



PLANNING PROPOSAL

KU-RING-GAI LOCAL ENVIRONMENTAL PLAN (REZONING AND RECLASSIFICATION OF CERTAIN COUNCIL OWNED LAND) 2012

BEING AN AMENDMENT TO KU-RING-GAI PLANNING SCHEME ORDINANCE (KPSO) 1971

PROPOSAL TO RECLASSIFY LOT 21 IN DP 713207 KNOWN AS 9 HAVILAH LANE, LINDFIELD FROM COMMUNITY LAND TO OPERATIONAL LAND

**Prepared for
Ku-ring-gai Council**

**By
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Job No. 12065
Planning Proposal - Havilah Lane.docx
June 2012



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1. INTRODUCTION

This Planning Proposal contains an explanation of the intended effect and justification for a proposed amendment to the Ku-ring-gai Planning Scheme Ordinance (KPSO). The Planning Proposal has been prepared in accordance with section 55 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and the relevant Department of Planning Guidelines including *A Guide to Preparing Local Environmental Plans* and *A Guide to Preparing Planning Proposals* (the guide).

The Planning Proposal seeks an amendment to the Ku-ring-gai Planning Scheme Ordinance (KPSO) to achieve:

- ii the reclassification of the Lot 21 in DP 713207, known as 9 Havilah Lane, from Community Land to Operational Land.

The land to which the Planning Proposal relates is shown in **Figure 1** following Section 5 of the Planning Proposal.

The reclassification of the land at lot 21 DP 713207 (9 Havilah Lane, Lindfield) was the subject of a previous Planning Proposal under the now invalidated Ku-ring-gai Local Environmental Plan (Town Centres) 2010.

Council, in its Statement of Commitments to the Minister for Planning adopted on 22 November 2011 regarding the preparation of new town centres plans, agreed to address reclassification of key Council owned sites within the town centre areas to facilitate orderly and economic growth.

Council were advised by the delegate of the Minister for Planning and Infrastructure on 22 December 2011 that he had, in accordance with section 56(7) of the Act, altered the Gateway Determination for the reclassification planning proposals so as they were not to proceed. It was also noted that Council had agreed to take those reclassification matters forward as part of new plans for the Town Centres.

On 20 March 2012, Council adopted a revised Statement of Commitments for the preparation of the new centres plans, which among other things, removed the commitment to reclassify land in the centres. As a result, the planning proposal for the local centres LEP adopted by Council on 3 April 2012 (see **Appendix 1**) did not include the reclassification of Council land.

At the Ordinary meeting of Council on 24 April 2012 a report was tabled to Council recommending that *"Council prepare a Planning Proposal to reclassify the site from community land to operational land and that a further report be brought back to Council regarding the future divestment following the reclassification process"*. The report is provided in **Appendix 2**.

At the Ordinary Meeting held on 24 April 2012, Council resolved:-

- "A. That a Planning Proposal be prepared, in accordance with section 55 of the *Environmental Planning and Assessment Act, 1979*, to amend the Ku-ring-gai Planning Scheme Ordinance 1971 to reclassify Lot 21 DP 713207 (9 Havilah Lane, Lindfield) from Community land to Operational land.



- B. *That Council undertake a public hearing under the provisions of the Local Government Act, 1993 for the proposed reclassification of Lot 21 DP 713207 (9 Havilah Lane, Lindfield) listed from Community land to Operational land.*
- C. *That Council formally seek to discharge all interests for Lot 21 DP 713207 (9 Havilah Lane, Lindfield).*
- D. *That the Planning Proposal be submitted to the Department of Planning and Infrastructure for a Gateway Determination in accordance with Section 56 of the Environmental Planning and Assessment Act, 1979.*
- E. *That upon receipt of a Gateway Determination, the exhibition and consultation process is carried out in accordance with the requirements of the Environmental Planning and Assessment Act, 1979 and with the Gateway Determination requirements.*
- F. *That a report be brought back to Council at the end of the exhibition and public hearing processes.*
- G. *That a further report be brought back to Council regarding the future divestment of 9 Havilah Lane, Lindfield."*

BBC Consulting Planners has been engaged by Ku-ring-gai Council to prepare a Planning Proposal in relation to the above resolution.

In accordance with Section 55 of the EP&A Act, this Planning Proposal seeks to explain the intended effect of the proposed instrument and sets out the justification for making the proposed instrument. It addresses matters that are intended to be included in the Local Environmental Plan.

1.1 Land to which the Planning Proposal applies

The Planning Proposal applies to the land identified in **Figure 1** (following Section 5 in this Planning Proposal) and is known as Lot 21 in DP 713207. It is owned by the 'Council of the Municipality of Ku-ring-gai'. The site has an area of 766.1m² and is rectangular in shape with access to Havilah Lane.

The site is burdened by an easement for drainage and sewerage along the northern boundary in favour of the adjoining land (Lot 1 in DP 502955). It accommodates approximately 25 spaces and operates as a Council car park.

The property was acquired by Council in 1986. This was consequent to satisfaction of conditions of consent to DA 411/82 when it was then known as Lot 2 in DP 502955. This consent was for the erection of a new supermarket and office building over basement car parking at the rear of 33-37 Lindfield Avenue. Condition 6 of this consent required the dedication of a strip of land 3.048 metres wide along the frontage as public road to achieve the widening of Havilah Lane and the transfer of the residue of the site to Council. The provision of car parking on this site was considered as part of the assessment of that application.



We are advised that the site is classified as community land under the Local Government Act, 1993. Section 45 of the Local Government Act, 1993 prevents Council from selling, exchanging or otherwise disposing of Community classified land therefore it is proposed to reclassify the site from Community Land to Operational Land in accordance with Section 27 of the Act.

1.2 Existing Planning Controls

The land to which the Planning Proposal relates, is currently zoned 3(a)-(A2) Business – Retail Services.

Figure 2 demonstrates the current zoning of the land affected by the Planning Proposal. A discussion on the existing controls applying to the land to which this Planning Proposal relates is provided below.

1.2.1 3(a)-(A2) Business – Retail Services

Objectives

The Objectives of the 3(a) – (A2) Business – Retail Services zone are as follows:-

"(a) to identify existing business centres within the Municipality, the principal functions of which are to satisfy the retail and community service demands of the community which they serve;

(b) to permit, within the business centres' hierarchy, business and office premises of a scale and character which do not threaten the role of the business centres as described in (a) above; and

(c) to permit other community facilities, recreation, leisure and general services within the zone to meet the needs and demands of employees within the centres and the community which each centre services."

Development Control Table

In relation to the land zoned 3(a) – Business – Retail Services, the following development is permitted with consent under the KPSO:-

*"Advertising signs; internal alterations to a building or work.
Any other purpose not included in item 4."*

The following development is prohibited (Item 4) in the 3(a) Retail Services zone:-

"Caravan parks; car repair stations; dwelling-houses (other than those used in conjunction with purposes permitted in this zone); extractive industries; gas holders; generating works; industries (other than light industries); institutions; junk yards; liquid fuel depots; mines; panel beating workshops; roadside stalls; stock and sale yards; transport terminals; warehouses; wholesale markets."

Height of Buildings

Pursuant to Clause 30A of the KPSO, the objectives of the height of buildings clause are as follows:-



"(a) to retain consistency in the apparent height of buildings when viewed from the main streets of each business centre, being generally 2 storeys (with the exception of land within floor space zone B1 where the apparent height is 3 storeys);

(b) to minimise the potential for the overlooking and overshadowing of non-business development by business development; and

(c) to promote a size of building which does not have an avoidable detrimental visual effect on adjacent residential development."

A building on land to which this part applies shall not exceed:-

"(a) a height, at the highest internal point of the ceiling of its topmost storey, of 12 metres in floor space zone B1 or 8 metres in any other floor space zone; and

(b) an exterior height determined by a building height plane projected at an angle of 30 from a point 1.5 metres above ground level located at the boundary of land within a residential or open space zone."

Floor Space Ratio (FSR)

Pursuant to Clause 30B of the KPSO the floor space zone A2 is:-

"(b) in floor space zone A2, the district retail and community service centres within the Municipality, to provide a reasonable level of service to the surrounding district of each centre;"

The Council shall not consent to the erection or use of a building on land within a Floor space zone of A2 if the FSR exceeds 1.0:1.

1.3 Heritage

There are no items of heritage significance within the land affected by this Planning Proposal.

1.4 Ku-ring-gai Local Environmental Plan (Town Centres) 2010

On 28 July 2011, the Land and Environment Court in *Friends of Turrumurra Inc v Minister for Planning* [2011] NSWLEC 128 declared "that Ku-ring-gai Local Environmental Plan (Town Centres) 2010 published on the NSW legislation website on 25 May 2010 has been made contrary to the provisions of Division 4 of Part 3 of the Environmental Planning and Assessment Act 1979 and is thereby of no legal force or effect".

As outlined in Section 1 of this Planning Proposal, the reclassification of the land at lot 21 DP 713207 (9 Havilah Lane, Lindfield) was the subject of a previous Planning Proposal under the now invalidated Ku-ring-gai Local Environmental Plan (Town Centres) 2010.

Council has prepared Draft Ku-ring-gai Local Environmental Plan (Local Centres) 2012 (Draft Local Centres LEP) which is on exhibition from Monday 21 June 2012 to Monday 18 June 2012 inclusive. The Local Centres LEP contains new planning controls for local centres including Lindfield within which the site is located.



1.5 Proposed Planning Controls

The Planning Proposal will result in the following amendments to the KPSO:

- ① Amendment of Schedule 10 *Classification and reclassification of public land as operational* by inserting the following property into the Schedule:
 - Havilah Lane – Lot 21 in DP 713207.
- ② Amendment of Planning Scheme Ordinance Amendment Summary by inserting under Item G – *The Amendment of Schedules*:
 - The amendment to Schedule 10 by inserting the matter relating to 9 Havilah Lane, Lindfield.
- ③ Amendment of Planning Scheme Ordinance Amendment Summary by inserting under Item E – *The addition of Clauses*:
 - [insert clause No.] on commencement of LEP [insert reference no.], the land known as 9 Havilah Lane, Lindfield ceases to be a public car park and the land is discharged from any trusts, estates, interests, dedications, conditions or restrictions and covenants affecting the land or any part of the land.

It is noted that Draft Local Centres Plan (on exhibition from Monday 21 June 2012 to Monday 18 June 2012) may be gazetted prior to this planning proposal being resolved to the point of gazettal. Should this occur, this planning proposal would relate to the amendment of that instrument rather than the KPSO.



2. PART 1 – OBJECTIVES OF THE PROPOSED LOCAL ENVIRONMENTAL PLAN

This section of the Planning Proposal sets out the objectives or intended outcomes of the Planning Proposal. The following objectives will be developed further as studies are undertaken to inform the Planning Proposal.

The objectives of the Planning Proposal are to:

1. enable the development of certain identified parts of the Ku-ring-gai Local Government Area for future development. The sale of this land will provide funds to Council's Infrastructure and Facilities Reserve for use in future infrastructure projects throughout the LGA; and
2. provide for the orderly and economic development of land.

The site adjoins a recently approved mixed use retail/commercial/residential development at 23-37 Lindfield Avenue and 11 Havilah Lane which, if implemented, will demolish the development in relation to which the subject site was transferred to Council.

This major development has established the urban form for the lands to the south west of the site and is likely to act as a catalyst for other sites in the area. The proposed zoning and provisions for the site (and adjoining sites) in the Local Centres LEP will facilitate a built form consistent with newly approved development. This aligns with the objectives of the draft Ku-ring-gai Local Centres Plan and the proposed Ku-ring-gai Development Control Plan (Local Centres) 2012, Ku-ring-gai Contributions Plan 2010 and Ku-ring-gai Public Domain Plan 2010.

The coordinated and orderly development of the land in the vicinity of the site would be facilitated by the inclusion of the site as a development site in the consideration of the future urban form of the area. If Council's site retains its community classification it could not be integrated into a new mixed use development for the adjoining sites, resulting in the isolation of the site and poor urban form and public domain outcomes.

The site contains 25 public car parking spaces. These spaces could be retained, if required, as part of any redevelopment proposal (subject to negotiation with a future developer of adjoining lots) or provided elsewhere as part of the provision of a larger consolidated public car park and town square planned for the local centre of Lindfield as part of its revitalisation to support redevelopment in the area if an on-going demand for these spaces is established.



3. PART 2 - EXPLANATION OF PROVISIONS

This section sets out the means through which the objectives described in Part 1 will be achieved, in the form of controls on development in an LEP.

Ku-ring-gai Council supports the Planning Proposal for the reclassification of Lot 21 in DP 713207 known as 9 Havilah Lane, Lindfield from community land to operational land.

The LEP will allow Council to sell the above site. The proceeds of the site would go to Council's Infrastructure and Facilities Reserve.



4. PART 3 - JUSTIFICATION

This section sets out the reasons for the proposed outcomes and development standards in the Planning Proposal.

The following questions are set out in the Department of Planning's *A Guide to Preparing Planning Proposals* and address the need for the planning proposal, its strategic planning context, the environmental, social and economic impacts and the implications for State and Commonwealth government agencies.

4.1 Section A - Need for the planning proposal

The approval of a mixed use retail/commercial/residential Major Project application for 23-37 Lindfield Avenue and 11 Havilah Avenue Lindfield on 27 January 2012 has determined the urban form for the lands to the south west of the site.

If Council's site retains its community classification it could not be integrated into a new mixed use development for the adjoining sites, resulting in the isolation of the site and poor urban form and public domain outcomes.

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

Yes. Council resolved, at the Ordinary Meeting held on 24 April 2012, to prepare a Planning Proposal to reclassify the surplus land from Community land to Operational land. This is consistent with Council's intention to dispose of the land so that it can be included in a new mixed use development on the adjoining sites.

The proposed zoning and provisions for Council's site (and adjoining sites) in the Local Centres LEP (a Planning Proposal is currently with the Department of Planning and Infrastructure for a gateway determination) will facilitate a built form consistent with newly approved development. This aligns with the objectives of the draft Ku-ring-gai Local Centres Plan and the proposed Ku-ring-gai Development Control Plan (Local Centres), the Ku-ring-gai Contributions Plan, 2010 and Ku-ring-gai Public Domain Plan, 2010.

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

Yes. The main objectives or intended outcomes of the Planning Proposal are to enable the redevelopment of the site. The site could be integrated into a new mixed use development for the adjoining sites, resulting in an improvement in the urban form and public domain outcomes in the Lindfield centre.

The site is currently classified as Community land and therefore Council is not able to develop and sell, exchange or dispose of Community land under the provisions of the Local Government Act 1993.

Amending the KPSO would be the only means of achieving the objective of the Planning Proposal.

A planning proposal for the site is therefore considered appropriate.



3. Is there a net community benefit?

The planning proposal and desired future outcome in terms of a mixed use development will provide the most appropriate outcome for the community.

The reclassification and potential future divestment of this site will assist with the revitalisation of the Lindfield centre and the planning and delivery of new and improved facilities and services consistent with Ku-ring-gai Contributions Plan 2010 and Ku-ring-gai Public Domain Plan 2010. As the site was transferred to Council for the provision of public car parking associated with an adjoining development, Council can seek the retention of public parking either as part of a larger development incorporating this site or, alternatively, within the Lindfield town centre. In this manner public parking consolidated within the Lindfield commercial area (local centre) would be available to the community fulfilling any Council obligations to address the public interest in this regard. Further investigation is required into the need to provide the 25 spaces currently on the site either on the site or in the area.

Under the guide, it is recommended that the Net Community Benefit Test from the Draft Centres Policy should be followed when assessing a Planning Proposal. However, as the Planning Proposal does not involve a rezoning 'the net community benefit test' is not applicable.

4.2 Section 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)?

Yes. In December 2010 the NSW Government released the *Metropolitan Plan for Sydney 2036*. This Plan supersedes the 2005 *Metropolitan Strategy – City of Cities: A Plan for Sydney's Future*. Actions contained in the Plan focus on aligning subregional planning with the Metropolitan Plan and concentrating development around centres. The Metropolitan Plan contains a hierarchy for strategic and local centres. These revised subregional strategies, consistent with the Metropolitan Plan 2036, are anticipated for release in 2012. The Planning Proposal is not inconsistent with the objectives and actions contained with the Metropolitan Strategy or the Draft North Subregional Strategy.

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

Yes. The Planning Proposal is consistent with the Ku-Ring-Gai Council Community Strategic Plan 2030, which includes the objective of the effective implementation of the Ku-ring-gai Town Centres LEP (the Planning Proposal for a Local Centres LEP has recently been endorsed by Council which will be similar to the former Town Centres LEP).

The Community Strategic Plan is based around the following principle activity areas that align with Council's Management Plan:

- Community Development;
- Urban environment;
- Natural environment;



- ☐ Planning and development;
- ☐ Civic leadership and corporate services;
- ☐ Financial sustainability.

The proposed reclassification of the subject Council land within the Lindfield Local Centre is consistent with Community Strategic Plan 2030 as outlined below:

Under the *Community Development* principle activity, the proposed reclassification will assist in meeting the aim to make Council's community and cultural programs and services accessible, affordable and meet current and emerging needs.

Under the *Urban Environment* principle activity the proposed reclassification will assist in the aim that Council's assets are managed effectively to meet community needs and standards within available resources.

Under the *Planning and Development* principle activity the proposed reclassification will assist in ensuring that the urban areas will become more liveable and sustainable to State Government and community demands for additional housing, greater housing choice and associated provision of more local retail and commercial floor space and associated employment activity.

Under the *Financial Sustainability* principle activity the proposed reclassification will assist in meeting the aim that Council effectively manages its financial position to meet community expectations for projects and service delivery. The reclassification of the land to operational status will assist Council to consider the sale of the land. Council has an adopted 20 year long term financial model to assist in the financial planning and delivery of strategic projects.

The Planning Proposal is also consistent with the Ku-ring-gai Town Centres Public Domain Plan 2010. In this regard, Havilah Lane is considered a town centre street in this plan. One of the Objectives of the Lindfield Town Centre Strategy within the Public Domain 2010 plan is to improve the streetscape character of Havilah Lane. Should the site not be reclassified it is likely to become isolated and have an adverse impact on the urban form and public domain of Havilah Lane.

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

The following State Environmental Planning Policies are relevant to the Planning Proposal:

		Consistent
SEPP 19	Bushland in Urban Areas	☐
SEPP 32	Urban Consolidation	☐
SEPP 55	Remediation of Land	☐
SEPP 65	Design Quality of Residential Flat Development	☐
	(Housing for Seniors	☐



	or People with a Disability) 2004	
	Building Sustainability Index: BASiX 2004	11
	Infrastructure 2007	12
	Affordable Rental Housing 2009	13
	Sydney Harbour Catchment 2005	14

The proposal's compliance and consistency with the above SEPPs would be determined during the assessment of any development application on the site.

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

The table below identifies the proposal's consistency with the relevant Ministerial Directions.

s.117 Direction Title	Consistency of Planning Proposal
1.1 Business and Industrial Zones Objectives The objectives of this direction are to: a. encourage employment growth in suitable locations, b. protect employment land in business and industrial zones, and c. support the viability of identified strategic centres. Where this direction applies This direction applies to all relevant planning authorities. When this direction applies This direction applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed business or industrial zone (including the alteration of any existing business or industrial zone boundary). What a relevant planning authority must do if this direction applies A planning proposal must: a. give effect to the objectives of this direction, b. retain the areas and locations of existing business and industrial zones, c. not reduce the total potential floor space area for employment uses and related public services in business zones,	Consistent. The Planning Proposal will allow the site to be redeveloped for commercial or mixed uses purposes increasing the total potential floor space area for employment uses and related public services in business zones.



s.117 Direction Title	Consistency of Planning Proposal
d. not reduce the total potential floor space area for industrial uses in industrial zones, and e. ensure that proposed new employment areas are in accordance with a strategy that is approved by the Director-General of the Department of Planning. Consistency A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are: a. justified by a strategy which: - gives consideration to the objective of this direction, and - identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and - is approved by the Director-General of the Department of Planning, or b. justified by a study (prepared in support of the planning proposal) which gives consideration to the objective of this direction, or c. in accordance with the relevant Regional Strategy or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or d. of minor significance. Note: In this direction, "identified strategic centre" means a centre that has been identified as a strategic centre in a regional strategy, sub-regional strategy, or another strategy approved by the Director General.	
2.1 Environmental Protection Zones Objective (1) The objective of this direction is to protect and conserve environmentally sensitive areas. Where this direction applies (2) This direction applies to all relevant planning authorities. When this direction applies (3) This direction applies when a relevant planning authority prepares a planning proposal. What a relevant planning authority must do if this	Consistent. The Planning Proposal applies to land which is identified as being environmentally sensitive. The Planning Proposal will not reduce the existing and proposed environmental protection standards that will apply to the land and is therefore consistent with the Local Planning Direction.



s.117 Direction Title	Consistency of Planning Proposal
direction applies (4) A planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas. (5) A planning proposal that applies to land within an environment protection zone or land otherwise identified for environment protection purposes in a LEP must not reduce the environmental protection standards that apply to the land (including by modifying development standards that apply to the land). This requirement does not apply to a change to a development standard for minimum lot size for a dwelling in accordance with clause (5) of Direction 1.5 "Rural Lands". Consistency (6) A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are: b. justified by a strategy which: i. gives consideration to the objectives of this direction, ii. identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and iii. is approved by the Director-General of the Department of Planning, or (b) justified by a study prepared in support of the planning proposal which gives consideration to the objectives of this direction, or (c) in accordance with the relevant Regional Strategy or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or (d) is of minor significance.	
3.4 Integrating Land Use and Transport Objective (1) The objective of this direction is to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve the following planning objectives: (a) improving access to housing, jobs and services by walking, cycling and public transport, and (b) increasing the choice of available transport and reducing dependence on cars, and (c) reducing travel demand including the number of trips generated by development and the distances travelled, especially by car, and	Consistent. At this stage of the Planning Proposal, the appropriate State and Commonwealth public authorities have not yet been identified, and the Gateway Determination has yet to be issued by the Minister for Planning and Infrastructure. Consultation will need to be undertaken with public authorities, such as the State Transit Authority of NSW to determine the capacity of the existing public infrastructure and whether the existing services are capable of supporting the reclassification of the land in the LEP. However, the site is located within an established local centre that has existing public transport infrastructure in place. Its development and more intensive use is consistent with this direction.



s.117 Direction Title	Consistency of Planning Proposal
(d) supporting the efficient and viable operation of public transport services, and (e) providing for the efficient movement of freight. Where this direction applies (2) This direction applies to all relevant planning authorities. When this direction applies (3) This direction applies when a relevant planning authority prepares a planning proposal that will create, alter or remove a zone or a provision relating to urban land, including land zoned for residential, business, industrial, village or tourist purposes. What a relevant planning authority must do if this direction applies (4) A planning proposal must locate zones for urban purposes and include provisions that give effect to and are consistent with the aims, objectives and principles of: (a) Improving Transport Choice – Guidelines for planning and development (DUAP 2001), and (b) The Right Place for Business and Services – Planning Policy (DUAP 2001). Consistency (5) A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are: (a) justified by a strategy which: (i) gives consideration to the objective of this direction, and (ii) identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and (iii) is approved by the Director-General of the Department of Planning, or (b) justified by a study prepared in support of the planning proposal which gives consideration to the objective of this direction, or (c) in accordance with the relevant Regional Strategy or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or (d) of minor significance.	
4.1 Acid Sulfate Soils	Consistent.



s.117 Direction Title	Consistency of Planning Proposal
Objective (1) The objective of this direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils. Where this direction applies (2) This direction applies to all relevant planning authorities that are responsible for land having a probability of containing acid sulfate soils, as shown on Acid Sulfate Soils Planning Maps held by the Department of Planning. When this direction applies (3) This direction applies when a relevant planning authority prepares a planning proposal that will apply to land having a probability of containing acid sulfate soils as shown on the Acid Sulfate Soils Planning Maps. What a relevant planning authority must do if this direction applies (4) The relevant planning authority must consider the Acid Sulfate Soils Planning Guidelines adopted by the Director-General of the Department of Planning when preparing a planning proposal that applies to any land identified on the Acid Sulfate Soils Planning Maps as having a probability of acid sulfate soils being present. (5) When a relevant planning authority is preparing a planning proposal to introduce provisions to regulate works in acid sulfate soils, those provisions must be consistent with: (a) the Acid Sulfate Soils Model LEP in the Acid Sulfate Soils Planning Guidelines adopted by the Director-General, or (b) such other provisions provided by the Director-General of the Department of Planning that are consistent with the Acid Sulfate Soils Planning Guidelines. (6) A relevant planning authority must not prepare a planning proposal that proposes an intensification of land uses on land identified as having a probability of containing acid sulfate soils on the Acid Sulfate Soils Planning Maps unless the relevant planning authority has considered an acid sulfate soils study assessing the appropriateness of the change of land use given the presence of acid sulfate soils. The relevant planning authority must provide a copy of any such study to the Director General prior to undertaking community consultation in satisfaction of section 57 of the Act. (7) Where provisions referred to under paragraph (5) of this direction have not been introduced and the relevant planning authority is preparing a planning proposal that proposes an intensification of land uses on land identified as having a probability of acid sulfate soils on the Acid Sulfate Soils Planning Maps, the planning proposal must	



s.117 Direction Title	Consistency of Planning Proposal
contain provisions consistent with paragraph (5). Consistency (8) A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are: (a) justified by a study prepared in support of the planning proposal which gives consideration to the objective of this direction, or (b) of minor significance	
4.3 Flood Prone Land Objectives (1) The objectives of this direction are: (a) to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005, and (b) to ensure that the provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land. Where this direction applies (2) This direction applies to all relevant planning authorities that are responsible for flood prone land within their LGA. When this direction applies (3) This direction applies when a relevant planning authority prepares a planning proposal that creates, removes or alters a zone or a provision that affects flood prone land. What a relevant planning authority must do if this direction applies (4) A planning proposal must include provisions that give effect to and are consistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005 (including the Guideline on Development Controls on Low Flood Risk Areas). (5) A planning proposal must not rezone land within the flood planning areas from Special Use, Special Purpose, Recreation, Rural or Environmental Protection Zones to a Residential, Business, Industrial, Special Use or Special Purpose Zone. (6) A planning proposal must not contain provisions that apply to the flood planning areas which: (a) permit development in floodway areas, (b) permit development that will result in significant	Consistent



s.117 Direction Title	Consistency of Planning Proposal
flood impacts to other properties, (c) permit a significant increase in the development of that land, (d) are likely to result in a substantially increased requirement for government spending on flood mitigation measures, infrastructure or services, or (e) permit development to be carried out without development consent except for the purposes of agriculture (not including dams, drainage canals, levees, buildings or structures in floodways or high hazard areas), roads or exempt development. (7) A planning proposal must not impose flood related development controls above the residential flood planning level for residential development on land, unless a relevant planning authority provides adequate justification for those controls to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General). (8) For the purposes of a planning proposal, a relevant planning authority must not determine a flood planning level that is inconsistent with the Floodplain Development Manual 2005 (including the Guideline on Development Controls on Low Flood Risk Areas) unless a relevant planning authority provides adequate justification for the proposed departure from that Manual to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General). Consistency (9) A planning proposal may be inconsistent with this direction only if the relevant planning authority can satisfy the Director-General (or an officer of the Department nominated by the Director-General) that: (a) the planning proposal is in accordance with a floodplain risk management plan prepared in accordance with the principles and guidelines of the Floodplain Development Manual 2005, or (b) the provisions of the planning proposal that are inconsistent are of minor significance. Note: "flood planning area", "flood planning level", "flood prone land" and "floodway area" have the same meaning as in the Floodplain Development Manual 2005.	
6.1 Approval and Referral Requirements Objective	Consistent. The Planning Proposal does not include provisions that require the concurrence, consultation or referral of future DAs to a Minister or Public Authority.



s.117 Direction Title	Consistency of Planning Proposal
(1) The objective of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development. Where this direction applies (2) This direction applies to all relevant planning authorities. When this direction applies (3) This direction applies when a relevant planning authority prepares a planning proposal. What a relevant planning authority must do if this direction applies (4) A planning proposal must: (a) minimise the inclusion of provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority, and (b) not contain provisions requiring concurrence, consultation or referral of a Minister or public authority unless the relevant planning authority has obtained the approval of: (i) the appropriate Minister or public authority, and (ii) the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General), prior to undertaking community consultation in satisfaction of section 57 of the Act, and (c) not identify development as designated development unless the relevant planning authority: (i) can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the class of development is likely to have a significant impact on the environment, and (ii) has obtained the approval of the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) prior to undertaking community consultation in satisfaction of section 57 of the Act. Consistency (5) A planning proposal must be substantially consistent with the terms of this direction. Note: In this direction "public authority" has the same meaning as section 4 of the Environmental Planning and Assessment Act 1979.	
6.2 Reserving land for public purposes Objectives (1) The objectives of this direction are: (a) to facilitate the provision of public services and facilities by reserving land for public purposes, and (b) to facilitate the removal of reservations of land	Consistent. The site is neither zoned nor reserved for a public purpose.



s.117 Direction Title	Consistency of Planning Proposal
for public purposes where the land is no longer required for acquisition. Where this direction applies (2) This direction applies to all relevant planning authorities. When this direction applies (3) This direction applies when a relevant planning authority prepares a planning proposal. What a relevant planning authority must do if this direction applies (4) A planning proposal must not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the relevant public authority and the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General). (5) When a Minister or public authority requests a relevant planning authority to reserve land for a public purpose in a planning proposal and the land would be required to be acquired under Division 3 of Part 2 of the Land Acquisition (Just Terms Compensation) Act 1991, the relevant planning authority must: (a) reserve the land in accordance with the request, and (b) include the land in a zone appropriate to its intended future use or a zone advised by the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General), and (c) identify the relevant acquiring authority for the land. (6) When a Minister or public authority requests a relevant planning authority to include provisions in a planning proposal relating to the use of any land reserved for a public purpose before that land is acquired, the relevant planning authority must: (a) include the requested provisions, or (b) take such other action as advised by the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) with respect to the use of the land before it is acquired. (7) When a Minister or public authority requests a relevant planning authority to include provisions in a planning proposal to rezone and/or remove a reservation of any land that is reserved for public purposes because the land is no longer designated by that public authority for acquisition, the relevant planning authority must rezone and/or remove the relevant reservation in accordance with the request. Consistency (8) A planning proposal may be inconsistent with	



s.117 Direction Title	Consistency of Planning Proposal
the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that: (c) with respect to a request referred to in paragraph (7), that further information is required before appropriate planning controls for the land can be determined, or (d) the provisions of the planning proposal that are inconsistent with the terms of this direction are of minor significance. Note: Clause 12 of the EP&A Reg 2000 provides that a planning proposal for a proposed local environmental plan: (a) may not contain a provision reserving land for a purpose referred to in section 26 (1) (c) of the EP&A Act, and (b) may not contain a provision in respect of that reservation as required by section 27 of the EP&A Act, unless the public authority responsible for the acquisition of the land has notified the relevant planning authority of its concurrence to the inclusion of such a provision in the planning proposal. In this direction: "public authority" has the same meaning as section 4 of the EP&A Act. the use or reservation of land for a public purpose has the same meaning as in section 26(1)(c) of the EP&A Act.	
6.3 Site specific provisions Objective (1) The objective of this direction is to discourage unnecessarily restrictive site specific planning controls. Where this direction applies (2) This direction applies to all relevant planning authorities. When this direction applies (3) This direction applies when a relevant planning authority prepares a planning proposal that will allow a particular development to be carried out. What a relevant planning authority must do if this direction applies (4) A planning proposal that will amend another environmental planning instrument in order to allow a particular development proposal to be carried out must either: (a) allow that land use to be carried out in the zone the land is situated on, or (b) rezone the site to an existing zone already applying in the environmental planning instrument	Consistent. The Planning Proposal will not impose any new development standards.



s.117 Direction Title	Consistency of Planning Proposal
that allows that land use without imposing any development standards or requirements in addition to those already contained in that zone, or (c) allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended. (5) A planning proposal must not contain or refer to drawings that show details of the development proposal. Consistency (6) A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are of minor significance.	
7.1 Implementation of the Metro Strategy	The development of the sites for mixed use purposes will contribute to meeting the commercial and residential targets in the Metropolitan Plan.

Should the Planning Proposal be supported at the Gateway Determination, further detail on consistency with Ministerial Directions will be provided following the consultation with the relevant public and private authorities.

4.3 Section 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?

No. Council has recently exhibited a planning proposal (submission period closed on 27 February 2012) to introduce biodiversity and riparian overlays (as well as heritage conservation overlays) along with associated provisions into the KPSO. The subject site is not affected by any of these overlays. Further investigation is required at the DA stage in relation to threatened species although given the use of the site as a public car park within an urbanised centre the likelihood of threatened species is considered low.

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

The planning proposal for the reclassification of 9 Havilah Lane, Lindfield will not result in any additional environmental effects to those considered during the preparing of the draft Local Centres LEP.

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

Yes. As outlined above, the reclassification and potential future divestment of this site will assist with the revitalisation of the Lindfield centre and the planning and delivery of new and



improved facilities and services consistent with Ku-ring-gai Contributions Plan 2010 and Ku-ring-gai Public Domain Plan 2010. As the site was transferred to Council for car park purposes in conjunction with an adjoining development in the early 1980s, the retention of parking either as part of a consolidation and redevelopment of the site or nearby within the Lindfield local centre could also be sought.

The reclassification of the site would facilitate its potential future divestment. The proceeds of the site would go to Council's Infrastructure and Facilities Reserve which will support the provision of infrastructure supporting the needs of people in and around new developments in Lindfield. Conversely, the isolation of this site could potentially limit or preclude future infrastructure provision in Lindfield.

4.4 Section D – State and Commonwealth Interests

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

Consultation with key agencies about the capacity to service the site was not undertaken prior to submitting this Planning Proposal to the Department of Planning and Infrastructure. Consultation will need to be undertaken with public authorities.

The proposal will result in minor increase in demand for facilities in an existing urban area where all utility services are available.

Consultation with State and Commonwealth agencies will be undertaken in accordance with **Section 5** of this Planning Proposal.

2. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

At this stage, the appropriate State and Commonwealth public authorities have not been identified or consulted, and the Gateway Determination has yet to be issued by the Minister for Planning and Infrastructure. Consultation with the following Government authorities, agencies and other stakeholders in regard to this Planning Proposal are proposed to include:-

- NSW Department of Planning and Infrastructure;
- State Transit Authority of NSW;
- Roads and Maritime Services (formerly the RTA) NSW;
- Sydney Water Corporation;
- Energy Australia;
- NSW Department of Transport;
- Lifetime Care and Support Authority of NSW;
- NSW Department of Family and Community Services (Housing);
- NSW Department of Education and Communities;
- Ministry of Police;
- NSW Health Department;
- Rail Corporation of NSW; and



ii Adjoining Councils.

Council seeks confirmation of the above list through the Minister's Gateway Determination.



5. PART 4 – COMMUNITY CONSULTATION

Extensive community consultation on the Planning Proposal will be undertaken by Council (subject to receiving a determination to proceed at the gateway) in accordance with the publication "A Guide to Preparing Local Environmental Plans", published by the Department of Planning. The community consultation will not be commenced prior to obtaining approval from the Minister or Director-General and not before Council has consulted with the Commissioner of the NSW Rural Fire Service as per the relevant Local Planning Direction. The notification and consultation process will be initiated after the s.55 submission has been sent to the Department of Planning and Infrastructure.

Council's consultation methodology will include, but not be limited to:-

- forwarding a copy of the Planning Proposal, the gateway determination and any relevant supporting studies or additional information to State and Commonwealth Public Authorities identified in the gateway determination;
- undertaking consultation if required in accordance with requirements of a Ministerial Direction under section 117 of the EP&A Act and/or consultation that is required because, in the opinion of the Minister (or delegate), a State or Commonwealth public authority will be or may be adversely affected by the proposed LEP;
- giving notice of the public exhibition in the main local newspaper (the North Shore Times);
- exhibiting the Planning Proposal in accordance with the gateway determination. It is assumed this would require an exhibition period of at least 28 days duration;
- exhibiting the Planning Proposal pursuant to s.57 and all supporting documentation at Council's Administration Centre and notification of exhibition at Council's Libraries;
- notifying of the Planning Proposal's exhibition on Council's website, including providing copies of the Planning Proposal, all supporting studies and additional information and the gateway determination;
- notifying affected landowners and adjoining land owners where relevant;
- holding a Public Hearing; and
- any other consultation methods deemed appropriate for the proposal.



6. RECLASSIFICATION OF PUBLIC LAND

Pursuant to Section 55(3) of the Act, the Director-General may issue requirements with respect to the preparation of a planning proposal. In this regard, the Department of Planning Guideline *A Guide to Preparing Local Environmental Plans* sets out the Director-General's requirements regarding the matters that must be addressed in the justification of all planning proposals to reclassify public land.

These requirements are addressed below:

6.1.1 A - Is the planning proposal the result of any strategic study or report?

Yes. As outlined in Section 4.1 of this Planning Proposal Council resolved, at the Ordinary Meeting held on 24 April 2012, to prepare a Planning Proposal to reclassify the land from Community land to Operational land. This is consistent with Council's intention to dispose of the land to allow it to be included in the redevelopment of the Lindfield Town Centre.

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

Yes. The Planning Proposal is consistent with Ku-ring-gai Council Community Strategic Plan 2030 and the Ku-ring-gai Town Centre Public Domain Plan 2010. See section 4.2 of this Planning Proposal.

6.1.3 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.

Certificates of Title for each property indicate that there are no easements or restrictions on the land that would need to be extinguished or changed.

Available Council records suggest that there are no unregistered interests in 9 Havilah Lane that would need to be extinguished. There is a public interest in the provision of public car parking in the area which, if substantiated, can be met by the provision of 25 public car parking spaces either as part of the redevelopment of the site or other sites in the Lindfield local centre.

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

Council is the landowner of the site and has endorsed the Preparation of the Planning Proposal.



FIGURES

