

Environmental Health and Regulation Committee



Report Title: SSLEP2015 Amendment 4 - 145 Woronora Road, Engadine

Report Number: EHR044-16

Committee Meeting Date: 01/02/2016

EXECUTIVE SUMMARY

- Amendment 4 to SSLEP2015 is a housekeeping amendment that seeks to address a number of minor issues that have arisen since Council finalised the comprehensive LEP.
- Council received representations from the owners of 145 Woronora Road, Engadine seeking its rezoning in order to facilitate its expansion. However, this request was not received in time for the matter to be addressed prior to the Christmas recess.
- The purpose of this report is to give Council the opportunity to include this matter into SSLEP2015 Amendment 4.

REPORT RECOMMENDATION

That Council adopt the draft amendments as detailed in this report and as shown below as part of Amendment 4 to Sutherland Shire Local Environmental Plan 2015:

That in order to facilitate the successful operation and expansion of the existing child care centre at 145 Woronora Road Engadine; that Lot B DP35768 be zoned SP2 Infrastructure (Child Care Centre) as part of Amendment 4 to SSLEP2015.

PURPOSE

Sutherland Shire Local Environmental Plan 2015 (SSLEP2015) was made by the State Government on 23 June 2015. Since the plan was made, a number of amendments have been identified as being

required. The amendments either make drafting changes to improve the implementation of the plan, or make changes in response to studies that have recently been completed or submissions made to Council. This report considers a request to rezone the Bullfrog Childcare Centre at 145 Woronora Road, Engadine to facilitate its expansion.

BACKGROUND

Towards the end of 2015 Council considered a number of reports which dealt with a range of minor matters which required amendment to SSLEP2015 to be addressed. Council received representations from the owners of 145 Woronora Road, Engadine seeking its rezoning in order to facilitate its expansion. However, this request was not received in time for the matter to be addressed prior to the Christmas recess.

DISCUSSION

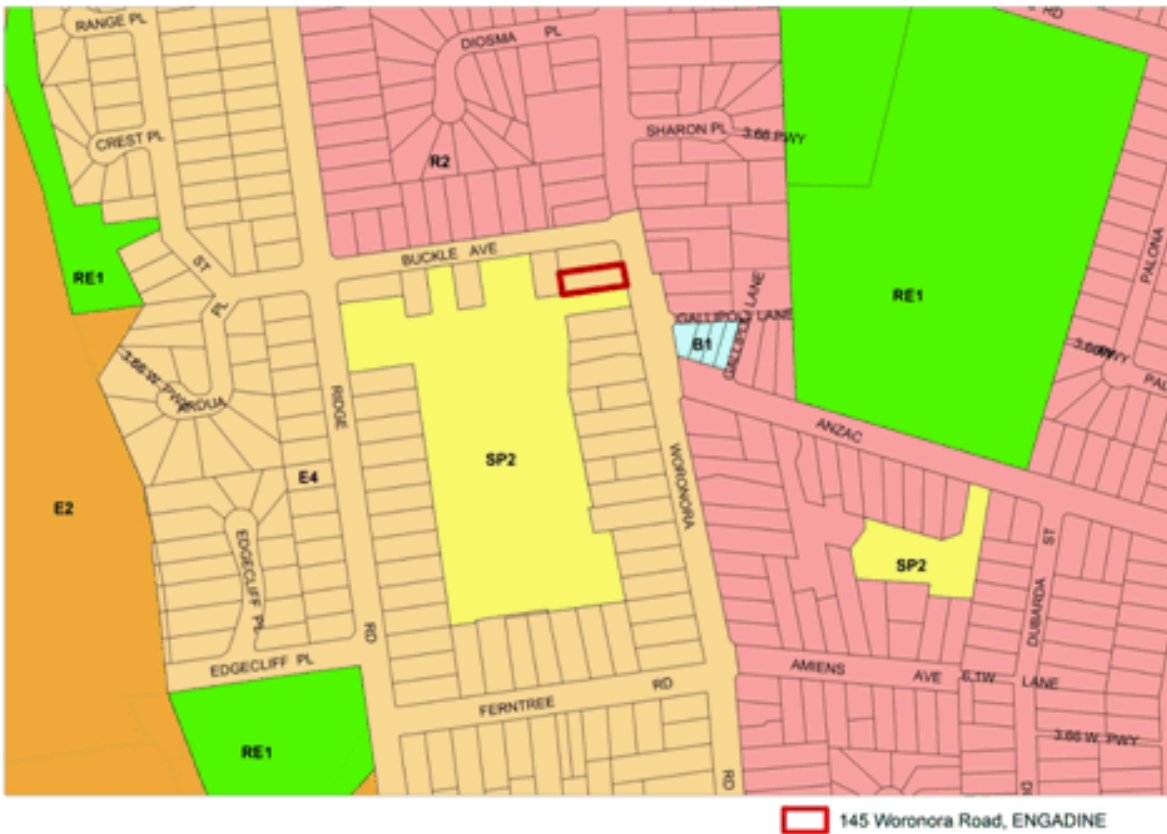
The Bullfrog Childcare Centre is located at 145 Woronora Road, Engadine. It is a very successful and long established business that is valued by the local community. The Bullfrog Childcare Centre is conveniently located next to Engadine West Primary School and has been in operation for many years. The space used for the childcare centre is at the rear of the site behind a single dwelling house.

The owners of the centre wish to expand their business but childcare centres are prohibited in the E4 Environmental Living zone under SSLEP2015. Childcare centres have been excluded as a permissible use in all areas that are subject to risk of bushfire or which require evacuation during bushfire events. This is a sensible strategy because the presence of childcare centres exacerbates the complexity of evacuation during a bushfire. Children must be safely evacuated while parents try and move towards the fire front to get to their children. Such situations have proven very difficult for emergency services to manage in past bushfire events.

The owners of the centre can intensify the use of the site by relying on existing use rights. Existing use rights legislation allows a lawfully commenced use to continue operating and expand where a planning instrument subsequently prohibits the use. However, established case law has determined that it is only the land actually used for the existing use that benefits from being able to be used contrary to the zoning of the land. This means that the owner cannot extend the centre to the front portion of the site that currently contains the dwelling house.

Childcare centres are permissible in the R2 zone which is on the opposite side of Woronora Road. However, the zoning boundary has been based on bushfire risk.

An extract of the zoning map showing the site and surrounding land is presented below:



Council has previously considered this case. Because this is a long established childcare centre located next to a school, Council resolved to add the property to Schedule 1 of the SSLEP2015 which would have allowed a child care centre to be an additional permitted use on the land. The draft LEP was referred to NSW Planning and Environment with this provision. However, it was removed by Parliamentary Counsel prior to the making of the plan. This is one of a number of properties that were removed from Schedule 1.

It is officers understanding that Parliamentary Counsel's Office took the view that Council had over used Schedule 1 in preference to the use of a zone where the use would be permissible. The Department has not indicated any planning argument with the logic of permitting a child care centre on the land. As such it is appropriate that Council has a second attempt at getting the property rezoned. Rather than use Schedule 1, an alternative approach that could be pursued is to expand the SP2 Infrastructure zone that applies to the adjoining school. This may prove more acceptable to Parliamentary Counsel's Office because it is an extension of the existing Special Uses zone rather than relying on Schedule 1.

CONSULTATION

Further consultation will occur during the exhibition of the Planning Proposal for Amendment 4.

BUDGET AND RESOURCES

The preparation of a Planning Proposal to progress these LEP amendments is budgeted for within the budget and resources allocation to Strategic Planning.

POLICY

The recommendations contained in this report will form part of a Planning Proposal to amend SSLEP2015.

CONCLUSION

Amendment 4 to SSLEP2015 is a housekeeping amendment that seeks to address a number of minor issues that have arisen since Council finalised the comprehensive LEP. Amendment 4 has not been referred to NSW Planning for Gateway Determination to give Council the opportunity to consider the representations received. It is recommended that the planning proposal for Amendment 4 to SSLEP2015 incorporate the rezoning of the existing child care centre at 145 Woronora Road Engadine (Lot B DP35768) from E4 Environmental Living to SP2 Infrastructure (Child Care Centre).

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.

File Number: 2015/220811

COMMITTEE RECOMMENDATION

That Council adopt the draft amendments as detailed in this report and as shown below as part of Amendment 4 to Sutherland Shire Local Environmental Plan 2015:

That in order to facilitate the successful operation and expansion of the existing child care centre at 145 Woronora Road Engadine; that Lot B DP35768 be zoned SP2 Infrastructure (Child Care Centre) as part of Amendment 4 to SSLEP2015.

(Councillor Walton / Councillor Schreiber)

COUNCIL RESOLUTION

That Council adopt the draft amendments as detailed in this report and as shown below as part of Amendment 4 to Sutherland Shire Local Environmental Plan 2015:

That in order to facilitate the successful operation and expansion of the existing child care centre at 145 Woronora Road Engadine; that Lot B DP35768 be zoned SP2 Infrastructure (Child Care Centre) as part of Amendment 4 to SSLEP2015.

(Councillor Provan / Councillor Schreiber)