

Planning Services

Plan Finalisation Report

Local Government Area: Northern Beaches

File Number: IRF18/3950

1. NAME OF DRAFT LEP

Warringah Local Environmental Plan 2011 Amendment No 21.

2. SITE DESCRIPTION

The planning proposal (**Attachment A**) applies to Lot 2 DP 1229082, a roadside buffer on the eastern side of Wakehurst Parkway, Oxford Falls (Figure 1).

The land is zoned RE1 Public Recreation and measures approximately 15m wide by 133m long. The site is vacant except for underground concrete on-site stormwater detention (OSD) tanks and associated pollution control devices. These facilities were constructed by the adjoining landowner, Oxford Falls Grammar School, in association with a 2002 development consent approved by the Land and Environment Court. The OSD tanks and pollution control devices are not Northern Beaches Council assets.

The land comprises a mown grassed area with limited tree cover. Middle Creek traverses the subject site.



Figure 1: Aerial view of the site in context (source: SIX Maps).

Historical context of land classification

The subject land and the allotment to the site's immediate south (previously combined as a single parcel), originally owned by the adjoining Oxford Falls Grammar School, was dedicated at no cost to Council in 1992 for the purpose of a public reserve as a condition of development consent (DA1990/35) for the development of a new primary and infants school. The intent of the dedication was to prevent vehicular and pedestrian access to the school grounds from Wakehurst Parkway by creating a separately owned buffer strip. The buffer strip also provided an additional landscape buffer to Wakehurst Parkway.

The subject land was subsequently classified as community land under the *Local Government Act 1993* and zoned 'public open space' under the former Warringah Local Environmental Plan 2000. The land was to be managed in accordance with Council's General Community Use Plan of Management. The land was rezoned RE1 Public Recreation under the Warringah Local Environmental Plan (LEP) 2011.

In March 2016, the land that was dedicated to Council as a condition of development consent for DA1990/35 (Lot 21 DP 819277) was subdivided, with the subject site encompassing the northern portion of the subdivision. A new folio for the subdivision of this land was created in January 2018, with the northern portion given a legal description of Lot 2 DP 1229082.

3. PURPOSE OF PLAN

The draft LEP seeks to reclassify the site from community to operational land under the *Local Government Act 1993* to enable its sale or lease. Community land cannot be sold, exchanged or otherwise disposed of. It can be leased, but there are restrictions on the granting of leases and licences, and on the way community land can be used.

Oxford Falls Grammar School uses the site as an extension of its outdoor recreation area. The school has expressed an intention to offer to purchase the land from Council should the draft LEP be made.

Reclassification of the site will allow Council to sell the site that is unusable for any public open space purpose so the adjoining school may use the land for its private outdoor recreational activities.

Clause 5.2(5) of the Warringah LEP 2011 was made pursuant to section 30 of the *Local Government Act 1993* and provides for the reclassification of community land as operational. This clause provides that the public land described in Part 2 of Schedule 4, to the extent (if any) that it is a public reserve, ceases to be a public reserve when the description of the land is inserted into that Part and is discharged from all interests affecting the land or any part of the land (unless otherwise specified).

The draft LEP will insert Lot 2 DP 1229082 into *Part 2 Land classified, or reclassified, as operational land—interests changed* of Schedule 4 of the Warringah LEP 2011.

4. STATE ELECTORATE AND LOCAL MEMBER

The site falls within the Davidson State Electorate. Mr Jonathan O'Dea MP is the State Member for Davidson.

The site falls within the Mackellar Federal Electorate. Mr Jason Falinski MP is the Federal Member for Mackellar.

To the regional planning team's knowledge, neither MP has made any written representations regarding the proposal.

NSW Government Lobbyist Code of Conduct: There have been no meetings or communications with registered lobbyists with respect to this proposal.

NSW Government reportable political donation: There are no donations or gifts to disclose and a political donation disclosure is not required.

5. GATEWAY DETERMINATION

The Gateway determination issued on 29 June 2017 (**Attachment B**) determined that the proposal should proceed subject to conditions and required finalisation of the draft plan by 3 April 2018.

6. PUBLIC EXHIBITION

In accordance with the Gateway determination, community consultation was undertaken by Council from 15 July to 13 August 2017.

Six (excluding one duplicate submission) written public submissions were received during the formal public exhibition period. One late submission was received and considered.

The key issues raised in community submissions have been summarised and considered below. A detailed summary and response from Council is available in Council's post-exhibition report (**Attachment C**).

Enabling more development

Several submissions expressed concern that the proposal will enable more development.

Council stated that the proposed reclassification of the site is to enable the leasing or sale of the land to regularise encroachments within the subject site. The land is zoned RE1 Public Recreation and no change to the land's zoning is being sought. Council states there is no intention to seek redevelopment of the site.

Council further advised that there are sufficient measures within the development assessment provisions of the *Environmental Planning and Assessment Act 1979* to enable opportunities for concerns to be raised should redevelopment be proposed in the future.

The Department considers that Council's response adequately addresses this issue.

Loss of wildlife corridor

Some submissions raised concerns regarding the loss of a wildlife corridor and the impact on biodiversity, waterways and riparian land.

Council advised that reclassification of the land is not expected to have a significant impact on biodiversity or the waterway and riparian land as most of the reserve is already cleared, turfed and landscaped. Council stated the land will remain zoned RE1 Public Recreation, restricting the range of potential future uses.

The Department considers Council's response adequately addresses this issue.

Loss of public land

Some submissions expressed concerns about the loss of public land and alienating public land for use by the private sector.

Council advised that the land originally formed part of the school holdings and was dedicated to Council in 1992 as a condition of development consent. Council stated the site is not readily accessible for general community use and, as such, has limited benefit for public open space purposes. Council noted an agreement between Council and the school is being developed as part of the sale of the southern part of former Lot 21 DP 819277 to

accommodate community use on the school sportsground when it's not being used by the school after school hours.

The Department considers Council's response adequately addresses this issue.

7. ADVICE FROM PUBLIC AUTHORITIES

In accordance with the Gateway determination, Council was required to consult with Roads and Maritime Services (RMS).

RMS provided a submission stating its support for the proposal contingent on Council's provision of an appropriate Restriction on Use being registered on the land prohibiting all access, including vehicular and pedestrian access, to/from Wakehurst Parkway to/from the adjacent Oxford Falls Grammar School.

This requirement is based on RMS's concerns that vehicular access could trigger school zone conditions and require associated traffic calming measures along Wakehurst Parkway.

In response, Council resolved to register an appropriate Restriction on Use on the title of the land in accordance with RMS's requirements.

The Department notes that Council's resolution to register a Restriction on Use on the land does not impact the proposed amendments sought to the Warringah LEP 2011.

Nevertheless, Council has confirmed that registering a Restriction on Use on the land has been actioned (**Attachment D**).

8. PUBLIC HEARING

Following the public exhibition, and in accordance with the Gateway determination and section 29 of the *Local Government Act 1993*, an independently chaired public hearing was held under former section 57 of the *Environmental Planning and Assessment Act 1979*.

The public hearing was held on 13 September 2017 at Peace Park, Oxford Falls and was chaired by GLN Planning.

Two people attended the public hearing and one email submission was received. Key issues raised as part of the public hearing included:

- ensuring the land would not be acquired by the adjoining school at no cost;
- the need for future road widening;
- loss of buffer; and
- loss of public land.

The independent chairperson's report on the public hearing (**Attachment E**) notes:

- the roadside buffer created by the required dedication of 15m-wide strips of land is a result of a previous practice of Council that is no longer required by the current planning controls and policies;
- dedication of the subject land was not related to the provision of useable open space, but was used to restrict access to the adjoining school from Wakehurst Parkway;
- other mechanisms are more appropriate to better achieve the desired outcome of landscaped setbacks and limit vehicular access to/from classified roads;
- the Wakehurst Parkway road reserve is of sufficient width to enable any future road widening; and
- the reclassification is not being undertaken to enable redevelopment of the site, but to remedy the drainage works constructed within the land and to facilitate the potential sale of the land to the adjoining school.

The independent chairperson's report concludes that the reclassification of the land from community to operational is appropriate.

9. POST-EXHIBITION CHANGES

No amendments were made to the planning proposal following public exhibition.

10. ASSESSMENT

It is considered that the LEP amendment is appropriate and it is recommended the Greater Sydney Commission's delegate make the draft LEP under section 3.36(2) of the *Environmental Planning and Assessment Act 1979* as submitted by Council as the planning proposal authority. The reasons for supporting the finalisation of the plan are as follows:

- it will enable the lease or sale of the subject land to regularise the drainage structures constructed within the land, and the use of the landscaped area as an extension of the school's outdoor activities;
- it will not enable redevelopment of the land;
- due to the dimensions and location of the subject land, it is considered impractical for any meaningful public open space and community use; and
- the proceeds from the sale of the land would go to Council's Allocation of Funds Obtained from the Sale of Council Real Property Policy, which requires funds to be used for the acquisition and future management of other community land.

Council has satisfied all conditions of the Gateway determination, including community and public authority consultation, and the public hearing requirements under the *Environmental Planning and Assessment Act 1979* and *Local Government Act 1993*.

State environmental planning policies (SEPPs)

The draft LEP is consistent with relevant SEPPs or deemed SEPPs. An assessment of the proposal against the relevant SEPPs was conducted before the Gateway determination was issued. No changes to the planning proposal have rendered it inconsistent with the relevant SEPPs.

Regional and district plans

The Greater Sydney Region Plan and the North District Plan, both released by the Greater Sydney Commission in March 2018, are the relevant strategic regional and district plans for the site.

The regional plan sets a 40-year vision (to 2056) and establishes a 20-year plan to manage growth and change for Greater Sydney in the context of social, economic and environmental matters. The proposal is consistent with the plan's direction for collaboration as the LEP demonstrates collaboration between local government and industry (Oxford Falls Grammar School) to increase the use of a public resource.

The North District Plan is a 20-year plan to manage growth in the context of economic, social and environmental matters to achieve the 40-year vision for Greater Sydney. It is a guide for implementing the region plan at a district level and is a bridge between regional and local planning. Planning Priority N2 *Working through collaboration* recognises the benefits of working together to grow a Greater Sydney. The draft LEP gives effect to this planning priority by allowing Council to appropriately manage its property portfolio and enter into negotiations or formalise tenure arrangements with the adjoining landowner, who uses the land for private use.

11. MAPPING

The planning proposal identified the need for a Land Reclassification (Part Lots) Map. However, this is no longer required given the proposed reclassification aligns to Lot 2 DP 1229082 in its entirety.

12. CONSULTATION WITH COUNCIL

Council was consulted on the terms of the draft instrument under clause 3.36(1) of the *Environmental Planning and Assessment Act 1979* (**Attachment F**). Council confirmed on 19 July 2018 that it was happy with the draft and that the plan should be made (**Attachment G**).

13. PARLIAMENTARY COUNSEL OPINION

On 27 March 2018, Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at **Attachment PC**.

14. GOVERNOR'S APPROVAL

As part of the reclassification process, Governor's approval (**Attachment ExCo**) was granted on 27 June 2018 to remove the restriction on the title of the land for the purpose of a public reserve.

15. RECOMMENDATION

It is recommended that the Greater Sydney Commission's delegate as the local plan-making authority determine to make the draft LEP under clause 3.36(2)(a) of the Act because:

- reclassification will allow Council to appropriately manage its property portfolio and enter into negotiations or formalise tenure arrangements with the adjoining landowner who is currently utilising the land for private use;
- it relates to a parcel of land that is alienated from the public, and is considered impractical for any meaningful open space and community use; and
- the proceeds from the potential sale of the site would be used for the acquisition and future management of other community land consistent with Council's key strategies for managing and disposing of Council-owned land.



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