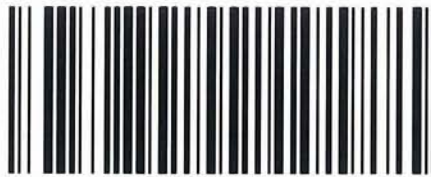




Jazmin van Veen
File Ref: LP/06/386062

21 December 2012



PCU040356

Juliet Grant
Sydney Region - East
Department of Planning and Infrastructure
GPO Box 39
SYDNEY NSW 2001

Dear Madam,

Planning Proposal for Amendment 20 to Sutherland Shire Local Environmental Plan 2006

[In response, please quote File Ref: LP/06/386062]

Council has resolved that to amend Sutherland Shire Local Environmental Plan 2006 (SSLEP2006) under the gateway process (Mayoral Minute No. 16/12-13).

A planning proposal has now been prepared in accordance with Section 55 of the *Environmental Planning and Assessment Act 1979*. The proposal contains the following amendments:

- increase the maximum floor space ratio permitted in Zone 1 – Environmental Housing (Environmentally Sensitive Land), Zone 2 – Environmental Housing (Scenic Quality), Zone 3 – Environmental Housing (Bushland) and Zone 4 – Local Housing.,
- decrease the minimum landscaped area required for Zone 1 – Environmental Housing (Environmentally Sensitive Land), Zone 2 – Environmental Housing (Scenic Quality), Zone 3 – Environmental Housing (Bushland), Zone 4 – Local Housing and Zone 5 – Multiple Dwelling A,
- include a provision to allow a reduction in landscaped area by 5% if a significant tree within the building platform is accommodated on site,
- exclude boatsheds and garden sheds from gross floor area calculations,
- delete Clause 18 which allows for the removal of waterfront structures, and
- introduce a new term “waterfront cottages” as a permissible land use in Zone 1 – Environmental Housing (Environmentally Sensitive Land), Zone 2 – Environmental Housing (Scenic Quality) and Zone 16 – Environmental Protection (Waterways).

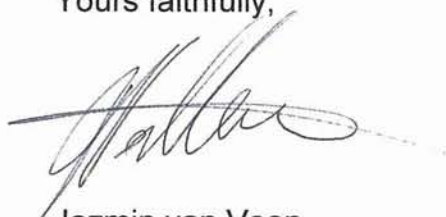
Department of Planning
Received
24 DEC 2012
Scanning Room

In accordance with Section 56 of the Environmental Planning and Assessment Act 1979, Council submits the enclosed planning proposal for a Gateway Determination. This information package contains the following:

1. Planning Proposal - Sutherland Shire Local Environmental Plan 2006 (Draft Amendment No. 20)
2. Planning Proposal - Project Timeline
3. Attachment 1 – Mayoral Minute No. 12/12-13
4. Attachment 2 – Council Report DAP014-13
5. Attachment 3 – Council Report DAP012-13
6. Attachment 4 – Mayoral Minute No. 16/12-13

An electronic copy of this information has been emailed. Should you have any further enquiries please contact Jazmin van Veen of Council's Environmental Planning Unit on 9710 0809.

Yours faithfully,



Jazmin van Veen
Environmental Planner
for J W Rayner
General Manager

Planning Proposal - Section 55 of the Environmental Planning and Assessment Act, 1979

LOCAL GOVERNMENT AREA

Sutherland Shire Council

NAME OF PLANNING PROPOSAL

Sutherland Shire Local Environmental Plan 2006 (Draft Amendment No. 20)

ADDRESS OF LAND

The proposal applies to the whole of the Sutherland Shire Local Government Area.

MAPS

N/A

DETAILS OF THE PLANNING PROPOSAL

1. A statement of the objectives or intended outcomes of the proposed local environmental plan. [Act s. 55(2)(a)]

The primary objectives of this planning proposal are:

- To increase the maximum floor space ratio permitted in Zone 1 – Environmental Housing (Environmentally Sensitive Land), Zone 2 – Environmental Housing (Scenic Quality), Zone 3 – Environmental Housing (Bushland) and Zone 4 – Local Housing.,
- To decrease the minimum landscaped area required for Zone 1 – Environmental Housing (Environmentally Sensitive Land), Zone 2 – Environmental Housing (Scenic Quality), Zone 3 – Environmental Housing (Bushland), Zone 4 – Local Housing and Zone 5 – Multiple Dwelling A,
- To include a provision to allow a reduction in landscaped area by 5% if a significant tree within the building platform is accommodated on site,
- To exclude boatsheds and garden sheds from gross floor area calculations,
- To delete Clause 18 which allows for the removal of waterfront structures, and
- To introduce a new term “waterfront cottages” as a permissible land use in Zone 1 – Environmental Housing (Environmentally Sensitive Land), Zone 2 – Environmental Housing (Scenic Quality) and Zone 16 – Environmental Protection (Waterways).

2. An explanation of the provisions that are to be included in the proposed local environmental plan. [Act s. 55(2)(b)]

- Amend Clause 35 (5) to remove sliding scale and introduce a set maximum Floor Space Ratio of 0.5:1 in Zone 1 – Environmental Housing (Environmentally Sensitive Land) and Zone 2 – Environmental Housing (Scenic Quality) irrespective of building type.
- Amend Clause 35 (6) & (7) to increase Floor Space Ratio maximum to 0.55:1 in Zone 3 – Environmental Housing (Bushland) and Zone 4 – Local Housing irrespective of building type.
- Amend Clause 36 (3) to reduce the landscaped area requirement to 30% for development in Zone 1 – Environmental Housing (Environmentally Sensitive

Land), Zone 2 – Environmental Housing (Scenic Quality), Zone 3 – Environmental Housing (Bushland), Zone 4 – Local Housing and Zone 5 – Multiple Dwelling A irrespective of building type.

- Add a subclause to Clause 36 to allow the minimum landscaped area on any land to be reduced by 5%, if a significant tree within the typical development zone (building platform) is accommodated on site.
- Delete Clause 18 – Development in or Adjacent to Waterways.
- Add “waterfront cottage” to the dictionary being “a dwelling constructed forward of the foreshore building line more than 3 years prior to the commencement of this amendment”.
- Amend Clause 11 to allow “waterfront cottage” as a permissible use in Zone 1 – Environmental Housing (Environmentally Sensitive Land), Zone 2 – Environmental Housing (Scenic Quality) and Zone 16 – Environmental Protection (Waterways).
- Amend the definition of gross floor area to exclude freestanding boatsheds and garden storage sheds.

3. Justification for those objectives, outcomes and provisions and the process for their implementation. [Act s. 55(2)(c)]

A. Need for planning proposal

1. Is the planning proposal the result of any strategic study or report?

The planning proposal is the result of a Mayoral Minute (Appendix 1) which outlines a need to review Sutherland Shire’s planning controls in relation to floor space ratios (FSR), landscaped area and waterfront controls to allow for a simpler planning system which will remove barriers to development. The changes also seek to promote clarity and assurance for land owners.

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

An amendment to Sutherland Shire Local Environmental Plan 2006 is the most expedient method to action these amendments. While Council has prepared its draft Standard Instrument LEP it is yet to be exhibited and it may be some time before it comes into force. As such an amendment to the SSLEP2006 has been requested by Council.

3. Is there a net community benefit?

The planning proposal seeks increase permissible floor space ratios and remove controls which in council’s view, unduly restrict the rights of land owners to develop land in harmony with their neighbours and the environment. Coupled with an increase in floor space potential is a decrease in landscaped area required on each lot to 30%. This reduction applies through residential Zones 1-5. Residential property owners will benefit from increased development potential.

These changes will facilitate larger single dwelling in line with current community expectations. Reductions in landscaped area requirements may

also make the development of townhouses and villas a more viable option contribution to meeting the needs of Sutherland's ageing population.

B. Relationship to strategic planning framework

1. *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)?*

Sutherland Shire Council has been set a dwelling target of 10,100 new dwellings in the Draft Subregional Strategy for the South Subregion. Increasing the development potential of residentially zoned properties may assist in reaching these targets through redevelopment at higher yields. Amendments to FSR and landscaped area may also assist in meeting direction C2.3 which seeks to provide a mix of housing types. These are more likely to be achieved with the greater flexibility provided under the proposed controls.

2. *Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?*

The planning proposal is not contrary to Council's community plan known as *Our Shire Our Future: Our Guide for Shaping the Shire to 2030*. The plan seeks to deliver balanced development and housing for all of the community. *Our Shire Our Future* also identifies a desire to provide homes that meet the aspirations of the community and the requirements of individuals. This planning proposal will provide greater opportunities to meet these needs and aspirations.

3. *Is the planning proposal consistent with applicable state environmental planning policies?*

The planning proposal does not contravene any state environmental planning policies.

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

The planning proposal does not contravene any Ministerial Directions.

C. Environmental, social and economic impact.

1. *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 will not directly result in any adverse impacts on critical habitat, threatened species, populations or ecological communities, or their habitats. Site specific impacts can be assessed at development assessment stage.

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

The proposed increase to FSRs and decrease of landscaped area requirements will lead to higher percentages of impervious surfaces. This will increase the amount of runoff produced on developed sites. Runoff mitigation may be provided through design elements as required under the current Sutherland Shire Development Control Plan 2006.

3. *How has the planning proposal adequately addressed any social and economic effects?*

There is not likely to be any negative social or economic effects. The proposals may provide for economic growth through greater development potential.

D State and Commonwealth interests.

1. *Is there adequate public infrastructure for the planning proposal?*

While the planning proposal facilitates potential growth in development it is unlikely to significantly impact any State or Commonwealth infrastructure.

2. *What are the views of the State and Commonwealth Public Authorities consulted in accordance with the gateway determination, and have they resulted in any variations to the planning proposal?*

Not applicable at this stage.

4. Justification for those objectives, outcomes and provisions and the process for their implementation. [Act s. 55(2)(c)]

- A. *Is the proposed reclassification the result of any strategic study or report?*

N/A

- B. *Is the planning proposal consistent with the local council's community plan, or other local strategic plan?*

N/A

- C. *If the provisions of the planning proposal include the extinguishment of any interests in the land, an explanation of the reasons why the interests are proposed to be extinguished.*

NA

- D. *The concurrence of the landowner, where the land is not owned by the relevant planning authority.*

N/A

5. Details of the community consultation that is to be undertaken on the planning proposal. [Act s. 55(2)(e)]

Council proposes that the planning proposal be exhibited in accordance with any requirements as determined by the gateway process and the requirements of Section 29 of the Local Government Act, 1993 and Section 57 the Environmental Planning and Assessment Act, 1979.

Council proposes to give notice of the public exhibition of the planning proposal:

- in the local newspaper (The St George and Sutherland Shire Leader and The Liverpool City Leader) and;
- on Council's web-site.

Sutherland Shire Local Environmental Plan 2006

Draft Amendment No. 20

Project Timeline

Task	Estimated Completion Time	Dates
Submission of SSLEP2006 Draft Amendment No. 21 / Planning Proposal to DP&I	N/A	Week ending 21 Dec 2013
Gateway Determination Note DP&I closed to 7/01/2013		25 January 2013
Anticipated timeframe for the completion of required studies	N/A	N/A
Timeframe for government agency consultation (pre and post exhibition as required by Gateway determination)	N/A	N/A
Commence exhibition and completion dates for public exhibition period	2 weeks to finalise exhibition documents, distribute to libraries & place advert in St George & Sutherland Leader for February. Four (4) weeks public consultation period.	5 February 2013
Finish Exhibition		5 March 2013
Dates for public hearing (if required)	N/A	N/A
Timeframe for consideration of submissions	Two (2) week	6 March to 13 March 2013
Report completed, mapping revised, instrument amended and report submitted to Development Assessment and Planning (DAP) Committee	DAP meeting dates not confirmed at this stage.	8 April 2013
Council meeting	Council meeting dates not confirmed at this stage.	6 May 2013
Anticipated date Relevant Planning Authority will forward to the department for plan to be made		Week ending 10 April 2013
PC Opinion and plan made	Approx 3 weeks plus time for legislation website	Early June 2013
Anticipated commencement date (date of Gateway determination)		DP&I to determine

Appendix 1

Council Meeting

MinuteNumber: 284

Council Meeting Date: 08/10/12

08/10/2012

Mayoral Minute No. 12/12-13

- **Review of Planning Controls to Promote Clarity and Assurance for Home and Land Owners**
- **Review of Independent Hearing & Assessment Panel (IHAP) and Architectural Review Advisory Panels (ARAP)**

File Number: GO/06A/820215, LP/06/723665, GO/06B/484611, GO/06B/2857

Director:

Report Item

MAYORAL MINUTE NO. 12/12-13

8 October 2012

The Councillors of Sutherland Shire

Dear Councillors

- **Review of Planning Controls to Promote Clarity and Assurance for Home and Land Owners**
- **Review of Independent Hearing & Assessment Panel (IHAP) and Architectural Review Advisory Panels (ARAP)**

Executive Summary

The recent election has delivered a mandate for change within the Council planning controls and policies, particularly with regards to provisions that distort the planning system, create delays, and unduly restrict the rights of land owners to develop residential land in harmony with their neighbours and the environment.

At the same time with the election of a new Council it is timely for a review of the review bodies which the Council charges with the important task of providing it with independent advice about important planning proposals before it.

To address those matters, the complicated and unduly restrictive parts of Council's planning policies and controls which detract from the objective of making the Sutherland planning system simpler and more closely aligned with community attitudes are to be changed with minimum delay.

Council will also reconsider both membership of its Independent Hearing & Assessment Panel (IHAP) and the Architectural Review Advisory Panel (ARAP), while at the same time reviewing the rules governing the constitution and objectives of those panels to ensure that they are delivering the best outcome for the Shire.

Background

Changes to planning controls and policy

As a Councillor for many years I have often seen people come before this Council angry and frustrated by planning controls which impose unfair and unreasonable requirements on property owners and which seem to be aimed at creating delays and confusion in the planning system rather than reducing them.

In the recent election the residents of Sutherland have delivered a strong message for change, and a strong mandate for this Council to put an end to policies which distort the planning system to put unreasonable constraints upon families reasonably enjoying their homes.

As Mayor, I intend to move quickly to deliver on that mandate.

Local Environment Plan and DCP

From my experience as a Councillor I have identified the following parts of the Local Environment Plan and DCP as areas responsible for obvious unfairness and injustice for land owners, as well as leading to cost and delay in the planning process without delivering any meaningful benefit to the environment:

- Policies associated with the identification of dangerous and inappropriately planted trees on private land which ought to be removed or appropriately lopped. These changes should be considered in conjunction with a sensible off-set policy with appropriate ratios to ensure that trees are replaced in more appropriate settings.
- Forced removal of waterfront structures, which have stood in some cases for half a century or more.
- LEP planning provisions which identify the permissible floorspace of new dwellings, but then constrain that development potential through landscaping requirements which make it impossible to achieve the permitted floor space.
- Definitions of FSR which perversely include boatsheds and storage structures which are unrelated to the effective density of the development as generally understood in planning assessments.
- A definition of the foreshore building line which is complex and uncertain and does not follow established examples.
- Changes in the permissible FSR across residential zones which often do not reflect a reasonable development expectation of land owners in the area.

As Mayor I believe that planning controls are there to serve land owners to develop their land in ways that will best serve their families, but in a harmonious way. I also believe that planning controls should be certain and easy to interpret.

It is on that basis that I have asked the General Manager to review the list of outstanding DA's and Council prosecutions to identify situations where these issues arise. I intend to personally involve myself in a process whereby fair and just outcomes are obtained in these cases.

I also intend to see that the LEP and DCP controls in the Shire are immediately examined in relation to the issues I have identified and that appropriate revisions are brought back before the Council as soon as possible for determination.

I ask the Council to consider the resolutions proposed to that end in this Mayoral Minute.

Constitution of the IHAP and ARAP

Council's IHAP and ARAP provide an important source of independent advice from experts in the community.

In my time as Councillor I have found the advice and assistance provided by those panels to be an invaluable asset in allowing better decision making and also a voice from outside the political process.

The Panels are significant investment of resources by the Council, and it is important that the Council continually reviews ways in which that investment can be most efficiently utilised.

A number of questions were recently raised in reviews at State level about how IHAP and ARAP function and overlap.

One innovation that should be considered for example would be for a member of ARAP to also sit on the IHAP. That would allow the benefit firstly of ensuring that the two Panels do not work in conflict, while also allowing the IHAP the benefit of the expert insights of the ARAP.

Another issue that should be addressed is whether it is appropriate for any staff member to sit on the ARAP or the IHAP. While there is clearly a role for a Council staff member to work with and advise the panels, the objective of independence argues against a Council staff member voting on the Panels' decisions.

To address those issues I propose:

- (a) that positions on the IHAP and ARAP be advertised to ensure Council has the best available candidates, with existing candidates welcome to reapply, with the Council to determine the final membership of the Panels on advice from the General Manager;
- (b) that members of Council staff be disqualified from sitting on the Panels, but may retain an advisory role;
- (c) that Council staff report to Council any innovations possible under the current legislation including the possibility of reducing any duplication between the two panels, and of a member of the ARAP sitting on the IHAP Panel

MOTION:

1. That changes be made to Sutherland Shire DCP 2006 to ensure that land owners seeking to remove or prune trees causing a risk to personal property and safety are not unduly prevented from doing so.
2. That a sensible tree off-set policy with considered ratios be developed where the promotion of planting trees in more suitable locations on private or public property in place of dangerous or poorly located trees that limit sensible urban development in urban zones.
3. That Council declare a change to its policy of pursuing removal of existing waterfront structures where those structures form part of the existing character of the waterfront.
4. That the Mayor in consultation with the General Manager be delegated authority to reconsider current compliance action by Council for the removal of historical waterfront structures, and where consistent with the policy so identified, to cease that compliance action and/or enter into settlement agreements which are consistent with that policy.
5. That advice be provided to the Council as to changes to be made to Council's draft Standard Instrument LEP (or if more appropriate a specific amending LEP) as necessary to:
 - (a) delete provisions in the current Sutherland LEP which require the removal of existing waterfront structures as the price for development elsewhere on a property;
 - (b) change Council's definition of foreshore building line to allow a precise and simple determination for individual properties following methodology broadly applied in the state.
 - (c) appropriately increase FSR in residential zones to reflect reasonable expectations in the area.
 - (d) to ensure that the development potential of land permitted under the FSR controls is not unduly reduced by ambiguous landscaping controls.
6. That positions on the IHAP and ARAP be advertised to ensure Council has the best available candidates, with existing candidates welcome to reapply, with the Council to determine the final membership of the Panels on advice from the General Manager.
7. That members of Council staff be disqualified from sitting on the Panels, but may retain an advisory role.
8. That Council staff report to Council any innovations possible under the current legislation including the possibility of reducing any duplication between the two panels, and of a member of the ARAP sitting on the IHAP Panel.

Councillor Kent Johns
Mayor

Report Recommendation:

Mayoral Minute No.12/12-13

Review of Planning Controls to Promote Clarity and Assurance for Home and Land Owners

Review of Independent Hearing & Assessment Panel (IHAP) and Architectural Review

Advisory Panels (ARAP)

Committee Recommendation:

Mayoral Minute No.12/12-13

Review of Planning Controls to Promote Clarity and Assurance for Home and Land Owners

Review of Independent Hearing & Assessment Panel (IHAP) and Architectural

Review Advisory Panels (ARAP)

Council Resolution:

1. That changes be made to Sutherland Shire DCP 2006 to ensure that land owners seeking to remove or prune trees causing a risk to personal property and safety are not unduly prevented from doing so.
2. That a sensible tree off-set policy with considered ratios be developed where the promotion of planting trees in more suitable locations on private or public property in place of dangerous or poorly located trees that limit sensible urban development in urban zones.
3. That Council declare a change to its policy of pursuing removal of existing waterfront structures where those structures form part of the existing character of the waterfront.
4. That the Mayor in consultation with the General Manager be delegated authority to reconsider current compliance action by Council for the removal of historical waterfront structures, and where consistent with the policy so identified, to cease that compliance action and/or enter into settlement agreements which are consistent with that policy.
5. That advice be provided to the Council as to changes to be made to Council's draft Standard Instrument LEP (or if more appropriate a specific amending LEP) as necessary to:
 - (a) delete provisions in the current Sutherland LEP which require the removal of existing waterfront structures as the price for development elsewhere on a property;
 - (b) change Council's definition of foreshore building line to allow a precise and simple determination for individual properties following methodology broadly applied in the state.

(c) appropriately increase FSR in residential zones to reflect reasonable expectations in the area.

(d) to ensure that the development potential of land permitted under the FSR controls is not unduly reduced by ambiguous landscaping controls.

6. That positions on the IHAP and ARAP be advertised to ensure Council has the best available candidates, with existing candidates welcome to reapply, with the Council to determine the final membership of the Panels on advice from the General Manager.

7. That members of Council staff be disqualified from sitting on the Panels, but may retain an advisory role.

8. That Council staff report to Council any innovations possible under the current legislation including the possibility of reducing any duplication between the two panels, and of a member of the ARAP sitting on the IHAP Panel.

Appendix 2

Development Assessment and Planning

MinuteNumber: 331

Council Meeting Date: 22/10/12

22/10/2012 DAP014-13

Review of Floor Space Ratio and Landscaped Area in Residential Zones

File Number: LP/06/562397

Director: Environmental Services (BM:MC)

Report Item

Disclaimer

Council is in the process of formulating a proposed local environmental plan for part of the Sutherland Shire. Council has elected to release certain documents, or parts thereof, which it has considered during the process. The documents released may in part or in whole contain the opinions of third parties that Council may or may not have accepted in part or in whole. The documents are released for information only and should in no way be relied upon by any person as an indication of what the final proposed local environmental plan will be as that is subject to further consideration and decisions by Council, a formal exhibition period, and consideration and determination by the State Government. You should seek your own professional advice in relation to this and the information contained in the documents.

REPORT IN BRIEF

Purpose

This report responds to Council's resolution to Mayoral Minute No. 12/12-13 and examines existing floor space ratios and landscaped area controls and puts forward suggestions as to how the controls can be varied to better accommodate resident's expectations of the development of their land.

Summary

Maximum building height, minimum landscaped area and floor space ratio limits are all development controls tools that control the bulk, scale and intensity of development. The controls work in concert – generally larger buildings with greater floor space ratio require greater height to be able to achieve the applicable floor space ratio, with less landscaped area.

Residential low density development in the Shire is currently limited to two storeys. Without a portion of the development being two storeys it is often difficult to maximise the floor space potential of a lot and achieve the current landscape requirements. Similarly, it can be difficult to maximise development potential if a site has extensive areas of paving or driveway because this is at the expense of landscaped area.

There is scope to increase the floor space ratio to facilitate larger residential dwellings in the Shire. However it should be noted that increasing the amount of built form on a site will result in less landscaped area and potentially a change in the landscape character of the Shire. Increasing the permitted gross floor area of dwellings will reduce the standard of amenity of neighbours of new development in low density areas, due to the proximity and extent of built form.

Should Council wish to facilitate larger single dwellings and dual occupancy development, it is recommended that an increased floor space ratio be introduced and be supported by a reduced landscape control. It is considered that such reforms are most efficiently introduced through the Standard Instrument Local Environmental Plan.

REPORT IN FULL

Introduction

Councils commonly use a variety of development standards in local environmental plans to limit the bulk, scale and intensity of development. Development standards establish the character of the area.

Development standards also establish how future development will relate to adjoining development and the public domain. Together the development standards help set the amenity that residents in a locality will enjoy. This is because the development standards establish the separation between buildings and the volume of landscape that will be provided throughout a neighbourhood. Lower density development generally results in greater separation between dwellings and therefore greater opportunity for solar access, privacy and landscaping.

The primary development controls used by Sutherland Shire Council have traditionally been setting maximum floor space ratios (FSR) and building height limits, combined with minimum landscaped area controls.

Part 5(c) of Council's resolution in relation to Mayoral Minute No. 12/12-13 requires that the *"draft Standard Instrument LEP (or if more appropriate a specific amending LEP) appropriately increase FSR in residential zones to reflect reasonable expectations in the area."* Part 5(d) of the resolution directs officers *"to ensure that the development potential of land permitted under the FSR controls is not unduly reduced by ambiguous landscaping controls"*.

Current Controls: SSLEP2006 maximum Floor Space Ratio

Floor Space Ratio (FSR) controls are expressed as a ratio of building area to site area. For example a FSR of 0.5:1 sets the maximum development potential of a site as being equal to half the site area, while a FSR of 3:1 would permit floor space to be up to three times the area of the site. Floor space ratios set an upper limit on the intensity of development in terms of building bulk, traffic generation, parking and associated vehicular access movements. Where FSR is less than 1:1, the control helps set the rhythm between buildings and open space.

Under SSLEP2006, Clause 35 *Building density*, contains the controls that limit the maximum gross floor area of development on a site. The aims of the clause are:

- (a) *to ensure that development is in keeping with the characteristics of the site and the local area,*
- (b) *to provide a degree of consistency in the bulk and scale of new buildings that relates to the context and environmental qualities of the locality,*
- (c) *to minimise the impact of buildings on the amenity of adjoining residential properties,*
- (d) *to ensure, where possible, that non-residential buildings in residential zones are compatible with the scale and character of residential buildings on land in those zones.*

Gross floor area is limited by using a floor space ratio control. Under SSLEP2006 the **floor space ratio** of buildings on a site, is *the ratio of the gross floor area of all buildings within the site to the site area*.

Gross floor area is defined as:

gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:

- (a) the area of a mezzanine, and
- (b) habitable rooms in a basement or an attic, and
- (c) any shop, auditorium, cinema, and the like, in a basement or attic, but excludes:
- (d) any area for common vertical circulation, such as lifts and stairs, and
- (e) any basement:
 - (i) storage, and
 - (ii) vehicular access, loading areas, garbage and services, and
- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
- (h) any space used for the loading or unloading of goods (including access to it), and
- (i) terraces and balconies with outer walls less than 1.4 metres high, and
- (j) voids above a floor at the level of a storey or storey above.

Under SSLEP2006 “Site” is defined as:

The following is taken to be excluded from the site of proposed development for the purposes of this clause:

- (a) land on which the proposed development is prohibited under this plan (other than land on which the proposed development is prohibited solely because of the application of clause 17),
- (b) in the case of an internal lot:
 - (i) any access corridor to or from the lot (if the lot is a hatchet-shaped lot), and
 - (ii) any right of way that traverses another lot.

It should be noted that SSLEP2006 zones and development controls were developed using robust, science based controls which came into effect after extensive community consultation. The current plan recognises that some areas are more environmentally sensitive than others and that vulnerable areas should be afforded greater protection. Council employed an environmental risk assessment methodology which underpinned the development of the current LEP. This approach focused on key sustainability risks and led to the development of appropriate controls for each locality. The work was widely regarded. The Australian Planner journal, published quarterly by Planning Institute of Australia, commended the approach stating that it was ‘scientifically justifiable’ (Australian Planner Volume 41 No 1 2004).

The following floor space limits currently apply Under SSLEP2006 in the low density residential zones:

Zone	Equivalent Standard Instrument Zone	FSR	Zone characterised by the following permissible residential uses
SEPP Kurnell E4 Environmental Living (Greenhills)	E4 Environmental Living	0.55:1	Dwellings (and secondary dwellings 65sq.m.)
SSLEP2006 Zone 1 Environmental Housing (Environmentally Sensitive Land) & Zone 2 Environmental Housing (Scenic Quality) Sliding Scale: Area of site maximum gross floor area (m2) >850 AS x 0.4 850-1200 (AS – 850) x 0.3 + 340 1200 – 1800 (AS – 1,200) x 0.25 + 445 1800+ (AS – 1,800) x 0.2 + 595	E4 Environmental Living And E3 Environmental Management	equivalent to 0.4:1 0.4-0.37:1 0.37 – 0.33:1 0.33 :1	Dwellings (and secondary dwellings 65sq.m.) Dual occupancies (unable to be subdivided)
SSLEP2006 Zone 3 Environmental Housing (Bushland)	R6 Risk Management Residential	0.45:1	Dwellings (and secondary dwellings 65sq.m.) Dual occupancies
SSLEP2006 Zone 4 Local Housing	R2 Low Density Residential	0.45:1	Dwellings (and secondary dwellings 65sq.m.) Dual occupancies (and Villas and Townhouses)

Zones 1 and Zone 2 apply to the lower density foreshore areas. In Zone 1 natural elements remain and form the dominant character of the locality when viewed from the waterway. Zones 1 and 2 have lower FSR to ensure the scale and intensity of future development reflects landscape quality of the area and the constraints imposed by generally steep topography. The floor space ratio is lower (0.4:1 to 0.33:1) to ensure new buildings complement the scale and character of the locality. It also helps preserve the high level of amenity currently enjoyed by surrounding residents because it results in more separation between buildings and more landscaping, which contributes to privacy. The limited floor space ratio control in this zone enables more of each site to be landscaped.

The control is a sliding scale – a provision that recognises the constraints of small sites by allowing a greater floor ratio space. The sliding scale is useful in preventing overdevelopment of very large lots, which is particularly important in visually sensitive environments. Where lots are large and near square in shape, very large dwellings can be accommodated because there is sufficient space surrounding the dwelling to establish a landscaped context for the

building. As such large dwellings can be well separated from neighbours' dwellings as is typically the case in rural residential areas such as Dural. However, in Sutherland Shire large lots tend to be standard allotments in terms of width but extremely deep. Large foreshore lots typically have a standard road frontage but fall away to the waterfront or bushland. When these sites are developed, there is usually a small building platform, usually at the foreshore building line. For example, many Zone 1 lots in Ellesmere Road and Arcadia Avenue in Gympsea Bay range in size from 1200 sq m to 2000 sq m. Some Zone 1 lots in Willarong Road Caringbah South and Fowler Road Illawong also exceed 1200 sq m in size. Yet these lots typically have standard lot widths. On a 2000 sq m lot, an FSR of 0.4:1 would result in a house with a gross floor area of 800 sq m. Under the sliding scale FSR (SSLEP2006) a 2000 sq m site would allow a gross floor area of 635 sq m.

Current Controls: SSLEP2006 Minimum Landscaped Area

Clause 36 of SSLEP2006 contains specific landscape controls for each zone. The Shire's residential areas are characterised by the presence of established canopy trees and remnant bushland that extends out from the five National Parks within the Shire. The landscape character of the Shire is one of the significant reasons why residents like to live here.

This local character has been maintained through the consistent application of landscaped area requirements introduced under Sutherland Shire's Local Environmental Plan 1993 and carried through to the current plan, Sutherland Shire Local Environmental Plan (SSLEP2006). These requirements reinforce Council's biodiversity strategy.

Landscaped area (LA) controls are expressed as a percentage of the site area. For example a LA of 45% means that 45% of the site must be planted. The LA controls work in concert with the FSR controls to establish the balance between landscape and built form in each neighbourhood. Generally larger buildings with a greater floor space ratio require more height to be able to achieve the applicable floor space ratio. Low density residential development in Sutherland Shire is currently limited to two storeys. Without a portion of the development being two storeys it is often difficult to maximise a site's floor space ratio potential and achieve the current landscape requirements.

Under SSLEP2006, Clause 36 *Landscaped Area*, contains the controls that set the minimum amount of landscaped area that may be provided on a site. The objectives of the clause are:

- a) to ensure adequate opportunities for the retention or provision of vegetation that contributes to biodiversity,*
- (b) to ensure adequate opportunities for tree retention and tree planting so as to preserve and enhance the tree canopy of Sutherland Shire,*
- (c) to minimise urban run-off by maximising pervious areas on the sites of development,*
- (d) to ensure that the visual impact of development is minimised by appropriate landscaping and that the landscaping is maintained,*
- (e) (Repealed)*
- (f) to ensure that landscaping carried out in connection with development on land in Zone 11—Employment is sufficient to complement the scale of buildings, provide shade, screen parking areas and enhance workforce amenities.*

For the purposes of calculating site area clause 36 contains the following provision:

The following is taken to be excluded from the site of proposed development for the purposes of this clause:

- (a) land on which the proposed development is prohibited under this plan (other than land on which the proposed development is prohibited solely because of the application of clause 17),
- (b) in the case of an internal lot:
 - (i) any access corridor to or from the lot (if the lot is a hatchet-shaped lot), and
 - (ii) any right of way that traverses another lot,
- (c) 40 square metres of the area of any lot on which there is, or is intended to be as part of the proposed development, a swimming pool that is ancillary to a dwelling house.

The dictionary that forms part of SSLEP2006 contains the following definition of landscaped area which is used to administer the development standard:

landscaped area means that part of a site that is used for growing plants, grasses or trees (including bushland), but does not include any building, structure, hard paved area, driveway, garbage storage area or swimming pool, or any planting over a basement, on a podium or roof top or within a planter box.

The following landscaped area requirements apply Under SSLEP2006 in the low density residential zones:

Zone	Landscaped Area	Zone characterised by the following permissible residential uses
SEPP Kurnell E4 Environmental Living (Greenhills)	40%	Dwellings (and secondary dwellings 65sq.m.)
SSLEP2006 Zone 1 Environmental Housing (Environmentally Sensitive Land) & Zone 2 Environmental Housing (Scenic Quality) Lot size: >850sq.m. 850-1200sq.m. 1200 – 1800sq.m. 1800+ sq.m.	Sliding scale equivalent to 45% 45%- 47% 48% - 53% 53%+	Dwellings (and secondary dwellings 65sq.m.) Dual occupancies (unable to be subdivided)
SSLEP2006 Zone 3 Environmental Housing (Bushland)	45%	Dwellings (and secondary dwellings 65sq.m.) Dual occupancies
SSLEP2006 Zone 4 Local Housing	45%	Dwellings (and secondary dwellings 65sq.m.) Dual occupancies Villas and Townhouses

However, Councillors should note that State Environmental Planning Policy (Exempt and Complying Codes) 2008 operates to override the landscaped area standards for certain development in certain zones. This includes complying development in part of zone 2 (non-foreshore lots) and zones 3 and 4. Under the Codes SEPP, a complying dwelling can be

erected with only 20% landscaping (lots under 600sq.m.) or 30% landscaping (for lots 600-900sq.m.). While the full potential of complying development has not been taken up, it could result in 80% of lots which are eligible for complying development being developed with dwellings with substantially less landscaped area than the current LEP requirement of 45%.

It should be noted that villas and townhouses have current concessions for landscaping, with 30% and 35% being required respectively. This concession aims to facilitate development.

Development Standards Comparison with other Councils

The FSR and landscape controls are not unusual in Sydney, particularly in areas with similar landscaped character and topography. It should be noted that not many councils include landscaped area as a statutory LEP development control. However, many do set landscaped area as a DCP control. Areas with a similar landscape character as the Shire have similar standards as the Shire. The following table illustrates the differing standards of low density (single dwelling) areas around Sydney:

Council	Zone (Low Density -Zone 4 equivalent)	FSR	Landscaped Area	Principal Private Open Space
Hurstville	Zone No 2	0.5:1	DCP control 40% 45% in FSPA	30sq.m. 5m min dim
Kogarah	Zone 2a Low Density	Sliding Scale maximum - 0.55:1	15% deep soil planting	Villas must have 40% pervious area
Hornsby	Residential A Low Density	0.4:1	45%	60-120sq.m. depending on size of dwelling (100-150sq.m)
Willoughby	Proposed R2 - Low Density	0.4:1	25-50% (average lot 45%)	2 bedroom dwelling 60m ² 3 bedroom dwelling 90m ² 4+ bedroom dwelling 150m ²
Kiama	R2 - Low Density	0.45:1	No landscaped area requirement 60% max site cover (buildings)	24sq.m. = 6m x 4m
Ku-ring -gai	R2 - Low Density	0.3:1 mapped 0.3:1 to 0.4:1 dependent on lot size	42-50%	50sq.m. min dimension 5m
Wollongong	R2 - Low Density	0.5:1	20% (50% of which must be behind the building line)	24sq.m. min dimension 4m
Liverpool	R2 - Low Density	0.5:1	25% (space 4mx6m rear, 3mx5m front for tree planting)	70-80sq.m. (4mx6m)
Lane Cove	R2 - Low Density	0.5:1	35% min width 1m	24sq.m. (min dimension 4m)

Opportunities to Increase Development Potential of Residential Land

Part 5(c) of Council's resolution in relation to Mayoral Minute No. 12/12-13 requires that the *"draft Standard Instrument LEP (or if more appropriate a specific amending LEP) appropriately increase FSR in residential zones to reflect reasonable expectations in the area."* Part 5(d) of the resolution directs officers *"to ensure that the development potential of land permitted under the FSR controls is not unduly reduced by ambiguous landscaping controls"*. This section of the report seeks to address these decisions.

Both the FSR and the Landscaped Area controls are statutory development standards which can only be changed through an amendment to the LEP. An amending LEP must follow a lengthy statutory process. Council's general experience has shown that a six month time frame is the minimum that could be expected for a matter to go from council resolution to gazettal. However, the actual processing time is largely dependent on the priorities of the Department of Planning and Infrastructure and the Minister. Given the extent of the planning reform program currently being undertaken by the State at present, it can be expected that there will be many competing priorities.

Sutherland Shire Council has however, been instructed by the Minister to have its draft Standard Instrument LEP submitted to the DoPI so that it can be made this year. This time frame cannot be accommodated due to the statutory processes required to prepare a plan. However, if the draft plan is submitted to the Department for gateway Determination prior to Christmas, it could be gazetted by mid 2013. If Council abides by this time frame, it is considered that planning reforms discussed in this report could be introduced through the SI almost as fast as an amending LEP. Making the changes to floor space ratio controls and landscape controls through the SILEP would be far more efficient for the both the EPU and the DoPI because there would be no duplication of work. As such this approach is recommended

The Standard Instrument : Floor Space Ratio

The SI contains definitions which cannot be altered by council. This is relevant because it is the definition of floor area that determines what is included within the calculation of floor space for the purposes of determining the FSR. The SI definition of floor space ratio and gross floor area is consistent with the definition in SSLEP2006 and states:

***floor space ratio** of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area.*

***gross floor area** means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:*

- (a) *the area of a mezzanine, and*
- (b) *habitable rooms in a basement or an attic, and*
- (c) *any shop, auditorium, cinema, and the like, in a basement or attic, but excludes:*
- (d) *any area for common vertical circulation, such as lifts and stairs, and*
- (e) *any basement:*
 - (i) *storage, and*
 - (ii) *vehicular access, loading areas, garbage and services, and*

- (f) *plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and*
- (g) *car parking to meet any requirements of the consent authority (including access to that car parking), and*
- (h) *any space used for the loading or unloading of goods (including access to it), and*
- (i) *terraces and balconies with outer walls less than 1.4 metres high, and*
- (j) *voids above a floor at the level of a storey or storey above.*

The SI includes a model clause for the calculation of floor space ratio and site area (clause 4.5). The SI definition of site area is also similar (clause 4.5 Calculation of floor space ratio and site area):

(3) Site area

In determining the site area of proposed development for the purpose of applying a floor space ratio, the site area is taken to be:

- (a) *if the proposed development is to be carried out on only one lot, the area of that lot, or*
- (b) *if the proposed development is to be carried out on 2 or more lots, the area of any lot on which the development is proposed to be carried out that has at least one common boundary with another lot on which the development is being carried out.*

The SI clause on the calculation of floor space ratio and site area specifies the following:

(4) Exclusions from site area

The following land must be excluded from the site area:

- (a) *land on which the proposed development is prohibited, whether under this Plan or any other law,*
- (b) *community land or a public place (except as provided by subclause (7)).*

(5) Strata subdivisions

The area of a lot that is wholly or partly on top of another or others in a strata subdivision is to be included in the calculation of the site area only to the extent that it does not overlap with another lot already included in the site area calculation.

(6) Only significant development to be included

The site area for proposed development must not include a lot additional to a lot or lots on which the development is being carried out unless the proposed development includes significant development on that additional lot.

(7) Certain public land to be separately considered

For the purpose of applying a floor space ratio to any proposed development on, above or below community land or a public place, the site area must only include an area that is on, above or below that community land or public place, and is occupied or physically affected by the proposed development, and may not include any other area on which the proposed development is to be carried out.

(8) Existing buildings

The gross floor area of any existing or proposed buildings within the vertical projection (above or below ground) of the boundaries of a site is to be included in the calculation of the total floor space for the purposes of applying a floor space ratio, whether or not the proposed development relates to all of the buildings.

(9) Covenants to prevent “double dipping”

When development consent is granted to development on a site comprised of 2 or more lots, a condition of the consent may require a covenant to be registered that prevents the creation of floor area on a lot (the restricted lot) if the consent authority is satisfied that an equivalent quantity of floor area will be created on another lot only because the site included the restricted lot.

(10) Covenants affect consolidated sites

If:

- (a) a covenant of the kind referred to in subclause (9) applies to any land (affected land), and*
- (b) proposed development relates to the affected land and other land that together comprise the site of the proposed development, the maximum amount of floor area allowed on the other land by the floor space ratio fixed for the site by this Plan is reduced by the quantity of floor space area the covenant prevents being created on the affected land.*

(11) Definition

In this clause, public place has the same meaning as it has in the Local Government Act 1993.

FSR and Boatsheds

Mayoral Minute No. 12/12-13 raises concern that *the “definition of FSR ...perversely includes boatsheds and storage structures which are unrelated to the effective density of the development as generally understood in planning assessment.”*

Please note that it is the definition of floor space ratio that determines that storage and boat sheds are floor space. Only basement storage is excluded from the definition. If a boatshed is enclosed and meets the tests established in the first section of the definition, it must at law be included in the calculation. It is not possible for council to exempt general storage and boatsheds from the calculation of floor space.

The only option open to council to facilitate boat sheds and storage under the standard instrument is to increase the permissible FSR. However, this does not overcome the situation where applicants exhaust the floor space potential of a site when constructing the primary dwelling, and are therefore restricted when they attempt to construct a boatshed in the future.

FSR : Standard Instrument LEP Proposed Changes

The comparison table of the FSR standards used by other councils shows that Sutherland Shire is not out of step with existing practice. The two sensitive foreshore zones (zones 1 & 2) provide for a FSR of between 0.33:1 and 0.4:1 which compares with Ku-ring-gai, Hornsby and Willoughby. While the Local Housing Zone permits a FSR of 0.45:1 which is comparable to Kiama. 0.55:1 is permitted in the new Greenhills Beach release area (zone E4) which is

comparable to Kogarah maximum FSR.

In responding to the Council direction, it is suggested that Council move away from the sliding scale in Zones 1 and 2 (generally equivalent to E3 and E4) and instead permit a uniform FSR of 0.45:1. This will result in all properties benefiting from at least 0.05:1, with larger sites gaining as much as 0.12:1. On a large 1200 m² this would result in an additional 96m² of floor space. Given that it is the affluent foreshore areas where residents seek to build the largest houses and also have boatsheds which are caught by the definition of gross floor area; this approach meets the direction of meeting the expectations of residents.

The Local Housing Zone (Zone 4), currently has a floor space ratio of 0.45:1. In response to Council's direction it is recommended that 0.5:1 is a reasonable increase for low density zones (R2 Low Density Residential and R6 Risk Management Residential) . This would bring the permissible FSR in line with dwellings in Hurstville, Wollongong, Liverpool and Lane Cove. An increase in FSR from 0.45: to 0.5:1 will facilitate an additional 30 m² on an average 600 m² lot. This is enough to accommodate an additional living area or bedroom and bathroom, which are typical types of additions proposed to single family dwellings.

Landscaped Area: Standard Instrument LEP Proposed Changes

The Standard Instrument also sets the definition of landscaped area. This definition limits the calculation to areas where plants grow that are not also occupied by any building or structure. This would exclude podium planting and planter boxes from the calculation. Specifically the SI states:

landscaped area means a part of a site used for growing plants, grasses and trees, but does not include any building, structure or hard paved area.

Any increase in the floor space ratio for development must also be accompanied by a corresponding reduction in the landscape area, as it would allow more of the site to be covered by built form. Given that Council's resolution requires the development potential of land permitted under the FSR controls to not be unduly reduced by landscaping controls, it is accepted that the landscape area control will need to be reduced by a corresponding greater amount than FSR is increased.

It is an appropriate time to review landscape area controls because State Environmental Planning Policy (Exempt and Complying Codes) allows development to proceed without meeting Council's current landscaped area requirements. As discussed above, the State Policy requires lots between 600 – 900 m² to provide only 30% landscaped area. Given that the State Government has stated that it intends to make greater use of complying development, it is appropriate that Council review its current approach to managing the landscape character of Sutherland Shire.

Report DAP010-13  on this agenda argues that as residential density increases, the retention and replanting of large canopy trees on private land is becoming increasingly difficult. It suggests that Council should take a longer term strategic approach to trees concentrating on ensuring that the next generation of canopy trees is established. To achieve this as urban densities rise means that trees on public land become of greater importance. The report recommends that council allow offset tree planting on public land. it also recommends that this be coupled with a properly funded proactive replanting program to ensure there is no loss

to the tree canopy into the future.

In line with this approach, it is also recommended that Council take a more strategic approach to the planting and retention of trees as part of landscape area requirements. In practice the percentage landscaped area is less important than the volume of planting actually provided on a site. Landscape planting that provides tree canopy is most important. The landscaped character of a locality benefits more from a site having one large tree than it does from large areas of grass or hedged borders. As such it is considered that council could be more relaxed about landscaped area as a percentage of the site if landscaping on each site was design to accommodate existing and future trees.

Consequently, it is suggested that Council amend its DCP to take a more strategic approach to trees in the urban area. The trees which make the greatest contribution to the landscape character of the locality are those located in the front setback and those along the rear boundary of the lot. Trees in the front set back help set the character of a locality and if combined with street planting can achieve a band of vegetation acting as a link for wildlife. Trees along rear boundaries help to improve neighbourhood amenity through offsetting building bulk and creating privacy between properties. Where bands of trees along common boundaries are achieved, the vegetation also acts as a wildlife corridor.

As such, it is considered that a superior result may be achieved if each single dwelling were required to provide two trees in the front setback and one near the boundary of the rear yard, rather than simply focusing on numerical compliance of 45% landscaped area. However, the trees would need to be in landscaped spaces of 4m by 4m and be further than 3m from a dwelling or pool to ensure they have sufficient space to grow to maturity. For larger developments this approach could focus on ensuring one tree every 5 metres of frontage.

The landscape quality of the Shire is one of the features that attract residents to the Shire. Whilst the cumulative effects of reducing the landscaped area requirement are not likely to be evident for some time, the community values the Shire's tree canopy. Development that includes appropriate tree planting, effectively maintaining the tree canopy over time, is better than cumulative tree removal. A landscaped area of 4m by 4m facilitates the planting of a small tree and Council could consider a requirement for tree planting as part of the development application process for single dwellings as it does now for dual occupancy and medium density development.

With this approach it is recommended that landscaped area could be reduced from 45% to 30%.

One other strategy that Council could pursue is to provide a bonus to actually retain significant trees on site. Report DAP010-13 on this agenda puts forward options for Council in relation to the management of trees on private land so that trees come secondary to residents' development expectations. While this shift in focus is acknowledged, it may be possible to encourage more residents to accommodate trees on site as a bonus is offered to protect the tree. It is recommended that Council offer a further 5% reduction in landscaped area if a significant tree is accommodated on site. Where a significant tree is located within the typical development zone (building platform) of a lot and the design has accommodated the tree, landscaped area requirements could be further reduced because the tree will have a far greater contribution than any other form of landscaping. To be eligible for the bonus the tree would need to be greater than 6 metres in height, be a native species and be located

greater than 3 metres from a building or swimming pool.

It should be noted that reduced landscaped area will increase the amount of impervious area of a site. In order to protect Council's drainage system, neighbouring amenity, and localised flooding impacts, dwellings that do not have 45% landscaped area will be required to implement on site detention measures. This will increase construction costs for landowners.

Council has previously supported a landscaped area concession in the draft Standard Instrument, for multi dwelling development (villas and townhouses) in accessible locations of 20%. This is the minimal rate of landscaping that can be provided. In line with direction taken in this report it is also recommended that the landscaped area requirement for multi dwellings be reduced from 35% to 30%.

Conclusion

It is possible to reduce some of the complexity of the existing planning framework while also facilitating additional development potential across the Shire. The table below sets out both existing and recommended floor space ratio and landscaped area controls. It is recommended that these changes be implemented through the SILEP. These changes could also be accompanied with an incentive clause to encourage significant trees to be accommodated on site through offering a 5% reduction in landscaped area. It is also recommended that changes be made to the DCP support the new approach which would focus on the provision of spaces for trees adjacent to the front and rear boundaries of sites.

The following table indicates the current and proposed controls in low density areas:

Zone	Current FSR	Proposed FSR	Current landscaped Area	Proposed Landscape Area
E4 Environmental Living (Greenhills Beach)	0.55:1	0.55:1	40%	40%
Zones 1&2 Lot size: >850sq.m. 850-1200sq.m. 1200 – 1800sq.m. 1800+ sq.m. (E3 Environmental Living and E4 Environmental Management)	Sliding scale equivalent to 0.4:1 0.4-0.37:1 0.37 – 0.33:1 0.33 :1 and less	0.45:1	Sliding scale equivalent to 45% 45%- 47% 48% - 53% 53%+	30%
Zone 3 (R6 Risk Management Residential)	0.45:1	0.5:1	45%	30%
Zone 4 (R2 Low Density Residential)	0.45:1	0.5:1	45%	30%

It is also recommended that the landscaped area requirement for townhouses in the Multiple Dwelling A zone, which is generally equivalent to the villa and townhouse zone, be reduced from 35% to 30%.

It should be noted that Greenhills Beach already has a higher FSR and lower landscaped area than elsewhere in the Shire. When the land was first zoned, council accepted the proponent's submission that smaller lot sizes, higher FSR, reduced landscaped area and higher development were appropriate. Further increasing the FSR and reducing the landscape standard at Greenhills Beach is likely to result in a suburb with a significantly more urban character. Increasing the FSR and reducing the landscape area across the existing residential areas of Sutherland Shire will cause a change over time, but it will not be immediately noticeable, because of the scattering of development. However, at Greenhills Beach all the development will be built at once and if it is built to even higher densities, the outcome will be less than Council expected of the locality.

Finally, it is also recommended that the landscape provisions for villas and townhouses in the Multiple Dwelling A zone (generally equivalent to the R3 Medium Density Residential zone) be consistent with the new direction.

Report Recommendation:

1. The Standard Instrument Local Environmental Plan incorporate the following changes:
 - a. The Floor Space Ratio Map be amended to indicate the following maximum floor space ratios:
 - E3 Environmental Management and E4 Environmental Living (generally equivalent to zones 1 & 2) - 0.45:1
 - R2 Low Density Residential and R6 Risk Management Residential (generally equivalent to Zones 3 & 4) - 0.5:1
 - b. The Landscaped Area Map be amended to indicate the following minimum percentage: R2 Low Density Residential, R3 Medium Density Residential, R6 Risk Management Residential, E3 Environmental Management, E4, Environmental Living - 30%
2. That a bonus be offered for the retention of significant trees within the normal building platform on a lot by making the following amendments:
 - a. The following clause be added to clause 6.13 Landscaped Area:

"6.13 (4) Despite Subclause 2, the minimum landscaped area on any land may be reduced by 5% of the required percentage as shown on the Landscape Area Map, if a significant tree within the typical development zone (building platform) is accommodated on site." and
 - b. The Development Control Plan accompanying the Standard Instrument LEP be amended to clarify the above clause and include a requirement that the tree must be greater than 6 metres in height, be a native species and be located greater than 3 metres from a building or swimming pool to be eligible for the bonus consideration.

Committee Recommendation:

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Development Assessment and Planning

MinuteNumber: 328

Council Meeting Date: 22/10/12

22/10/2012 DAP012-13

Review of Foreshore Development Controls

File Number: LP/06/526228

Director: Environmental Services (MC)

Report Item

Disclaimer

Council is in the process of formulating a proposed local environmental plan for part of the Sutherland Shire. Council has elected to release certain documents, or parts thereof, which it has considered during the process. The documents released may in part or in whole contain the opinions of third parties that Council may or may not have accepted in part or in whole. The documents are released for information only and should in no way be relied upon by any person as an indication of what the final proposed local environmental plan will be as that is subject to further consideration and decisions by Council, a formal exhibition period, and consideration and determination by the State Government. You should seek your own professional advice in relation to this and the information contained in the documents.

(The attachment to this report is available electronically only.)

REPORT IN BRIEF

Purpose

Council recently resolved to support changes to Council's planning controls and policies, to ensure that the planning controls are certain and easy to interpret. Two foreshore development controls - the removal of waterfront structures and the foreshore building line - were identified for particular review. This report provides information for councillors on the policy position relating to the foreshores which Council has held for almost 40 years, the implications of the new policy position and the necessary amendments to Council's draft Standard Instrument LEP (DSILEP) to reflect the new policy position.

Summary

The foreshore controls in Sutherland Shire aim to maintain and enhance the natural qualities of the land adjacent to the waterway, through establishing and protecting a swathe of the foreshore land from intensive development and limiting the location and type of development permitted.

On 8 October 2012, Council resolved as part of Mayoral Minute No. 12/12-13 to "declare a change to its policy of pursuing removal of existing waterfront structures where those structures form part of the existing character of the waterfront". This change in policy will allow Council to grant development consent for any permissible form of development on land adjoining the waterway or land zoned Zone 16 – Environmental Protection (Waterways) without requiring the removal of existing waterfront structures. This will provide greater certainty to land owners that existing buildings or structures on the waterfront will be allowed

to remain. In order to implement the new policy the report recommends that Council resolve to no longer exercise the discretion available to it under Clause 18 of SSLEP2006, as Council is satisfied for the purpose of clause 18 (4)(c) that the removal of existing buildings is not necessary to achieve any of the objectives of that clause. This report also recommends changes to the DSILEP that are required to achieve the intention of the new policy. To achieve this involves:

1. Deleting the proposed local provision '6.3 Development in or adjacent to a waterway' from the DSILEP; and
2. Adding dual occupancy as a use "Permissible with Consent" to the Land Use Table for Zone E3 Environmental Management to allow existing habitable structures on the waterfront to remain when a new dwelling is proposed on a waterfront lot.

3. Adding an additional local provision to prevent the subdivision of dual occupancy development in the E3 Zone, so maintaining the current policy relating to dual occupancy development on the foreshore.

The effect of the recommended changes to the LEP will take several years to be noticeable. As waterfront dwellings become larger and there is an increase in the number of structures visible from the water, the cumulative impact is likely to be that the delicate balance between natural and man-made structures will be altered to create the perception of an urban waterfront environment for significant stretches of Port Hacking and the Georges River.

The same Mayoral Minute (No. 12/12-13) resolved to "change Council's definition of the foreshore building line to allow a precise and simple determination for individual properties following methodology broadly applied in the state". Under SSLEP2006, the foreshore building line is complex for residents to understand and apply, although Council officers are well versed in applying an exact and correct legal interpretation of the foreshore building line. The Standard Instrument Template contains a model clause and standardised definition of the foreshore building line. Council has previously resolved (SDC011A-11) to adopt the model provision and definition, which will result in the foreshore building line being definitively determined by reference to a line on a map - an approach consistent with the rest of the State. This report recommends that Council continue with the approach already adopted in preparing the Draft Standard Instrument LEP in relation to the foreshore building line as this is consistent with the most recent resolution.

REPORT IN FULL

Background

The planning framework in NSW is built upon the concept of land use zones. Essentially all land is given a zone which establishes what land uses are permissible and what land uses are prohibited. The range of zones and the permissible uses in each allows a council to balance the environmental capacity of the land with how it may be used in the future. Development standards and local provisions provide a further layer of control in each zone and to control the intensity and form of development to achieve the desired future character for the locality. Where a local government area includes a water body, Foreshore Building Lines (FSBL) have traditionally been used in local plans to establish a building setback from the waterway.

As a metropolitan city Sydney prides itself on the scenic and environmental values of its waterways. Sydney and Middle Harbour, Pittwater, Georges River/Botany Bay and Port Hacking are all renowned for their scenic values and the recreational opportunities they provide. Successive State Governments and councils have worked hard to preserve and enhance the values of these waterways. In each of the water bodies authorities have focused on improving the environmental health of the waterway, ending inappropriate foreshore land use, facilitating public access along the foreshores wherever practical, and sensitively controlling development to ensure the scenic value of the waterways are not eroded over time through the cumulative impact of development.

At a local level this has been achieved by the consistent application of a strong foreshore policy since 1974. On 2 September 1974 Sutherland Shire Council adopted its "Foreshore and Waterway Policy". This policy accompanied the mapping of the foreshore building line for the first time.

The objectives of the policy were to *“arrest the aspects of the present undesirable overdevelopment and development not in sympathy with its surroundings and the natural site conditions... The policy aims at permitting the reasonable enjoyment of valuable foreshore land and recognises the desires of individuals to develop their land to suit their particular needs. The right to development these unique lands also carries a responsibility to ensure either individually or collectively the environmental quality of the areas is not further eroded, but rather enhanced”*.

The following principles were adopted as unpinning the policy:

- a) *To ensure that all development creates a minimum of disturbance to the natural landscape; the design criteria should aim at integrating the development into the site and complementing the land form as far as possible.*
- b) *To encourage the siting of buildings with regard to the retention of as much existing flora as possible*
- c) *To require landscaping to soften the appearance of development especially when viewed from the waterways.*
- d) *To conserve the natural shore line with the minimum of disturbance to the land/water interface*
- e) *To minimise the increasing obstruction of water views and have regard to the amenity of adjoining properties*
- f) *To maintain and improve public access around the foreshore areas in the intertidal area and areas held under permissive occupancy*

Each of these objectives retains its relevance today.

The concept of requiring the removal of inappropriate waterfront structures and restoring the foreshores to a more natural state was also introduced in the Foreshore and Waterway Policy which remained in force from 1974 until 1985. This policy made provision for the removal of existing unauthorised development defined as ‘unsatisfactory development’, development obstructing public access along the foreshores or the illegal occupation of structures. The Code for Waterfront Development (in force between 1985 and 2002) continued the policy. Similar provisions were introduced into local environmental plans in Sutherland Shire Local Environmental Plan 1992 and carried through successive instruments (SSLEP1993, SSLEP2000 and SSLEP2006), with exemptions from the requirements having been introduced over time.

The importance of Council’s role in protecting the foreshores around Sutherland Shire stems from a series of unique circumstances. Much of the land adjacent to the waterways of metropolitan Sydney is in public ownership, and forms part of significant conservation areas e.g. Sydney Harbour National Park. Other waterfront land is in public ownership because historically Crown grants for land along the waterfront were issued subject to an exception of land within 100 feet of the tidal water (30.48m of MHW), with this land designated as public reservation. This land is therefore not subject to the same levels of development pressure as privately waterfront property. Specific examples of this occur in Randwick Council area e.g. Clovelly, Coogee, South Coogee, Maroubra, Malabar; Mosman Council area e.g. Cremorne Point, Mosman Bay, Balmoral; around Little Sirius Cove, Clifton Gardens; and in Woollahra Council area e.g. Hermitage Reserve Vacluse.

Sutherland Shire is one of the few areas in Sydney where most land along the waterfront is in private ownership to the Mean High Water Mark. It is believed this stems from a special exception made in the Crown Grant issued to Mr. Holt, the original land owner of much of what is now Sutherland Shire. However, at Lilli Pilli Point the 100 ft reservation was created as this area was not part of the Holt Estate at the time of land grants.

As affluence has increased and lifestyles changed, the development pressures on waterfront land have increased. Over time landowners have sought to build larger dwellings and larger and increasing numbers of ancillary structures to enhance the recreational use of the land. This puts increasing pressure on the sensitive natural environment at the land/water interface, and can result in irreparable damage to, or complete loss of, the valuable natural ecosystems at the land/water interface. It can also result in significant visual intrusion of structures into the landscape, and cumulatively a loss of most of the natural elements in the landscape. While this may not be apparent when considering the impacts on individual lots, when viewed in the context of a whole bay or inlet, the impact can be considerable and represent a significant change in character and erosion of scenic quality.

Existing Foreshore Development Controls

Clauses 17 and 18 of SSLEP 2006 set Council's current planning framework for foreshore development. The objectives of Clause 17 echo the original objectives on the 1974 foreshore policy and are copied below for the information of Councillors:

- (a) to avoid adverse ecological effects on waterways,*
- (b) to protect and enhance significant natural features and vegetation on riparian land,*
- (c) to retain endemic vegetation along foreshore areas,*
- (d) to restore and revegetate foreshore areas to improve estuarine flora and fauna habitat,*
- (e) to minimise any adverse impact from development on water quality and, so far as is practicable, to improve the quality of urban run-off entering waterways,*
- (f) to minimise any adverse visual impact of development when viewed from adjacent land and waterways by using a design and materials that complement the natural landscape of the land to which this clause applies,*
- (g) to minimise any adverse impact of development on the natural landform of foreshore areas and waterways by integrating structures into the site with minimal change to the natural topography of the land to which this clause applies,*
- (h) to achieve an appropriate balance between private development and the public use of waterways,*
- (i) to maintain and improve public access to the intertidal area of waterfronts where there will be minimal environmental impact,*
- (j) to conserve and enhance structures on waterfronts that are of heritage significance,*
- (k) to minimise the obstruction of water views from public land,*
- (l) to ensure that there is no development below any foreshore building line, except as provided by this clause.*

Clause 17 restricts Council's ability to approve development on land adjoining a waterway or land zoned Zone 16 – Environmental Protection (Waterways), unless council is satisfied that the development meets a number of prescribed tests. Each of the tests works to ensure only development that needs to be located in this sensitive part of the site is approved.

Specifically council can approve development within the FSBL if it is for:

- a boat shed,
- a watercraft facility,
- an in-ground swimming pool that is no higher than 300 millimetres above ground level at any point,
- a work to enable pedestrian access,
- landscaping,
- a barbecue, or
- a utility installation.

Council may also approve a dwelling forward of the foreshore building line if council has considered the objectives of the clause, and it is satisfied that:

- (i) the new dwelling or addition will not be erected any further forward of the foreshore building line than any existing dwelling on the land, and
- (ii) the new dwelling will not dominate the locality in which it is erected as a result of its height, bulk, design, colour or detailing, and
- (iii) the natural qualities of the foreshore are retained or restored as far as practicable through the retention or reinstatement of natural levels and endemic vegetation, and
- (iv) in the case of the erection of a dwelling—there is no reasonable alternative that would allow a new dwelling to be located behind the foreshore building line.

Clause 18 operates to require any non-conforming existing buildings and structures to be removed as a condition of development consent for work carried out elsewhere on the site. This means that when council determines any development application for land affected by a FSBL, it must require, as a condition of consent, the removal of inappropriate foreshore structures. However, this clause only applies to illegal buildings/structures or buildings that are being illegally used. Clause 18(4) (b) specifically states that the clause does not require removal if *“the consent authority is satisfied that the use of the building or work is lawful”*

Clause 18 (4) (c) provides a further concession and gives council discretion to allow a structure to be retained. Clause 18(4) (c) specifically states that the clause does not require removal if *“the consent authority is satisfied that the removal of the building or work:*

- (i) would be inconsistent with, or is not necessary to achieve, any of the objectives of this clause, or
- (ii) is unreasonable or unnecessary in the circumstances of the case.

In addition, the LEP also exempts heritage items from application of Clauses 17 and 18. Sutherland Shire has approximately 100 foreshore heritage items, the bulk of which are boatsheds and foreshore dwellings.

Not all work triggers the requirement to remove unlawful works elsewhere on site. The clause specifically excludes the consideration for ‘minor works’ of awnings, canopies, decks, verandahs, garages, carports, fences and retaining walls located between the street and the dwelling.

This existing policy position articulated in Clauses 17 and 18 of SSLEP2006 is consistent with the long standing position of Council, first introduced in 1974.

New Policy Direction relating to existing waterfront structures

On 8 October 2012, Council resolved as part of Mayoral Minute 12/12-13 to *“declare a change to its policy of pursuing removal of existing waterfront structures where those structures form part of the existing character of the waterfront”*.

Implications of the change in policy

The policy of requiring the removal of existing waterfront structures aimed to restore the natural qualities of the land adjacent to the waterway. This aim was motivated by a cluttering of the foreshore areas and waterways with structures which cumulatively were eroding the scenic values of the waterways, reducing their navigability and also obstructing residents' views of the waterways.

The consistent application of the policy over almost 40 years has greatly enhanced the scenic and environmental qualities of the waterways. It has addressed the cumulative impact of structures which were dominating the land/water interface in the 1970s. It has reduced the presence of buildings at the land/water interface to those buildings which need to be there (boatsheds, jetties and watercraft facilities), those that do not have significant visual impacts such as swimming pools, and set aside this land for landscaping and tree retention. As dwellings have become larger over time, the policy has allowed building bulk to be offset by landscaped space which has helped maintain the scenic qualities of the waterways. In essence the waterways are the “front yards” of foreshore dwellings and presenting a house in a landscape setting is far more attractive than an accumulation of ancillary structures.

The policy has been upheld in numerous decisions of the Land and Environment Court (e.g. *Hosey v SSC* [2005] NSWLEC374; *Harbour Port Construction v SSC* [2007] NSWLEC693). In the more recent decisions, the Commissioners have noted that the critical issues have been the cumulative impact of waterfront structures and the balance between the addition of man-made structures and the natural environment. The Commissioners have supported the contention that while waterfront structures are permissible within the foreshore area, in places the foreshore is cluttered with many older structures below the foreshore building line (some adjacent to or over the waterway) and the policy of requiring the removal structures has aimed to rectify this situation and restore the natural qualities of the foreshore.

The declared change in policy will allow Council to grant development consent for any permissible form of development on land adjoining the waterway or land zoned Zone 16 – Environmental Protection (Waterways) without requiring the removal of existing waterfront structures. This will provide greater certainty to land owners that existing buildings or structures on the waterfront will be allowed to remain.

In practice the most contentious application of Clause 18 occurs when a resident has a dwelling at the waterfront. In most cases these cottages were built as the original dwelling. Prior to the suburbanisation of Sutherland Shire small cottages accessed by the water were built as simple holiday homes. The vast majority of these original dwellings are heritage items and are exempt from the application of Clause 18. However, there are many instances where boatsheds have been converted to dwellings unlawfully or where the original cottage has been so altered that it has no heritage value.

In such cases where the land owner seeks to redevelop their land, typically to provide a large dwelling further up the site, Clause 18 functions to require these dwellings to be removed. Allowing the dwelling to remain essentially allows dual occupancy on these lots. Dual occupancy is currently permissible under SSLEP2006, but cannot be subdivided to provide a separate land title.

As waterfront dwellings become larger and there is an increase in the number of ancillary structures visible from the water, the cumulative impact of structures is likely to have a negative effect on the environmentally sensitive and visually prominent locations along the waterways. The long term cumulative outcome in these areas is likely to be that the delicate balance between natural and man-made structures will be altered to create the perception of an urban waterfront environment for significant stretches of the Port Hacking and the Georges River.

Immediate Action that May be Taken under SSLEP2006

At present Clause 18 of the Sutherland Shire Local Environmental Plan states that Council cannot approve any form of development on land adjoining a waterway unless action is taken to ensure removal of buildings located below the foreshore building line that have been unlawfully erected or used. The provisions in this clause apply to no other land in Sutherland Shire, only to foreshore land. In other localities Council must rely on the general powers under the Environmental Planning and Assessment Act to enforce the provisions of the local environmental plan. Council resolved to change its policy of pursuing removal of existing waterfront structures where those structures form part of the existing character of the waterfront. To achieve this it is proposed that Council no longer exercise the discretion available to it under Clause 18. This occurs through subclause (4) that states:

- “(4) *(this clause) does not require the removal of any building or work if:*
- (c) the consent authority is satisfied that the removal of the building or work:*
 - (i) would be inconsistent with, or is not necessary to achieve, any of the objectives of this clause, or*
 - (ii) is unreasonable or unnecessary in the circumstances of the case.”*

In response to Council’s decision (Mayoral Minute No 12/12-13) as a matter of policy, Council is satisfied for the purpose of clause 18 (4)(c) that the removal of existing buildings is not necessary to achieve any of the objectives of that clause. An appropriate resolution to this effect forms one of the recommendations to this report.

Implications for the Standard Instrument LEP

In drafting the Standard Instrument LEP, Council is obliged to use a Standard Instrument Template format and model clauses. Council is also able to include additional local provisions to address locality specific provisions.

There is no Standard Instrument Template clause or model provision which addresses the removal of waterfront structures. Council considered the merits of carrying this policy forward to the DSILEP (SDC011A-11) and resolved to include it. To reflect Council’s current decision to change its policy of pursuing removal of existing waterfront structures, council can simply remove the proposed local provision ‘6.3 Development in or adjacent to a waterway’ from the DSILEP.

Council's resolution seeks to allow foreshore cottages to remain on site. However, in cases where there is an existing habitable building adjoining the waterway and an application is lodged for a new dwelling elsewhere on the land, legally the development application will need to be for a dual occupancy or secondary dwelling. However, dual occupancies are not proposed to be permissible in the E3 Environmental Management zone.

E3 Environmental Management is the zone applied to the more sensitive foreshore residential land. While secondary dwellings smaller than 60 m² are proposed to be permissible, dual occupancy is currently proposed to be prohibited along the most sensitive parts of the waterfront. This decision was taken because dual occupancies along the waterfront are likely to result in increased clearing of vegetation, more paved surfaces and ancillary structures on the land. Driveways down steep slopes necessary to serve second dwellings also tend to be very visually impactive. The cumulative impacts of significant numbers of dual occupancy will result in changes to run-off and drainage patterns, changes to landforms as well as increased visual density of development.

As currently drafted, applications for a new dwelling where an existing habitable building on the land adjoining the waterway is proposed to be retained, would have to be refused in the E3 zone. To meet the intent of Council's resolution it is recommended that a local provision also be added to the draft instrument allowing dual occupancies within the E3 zone. However, to ensure this concession only serves the retention of foreshore cottages, it is recommended that the local provision prevent the subdivision of the second dwelling.

Foreshore Building Line

The foreshore building line delineates the area on a site below which only limited and minor forms of development are permitted (e.g. boat sheds, watercraft facilities, in-ground swimming pools, landscaping, barbecues and in limited circumstances – a new dwelling, or extension or alteration of an existing dwelling). The aim of the control is to protect a swathe of the foreshore from intensive development. The FSBL provides certainty relating to the location of future development. This is a very significant function because it protects views enjoyed by adjoining properties. The consistent application of this policy has given residents certainty that their views, and the property value they impart, will be protected when development occurs on adjoining land. The FSBL also helps to protect natural vegetation, landforms and scenic quality of the waterways.

Current Definition of the Foreshore Building Line

Under SSLEP2006, the foreshore building line is a complex element of planning law. Its exact interpretation has been subject of extensive legal debate and Council officers are well versed in applying an exact and correct legal interpretation of the FSBL. However, it is acknowledged that the current practice is extremely complex for residents to understand and is easy to misinterpret. As such it is readily accepted that Sutherland Shire should move forward to a clearer system.

Under SSLEP2006 the FSBL is defined as follows:

foreshore building line, in relation to land (other than land referred to in subclause (4) or (5)), means:

(a) if a foreshore building line is shown on the map in relation to the land:

- (i) *in the case of land that has a deemed mean high water mark—a line across the land that is parallel to, and the distance specified on the map from, that deemed mean high water mark, or*
- (ii) *in the case of land that does not have a deemed mean high water mark—a line across the land that is parallel to, and the distance specified on the map from, any boundary of the land that adjoins a waterway or waterfront reserve, or*
- (b) *if a foreshore building line is not shown on the map in relation to the land:*
 - (i) *in the case of land that has a deemed mean high water mark—a line across the land that is parallel to, and 7.5 metres from, the deemed mean high water mark, or*
 - (ii) *in the case of land that does not have a deemed mean high water mark—a line across the land that is parallel to, and 7.5 metres from, any boundary of the land that adjoins a waterway or waterfront reserve.*

In addition, there are specific definitions for the foreshore building line at Sandy Point, Illawong and Oyster Bay.

To interpret the definition of the foreshore building line requires reference to the definition of the deemed mean high water mark, which is defined as:

***deemed mean high water mark**, in relation to land, means the mean high water mark, or high water mark, as shown on any plan relating to that land that was registered with the Registrar-General on or before 24 April 1980, being a plan that was current at that date.*

The practical application of the definition of the foreshore building line can result in uncertainty and ambiguity as:

- There are multiple expressions of the definition of the foreshore building line to consider
- The location indicated on the map is only indicative
- The deemed Mean High Water Mark may not be the Mean High Water Mark on the current title, so a search of historical plans may be required to ascertain this information;
- The precise location of the foreshore building line requires confirmation through a site specific survey in each case, based on a measurement being taken perpendicular to the deemed Mean High Water Mark.

The logic behind relating the foreshore building line to the ‘deemed mean high water mark’ is to fix it to a constant location over time. If the foreshore building line were defined relative to the mean high water mark, it would be relative to the Mean High Water Mark reflected on the current title. As a mean high water mark can be redefined by survey and registration of a new plan, this would result in the location of the foreshore building line changing with redefinition of a mean high water mark. The foreshore building line would therefore not be ‘fixed’. A changing foreshore building line would result in the area of land where redevelopment is permissible changing over time.

As redefinitions of the mean high water mark in the Sutherland Shire tend to result in the mean high water mark being located further into the waterway than before, this would mean that the foreshore building line would move closer to the waterway, thus allowing an area of land that had previously been protected to become a part of the development site.

This would have significant implications for neighbours. A 'fixed' foreshore building line clearly establishes the most forward location of development on a site, and allows the neighbours to have certainty as to the views available from their land. This allows residents to plan their dwellings accordingly. A situation where the foreshore building line moves will remove this certainty, and may result in water views being obliterated by new development.

Moving the FSBL forward over time is also likely to have significant environmental and visual impacts, should the landowners choose to develop in a more forward position, which is a likely outcome to maximise views and proximity to the waterway. New dwellings forward of the FSBL would most likely result in clearing of established mature vegetation which had been previously preserved, changing drainage patterns and water flows, and a greater perception of bulk of development on the waterfront.

Changes to the foreshore building line requested by Mayoral Minute No. 12/12-13

Mayoral Minute No. 12/12-13 resolved:

That advice be provided to the Council as to changes to be made to Council's draft Standard Instrument LEP (or if more appropriate a specific amending LEP) as necessary to:

- (a)
- (b) *change Council's definition of foreshore building line to allow a precise and simple determination for individual properties following methodology broadly applied in the state.*

Standard Instrument LEP

In drafting the Standard Instrument LEP, Council is obliged to use a Standard Instrument Template and model clauses. The intention behind the standardised format, clauses and definitions is to achieve consistency in planning provisions across New South Wales. There is a model clause and associated definitions relating to a foreshore building line within the standard instrument template. Council has previously resolved (SDC011A-11) to adopt this model provision.

The relevant new definitions are set out below:

Foreshore building line means the line shown on the foreshore building line on the *Foreshore Building Line Map*

Foreshore Building Line Map means the *Sutherland Shire Local Environmental Plan 2012 Foreshore Building Line Map*.

The foreshore building line will therefore be definitively determined by reference to a line on a map. This will ensure that the approach adopted by Sutherland Shire Council is consistent with the approach across the rest of the State.

Landowners and applicants will be able to confirm the location of the foreshore building line by either referring to Council's on-line mapping tool Shire Maps, or if electronic data is required for the purposes of survey or the preparation of development proposal plans, by request from council's GIS Unit. Consequently, there will be no ambiguity as to the location of the foreshore building line on a property, and individual property surveys will not be required to determine the location of the foreshore building line.

In order to ensure that the location of the foreshore building line is accurately depicted on the Foreshore Building Line Map, Council's Environmental Planning Unit and GIS Unit have carried out a significant review of the mapping of the foreshore building line. To the best of officers' ability the FSBL has been mapped within the SILEP as it currently relates to the deemed mean high water mark, thus reflecting the location of the current foreshore building line for each property.

Report Recommendation:

1. That provision '6.3 Development in or adjacent to a waterway' be deleted from the Draft Standard Instrument Local Environmental Plan.
2. That Council no longer exercise the discretion available to it under Clause 18 of Sutherland Shire Local Environmental Plan 2006, as Council is satisfied for the purpose of clause 18 (4)(c) that the removal of existing buildings is not necessary to achieve any of the objectives of that clause.
3. That dual occupancies be added to the Land Use table for Zone E3 Environmental Management as 'development permitted with consent' in the Draft Standard Instrument Local Environmental Plan.
4. That the following clause be added to Draft Standard Instrument Local Environmental Plan to prohibit the subdivision of dual occupancy development in Zone E3 Environmental Management:

Dual occupancy subdivision of E3

- (1) This clause applies to land in Zone E3 Environmental Management.
 - (2) Despite any other provision of this plan, the subdivision of land to create a separate lot for each dwelling that comprises a dual occupancy is prohibited in this zone.
5. That Council proceed with the foreshore building line provisions within Draft Standard Instrument Local Environmental Plan as previously adopted in SDC011A-11.

APPENDIX

Review of Foreshore Development Controls

Appendix 1 : Copy of Clause 17 and 18 of SSLEP2006



Appendix 1 Copy Clause 17-18 SSLEP2006.docx

(To view the document, double click on icon and select 'Open'. Select 'File' 'Close' to return to report.)

Committee Recommendation:

1. That provision '6.3 Development in or adjacent to a waterway' be deleted from the Draft Standard Instrument Local Environmental Plan.
2. That Council declare its policy that when assessing applications against clause 18 of Sutherland LEP 2006, it is of the view that it is in the general case unreasonable (for the purposes of 18(4)(c)) to require the removal of a waterfront structure which has stood for many years, and forms part of the existing character of the waterfront.
3. That advice be provided to Council as to how the Draft Sutherland Standard Instrument LEP could be amended to have the substantial effect of adding "waterfront cottage" to the Land Use table for Zone E3 Environmental Management as 'development permitted with consent' in the Draft Standard Instrument Local Environmental Plan with "waterfront cottage" defined to mean "A dwelling constructed forward of the foreshore building line more than 3 years prior to the commencement of this LEP".
4. That the following clause be added to Draft Standard Instrument Local Environmental Plan to prohibit the subdivision of dual occupancy development in Zone E3 Environmental Management:

Waterfront cottages and subdivision of E3 land
 - (1) This clause applies to land in Zone E3 Environmental Management.
 - (2) Nothing in this plan permits the subdivision of land to create a separate lot for a waterfront cottage in this zone.
5. That Council proceed with the foreshore building line provisions within Draft Standard Instrument Local Environmental Plan as previously adopted in SDC011A-11.
6. That the Draft Sutherland Standard Instrument LEP is to be amended to provide that the floor space of freestanding boatsheds and garden storage sheds is to be excluded from the 'gross floor space' used to calculate FSR under the Instrument.
7. That if any doubt exists as to the means by which that amendment to the Standard

Instrument is best to be drafted, advice be obtained in that regard forthwith from the Director General of the Department of Planning and Infrastructure.

8. That the size of new or enlarged boatsheds is to be regulated by appropriate DCP controls which focus on the existing character of the nearby waterfront.

Council Resolution:

1. That provision '6.3 Development in or adjacent to a waterway' be deleted from the Draft Standard Instrument Local Environmental Plan.
2. That Council declare its policy that when assessing applications against clause 18 of Sutherland LEP 2006, it is of the view that it is in the general case unreasonable (for the purposes of 18(4)(c)) to require the removal of a waterfront structure which has stood for many years, and forms part of the existing character of the waterfront.
3. That advice be provided to Council as to how the Draft Sutherland Standard Instrument LEP could be amended to have the substantial effect of adding "waterfront cottage" to the Land Use table for Zone E3 Environmental Management as 'development permitted with consent' in the Draft Standard Instrument Local Environmental Plan with "waterfront cottage" defined to mean "A dwelling constructed forward of the foreshore building line more than 3 years prior to the commencement of this LEP".
4. That the following clause be added to Draft Standard Instrument Local Environmental Plan to prohibit the subdivision of dual occupancy development in Zone E3 Environmental Management:

Waterfront cottages and subdivision of E3 land

- (1) This clause applies to land in Zone E3 Environmental Management.
 - (2) Nothing in this plan permits the subdivision of land to create a separate lot for a waterfront cottage in this zone.
5. That Council proceed with the foreshore building line provisions within Draft Standard Instrument Local Environmental Plan as previously adopted in SDC011A-11.
 6. That the Draft Sutherland Standard Instrument LEP is to be amended to provide that the floor space of freestanding boatsheds and garden storage sheds is to be excluded from the 'gross floor space' used to calculate FSR under the Instrument.
 7. That if any doubt exists as to the means by which that amendment to the Standard Instrument is best to be drafted, advice be obtained in that regard forthwith from the Director General of the Department of Planning and Infrastructure.
 8. That the size of new or enlarged boatsheds is to be regulated by appropriate DCP

controls which focus on the existing character of the nearby waterfront.

Appendix 4.

Council Meeting

MinuteNumber: 348

Council Meeting Date: 19/11/12

19/11/2012

Mayoral Minute No. 16/12-13

Reform of Development Controls

File Number: GO/06A/820215, LP/03/756411

Director:

Report Item

MAYORAL MINUTE NO. 16/12-13

19 November 2012

The Councillors of Sutherland Shire

Dear Councillors

Reform of Development Controls

On the 22 October 2012 Council resolved (DAP014-13 📄 & DAP012-13 📄) to adopt planning provisions that will form part of the Standard Instrument Local Environmental Plan that is nearing completion. Preparation of these provisions was initiated in response to Council's resolution to Mayoral Minute No. 12/12-13 📄. In the Mayoral Minute it was outlined how these provisions will ensure that residential land owners are not subject to planning policies that unduly restrict their rights to develop land in harmony with their neighbours and the environment.

The specific amendments to the Standard Instrument Local Environmental Plan to facilitate this new direction of Council include:

- Floor Space Ratio Controls: A move away from the sliding scale in Zones 1 and 2 (generally equivalent to E3 and E4) and instead permit a uniform maximum permitted floor space ratio (FSR) of 0.5:1 which increases the development potential of all properties in the zone, and increase development potential of all properties in the low density zones (Zones 3 and 4 which are generally equivalent to R2 Low Density Residential and R6 Risk Management Residential) by increasing the FSR from 0.45:1 to 0.55:1
- Minimum Landscaped Area Controls: Reduce the minimum required landscaped area to 30% for all low and medium density residential areas (Zones 1, 2, 3, 4, and 5 which are generally equivalent to the R2 Low Density Residential, R3 Medium Density Residential, R6 Risk Management Residential, E3 Environmental Management, E4, Environmental Living)

- Foreshore Controls: Delete planning provisions which require the removal of waterfront structures below the Foreshore Building Line, and
- Foreshore Building Line: Adopt the definition of the FSBL in the model provisions associated with the Standard Instrument LEP so that the control is easily understood by all parties.

Action has been initiated to complete the drafting of these new controls and will form part of the draft Standard Instrument Local Environmental Plan which will be presented to council later this year. Council officers' discussion with the Department of Planning and Infrastructure indicate that the finalisation of the new Standard Instrument Local Environmental Plan (SILEP) may take longer than previously anticipated. The best estimate at present is that it is unlikely to come into operation until October 2013. This timeframe may be further reviewed and extended following community consultation and State Government priorities associated with the introduction of the new planning legislation.

From a local perspective, if Council is to deliver on its commitments it is imperative that these changes be expedited. In order to immediately advance the change in policy, the current planning provisions within Sutherland Shire Local Environmental Plan 2006 (SSLEP2006) will need to be amended. The Director Environmental Services has advised that it is possible for the amendments in relation to floor space ratio, landscaped area and controls on foreshore development to be referred to the Department without delay. However, it is not practically possible to incorporate the delineation of the foreshore building line on new maps if the amendment to SSLEP2006 is to proceed without delay. The completion of this element requires the transfer of information from the current maps and the accurate mapping of the foreshore building line against the new definition. For a small number of sites there will be reviews to resolve any resulting anomalies. The review process is well underway, but is not complete. So as not to delay the introduction of the other changes to the planning framework, it is proposed to proceed with the amendment of SSLEP2006 without these new maps. In the interim the existing maps are satisfactory for their intended purpose.

Conclusion

The planning controls are there to serve land owners to develop their land in ways that will best serve their families, but in a harmonious way. It is recommended that a Planning Proposal be prepared to change the planning provisions within SSLEP2006 as detailed above and that this be referred to the DP&I for Gateway Determination. This will enable the changes to be publicly exhibited and made in the quickest possible way.

MOTION:

1. The Sutherland Shire Local Environmental Plan 2006 be amended to incorporate the following changes:
 - a. Amend the Maximum Floor Space Ratio provisions to the following: zones 1 & 2 - 0.5:1, and Zones 3 & 4 - 0.55:1;
 - b. Amend the Minimum Landscaped Area provisions to the following minimum percentage: Zones 1,2,3,4 - 30%;

- c. Amend the Minimum Landscaped Area control to include a provision that such may be reduced by 5% of the required percentage, if a significant tree within the typical development zone (building platform) is accommodated on site;
 - d. Delete Clause 18 - Development in or Adjacent to Waterways;
 - e. Add "waterfront cottage" to Clause 11 Land Use Table as permissible with consent in zone 1 and zone 2, and zone 16 and include a definition for "Waterfront cottage" as "A dwelling constructed forward of the foreshore building line more than 3 years prior to the commencement of this amendment", and a provision prohibiting the subdivision of such land containing waterfront cottages;
 - f. Amend the definition of gross floor area to provide that the floor space of freestanding boatsheds and garden storage sheds be excluded from the 'gross floor space'.
2. That a Planning Proposal to achieve the above changes to planning policy and controls be prepared and submitted to the Department of Planning and Infrastructure for a Gateway Determination.

Councillor Kent Johns
Mayor

Report Recommendation:

1. The Sutherland Shire Local Environmental Plan 2006 be amended to incorporate the following changes:
 - a. Amend the Maximum Floor Space Ratio provisions to the following: zones 1 & 2 - 0.5:1, and Zones 3 & 4 - 0.55:1;
 - b. Amend the Minimum Landscaped Area provisions to the following minimum percentage: Zones 1,2,3,4 - 30%;
 - c. Amend the Minimum Landscaped Area control to include a provision that such may be reduced by 5% of the required percentage, if a significant tree within the typical development zone (building platform) is accommodated on site;
 - d. Delete Clause 18 - Development in or Adjacent to Waterways;
 - e. Add "waterfront cottage" to Clause 11 Land Use Table as permissible with consent in zone 1 and zone 2, and zone 16 and include a definition for "Waterfront cottage" as "A dwelling constructed forward of the foreshore building line more than 3 years prior to the commencement of this amendment", and a provision prohibiting the subdivision of such land containing waterfront cottages;

- f. Amend the definition of gross floor area to provide that the floor space of freestanding boatsheds and garden storage sheds be excluded from the 'gross floor space'.
2. That a Planning Proposal to achieve the above changes to planning policy and controls be prepared and submitted to the Department of Planning and Infrastructure for a Gateway Determination.

Committee Recommendation:

1. The Sutherland Shire Local Environmental Plan 2006 be amended to incorporate the following changes:
 - a. Amend the Maximum Floor Space Ratio provisions to the following: zones 1 & 2 - 0.5:1, and Zones 3 & 4 - 0.55:1;
 - b. Amend the Minimum Landscaped Area provisions to the following minimum percentage: Zones 1,2,3,4 - 30%;
 - c. Amend the Minimum Landscaped Area control to include a provision that such may be reduced by 5% of the required percentage, if a significant tree within the typical development zone (building platform) is accommodated on site;
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 - e. Add "waterfront cottage" to Clause 11 Land Use Table as permissible with consent in zone 1 and zone 2, and zone 16 and include a definition for "Waterfront cottage" as "A dwelling constructed forward of the foreshore building line more than 3 years prior to the commencement of this amendment", and a provision prohibiting the subdivision of such land containing waterfront cottages;
 - f. Amend the definition of gross floor area to provide that the floor space of freestanding boatsheds and garden storage sheds be excluded from the 'gross floor space'.
2. That a Planning Proposal to achieve the above changes to planning policy and controls be prepared and submitted to the Department of Planning and Infrastructure for a Gateway Determination.

Council Resolution:

1. The Sutherland Shire Local Environmental Plan 2006 be amended to incorporate the following changes:
 - a. Amend the Maximum Floor Space Ratio provisions to the following: zones 1 & 2 - 0.5:1, and Zones 3 & 4 - 0.55:1;

- b. Amend the Minimum Landscaped Area provisions to the following minimum percentage: Zones 1,2,3,4 - 30%;
 - c. Amend the Minimum Landscaped Area control to include a provision that such may be reduced by 5% of the required percentage, if a significant tree within the typical development zone (building platform) is accommodated on site;
 - d. Delete Clause 18 - Development in or Adjacent to Waterways;
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 - f. Amend the definition of gross floor area to provide that the floor space of freestanding boatsheds and garden storage sheds be excluded from the 'gross floor space'.
2. That a Planning Proposal to achieve the above changes to planning policy and controls be prepared and submitted to the Department of Planning and Infrastructure for a Gateway Determination.