

Environmental Health and Regulation Committee



Report Title: Review of Small Shops Currently Residentially Zoned

Report Number: EHR036-16

Meeting Date: 30/11/2015

EXECUTIVE SUMMARY

- This report reviews the feasibility of rezoning existing small shops located within residential zones to B1 Neighbourhood Centre under SSLEP2015.
- During the preparation of SSLEP2015 Council received submissions requesting rezoning to B1 Neighbourhood Centre to facilitate the continued operation of the shops.
- Rezoning small shops to B1 Neighbourhood Centre allows more flexibility to change the business use without relying on existing use rights. Residential development is also permissible.
- The amenity of the surrounding residential uses can be protected by retaining the residential floor space ratios (FSR) and height controls that currently applies to the land.

REPORT RECOMMENDATION

That Council seek to rezone properties to B1 Neighbourhood Centre as part of Amendment 4 to Sutherland Shire Local Environmental Plan 2015, as detailed in Schedule A of this Report.

PURPOSE

This report reviews the feasibility of rezoning existing small shops located within residential zones to B1 Neighbourhood Centre under SSLEP2015.

BACKGROUND

During the first exhibition of SSLEP2015, a submission requested the rezoning of a group of shops at 176 Parraweena Road, Miranda to B1 Neighbourhood Centre. These purpose built shops, which had been exhibited as R2 Low Density Residential (a transfer of their zone under SSLEP2006). These properties relied on 'existing use rights' to continue their use as shops. In response to this submission Council rezoned these properties B1 Neighbourhood Centre, with development standards of FSR 1:1, height 9m and no landscaped area requirement (CCL004-15). The Independent Review of Sutherland's LEP agreed with Council's decision to rezone this land to reflect its established use, and recommended that similar sites across the Shire should be reviewed for consistency (CCL004-15).

During the third public exhibition of SSLEP2015, two more submissions were received in relation to the zoning of small groups of shops in various locations that are now zoned R2 Low Density Residential. These shops rely on 'existing use rights' and it was submitted that they should be rezoned to the B1 Neighbourhood Centre zone to facilitate their continued operation. Council did not progress the requests for rezoning as part of draft LEP 2013 because the necessary investigation could not occur in the time frame available. Council officers did, however, recommend that "a comprehensive review of small shops sites in the R2 zone be undertaken as part of the Environmental Planning Unit work program following the making of this plan" (CCL005-15). This report follows up on this recommendation.

DISCUSSION

Shops are not a permitted use in Zone R2 Low Density Residential. Where shops do exist within the zone, the existing and future use of each tenancy for commercial purposes relies on the application of 'existing use' rights. 'Existing uses' are lawfully commenced uses which are subsequently prohibited by an environmental planning instrument. The *Environmental Planning & Assessment Act 1979* and *Environmental Planning & Assessment Regulation 2000* makes provisions for the continuance of 'existing uses' subject to strict compliance rules. 'Existing use' rights may be extinguished by abandonment (where the use does not operate for 12 months or more) or the unlawful replacement of the uses. While allowing for the uses to continue, 'existing use' rights do not allow the same flexibility and security for the landowner as is the case where a use is permissible in the zone. There are limitations on the expansion of the business and how uses can change. Establishing continuous use of the site for current uses can be difficult. Relying on 'existing use' rights can create problems for shop owners wishing to lease their property, with some businesses hesitant to take out a lease.

This report examines the groups of small shops specifically identified in the submissions to LEP3, as well as additional small shops located in Zone R2 and Zone R3. Vehicle sales and repair premises

and service stations have not been included in the review. The subject sites are listed below. Detailed analysis of each is contained in the appendix to this report.

1. 273-277 Willarong Road, Caringbah (Lot 1 DP 520407; Lot 2 DP 520407, Lot 3 DP 520407)
2. 23 Leonay Street, Sutherland (Lot 3 DP 598707)
3. 86-94 Cawarra Road, Caringbah (Lot A DP 385007, Lot B DP 385007, Lot D DP 385007)
4. 84 Cawarra Road, Caringbah (Lot 11 DP 16481)
5. 143-149 Ewos Parade, Cronulla (Lot A DP 378445, Lot B DP 378445)
6. 69-71 National Avenue, Loftus (Lot 1 DP 535824, Lot 2 DP 535824)
7. 55A, 57 and 57A Port Hacking Road, Sylvania (Lot 1 DP 512022, Lot 2 DP 512022, Lot 3 DP 512022)
8. 206 Sylvania Road, Miranda (Lot 1 DP 507176)
9. 52 Forest Road, Yowie Bay (Lot 31 DP 9094)
10. 418 Princes Highway, Gympie (Lot 20 DP 202488)
11. 46 Attunga Road, Yowie Bay (S/P 66608)
12. 461 Princes Highway, Kirrawee (Lot 9 DP 20858)
13. 218 Willarong Road, Caringbah (Lot 1 DP 583233)
14. 192 Princes Highway, Sylvania (Lot A DP 364483)

Draft LEP Submissions Requesting Rezoning

Three submissions were received in connection with this issue in response to the third public exhibition of SSLEP2015, being:

1. A general submission advising that there are a number of small groups of shops (e.g. 273-277 Willarong, 218 Willarong, corner Leonay and Vermont, corner National and Fourth Avenue, Sylvania Road corner Omaru Avenue) that are zoned R2 and some of these do not have existing use rights or are at risk of losing them because the shops are vacant or have unauthorised uses in them. It was suggested that these small groups of shops should be B1 Neighbourhood Centre not R2.
2. The other submission was on behalf of the owner of 275 Willarong Road, Caringbah, which is one property in a set of three shops with different owners. The submission identified that the site currently relies on existing use rights to operate. However the history of approvals on this site is such that only a small portion of the shop has the benefit of existing use rights, with the remainder of the building having a residential use. The submission stated that this situation is not viable for the owners and has caused the loss of all potential retail tenants and has resulted in the shop remaining vacant for many months. The following arguments were put in support of

the requested rezoning of the site:

- a. Council's Independent Review of the Draft SSLEP 2013 recently rezoned a similar group of shops and recommended similar sites across the Shire should be reviewed for consistency.
 - b. The rezoning will simplify future change of use development applications for the existing shops, as opposed to the onerous task of proving existing use rights.
 - c. The rezoning to allow retail usage of the property will support employment generation, close to a large population base.
3. A later submission was received from the owners of 23 Leonay Street, Sutherland seeking to rezone their property, which consists of 4 shops and 2 residences on top, built over 60 years ago. The rezoning was requested for the following reasons:
- "Over the last 2 years we have had difficulty in prospective shop tenants applying for DA's, as the property is zoned residential. Although we have now established existing use rights and subsequent DA's would be evaluated as such, I feel it would be better to have the zoning changed to reflect the true nature of the site."*

Description of the Sites

Most of the subject sites are zoned R2 Low Density Residential; however, one group of shops zoned R3 Medium Density Residential has been included in the review. While 'neighbourhood shops' are permissible in R3, there are many types of business activities that do not fit the narrow definition of 'neighbourhood shop'.

Efforts have been made to identify all groups of small shops which are currently Zone R2 or R3. Information has been gathered from submissions, the lodgement of development applications which relied upon 'existing use' rights and local knowledge. It could be that not all such shops in zones R2 or R3 have been identified. However, if others come to light they can be examined at a later stage. The summary table (Appendix 1) identifies the built form, current use and availability of parking for each of the identified sites. Many of the shops on the subject sites are one or two storey brick buildings with typical shop style built forms, characterised by brick parapets and awnings over the footpath. Many of the shops have nil front setbacks and glazed shopfronts creating active street fronts. The extent of the individual sites occupied by shops varies between the locations. The subdivision pattern of many of the lots has been devised to suit a group of shops, being smaller and narrower than average residential lots.

The age of the groups of shops indicates that they were constructed prior to 1980. This date is

important because prior to 1980, shops were permissible in the residential zone. Shops have been prohibited in residential zones since the commencement of the Sutherland Planning Scheme Ordinance in 1980. The majority of businesses identified in this review currently operate under existing use rights. However, operating a business using existing use rights is severely restrictive. In some cases, such as 275 Willarong Road, expansion is restricted because the business occupies a relatively small floor area.

The types of shops found in each of the locations varies but can generally be characterised as small scale speciality shops e.g. craft shop, trophy store and pet shop and pet grooming salon, along with more general uses such as grocery stores, cafes, hairdressers, beauticians, newsagencies and small convenience shops. The businesses occupying these shops are generally not part of a larger retail chain. These shops provide opportunities for small business to establish on presumably lower rents because they are outside the larger retail centres. The majority of shops under consideration do not fit the test of satisfying the 'daily' retail needs of the neighbourhood. Most cater for less frequently utilised services and goods, for which customers are willing to make a special trip. Such lower turnover businesses often rely on a larger catchment area of clients. The principal exception is the 86-94 Cawarra Road, Caringbah shops which contain a higher proportion of shops servicing everyday needs, including a newsagency. These shops are located in close proximity to a school and industrial area. These land uses provide a larger potential customer base in comparison to shops located in a low density residential area, for example those at 143-149 Ewos Parade, Cronulla and 69-71 National Avenue, Loftus.

The viability of the groups of shops appears to vary between locations. The shops at Cawarra Road, National Avenue and Sylvania Road are all occupied, while Ewos Parade and Leonay Street each currently contain one or more vacant shops. The existing use rights difficulties raised in submissions are likely to contribute to vacancies in the shops. However, other factors may also influence their viability such as proximity to other shops, density and mix of surrounding land uses all of which influence the size of the potential customer catchment. A DA has been submitted in 2015 for the property at 143-145 Ewos Parade, Cronulla, seeking a change of use from butcher to cafe. For each DA, existing use rights need to be established, which is a costly and time consuming barrier to changing commercial uses for the subject sites.

There are currently approximately 50 areas zoned B1 Neighbourhood Centre in the Sutherland Shire. While they all contain commercial premises, it is difficult to generalise about the character of Zone B1 Neighbourhood Centre in this range of locations. The size of the area, site layout, number of shops and the role of the shops in the area varies greatly across the group. For example, in some cases the main group of shops for a suburb is zoned B1 Neighbourhood Centre (Woolooware, Como, Loftus,

Kurnell). In many cases the B1 zoned area is a small group of shops surrounded by a residential area. However, most of these sites have more than 3 shops and many have good vehicular/ loading dock access, being on corners or with laneway access. By comparison the sites which are the subject of this report are generally more marginal in their apparent viability. They have few shops (1 – 4 shops), they are located in more out of the way locations (e.g. 69-71 National Avenue Loftus), and parking and delivery arrangements are not optimal in some cases (e.g. 55A, 57 and 57A Port Hacking Road Sylvania).

Implications of Rezoning to B1 Neighbourhood Centre:

More Permissible Uses

The main consequence of rezoning the subject sites to B1 Neighbourhood Centre is that a greater range of uses become permissible on the land. The R2 Low Density zone principally provides for low density residential uses, including multi dwelling housing and dual occupancies. The B1 zone enables a much larger range of uses than those allowed in R2 Low Density Residential. Permitted uses in the B1 zone include business premises, neighbourhood shops and shop top housing. The B1 zone is an 'open' zone, which means that all uses not expressly prohibited are permitted. There is an extensive list of prohibited uses, but many retail and commercial uses could be established in the B1 zone, for example food and drink premises including take away food premises, restaurants or cafes. Because B1 is an open zone, 100% residential uses would also be permitted, such as dwelling houses and multi dwelling development (i.e. townhouses).

For the shop owner, the greater range of uses possible in zone B1 is of benefit, as is removing the necessity to use 'existing use' rights to change the use of the commercial premises. The flexibility to change use and possibly to expand afforded by the B1 zone would make the business premises easier to lease to a greater range of businesses. A development application is required to change the use of premises relying on existing use rights. A B1 zoning would open up the possibility that a change of use may be exempt development under the State Environmental Planning Policy (Exempt and Complying Development Codes), thereby streamlining the establishment for new businesses.

The shop at 206 Sylvania Road Miranda is a hardware store, which is expressly prohibited in Zone B1. If this land was rezoned to B1, this use would still have to rely on existing use rights to continue. However, the use could be changed in the future to another type of business if the need to do so ever arose.

The application of the B1 zone may also increase opportunities for the establishment of businesses, with associated increases in local employment, consistent with Council's Employment Strategy. Employment self containment in the Shire is encouraged; it results in fewer car journeys and less road

congestion. Another positive consequence of rezoning is that the added permissibility of shop top housing could add more small dwellings, although this would be limited by the floor space ratio assigned to the subject sites.

The application of the B1 zone to a set of shops does not guarantee its viability. There are examples in Sutherland Shire of Neighbourhood Centre zones which have not resulted in viable centres. For example, the shops at Putland Close, Kirrawee are all currently vacant. There have also been vacancy issues associated with the neighbourhood shops at Woronora Heights. These centres are located in low density residential zones and the streets are not through-routes to other areas. As such there are limited local potential customers and minimal passing trade.

For local residents, the provision of a wider range of goods and services locally can be of benefit. There is a growing cafe culture in Sydney and the Sutherland Shire: people increasingly appreciate and use local cafes. Some of the groups of existing shops in this survey include cafes or food shops with outdoor tables and appear well patronised. Owners of one of the subject sites in Cronulla noted that when their premises are offered to let, there is great interest from people wanting to operate bakeries and cafes. The establishment of new food and drink premises could however, have a negative amenity impact in terms of possible noise impacts for neighbours and increased traffic and parking demand. Protecting the amenity of existing residents is an important principle in the assessment of development applications. The development assessment process, with conditions of consent setting opening hours, can help mitigate impacts.

If the identified sites were to be rezoned to B1, development for residential uses could be pursued in the future if businesses failed to thrive. In some cases where lots are small and narrow and most suited to the existing shop development on the site, this would require site amalgamation, which makes redevelopment for residential use less likely, although still possible. Depending on the location, low density residential could be a higher value use than a commercial use, which would be an incentive for amalgamation and residential development, especially in high value residential locations such as South Cronulla.

Rates

Rates are based on the use of the land and not the zone. Therefore rates should be unaffected by a zone change, although future increases in the value of land will affect rates. If the use of the land were to change from business to residential, or vice versa, rates will be affected.

Objectives of the B1 Neighbourhood Centre Zone

In examining the LEP objectives for the B1 zone, an inconsistency has been noted. One of the zone

objectives currently requires active uses at street level, as follows:

'To allow for residential accommodation while maintaining active retail, business or non residential land uses at street level. '

This objective, while desirable in the case of a mixed use development with a nil front setback in a commercial zone, could be at odds with some of the permissible uses possible in Zone B1 zone. Although Zone B1 is a commercial zone, it is intended have a lesser commercial intensity than Zone B2 Local Centre or Zone B3 Commercial Core. Dual occupancies, multi dwelling housing and dwelling houses are permissible in the zone. To be consistent with the flexibility of use allowed in the zone, it is considered appropriate to remove the requirement for an active street front from the zone objectives. Requirements for a nil front setback and active streetfronts for mixed use developments are in the DCP.

Height and Floor Space Ratio

While rezoning to B1 has advantages for the owners of the subject sites, the future residential amenity of neighbours may be affected by the rezoning and must be a consideration in the decision. The increased permissibility makes the selection of a height and FSR of more consequence. Most of the existing shops were built prior to 1980 and some are one storey which may not use the full extent of the 0.55:1 floor space ratio which applies to the land currently. Redevelopment could result in buildings with greater bulk and scale, with subsequent potential for greater impacts on neighbours' amenity. Development would have smaller setbacks than required for dwellings and no landscaped area requirement. While neighbours are living with the existing shops, which have in many cases been there for a long time, an intensification of these uses may not be a welcome change. However, the development standards which are applied to the land can control the potential for intensification.

The height and FSR standards which apply to existing areas of B1 Neighbourhood Centre are 9m and FSR 1:1. If the FSR of 1:1 was applied to the subject sites, the change could be a stimulus to commercial redevelopment or the residential redevelopment of the sites. It could create larger business premises and shop top housing within the context of low density residential areas. The higher floor space ratio could also be a catalyst for redevelopment to multi dwelling housing at a fairly high density. With this increased FSR, there is the possibility of negative amenity impacts on surrounding residential areas if redevelopment was to occur.

Under SSLEP2015, development standards are attached to land and not allocated by zone, thus giving the flexibility to assign appropriate development standards for individual sites. If the subject sites are rezoned to B1 whilst retaining the existing FSR of 0.55:1 and height of 8.5m, the commercial

use of the sites would be legitimised. However, it would not provide a trigger for extensive commercial/residential redevelopment, although small extensions could occur depending on the existing floor space ratio. Maintaining existing development standards better protects the amenity of surrounding residential uses. This option offers flexibility of business use as well as possible future residential conversion for the land.

In either option there would be no required landscaped area percentage or minimum lot size applying to the land on redevelopment. If the land is developed for residential use, the FSR would control the bulk and scale of the development. DCP controls would apply for residential uses, including those requiring setbacks and private open space. If owners have a specific design solution for a site which exceeds 0.55:1 or the height of 8.5m, they have the option of applying for a Clause 4.6 variation on development standards in the LEP. The success of such an application depends on a merit assessment of the design in its specific context and would ensure that the development would be compatible with neighbours. Retaining the existing FSR of 0.55:1 and height of 8.5m in conjunction with rezoning to B1 is recommended.

CONSULTATION

As part of this review, sixteen letters were sent to the owners of the sites under review. A total of twelve out of the sixteen owners either made a written submission or responded to the letter by telephone. All supported the potential rezoning to B1 Neighbourhood Centre. Three of the respondents also requested an increase of FSR from 0.55:1 up to 1:1. Two respondents were concerned about whether their rates would rise as a result of the rezoning. A summary of the responses from owners is in the table attached as Appendix 1. Further consultation will occur during the exhibition of a draft LEP amendment if Council resolves to proceed with the rezoning of these shops.

BUDGET AND RESOURCES

The making of the LEP is a procedural matter. The resource requirements can be provided within Strategic Planning.

POLICY

Rezoning the subject properties will be an amendment to Sutherland Shire Local Environmental Plan 2015 (SSLEP2015).

CONCLUSION

The subject sites are all long standing businesses which are zoned either R2 Low Density Residential or R3 Medium Density Residential. Under SSLEP2015, B1 Neighbourhood Centre is an open zone, which means that land zoned B1 can be developed with residential uses. Rezoning the subject sites

to B1 would allow more flexibility to change the use of the businesses without having to prove 'existing use' rights. If the subject sites are rezoned to B1 whilst retaining the existing FSR of 0.55:1 and height of 8.5m, the commercial use of the sites would be legitimised, while the amenity of surrounding residential uses would be protected.

RESPONSIBLE OFFICER

The officer responsible for the preparation of this Report is the Manager Strategic Planning Mark Carlon, who can be contacted on 9710 0523.

SCHEDULE A

A. The following properties be rezoned to B1 Neighbourhood Centre as part of Amendment 4 to Sutherland Shire Local Environmental Plan 2015, with no landscaped area requirement and no minimum lot size for residential subdivision, but other development standards equivalent to Zone R2, being a height limit of 8.5m and floor space ratio of 0.55:1:

1. 273-277 Willarong Road, Caringbah (Lot 1 DP 520407; Lot 2 DP 520407, Lot 3 DP 520407)
2. 23 Leonay Street, Sutherland (Lot 3 DP 598707)
3. 86-94 Cawarra Road, Caringbah (Lot A DP 385007, Lot B DP 385007, Lot D DP 385007)
4. 84 Cawarra Road, Caringbah (Lot 11 DP 16481)
5. 143-149 Ewos Parade, Cronulla (Lot A DP 378445, Lot B DP 378445)
6. 69-71 National Avenue, Loftus (Lot 1 DP 535824, Lot 2 DP 535824)
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9. 52 Forest Road, Yowie Bay (Lot 31 DP 9094)
10. 418 Princes Highway, Gympie (Lot 20 DP 202488)
11. 46 Attunga Road, Yowie Bay (S/P 66608)
12. 461 Princes Highway, Kirrawee (Lot 9 DP 20858)
13. 218 Willarong Road, Caringbah (Lot 1 DP 583233)
14. 192 Princes Highway, Sylvania (Lot A DP 364483)

B. That the objectives for B1 Neighbourhood Centre zone be amended by deletion of an objective as shown below;

1. *Objectives of zone.*

- *"To provide a range of small scale retail, business and community uses that serve*

- the needs of people who live or work in the surrounding neighbourhood.*
- *To allow small scale office uses that provide local employment opportunities and services for residents.*
 - ~~*To allow residential accommodation while maintaining active retail, business or non-residential land uses at street level*~~
 - *To provide for pedestrian friendly and safe shopping designed to cater for the needs of all ages and abilities"*

COMMITTEE RECOMMENDATION

That Council seek to rezone properties to B1 Neighbourhood Centre as part of Amendment 4 to Sutherland Shire Local Environmental Plan 2015, as detailed in Schedule A of this Report.

(Councillor Walton / Councillor Schreiber)

COUNCIL RESOLUTION

That Council seek to rezone properties to B1 Neighbourhood Centre as part of Amendment 4 to Sutherland Shire Local Environmental Plan 2015, as detailed in Schedule A of this Report.

(Councillor Johns / Councillor Provan)

APPENDIX

Review of Small Shops Currently Zoned R2, R3

Appendix 1: Summary Table



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