



Ku-ring-gai Council

SECTION 59 PLANNING REPORT

**To list 'Glen Brae' 28 Cook Road,
Killara as a heritage item of local
significance**

April 2016

Planning proposal details:

PP_2015_KURIN_005_00

Planning proposal summary:

To amend the Ku-ring-gai Local Environmental Plan 2015 to include 'Glen Brae' 28 Cook Road, Killara as a heritage item of local significance within Schedule 5 and on the associated Heritage Map Sheet.

Date of Gateway determination:

28 January 2016

3.0 SUMMARY

Relevant background issues and rationale for proceeding with the proposal:

A development application was submitted to Ku-ring-gai Council on the 26th of March 2015 proposing demolition of existing structures to construct new dwelling including garage, pool and associated landscaping. Ku-ring-gai Council received a number of submissions in relation to the subject property requesting and/or supporting its listing as a heritage item.

On 21 April 2015 Council resolved to make an interim heritage order over 28 Cook Road, Killara. The interim heritage order came into effect on 24 April 2015. The IHO provided Council with time to undertake further historical research of the property to establish if it warrants a formal heritage listing.

An independent heritage assessment of 28 Cook Road Killara (Lot 3, DP 516966) has been undertaken by the heritage consultants Conroy Heritage Planning and found it is of local heritage significance and should be included as a heritage item under Schedule 5 and on the heritage map of the Ku-ring-gai Local Environmental Plan 2015 (KLEP 2015).

At its meeting held on 8 September 2015, Council resolved to prepare a planning proposal to include the property in Schedule 5 of the KLEP 2015 as an item of local environmental heritage.

The proposal was referred to the NSW Office of Environment and Heritage (OEH) for comment prior to submitting the planning proposal to Gateway.

The Gateway Determination was issued on 28 January 2016 (Appendix 2). Council was given delegation to make the plan under section 59 of the *Environmental Planning and Assessment Act 1979*.

The planning proposal was placed on exhibition between 12 February 2016 and 11 March 2016.

At its meeting of 5 April 2016 Council considered the submissions received during the public exhibition and resolved that the planning proposal should proceed without variation.

The rationale for proceeding with the planning proposal is to ensure that Ku-ring-gai's heritage is protected.

Zones/development standards to be amended:

The zoning and development standards applying to the site are not proposed to be amended as a result of this planning proposal.

Key exhibition dates:

The planning proposal was exhibited between 12 February 2016 and 11 March 2016.

Main points raised in submissions:

A total of 2 submissions were received. Both submissions were in support of listing the property in Council's Local Environmental Plan as a heritage item.

Summary of any key amendments made to the planning proposal as a consequence of public exhibition or agency consultation:

No changes were made to the planning proposal as a result of the submissions made during the public exhibition or agency consultation.

4.0 GATEWAY DETERMINATION

Date Determination issued:

28 January 2016

Timeframe for completion of proposal:

4 August 2016

Was the Gateway determination subject to a review request, if so what were the outcomes of that request?

No

Have the conditions included in the Gateway Determination been complied with, if not, what is the justification for the non-compliance, and what are the impacts non-compliance may/will have on the LEP?

Yes, the conditions 1 - 4 included in the gateway determination have been complied with.

5.0 COMMUNITY CONSULTATION

Dates of exhibition:

The planning proposal was exhibited in accordance with the Gateway Determination for 28 days from 12 February 2016 to 11 March 2016.

Number of submissions received:

A total of 2 submissions were received.

Issues raised during exhibition:

All submissions were in support of the proposal to list 28 Cook Road, Killara as a local heritage item. One of these submissions was from the current owner.

Responses to issues:

No issues were raised during the exhibition. The support for the planning proposal is noted and accordingly no changes to the planning proposal are recommended.

Was the Planning Proposal re-exhibited, if so, provide all relevant details as above?

The planning proposal was not required to be re-exhibited.

Were the consultation requirements included in the Gateway Determination complied with?

Yes. Conditions 1 and 2 of the Gateway determination outlined the requirements for community and public authority consultation.

The planning proposal was exhibited for a period of 28 days in accordance with condition 1(a).

The public exhibition, notice and material made available during the public exhibition was in accordance with that identified in section 5.5.2 of *A Guide to*

Preparing Planning LEPs (Planning and Infrastructure 2013) and satisfies the requirements of condition 1(b).

Condition 2 outlined that consultation with public authorities under section 56(2)(d) of the EP&A Act is not required, as Council had consulted with the Office of Environment and Heritage prior to the issuing of the Gateway.

Were amendments made to the Planning Proposal in response to the issues raised during public exhibition?

No amendments were required to be made to the planning proposal as a result of the issues raised during public exhibition.

6.0 VIEWS OF PUBLIC AUTHORITIES

Which agencies were consulted?

Condition 2 of the Gateway determination outlined that consultation with public authorities under section 56(2)(d) of the EP&A Act is not required.

However, prior to submitting the planning proposal to the Department of Planning and Environment for Gateway determination, Council referred the proposal to the Heritage Division of the NSW Office of Environment and Heritage (OEH) for comment.

Which agencies provided a response?

The Heritage Division of the Office of Environment and Heritage

What were the views of those agencies?

The OEH raised no objection, and made the following comments:

“Heritage listings provide statutory protection to assist with conservation and management of significant places. The Heritage Council of NSW supports the listing of items of local heritage significance where they are supported by a robust heritage assessment.

In this regard, the proposal is based upon a comprehensive heritage assessment that sufficiently demonstrates how the property meets the significance criteria for

local heritage listing. The Heritage Council of NSW therefore supports the inclusion of Glen Brae as a heritage item in Schedule 5 of the Ku-ring-gai Local Environmental Plan 2015."

How were any objections or issues resolved?

There were no objections or issues to resolve as a result of agency consultation.

Did agency consultation occur in accordance with the requirements of the Gateway determination?

Condition 2 of the Gateway determination outlined that consultation with public authorities under section 56(2)(d) of the EP&A Act is not required.

What amendments were made to the Planning Proposal to respond to the issues raised by agencies?

No amendments were required to be made to the planning proposal in response to the issues raised by agencies.

7.0 CONSISTENCY WITH S.117 DIRECTIONS AND OTHER STRATEGIC PLANNING DOCUMENTS

Is the planning proposal consistent, justifiably inconsistent or inconsistent with all relevant s117 Directions?

Direction	Consistency
1.1 Business and Industrial zones	Not relevant
1.2 Rural zones	Not relevant
1.3 Mining, Petroleum and Extractive Industries	Not relevant
1.4 Oyster Aquaculture	Not relevant
1.5 Rural Lands	Not relevant
2.1 Environment Protection Zones	Not relevant
2.2 Coastal Protection	Not relevant
2.3 Heritage Conservation	Consistent. The objective of the planning proposal is to conserve the environmental heritage of Ku-ring-gai by including the subject property as a local heritage item within Schedule 5 of the KLEP 2015.
2.4 Recreation Vehicle Areas	Not relevant
3.1 Residential Zones	Consistent. The planning proposal relates to an existing dwelling, and in this regard will not adversely impact on housing choice, infrastructure or the environment.
3.2 Caravan Parks and Manufactured Home Estates	Not relevant
3.3 Home Occupations	Consistent. The planning proposal will not preclude the carrying out of a home occupation.
3.4 Integrating Land Use and Transport	Not relevant
3.5 Development Near Licensed Aerodromes	Not relevant
3.6 Shooting Ranges	Not relevant
4.1 Acid Sulfate Soils	Not relevant
4.2 Mine Subsidence and Unstable Land	Not relevant
4.3 Flood Prone Land	Not relevant

4.4 Planning for Bushfire Protection	Not relevant
5.1 Implementation of Regional Strategies	Not relevant
5.2 Sydney Drinking Water Catchments	Not relevant
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	Not relevant
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	Not relevant
5.5 Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA)	Revoked 18 June 2010
5.6 Sydney to Canberra Corridor	Revoked 10 July 2008
5.7 Central Coast	Revoked 10 July 2008
5.8 Second Sydney Airport: Badgerys Creek	Not relevant
5.9 North West Rail Link Corridor Strategy	Not relevant
6.1 Approval and Referral Requirements	Consistent. The planning proposal would result in the building becoming a local heritage item, but not a state heritage item.
6.2 Reserving Land for Public Purposes	Not relevant
6.3 Site Specific Provisions	Consistent. The planning proposal is not for the purpose of facilitating a particular development proposal. It relates solely to the heritage listing of a new item of environmental heritage.
7.1 Implementation of A Plan for Growing Sydney	Consistent. The planning proposal is consistent with the directions and actions contained with A Plan for Growing Sydney. The planning proposal will not result in any adverse effects in the implementation of the direction and aims contain in A Plan for Growing Sydney.

Is the planning proposal consistent, justifiably inconsistent or inconsistent with all relevant SEPPs?

SEPPs	Not Relevant	Consistent	Justifiably inconsistent	Comments
SEPP 1 – Development Standards	x			
SEPP 4 – Development Without Consent & Miscellaneous Complying Development	x			
SEPP 6 – Number of Storeys in a Building	x			
SEPP 14 – Coastal Wetlands	x			
SEPP 15 – Rural Living	x			
SEPP 19 – Bushland in Urban Areas	x			
SEPP 21 – Caravan Parks	x			
SEPP 22 – Shops and Commercial Premises	x			
SEPP 26 – Littoral Rainforests	x			
SEPP 29 – Western Sydney Recreation Area	x			
SEPP 30 – Intensive Agriculture	x			
SEPP 32 – Urban Consolidation (Redevelopment of Urban Land)	x			
SEPP 33 – Hazardous and Offensive Development	x			
SEPP 36 – Manufactured Home Estates	x			
SEPP 39 – Spit Island Bird Habitat	x			
SEPP 44 – Koala Habitat Protection	x			
SEPP 47- Moore Park Showground	x			
SEPP 50 – Canal Estate	x			
SEPP 52 – Farm Dams and Other Works in Land and Water Management Plan Areas	x			
SEPP 55 – Remediation of Land		x		The proposal does not facilitate any building works or disturbance of land.

SEPP 59 – Central Western Sydney Economic and Employment Area	x			
SEPP 60 – Exempt and Complying Development	x			
SEPP 62 – Sustainable Aquaculture 2000	x			
SEPP 64 – Advertising and Signage	x			
SEPP 65 – Design Quality of Residential Flat Development	x			
SEPP 70 – Affordable Housing (Revised Schemes)	x			
SEPP 71 – Coastal Protection	x			
SEPP (Building Sustainability Index : BASIX) 2004	x			
SEPP (Housing for Seniors or People with a Disability) 2004	x			
SEPP (Development on Kurnell Peninsula) 2005	x			
SEPP (Major Development) 2005	x			
SEPP (Sydney Region Growth Centres) 2006	x			
SEPP (Mining, Petroleum Production and Extractive Industries)	x			
SEPP (Temporary Structures) 2007	x			
SEPP (Infrastructure) 2007		x		The proposal is not inconsistent with the SEPP
SEPP (Kosciuszko National Park – Alpine Resorts) 2007	x			
SEPP (Rural Lands) 2008	x			
SEPP (Exempt and Complying Development Codes) 2008		x		The proposal is not inconsistent with the SEPP
SEPP (Western Sydney Parklands) 2009	x			
SEPP (Western Sydney Employment Area) 2009	x			
SEPP (Affordable Rental Housing) 2009	x			
SEPP (State and Regional Development) 2011	x			
SEPP (Sydney Drinking Water Catchment) 2011	x			
Deemed SEPPs	Not Relevant	Consistent	Justifiably inconsistent	Comments
Sydney REP No. 5 – Chatswood Town Centre	x			
Sydney REP No.8 – Central Coast Plateau Areas	x			
Sydney REP No.9 – Extractive Industry (No.2)	x			
Sydney REP No.11 – Penrith Lakes Scheme	x			
Sydney REP No.13 – Mulgoa Valley	x			
Sydney REP No.16 – Walsh Bay	x			
Sydney REP No.17 Kurnell Peninsula (1989)	x			
Sydney REP No.18 – Public Transport Corridors	x			
Sydney REP No.19 – Rouse Hill Development Area	x			
Sydney REP No.20 – Hawkesbury Nepean River (No.2 1997)	x			
Sydney REP No.24 – Homebush Bay Area	x			
Sydney REP No.25 Orchard Hills	x			
Sydney REP No.26 – City West	x			
Sydney REP No.28 - Parramatta	x			
Sydney REP No.30 – St Marys	x			
Sydney REP No.33 – Cooks Cove	x			
Sydney REP (Sydney Harbour Catchment) 2005		x		The proposal will have no effect on the harbour or the catchment.

Is the planning proposal consistent, justifiably inconsistent or inconsistent with all other strategic planning documents?

Yes. This Planning Proposal is consistent with other relevant strategic planning documents, including:

A Plan for Growing Sydney

The planning proposal is consistent with the objectives and actions of the Sydney Metropolitan Strategy, A Plan for Growing Sydney.

The planning proposal will not adversely impact on the directions and actions identified in Goal 3 to achieve a great place to live with communities that are strong, healthy and connected. The planning proposal is consistent with Direction 3.4 : *Promote Sydney's heritage, arts and culture* and Action 3.4.4 : *Identify and re-use heritage sites, including private sector re-use through the priority precincts program.*

The planning proposal will not adversely impact on the directions and actions identified in Goal 4 to achieve a sustainable and resilient city that protects the natural environmental and has a balanced approach to the use of land and resources.

Ku-ring-gai is located within the North subregion. The planning proposal is consistent with the identified priorities for the North subregion including:

- A competitive economy
- Accelerated housing supply, choice and affordability and built great places to live
- Protect the natural environment and promote sustainability and resilience

Our Community. Our Future. Community Strategy 2030

The Ku-ring-gai Community Strategic Plan is called "Our Community. Our Future. Community Strategy 2030". The planning proposal is consistent with the following objectives within the community strategic plan:

P1.1 Ku-ring-gai's unique visual character and identity is maintained

P2.1 A robust planning framework is in place to deliver quality design outcomes and maintain the identity and character of Ku-ring-gai

P5.1 *Ku-ring-gai's heritage is protected, promoted and responsibly managed*

Ku-ring-gai Local Environmental Plan 2015

The planning proposal is consistent with the following aims at Clause 1.2 of the KLEP 2015:

- (a) To guide the future development of land and the management of environmental, social, economic, heritage and cultural resources within Ku-ring-gai*
- (f) To recognise, protect and conserve Ku-ring-gai's indigenous and non-indigenous cultural heritage*

The planning proposal seeks to conserve the cultural and environmental heritage of Ku-ring-gai by listing the subject properties as heritage items of local significance within Schedule 5 of the KLEP 2015, and in doing so will ensure the character and identity of the local government area is maintained.

8.0 PARLIAMENTARY COUNSEL OPINION

Was an Opinion sought and given by Parliamentary Counsel?

Council sought an opinion from Parliamentary Counsel on the 19 April 2016.

An opinion was issued by Parliamentary Counsel on 27 April 2016 (Appendix 3).

9.0 OTHER RELEVANT MATTERS

Have representations been received on the Planning Proposal from State or Federal members of Parliament?

No representations have been received on the planning proposal from state or federation members of parliament and council has not met with the Minister in relation to the planning proposal.

Has Council has met with the Minister in relation to the Planning Proposal?

Council has not met with the Minister in relation to the Planning Proposal.

10.0 MAPPING

The amended Heritage Map – Sheet HER_015_010 is included as an attachment to this report (Appendix 4).

11.0 RECOMMENDATION

At Council's meeting on 5 April 2016, Council resolved the following:

- A. *That the Planning Proposal to list the property known as 'Glen Brae' at 28 Cook Road, Killara as a local heritage item under the Ku-ring-gai Local Environmental Plan 2015 proceed without variation.*
- B. *That Council proceed to make the Plan, using its delegated authority, under Section 59(2) of the Environmental Planning & Assessment Act 1979.*
- C. *That those who made submissions be notified of Council's decision.*

APPENDICES

1. Planning Proposal
2. Gateway Determination
3. PCO Legal Drafting - signed under delegation
4. Proposed LEP Map - Amended Heritage Map – Sheet HER_015_010
5. Department's Attachment 5 - Delegated plan making reporting template