

Ku-ring-gai Planning Scheme Ordinance - Amendment to incorporate provisions for Biodiversity, Riparian Land and Heritage Conservation Areas

Proposal Title : Ku-ring-gai Planning Scheme Ordinance - Amendment to incorporate provisions for Biodiversity, Riparian Land and Heritage Conservation Areas

Proposal Summary : This Planning Proposal seeks to amend the Ku-ring-gai Planning Scheme Ordinance 1971 to incorporate new definitions and provisions for biodiversity, riparian land and heritage conservation areas.

PP Number : PP_2011_KURIN_002_00 **Dop File No :** 11/20894

Proposal Details

Date Planning Proposal Received : 29-Nov-2011 **LGA covered :** Ku-Ring-Gai

Region : Sydney Region West **RPA :** Ku-ring-gai Council

State Electorate : KU-RING-GAI **Section of the Act :** 55 - Planning Proposal

LEP Type : Policy

Location Details

Street : Ku-ring-gai

Suburb : Ku-ring-gai **City :** Ku-ring-gai **Postcode :** 2073

Land Parcel : Ku-ring-gai Local Government Area

DoP Planning Officer Contact Details

Contact Name : Sandy Shewell

Contact Number : 0298738558

Contact Email : sandy.shewell@planning.nsw.gov.au

RPA Contact Details

Contact Name : Craige Wyse

Contact Number : 0294240860

Contact Email : cwyse@kmc.nsw.gov.au

DoP Project Manager Contact Details

Contact Name :

Contact Number :

Contact Email :

Land Release Data

Growth Centre : **Release Area Name :**

Regional / Sub Regional Strategy : Metro North subregion **Consistent with Strategy :** Yes

Ku-ring-gai Planning Scheme Ordinance - Amendment to incorporate provisions for Biodiversity, Riparian Land and Heritage Conservation Areas

MDP Number :		Date of Release :	
Area of Release (Ha) :		Type of Release (eg Residential / Employment land) :	
No. of Lots :	0	No. of Dwellings (where relevant) :	0
Gross Floor Area :	0	No of Jobs Created :	0

The NSW Government Yes
Lobbyists Code of Conduct has been complied with :

If No, comment :

Have there been meetings or communications with registered lobbyists? : No

If Yes, comment :

Supporting notes

Internal Supporting Notes :

LOBBYIST STATEMENT

At this time, to the best of the Regional Team's knowledge, there have been no meetings or communications with lobbyists regarding this planning proposal.

POLITICAL DONATIONS DISCLOSURE STATEMENT

The political donation disclosure laws commenced on 1 October 2008. The legislation requires public disclosure of donations or gifts for certain circumstances relating to the Planning system.

The disclosure requirements under the new legislation are triggered by the making of relevant planning applications and relevant public submissions on such applications.

The term relevant planning application means:

"A formal request to the Minister, a council or the Director-General to initiate the making of an environmental planning instrument..."

Planning Circular PS 08-009 specifies that a person who makes a public submission to the Minister or Director General is required to disclose all reportable political donations (if any).

No disclosures were provided for this planning proposal.

External Supporting Notes :

BACKGROUND

On 28 July 2011, the NSW Land and Environment Court declared the Ku-ring-gai Town Centres Local Environmental Plan (LEP) 2010 to be of no legal force or effect.

The effect of the Land and Environment Court's decision is that the planning controls which apply to all sites within the boundaries of the Ku-ring-gai Town Centres revert back to the underlying planning controls contained within the Ku-ring-gai Planning Scheme Ordinance 1971.

The Minister met with representatives of Ku-ring-gai Council on 23 August 2011 and 19 October 2011 to discuss the options for completing a new Town Centres LEP and a Comprehensive LEP. At this meeting on 19 October 2011, Council requested the Minister's support to proceed with a stand-alone Heritage and Biodiversity LEP and to ensure that the community was adequately consulted during the preparation of the draft Town Centres

Ku-ring-gai Planning Scheme Ordinance - Amendment to incorporate provisions for Biodiversity, Riparian Land and Heritage Conservation Areas

LEP.

Council prepared and submitted a timeframe for taking these elements further (Refer to Attachment A of the attached Planning Proposal). The Department supports these timeframes.

On 29 November 2011, Council wrote to the Department's Sydney West Regional Director advising of its resolution at a meeting on 8 November 2011 to prepare a Planning Proposal to amend the Ku-ring-gai Planning Scheme Ordinance to include heritage conservation areas, biodiversity and riparian mapping
(A copy of the Planning Proposal is attached to this report).

The Planning Proposal was initiated by Council, in accordance with section 55 of the Environmental Planning and Assessment Act 1979, to ensure protection of Ku-ring-gai's distinctive qualities, including its local heritage and natural landscapes.

It is noted that the proposed clauses for Biodiversity, Riparian Land and Waterways provisions included in this Planning Proposal have been previously approved by the Parliamentary Counsel and were included within the former Ku-ring-gai LEP (Town Centres) 2010 (Refer to pages 3-4 of the attached Planning Proposal).

The Minister and the Mayor have agreed that this LEP amendment could retain these clauses as previously settled.

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? Yes

Comment : To ensure clarity of the intent of this Planning Proposal, it is suggested that the 'statement of objectives' be simplified to read as follows:

"This Planning Proposal seeks to:

- (a) protect, maintain and improve biodiversity;
- (b) maintain and improve waterways and riparian lands;
- (c) protect the local character, heritage and natural landscapes; and
- (d) form the basis for future residential, retail and commercial planning,

within the Ku-ring-gai Local Government Area."

The intended outcomes of the Planning Proposal are generally consistent with the criteria outlined in the Department's 'Guide to Preparing Planning Proposals'.

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? Yes

Comment :

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? No

b) S.117 directions identified by RPA :

* May need the Director General's agreement

1.1 Business and Industrial Zones

2.1 Environment Protection Zones

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

Ku-ring-gai Planning Scheme Ordinance - Amendment to incorporate provisions for Biodiversity, Riparian Land and Heritage Conservation Areas

- 4.1 Acid Sulfate Soils
- 4.4 Planning for Bushfire Protection
- 6.1 Approval and Referral Requirements
- 6.2 Reserving Land for Public Purposes
- 7.1 Implementation of the Metropolitan Plan for Sydney 2036

Is the Director General's agreement required? **Yes**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

SEPP No 19—Bushland in Urban Areas
SEPP No 44—Koala Habitat Protection
SEPP (Exempt and Complying Development Codes) 2008
SREP (Sydney Harbour Catchment) 2005
SREP No. 20 - Hawkesbury–Nepean River (No. 2 - 1997)

e) List any other matters that need to be considered :

SECTION 117 DIRECTIONS

It is noted that the Planning Proposal has included an incorrect reference to the attached checklist of compliance with the Local Planning section 117 Directions. In this light, the reference to 'Attachment A' included on page 12 of the Planning Proposal should be revised to read 'Attachment E', to avoid confusion during the consultation stages.

1.1 BUSINESS AND INDUSTRIAL ZONES

The Planning Proposal is consistent with this Direction as it does not seek to reduce the floor space potential of Ku-ring-gai's existing business zones.

2.1 ENVIRONMENT PROTECTION ZONES

This Planning Proposal is considered to be consistent with this Direction as it seeks to incorporate new provisions for biodiversity and riparian land and waterways in the Ku-ring-gai Planning Scheme Ordinance 1971 to facilitate protection and conservation of environmentally sensitive areas within the Ku-ring-gai Local Government Area.

2.3 HERITAGE CONSERVATION

It is considered that this Planning Proposal is consistent with this Direction as seeks to incorporate heritage conservation provisions in the Ku-ring-gai Planning Scheme Ordinance 1971 to facilitate the conservation of heritage items, areas, objects and places of environmental heritage significance.

2.4 RECREATION VEHICLE AREAS

Part 3 of the Planning Proposal indicates that this proposal complies with this Direction as it does not propose to enable land to be developed for the purpose of a recreation vehicle area.

3.1 RESIDENTIAL ZONES

It is considered that the Planning Proposal is consistent with this Direction as it seeks to minimise the impact of residential development on the environment, and will not reduce the area of land in Ku-ring-gai which is currently zoned for residential purposes.

3.2 CARAVAN PARKS AND MANUFACTURED HOME ESTATES

Part 3 of the Planning Proposal indicates that this proposal complies with this Direction as it does not propose any land use rezoning's or amendments to the provisions of the Ku-ring-gai Planning Scheme Ordinance 1971 relating to caravan parks and manufactured home estates.

3.3 HOME OCCUPATIONS

The Planning Proposal is consistent with this Direction as the proposed amendments will not affect the existing provisions in the Ku-ring-gai Planning Scheme Ordinance 1971 relating to home occupations.

3.4 INTEGRATING LAND USE AND TRANSPORT

Ku-ring-gai Planning Scheme Ordinance - Amendment to incorporate provisions for Biodiversity, Riparian Land and Heritage Conservation Areas

This Planning Proposal is not considered inconsistent with this Direction as it does not propose to create, alter or remove any zones relating to urban land and will not impact the achievement of the aims, objectives and principals of the 'Improving Transport Choice – Guidelines for planning and development (DUAP 2001)', and 'The Right Place for Business and Services –Planning Policy (DUAP 2001)'.

4.1 ACID SULFATE SOILS

The Planning Proposal is consistent with this Direction as it does not seek to intensify the use of certain land in the Ku-ring-gai LGA which has a probability of containing acid sulfate soils.

4.4 PLANNING FOR BUSHFIRE PROTECTION

Part 3 of the Planning Proposal identifies consistency of the Proposal with this Direction as it does not propose any land use rezoning and will not prohibit the bushfire hazard reduction works in asset protection zones.

6.1 APPROVAL AND REFERRAL REQUIREMENTS

This Planning Proposal is considered consistent with this Direction as it does not seek to include provisions that require concurrence, consultation or referral of development applications to a Minister or public authority or identify development as designated development.

6.2 RESERVING LAND FOR PUBLIC PURPOSES

The Planning Proposal is considered consistent with this Direction as it does not seek to create or alter existing zonings or reservations of land for public purposes. Part 3 of the Planning Proposal identifies that the Planning Proposal will identify areas of natural resource and heritage significance, which will support future considerations pertaining to the reservation of land for public purposes.

7.1 IMPLEMENTATION OF THE METROPOLITAN PLAN FOR SYDNEY 2036

Part 3 of the Planning Proposal identifies compliance with '7.1 Implementation of the Metropolitan Strategy'. However, Direction 7.1 requires the Relevant Planning Authority to demonstrate consistency with the NSW Metropolitan Plan for Sydney 2036 which was published in December 2010, when preparing a planning proposal.

The Planning Proposal should be revised to include an accurate reference to this Direction and demonstrate consistency of the Planning Proposal with the Metropolitan Plan for Sydney 2036.

RELEVANT STATE ENVIRONMENTAL PLANNING POLICIES (SEPPs) & REGIONAL ENVIRONMENTAL PLANS (DEEMED SEPPs)

Part 3 of the Planning Proposal indicates that the Planning Proposal is not inconsistent with any relevant SEPPs or SREPs.

Have inconsistencies with items a), b) and d) being adequately justified? N/A

If No, explain :

Mapping Provided - s55(2)(d)

Is mapping provided? Yes

Comment :

Community consultation - s55(2)(e)

Has community consultation been proposed? Yes

Comment :

Council has proposed to consult the community during the preparation of this Planning Proposal, in accordance with the requirements specified in the Department's Guide to Preparing Local Environmental Plans and section 57 of the Environmental Planning and Assessment Act 1979. A public exhibition period of 20 days has previously been proposed by Council.

Ku-ring-gai Planning Scheme Ordinance - Amendment to incorporate provisions for Biodiversity, Riparian Land and Heritage Conservation Areas

(Refer to page 16 of the Planning Proposal).

Additional Director General's requirements

Are there any additional Director General's requirements? No

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? Yes

If No, comment :

Proposal Assessment

Principal LEP:

Due Date : February 2013

Comments in relation to Principal LEP : On 28 July 2011, the NSW Land and Environment Court declared the Ku-ring-gai Town Centres LEP 2010 to be of no legal force or effect.

The effect of the Land and Environment Court's decision is that the planning controls which apply to all sites within the boundaries of the Ku-ring-gai Town Centres revert back to those contained within the Ku-ring-gai Planning Scheme Ordinance 1971.

The Minister has agreed to Council's proposed timetable to progress the Principal LEP.

Assessment Criteria

Need for planning proposal : The need for the Planning Proposal has been adequately addressed by Council (Refer to pages 6 to 9 of the attached Planning Proposal).

Council has identified that the Planning Proposal is the outcome of a number of studies which have been undertaken regarding biodiversity, riparian land and heritage matters in the Ku-ring-gai LGA, and include the:

- Ku-ring-gai Residential Development Strategy: Environmental Baseline Study, for Ku-ring-gai Municipal Council (Conacher Travers Pty Ltd 2000);
- Lands of High and Special Ecological Value, Draft Methodology (Ku-ring-gai Council – 2008);
- Biodiversity and Riparian Lands Study, Ku-ring-gai Principal LEP Draft Background Study (Ku-ring-gai Council 2011);
- Ku-ring-gai Town Centres Heritage Conservation Area Review (Paul Davies Pty Ltd 2008);
- Northern Heritage Conservation Area Review (Paul Davies Pty Ltd 2010); and the
- Southern Heritage Conservation Area Review (Architectural Projects 2010).

Council has expressed its concerns about the lack of a strategic framework and provisions to ensure the management and protection of biodiversity and riparian land, under the Ku-ring-gai Planning Scheme Ordinance. Council is concerned that key environmental values and environmentally sensitive areas in the Ku-ring-gai LGA would be unprotected for an extended period of time if Council were to wait to include the proposed new provisions in the Principal and Town Centres LEPs.

Council has also identified that the Ku-ring-gai Planning Scheme Ordinance 1971 does not currently identify any heritage conservation areas (HCAs), and that a delay in gazettal of these HCAs would leave these areas unprotected and at potential risk.

On 8 November 2011, Council resolved to prepare a planning proposal to amend the Ku-ring-gai Planning Scheme Ordinance 1971 to include heritage conservation areas and

Ku-ring-gai Planning Scheme Ordinance - Amendment to incorporate provisions for Biodiversity, Riparian Land and Heritage Conservation Areas

biodiversity and riparian mapping, incorporating the heritage conservation areas adopted by Council at its meetings on 24 May and 28 June 2011; fourteen heritage conservation areas identified in the Town Centres LEP; and biodiversity and riparian mapping of the Ku-ring-gai LGA (Refer to Council's Resolution of 8 November 2011 as attached).

The Planning Proposal seeks to provide a strategic framework for the consideration, and protection of the biodiversity, riparian lands and heritage conservation areas in the Ku-ring-gai LGA.

The Planning Proposal includes the biodiversity, riparian land provisions and heritage conservation provisions that formed part of the former Ku-ring-gai Town Centres Local Environmental Plan 2010. The Minister and Council have previously agreed that these provisions will be adopted as part of the proposed Biodiversity and Heritage LEP.

The provisions of the Biodiversity and Heritage LEP will ultimately be incorporated into the proposed draft Town Centres LEP and the Principal LEP. The proposed draft LEP will therefore be developed as an interim LEP. The Department's latest biodiversity, riparian land and heritage provisions could be adopted by Council during the development of either of these LEPs.

Council advises that the Planning Proposal does not reduce the area or floor space potential of existing business zones nor does it reduce the area of land zoned for housing or reduce permissible residential density of land. It is considered that, through the preparation of its new town centres LEP and comprehensive LEP, Council will have the opportunity to demonstrate how these new plans will provide the capacity to deliver the number of net additional dwellings, and also employment opportunities, identified in the Metropolitan Strategy to 2031.

Consistency with strategic planning framework :

The Planning Proposal is generally consistent with the strategic planning framework, including the Sydney Metropolitan Strategy and Draft North Subregional Strategy (Refer to pages 9 to 10 of the attached Planning Proposal).

The Strategy aims to improve the quality of regional and local open space and protect high value environments and the loss of biodiversity.

Key directions of the Draft North Subregional Strategy are to:-

1. Ensure equitable access to parks and public places for all residents in the subregion.
2. Ensure open space areas and facilities are managed sustainably to cater for residents and visitors to the subregion; and
3. Ensure opportunities exist for all residents to pursue cultural activities in the subregion.

The Draft North Subregional Strategy identifies the need to protect Aboriginal and cultural heritage within the Region. This Planning Proposal is generally consistent with the Draft North Subregional Strategy. The outcomes of the Planning Proposal will assist Council to deliver the key directions of the Draft North Subregional Strategy as it seeks to ensure protection of the natural landscapes, open spaces and heritage assets within the Ku-ring-gai LGA.

Environmental social economic impacts :

Council has not provided an investigation of the social and economic effects due to the nature of the proposal (Refer to page 15 and 16 of the attached Planning Proposal). However, the aim of this Planning Proposal is to protect the specific character of Ku-ring-gai which comprises large areas of open space, bushland parks, substantial waterways, passive parkland, including picnic, play and civic parks.

Protecting the heritage conservation areas within Ku-ring-gai will benefit the community by providing certainty to the types and form of development that can occur in these areas.

The resultant Biodiversity and Heritage LEP of this Planning Proposal will ensure that the heritage and natural landscapes are protected and enhanced for current and future

Ku-ring-gai Planning Scheme Ordinance - Amendment to incorporate provisions for Biodiversity, Riparian Land and Heritage Conservation Areas

generations which benefit the whole community by sustaining a healthy natural environment in which to live. Council also considers that the draft LEP will form a basis for future residential, retail and commercial planning within the LGA.

While it is acknowledged that, particularly in relation to heritage, there may be additional development costs, it is considered that the potential costs to the community should not be substantial and are offset by the environmental benefits.

Assessment Process

Proposal type : **Routine** Community Consultation Period :
 Timeframe to make LEP : **6 Month** Delegation : **DDG**
 Public Authority **Hawkesbury - Nepean Catchment Management Authority**
 Consultation - 56(2)(d) **Sydney Metropolitan Catchment Management Authority**
Office of Environment and Heritage
NSW National Parks and Wildlife Service
NSW Rural Fire Service
State Water Corporation
Sydney Water
Adjoining LGAs
Other

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons :

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
01 2011 267776 Cover letter - Biodiversity, Riparian and Heritage Planning Proposal.pdf	Proposal Covering Letter	Yes
02 2011 266919 Ku-ring-gai Council Planning Proposal - Biodiversity and Heritage LEP November 2011.pdf	Proposal	Yes
03 2011 266447 Attachment B2 - Natural Resources Biodiversity Map.pdf	Map	Yes
04 2011 267208 Attachment B3 - Natural Resources Riparian Map.pdf	Map	Yes

Ku-ring-gai Planning Scheme Ordinance - Amendment to incorporate provisions for Biodiversity, Riparian Land and Heritage Conservation Areas

05 2011 264786 Attachment C2 - Heritage Conservation Areas Map.pdf

Map

Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions:

- 1.1 Business and Industrial Zones
- 2.1 Environment Protection Zones
- 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
- 4.1 Acid Sulfate Soils
- 4.4 Planning for Bushfire Protection
- 6.1 Approval and Referral Requirements
- 6.2 Reserving Land for Public Purposes
- 7.1 Implementation of the Metropolitan Plan for Sydney 2036

Additional Information :

It is recommended that the Planning Proposal proceeds, subject to the following requirements:

1. The Planning Proposal be revised to incorporate a simplified explanation of how all the objectives/intended outcomes of the Planning Proposal will be achieved as follows:

"This Planning Proposal seeks to:

- (a) protect, maintain and improve biodiversity;
- (b) maintain and improve waterways and riparian lands;
- (c) protect the local character, heritage and natural landscapes; and
- (d) form the basis for future residential, retail and commercial planning, within the Ku-ring-gai Local Government Area."

2. The Planning Proposal be revised to include an accurate reference to Local Planning Direction 7.1 (Implementation of the Metropolitan Plan for Sydney 2036) and demonstrate consistency of the Planning Proposal with the Metropolitan Plan for Sydney 2036. The reference to 'Attachment A' included on page 12 of the Planning Proposal should be also be revised to read 'Attachment E';

3. The Planning Proposal be exhibited for 20 days;

4. The Planning Proposal be completed within 6 months;

5. Council note that the Director General is to be satisfied that the summary (the material to be exhibited) provides sufficient details for community consultation. Council is to be requested to provide this summary to the Director General as required under section 57(2) of the Environmental Planning & Assessment Act 1979; and that

6. Council consult with the following agencies:-
Hawkesbury - Nepean Catchment Management Authority
Sydney Metropolitan Catchment Management Authority
Office of Environment and Heritage
NSW National Parks and Wildlife Service
NSW Rural Fire Service
State Water Corporation
Sydney Water
Willoughby City Council
Warringah Council
Ryde City Council
Hornsby Shire Council

Ku-ring-gai Planning Scheme Ordinance - Amendment to incorporate provisions for Biodiversity, Riparian Land and Heritage Conservation Areas

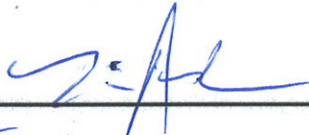
Aboriginal Heritage Office
Land and Property Management Authority
NSW Heritage Office

Supporting Reasons :

The proposed heritage conservation area provisions seek to protect heritage within the Ku-ring-gai LGA. The proposed biodiversity and riparian land and waterways provisions will enhance and protect the natural environment and protect the character of the LGA through the retention of vegetation within the urban setting.

It has been previously agreed with Council that the riparian land and waterways, biodiversity and heritage provisions identified in the former Ku-ring-gai Town Centres LEP 2010 will be included within the draft LEP.

Signature:



Printed Name:

Tim Archer

Date:

2/12/11