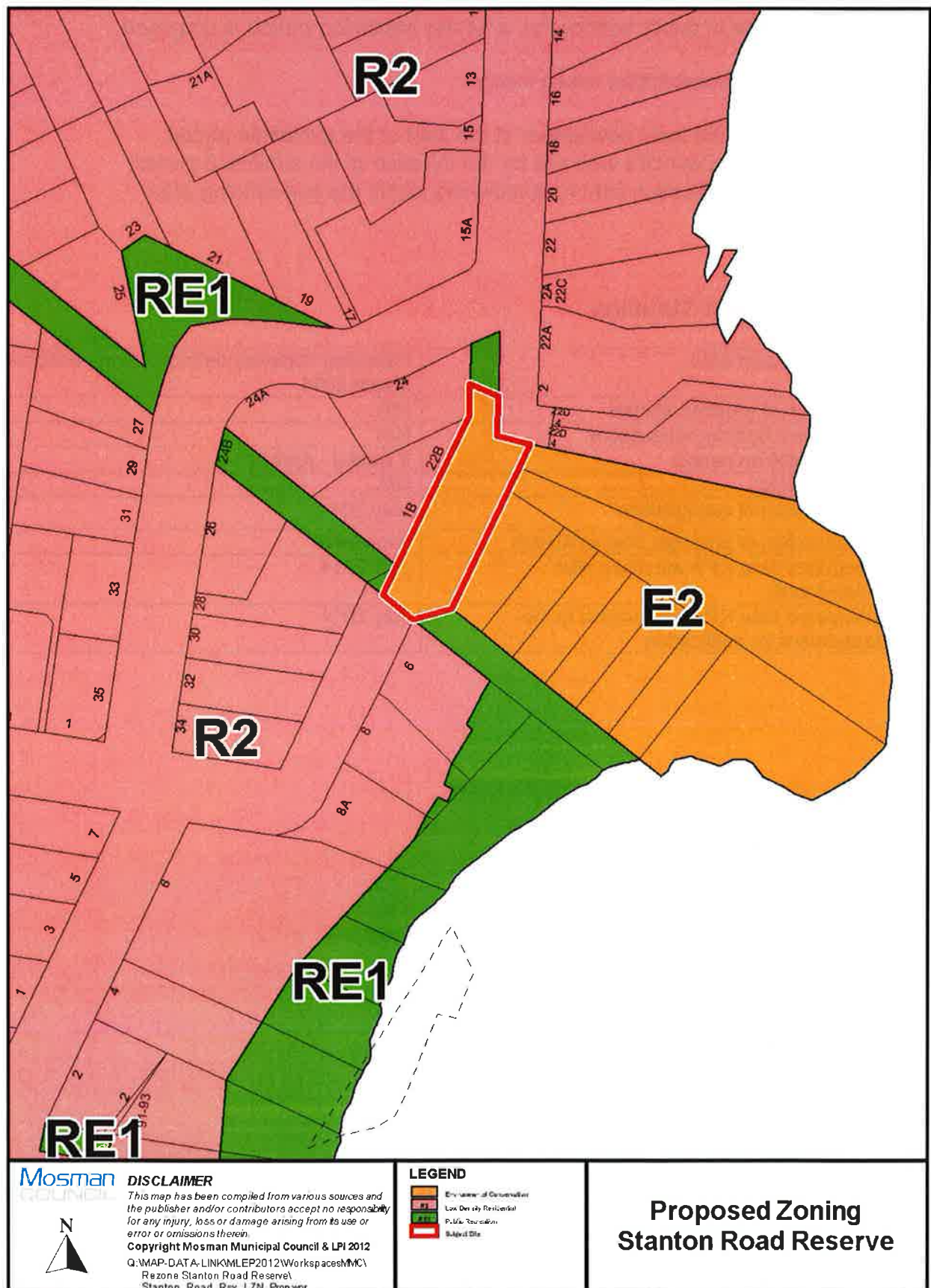
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20 0 20
Meters

**Site Location
Stanton Road Reserve**





Part 6 - Community Consultation

For the purpose of public notification, a 14 day exhibition period is proposed.

The community consultation would involve:

- Notice in the local newspaper at the start of the exhibition period;
- Notice on Council's web site for the duration of the exhibition period;
- Written notification sent to landowners within the surrounding area.

Part 7 – Project Timeline

Commencement date	Following Gateway determination - anticipated March 2014
Completion of required studies	N/A
Government agency consultation	N/A
Public exhibition period	2 weeks - April 2014
Public hearing	N/A
Consideration of submissions	May 2014
Consideration of proposal post exhibition	June 2014
Anticipated date RPA will make plan (if delegated)	July 2014
Anticipated date RPA will forward to the Department for notification	July 2014

ATTACHMENT 1 – CONSIDERATION OF STATE ENVIRONMENTAL PLANNING POLICIES AND SECTION 117 DIRECTIONS

ENVIRONMENTAL PLANNING INSTRUMENTS

A. State Environmental Planning Policies

State Environmental Planning Policies (SEPPs)	(tick only one)			Comment
	Not relevant	Consistent	Justifiably inconsistent	
SEPP 1 – Development Standards	✓			
SEPP 4 – Development Without Consent & Miscellaneous Complying Development	✓			
SEPP 6 – Number of Storeys in a Building	✓			
SEPP 14 – Coastal Wetlands	✓			
SEPP 15 – Rural Landsharing Communities	✓			
SEPP 19 – Bushland in Urban Areas		✓		Will assist in achieving aims of this Policy
SEPP 21 – Caravan Parks	✓			
SEPP 22 – Shops and Commercial Premises	✓			
SEPP 26 – Littoral Rainforests	✓			
SEPP 29 – Western Sydney Recreation Area	✓			
SEPP 30 – Intensive Agriculture	✓			
SEPP 32 – Urban Consolidation (Redevelopment of Urban Land)	✓			
SEPP 33 – Hazardous and Offensive Development	✓			
SEPP 36 – Manufactured Home Estates	✓			
SEPP 39 – Spit Island Bird Habitat	✓			
SEPP 41 – Casino Entertainment Complex	✓			
SEPP 44 – Koala Habitat Protection	✓			
SEPP 47 – Moore Park Showground	✓			
SEPP 50 – Canal Estate Development	✓			
SEPP 52 – Farm Dams and Other Works in Land and Water Management Plan Areas	✓			
SEPP 53 – Metropolitan Residential Development	✓			
SEPP 55 – Remediation of Land	✓			
SEPP 59 – Central Western Sydney Economic and Employment Area	✓			
SEPP 60 – Exempt & Complying Development	✓			
SEPP 62 – Sustainable Aquaculture 2000	✓			
SEPP 64 – Advertising and Signage	✓			
SEPP 65 – Design Quality of Residential Flat Development	✓			
SEPP 70 – Affordable Housing (Revised Schemes)	✓			
SEPP 71 – Coastal Protection	✓			
SEPP (Building Sustainability Index: BASIX) 2004	✓			

A. State Environmental Planning Policies (continued)

State Environmental Planning Policies (SEPPs)	(tick only one)			Comment
	Not relevant	Consistent	Justifiably inconsistent	
SEPP (Housing for Seniors or People with a Disability) 2004	✓			
SEPP (Development on Kurnell Peninsula) 2005	✓			
SEPP (Major Development) 2005	✓			
SEPP (Sydney Region Growth Centres) 2006	✓			
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	✓			
SEPP (Temporary Structures) 2007	✓			
SEPP (Infrastructure) 2007	✓			
SEPP (Kosciuszko National Park – Alpine Resorts) 2007	✓			
SEPP (Rural Lands) 2008	✓			
SEPP (Exempt and Complying Development Codes) 2008	✓			
SEPP (Western Sydney Parklands) 2009	✓			
SEPP (Western Sydney Employment Area) 2009	✓			
SEPP (Affordable Rental Housing) 2009	✓			
SEPP (Urban Renewal) 2010	✓			
SEPP (State and Regional Development) 2011	✓			
SEPP (Sydney Drinking Water Catchment) 2011	✓			
Draft SEPP (Competition) 2010	✓			

B. Deemed State Environmental Planning Policies (formerly regional environmental plans)

Regional Environmental Plans (REPs)	(tick only one)			Comment
	Not relevant	Consistent	Justifiably inconsistent	
Sydney REP 5 – Chatswood Town Centre	✓			
Sydney REP 8 – Central Coast Plateau Areas	✓			
Sydney REP 9 – Extractive Industry (No. 2)	✓			
Sydney REP 11 – Penrith Lakes Scheme	✓			
Sydney REP 13 – Mulgoa Valley	✓			
Sydney REP 16 – Walsh Bay	✓			
Sydney REP 17 – Kurnell Peninsula (1989)	✓			
Sydney REP 18 – Public Transport Corridors	✓			
Sydney REP 19 – Rouse Hill Development Area	✓			
Sydney REP 20 – Hawkesbury-Nepean River (No. 2 1997)	✓			
Sydney REP 24 – Homebush Bay Area	✓			
Sydney REP 25 – Orchard Hills	✓			
Sydney REP 26 – City West	✓			
Sydney REP 28 – Parramatta	✓			
Sydney REP 29 – Rhodes Peninsula	✓			

Planning Proposal for Unformed Stanton

Sydney REP 30 – St Marys	✓			
Sydney REP 33 – Cooks Cove	✓			
Sydney REP (Sydney Harbour Catchment) 2005		✓		Will assist in achieving aims of this Policy

MINISTERIAL DIRECTIONS (COMMENCED ON 19 JULY 2007)

New Ministerial Directions under s.117 of the EP&A Act	(tick only one)			Comment
	Not relevant	Consistent	Justifiably inconsistent	
1.1 Business and Industrial Zones	✓			
1.2 Rural Zones	✓			
1.3 Mining, Petroleum Production and Extractive	✓			
1.4 Oyster Aquaculture	✓			
1.5 Rural Lands	✓			
2.1 Environmental Protection Zones		✓		
2.2 Coastal Protection	✓			
2.3 Heritage Conservation	✓			
2.4 Recreation Vehicle Areas	✓			
3.1 Residential Zones	✓			
3.2 Caravan Parks and Manufactured Home Estates	✓			
3.3 Home Occupations	✓			
3.4 Integrating Land Use and Transport	✓			
3.5 Development Near Licensed Aerodromes	✓			
3.6 Shooting Ranges	✓			
4.1 Acid Sulfate Soils	✓			
4.2 Mine Subsidence and Unstable Land	✓			
4.3 Flood Prone Land	✓			
4.4 Planning for Bushfire Protection	✓			
5.1 Implementation of Regional Strategies	✓			
5.2 Sydney Drinking Water Catchments	✓			
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	✓			
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	✓			
5.5 Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA)	✓			
5.6 Sydney to Canberra Corridor	✓			
5.7 Central Coast	✓			
5.8 Second Sydney Airport: Badgerys Creek	✓			
5.9 North West Rail Link Corridor Strategy	✓			
6.1 Approval and Referral Requirements		✓		
6.2 Reserving Land for Public Purposes		✓		
6.3 Site Specific Provisions		✓		
7.1 Implementation of the Metropolitan Plan for Sydney 2036		✓		

Attachment 2 – Flora and Fauna Survey

Attachment 3 – Copy of Court Judgment

Attachment 4 – Council report of 3 December 2013