

APPENDIX 1

COUNCIL REPORTS RELATING TO MATTERS INCLUDED IN THE PLANNING PROPOSAL

Development Assessment and Planning

Minute Number: 672

Council Meeting Date: 25/03/2014

17/03/2014

DAP099-14 Outstanding Matters Excluded from draft SSLEP2013

File Number: LP/06/640581

Director: Planning & Environment Division (LW:MC)

Purpose

At the direction of Council, the Environmental Planning Unit has considered a number of relatively minor rezoning and reclassification matters that have not progressed to date due to the delay in finalisation of draft SSLEP2013. The purpose of this report is to provide planning advice in relation to these outstanding matters and to seek Council's approval to progress those recommended through the preparation of a Planning Proposal for Gateway Determination seeking to amend Sutherland Shire's Local Environmental Plan to include these changes. The Planning Proposal will be written to amend Sutherland Shire's new Local Environmental Plan, when made.

Summary

This report considers six (6) relatively minor rezoning and reclassification matters which have not progressed due to the delay in finalisation of draft SSLEP2013. The report reviews the merits of each of the proposals and recommends that the following five (5) matters are incorporated into a Planning Proposal to proceed to Planning & Infrastructure (P&I) for a Gateway Determination to amend Sutherland Shire's Local Environmental Plan:

The reclassification of a Development Control Strip at 34R-36R Caravan Head Road, Oyster Bay from 'community' land to 'operational' land to allow its sale to the adjoining owners 34-36 Caravan Head Road, Oyster Bay;

The rezoning of part of 1-3 and 2-4 Gidji Road, Miranda which is part of the Ewey Creek open space corridor, provided agreement is reached as to a right of carriage way for public access to the open space;

The reclassification of a drainage reserve from 'community' to 'operational land at 13R Pinnacle Street, Miranda. However, this land should remain in Council ownership because it is needed to improve pedestrian access to a new high density housing precinct which will be delivered through the new LEP;

The rezoning of three (3) sporting fields, being Loftus, Grays Point and Heathcote - located within the Royal National Park (RNP) and proposed to be transferred from the ownership of NPWS to Sutherland Shire Council - from SSLEP2006 Zone 20 - National Parks, Nature Reserves and State Conservation Areas to a 'Public Recreation' zone, and their classification as 'community' land; and

The rezoning of 691 and 697 Old Illawarra Road, Illawong to a 'Special Uses' zone that allows community facilities to be permitted with consent.

The Planning Proposal is also intended to include the rezoning of approximately 183m² of Bundeena Reserve (Lot 5 DP 663309) from a 'Public Recreation' to a 'Private Recreation' zone, and to rezone 69-71 Loftus Street, Bundeena (Lot 1 in DP 1077138) from its current 'Environmental Housing' zone to a 'Private Recreation' zone into the Planning Proposal, as per Council Resolution DAP077-14.

The report also provides planning advice in relation to the proposal to reclassify part of 2R Alexander Road, Taren Point to allow its sale to the adjoining owner at 98 Woodlands Road for rear access to the property. After receiving advice from across Council, it is considered that the loss of public reserve land for this purpose does not provide a net community benefit. Providing private access in this location presents potential safety risks for pedestrians and cyclists accessing Council facilities within the adjacent Taren Point Shorebird Reserve. Also known flood risk associated with the rear portion of 98 Woodlands Road is such that subdivision of this property to increase residential density in this location is inadvisable. Therefore, it is recommended that this proposal not proceed.

It should be noted that the Planning Proposal will be written so that it ultimately amends the new LEP.

Purpose and Background

Over the past year there have been a number of relatively minor matters where Council has directed the Environmental Planning Unit to consider the rezoning and/or the reclassification of land. These matters have not progressed due to the delay in finalisation of draft SSLEP2013. This report provides planning advice in relation to each matter to move these matters forward. Those matters supported by Council would proceed to Gateway Determination.

The *Environmental Planning & Assessment Act 1979* (EP&A Act) sets out the process by which land may be rezoned or reclassified. In brief, Council must address the impact of the proposal on the immediate locality as well as how it fits into the broader strategic policy context. Once prepared, a Planning

Proposal is forwarded to the Minister for Planning and Infrastructure for a Gateway Determination. A Determination considers the strategic merits of a Planning Proposal and, if approved, whether any conditions should be attached. Following formal public exhibition of the Planning Proposal and Council's consideration of submissions, changes may proceed as an amendment to a LEP.

It should be noted that the planning proposal will be written so that it ultimately amends the new LEP.

The outstanding matters addressed in this report are:

Land /Address	Matter for consideration
34R-36R Caravan Head Road, Oyster Bay	The reclassification from 'community' land to 'operational' land of a development control strip at 34R-36R Caravan Head Road, Oyster Bay to allow the sale to the adjoining owners.
2R Alexander Road, Taren Point	The reclassification of part of a public reserve at 2R Alexander Avenue, Taren Point (known as the Taren Point Shorebird Reserve) from 'community' to 'operational' land, to allow the sale to the adjoining owners.
Part of 1-3 and 2-4 Gidji Road, Miranda	The rezoning of part of 1-3 and 2-4 Gidji Road, Miranda which is part of the Ewey Creek open space corridor.
13R Pinnacle Street, Miranda	The reclassification of a drainage reserve from 'community' to 'operational' land at 13R Pinnacle Street, Miranda to facilitate its sale to the adjoining owners.
Loftus, Grays Point and Heathcote sporting ovals within Royal National Park	The rezoning of three (3) sporting fields, being Loftus, Grays Point and Heathcote, located within the Royal National Park (RNP) proposed to be transferred from the ownership of NPWS to Sutherland Shire Council, for 'public recreation', and their classification as 'community' land.
691 & 697 Old Illawarra Road, Illawong	The rezoning of 691 and 697 Old Illawarra Road, Illawong to allow a men's shed (i.e., a 'community facility') to be permitted with consent.

Subject Lands/Matters

1. *Reclassification of access Control Strip at 34R-36R Caravan Head Road, Oyster Bay*

At its meeting of 17 July 2013, council resolved that the Manager Environmental Planning prepare a report to consider the reclassification of land at 34R-36R Caravan Head Road, Oyster Bay from 'community' to 'operational' (FIN005-14) to facilitate its sale to the adjoining owner at 34-36 Caravan Road.

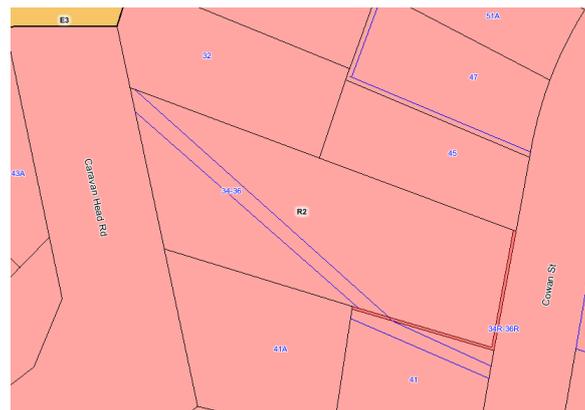
Current Situation

Sutherland Shire Council is the registered proprietor of 34R-36R Caravan Head Road, Oyster Bay (Lot 219 DP25965), a 1.5m wide, L shaped (26m² area) access Control Strip along the rear of 34-36 Caravan Head Road. Council records show the strip was purchased by Council to construct Cowan Street. At the time the residents of 34-36 Caravan Head Road, Oyster Bay did not contribute to the construction costs of the road, although it provided their land with direct access and improved the land's subdivision potential. Council used the access Control Strip across the Cowan Street frontage so that costs of road and drainage works to construct Cowan Street could be recouped when the subject property was subdivided.

Council has recently received a request from the owners at 34-36 Caravan Head Road, Oyster Bay to purchase the subject access Control Strip. Having regard to the fact that this parcel is surplus to Council's needs, Council's Land Management Committee has endorsed the reclassification for the sale of this small strip.



Location Map (subject land in green)



**Draft SSLEP2013 Zoning Map
(Easement shown in blue)**



Aerial View: 34-36 Caravan Head Road- subject land (34R-36R) in red

The subject land and adjoining property at 34-36 Caravan Head Road are currently designated as Zone 4 – Local Housing. A direct transfer to the equivalent Standard Instrument zone (R2 Low Density Residential) is proposed under draft SSLEP2013. The R2 zone is primarily for single dwellings, but dual occupancies, multi dwelling houses, seniors housing and secondary dwellings are also permissible.

The property at 34-36 Caravan Head Road is occupied by a single dwelling which is at the low end of the sloping site (i.e., closest to Cowan Road). The land is not subject to any environmental or heritage constraints, however they are burdened by an easement, as shown above in blue.

Benefits/Disadvantages/Alternatives

The existing and proposed zone both set the minimum lot size area for subdivision at 550m², or 700m² for an internal lot. The lot is approximately 1744m² and is sufficiently large to allow subdivision in its own right. The proposed reclassification and sale of the access strip would increase the land size of 34-36 Caravan Head Road by approximately 25m². The proposed reclassification and sale would effectively give the property owner access via Cowan Street, Oyster Bay. This would facilitate the future subdivision and use of the upper lot for a range of permissible uses (subject to development consent).

From a planning perspective, the reclassification of 34R-36R Caravan Head Road, Oyster Bay from 'community' to 'operational' is minor and of no strategic importance. It does not contravene the objectives or actions of relevant State or local strategic plans, policies or directions. No endangered communities exist on or in the vicinity of the site, and there are no likely environmental effects from the reclassification and use of the subject land. Nor is it likely that its reclassification will result in any significant social or economic effects. The land is not identified as bush fire prone.

The owner of 34-36 Caravan Head Road, Oyster Bay is aware that the sale is subject to reclassification of the land from 'community' to 'operational' and the payment of an amount to be assessed by Council's independent property

valuer. The proposed sale will be subject of a further report to council if reclassification is successful.

Conclusion

That, in accordance with Section 29 of the *Local Government Act 1993*, the proposal to reclassify 34R-36R Caravan Head Road, Oyster Bay (Lot 21 of DP 25965) from community to operational land is supported and is recommended for inclusion in a Planning Proposal to amend the Sutherland Shire LEP.

2. *Reclassification of part of public reserve at 2R Alexander Avenue, Taren Point*

On 8 October 2013 (BDS024-14), council resolved that a report be prepared to consider the reclassification of part of the public reserve at 2R Alexander Avenue, Taren Point - known as the Taren Point Shorebird Reserve - from 'community' land to 'operational' land to facilitate its sale to the adjoining land owner at 98 Woodlands Road. The proposal to reclassify the land was initiated at the request of the owner of 98 Woodlands Road to facilitate the subdivision of the lot.

Current Situation

Council is the registered proprietor of Lot 1 in Deposited Plan 234622, 2R Alexander Avenue, Taren Point. The land forms part of the Taren Point Shorebird Reserve. The Reserve is a 5017m² 'L' shaped parcel that starts at the end of Alexander Avenue and wraps around the eastern foreshore of Woolloomare Bay. It provides habitat for an assemblage of migratory shorebirds known as the Taren Point Shorebird Community, an endangered ecological community. The reserve also provides opportunity for walking, cycling and passive recreation while minimising impacts to, and creating awareness of, the shorebirds utilising the adjacent sandy shoals. The reserve is currently zoned Zone 13 - Public Open Space under SSLEP2006 and is classified as 'community land'. It is proposed to be designated as the equivalent Standard Instrument zone (RE1 Public Recreation) and to remain 'community land' under the new LEP.

Council has received a written enquiry from a consulting surveyor on behalf of the owner at 98 Woodlands Road, Taren Point (Lot 410 of DP 1114233) to acquire 75.5m² of 2R Alexander Avenue (part of Taren Point Foreshore Reserve) to, "enable efficient and sensitive use of their land". The property is 1531m² in area and occupied by an older, single dwelling with access via Woodlands Road. The land is currently zoned as Zone 2 - Environmental Housing (Scenic Quality). Under draft SSLEP2013 it is proposed to be zoned as E4 Environmental Living. As presently configured, subdivision of the property is only possible through the creation of an internal lot. Under both the current and the proposed LEP, this requires a minimum lot size of 1550m². The owner seeks to gain rear access to the property via Smith Street thus create the potential for subdivision of the lot into two (2) properties, each with

independent street access. Under this scenario, the minimum lot size for subdivision is 1440m².

In 2008, Council acquired part of Lot A in DP 308062 located at the rear of 98 Woodlands Road, Taren Point 2008, in accordance with the Local Government Act, 1993 and the Land Acquisition (Just Terms Compensation) Act, 1991 to create a link between the existing State reserve and Council's bike path. The site was zoned for open space purposes under Sutherland Shire Council LEP 2000 and formed part of the area of open space now known as the Taren Point Shorebird Reserve. Council acquired only that portion of the site which was closest to the waterfront. That agreement did not obligate council to provide rear access to 98 Woodlands Road.



Overview of subject area:

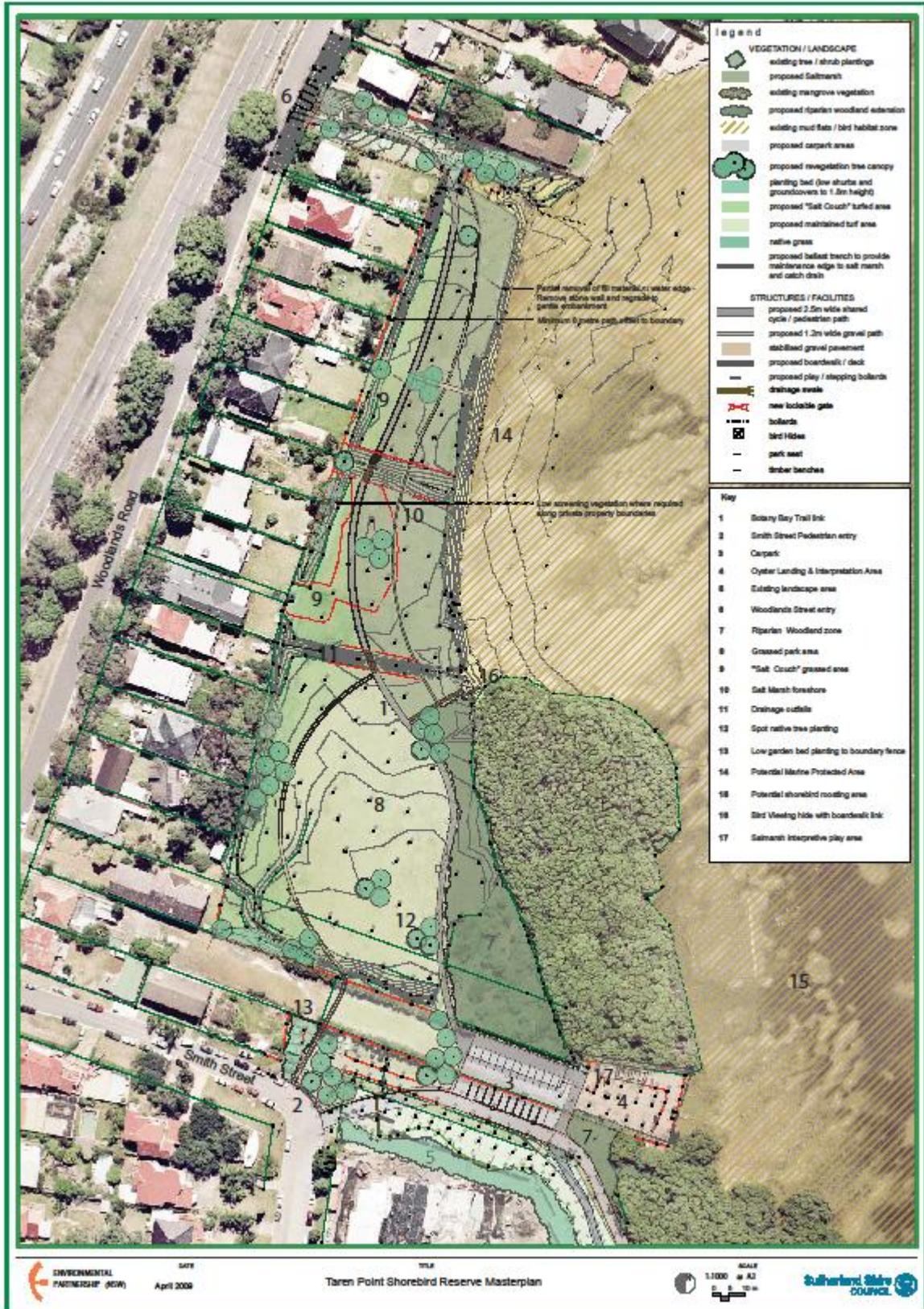
Land requested to be rezoned outlined in red. 2R Alexander Avenue outlined in blue. Council cycleway through the Taren Point Shorebird Reserve shown in yellow with red dashes.



Detailed view of that part of 2R Alexander Ave proposed for reclassification and sale (see white arrow) and 98 Woodlands Road



Street view of proposed reclassification area:
Corner of Smith Street and Alexander Avenue, looking north to the rear of 98 Woodlands Road (behind fence)



Taren Point Shorebird Reserve Masterplan:
 Adopted by Council at its meeting on 11 May 2009 (WKS128-09)
 Subject land adjacent to area '2': Smith Street Pedestrian Entry

The request was referred to Council's Land Management Committee meeting for consideration where no initial objections to the proposed reclassification and sale were raised. On further review, Council's Parks & Waterways Division advised that the Taren Point Shorebird Reserve, which includes the subject area, is subject to a masterplan to upgrade the reserve which was adopted by Council at its meeting on 11 May 2009 (WKS128-09). While the Division raised objection to the proposal, this view did not prevail in Council's Resolution (BDS024-14).

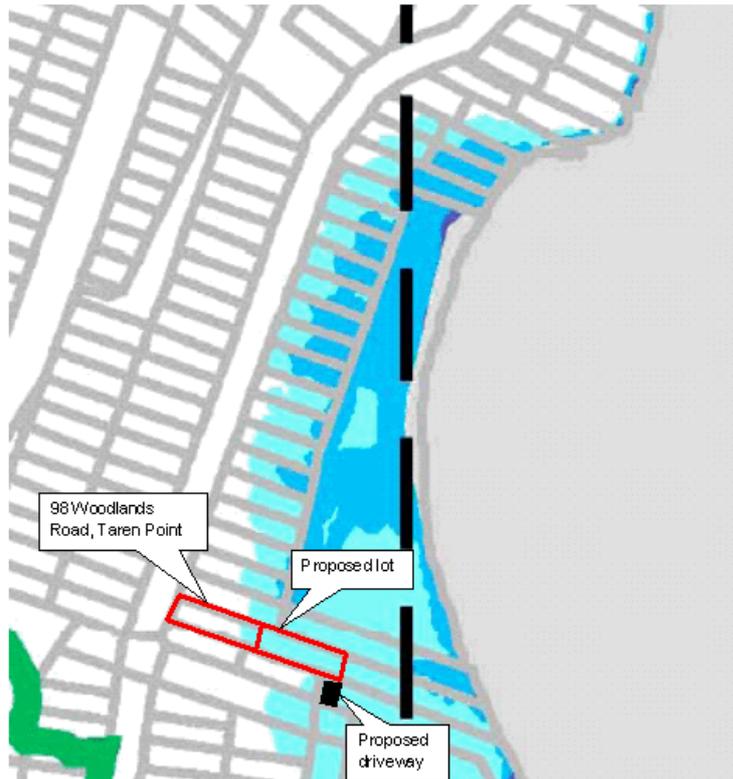
Benefits/Disadvantages/Alternatives

In its most simple terms, the reclassification does not contravene the objectives or actions of relevant state or local strategic plans, policies or directions. Nor is it likely that it will result in any significant social or economic effects. However, the proposal offers no net community benefit and, based on previous discussions, is likely to attract concerns from nearby residents, in particular the owner at 1 Smith Street. It also raises some important safety issues.

The Lower Georges River Floodplain Risk Management Study & Plan indicates that the property in question is subject to flooding and falls within the Flood Planning Area (FPA) as defined by the NSW State Government. The figure below shows the boundary of the 1% AEP (1 in 100-year Annual Recurrence Interval) flood. The proposed lot would be wholly affected by flooding to a water depth of between 100 and 200mm. Under the climatic conditions of 2014, the level of flood risk in the subject property is classified as *Low*. If the NSW State Government sea level rise predictions for the year 2050 become reality, the 1% AEP flood level could increase by up to 400mm.

The Flood Risk Management provisions in Chapter 5 of SSDCP2006 do not prohibit sub-division of land within areas of *Low* flood risk. However, from a floodplain risk management prospective it is not in the community's long-term interest to create additional flood affected properties through land subdivision. Nevertheless, if Council is of a mind to approve the sub-division, then the following should be considered:

1. The minimum finished floor level requirement for a dwelling within the new lot would likely be 1 to 1.2 metres above existing ground level if Climate Change is taken into consideration.
2. The figure below shows that Smith Street is subject to flooding. Thus, it may not be possible to enter or exit the property by way of the proposed driveway in the event of an emergency. A 'right of way' to Woodlands Road is needed that is suitable for emergency services personnel and equipment.



Light blue indicates boundary of the 1% AEP (1 in 100-year Annual Recurrence Interval) flood

The subject land is also constrained by Class 2 Acid Sulfate Soils; however, provided excavation is not required, this should not present an obstacle to future development on this land.

On the advice of Council's Science Policy Unit, it is considered that there is no contamination risks associated with the residential use of this site. Nor are there likely any detrimental environmental effects from the proposed reclassification and use of the subject land. However, should the proposal proceed, care must be taken to ensure that any future development of the site does not hinder access for pedestrians or cyclists to either of the purpose built pathways through the Reserve, or for vehicles bound for the Anglers Club.

Council's Parks & Waterways Division has reiterated its opposition to the proposal for the following reasons:

- the proposal is contrary to the masterplan adopted for the area which shows a footpath connection through this area;
- sale of the land and its subsequent use as a private property access would narrow the access to the public reserve. The access is shared by pedestrians, cyclists and cars with boats and trailer accessing the Anglers Club via the adjacent drive. Narrowing of the access may cause user conflict;

- there is no public benefit in selling the land.

It is considered that the primary impetus for this proposal is for the landowner to acquire legal access to the rear of 98 Woodland Road via Smith Street, thereby increasing the usable land area and the value of any future subdivision of the property. However, while the proposal will deliver the minimum lot sizes required for its subdivision (1400m²) under both the current and draft LEP the lot, which is approximately 16m in width, does not comply with the minimum 18m lot width in either instrument.

Conclusion

After receiving advice from across Council, it is considered that the loss of public reserve land for this purpose does not provide a net community benefit. Providing additional access in this location also presents potential safety risks for pedestrians and cyclists accessing Council facilities within the adjacent Taren Point Shorebird Reserve. In addition the known flood risk associated with the rear portion of 98 Woodlands Road is such that subdivision to increase residential density in this location is inadvisable. Therefore, it is recommended that this proposal not proceed further.

3. Rezone part of 1-3 and 2-4 Gidji Road, Miranda

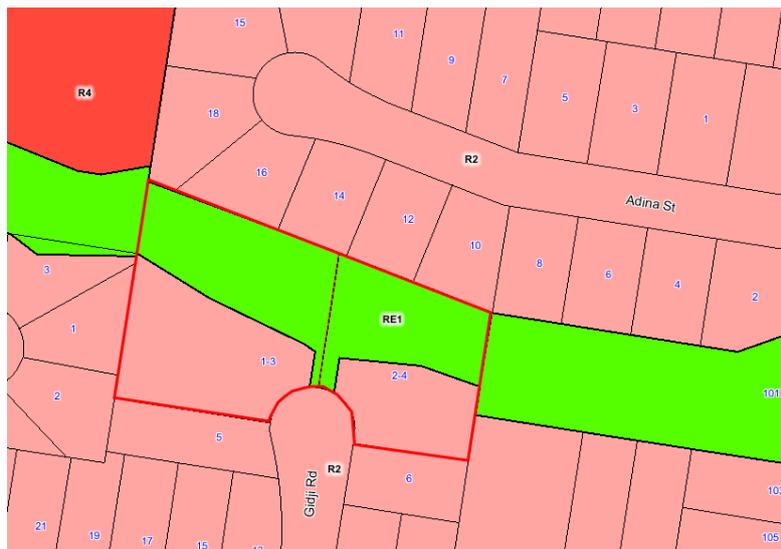
At its meeting of 5 August 2013, (FIN019-14) Council resolved that the Manager of Planning prepare a report to consider rezoning the tongue of land that adjoins the two (2) properties at 1-3 and 2-4 Gidji Road, Miranda via an amendment to Sutherland Shire Local Environmental Plan 2006. It also resolved that, “[an]...Agreement with the Proprietors be entered into to create a Right of Carriageway over the subject properties in a location to be agreed between Council and the Proprietors at terms and conditions to the satisfaction of the General Manager...”

Current Situation

A meeting was held on 3 May 2013 between the proprietors of 1-3 and 2-4 Gidji Road, Miranda, the Mayor and Council staff regarding a long standing matter of providing public access to the Ewey Creek corridor. At this meeting the proprietors requested that Council rezone the tongue of land which separates the two (2) land holdings. Essentially they seek the rezoning of part of the current Zone 13 – Public Open Space zone back to a residential zoning. Instead of Council acquiring the access tongue in free hold title, they have agreed to accept a Right of Carriageway (ROC) over the land on the basis that the location of the ROC could be moved to another more practical location, thereby facilitating redevelopment of the consolidated lot.



Aerial view of subject properties



Draft SSLEP2013 Zoning Map showing subject 'tongue' of land connecting Gidji Road to the Ewey Creek corridor (RE1).

The subject land, being part of 1-3 and 2-4 Gidji Road, Miranda is described as Part Lot 5 DP 26325 and Part Lot 4 DP 26325. Under SSLEP2006 it was rezoned from Zone 4 - Local Housing to Zone 13 - Public Open Space. This was done to enable the land zoned 13 - Public Open Space to be acquired by Council for inclusion in the Ewey Creek open space corridor, which has been a long-term Council commitment to establish as a pedestrian pathway in a natural setting.

After eight (8) years of negotiation, agreement over value of the open space portion of land to be acquired at 1-3 and 2-4 Gidji Road, Miranda is yet to be reached. However, the proprietors have now agreed to a Right of Way being

located over their land to provide public access to Ewey Creek corridor from Gidji Road. This requires the zoning of the tongue of land between the two (2) lots being part of Lot 5 DP 26325 to revert back from Zone 13 - Public Open Space to the appropriate residential zone (R2 Low Density Residential if amending the new draft LEP).

Benefits/Disadvantages/Alternatives

The subject property is included in the approved priority list of properties to be acquired for open space purposes. However, the only reason for the tongue of land being reserved for open space is to provide a pedestrian link to the future open space corridor for residents living in Gidji Road and properties to the south. The creation of a right of carriageway over the land will still achieve the objective of providing an access point and will assist in reaching an agreement with the proprietors to acquire the remaining Open Space portions of their land, which is necessary to complete the Ewey Creek corridor. This is a sensible outcome with net community benefit.

The rezoning of the tongue of land between the two (2) lots for residential use will allow the proprietors to consolidate their land at a future date. The lots will remain adjoining, which should avoid Council having to include severance costs in the compensation.

It is considered that the rezoning does not contravene the objectives or actions of relevant State or local strategic plans, policies or directions. Nor is it likely that its reclassification will result in any significant social or economic effects. On the contrary, it supports the key direction of the draft South Subregional Strategy with regard to Parks, Public Places and Culture: to ensure open space areas and facilities are managed to cater for residents and visitors to the region. It also supports community expectations to protect environmental values and provide good local amenity.

As specified in FIN019-14, in order to protect Council's interests, prior to the proposed rezoning of the tongue of land it is necessary that the parties enter into a formal written Agreement that a Right of Carriageway for public access be created over the subject land at a location that is agreed between Council and the proprietors. However, as of March 2014 there has been no agreement between the landowners and Council on the valuation of the land to be rezoned. Correspondence with the Council's Property Division (3/03/2014) indicates that it may be some time before this agreement is reached.

Given that to get to the current level of agreement between all parties has taken eight (8) years, the rezoning of this part of the reservation may encourage the parties to come to an agreement. However, should a Right of Carriageway not be formalised by the time the matter is further considered by Council, the subject land should not be rezoned. Public access from Gidji Road is essential to the future utility of the Ewey Creek Corridor. If agreement cannot be reached as to the right of carriageway, the reservation should remain and this element of the draft plan should not proceed to finalisation.

Conclusion

That the proposed rezoning of part of Part Lot 5 DP 26325 and Part Lot 4 DP 26325 should proceed to Gateway Determination and community consultation. However, it must not proceed to finalisation without a formal written Agreement that a Right of Carriageway for public access has been created over the subject land at a location and compensation price that is agreed between Council and the proprietors. Should this not be in place before this matter is next considered by Council, this matter should be removed from the draft LEP amendment. The land owners are to be advised of this timing and the need to come to an agreement prior to the end of the exhibition period.

4. 13R Pinnacle Street, Miranda

On 8 October 2013, Council resolved that the Manager, Environmental Planning prepare a report to consider reclassification of Lot 31 in DP11987 at 13R Pinnacle Street, Miranda from 'Community' land to 'Operational' land to facilitate a sale to the adjoining owners (BDS009-14).

Current Situation

Sutherland Shire Council is the registered proprietor of Lot 31 in DP 11987, a drainage reserve that acts as a pedestrian pathway located at 13R Pinnacle Street, Miranda. The reserve connects Pinnacle Street to the Kingsway as shown shaded pink on the cadastral map below. It is classified as community land. The adjoining owners at 13 Pinnacle Street and 15 Pinnacle Street have enquired with Council as to the possibility of purchasing part of the drainage reserve up to their rear property boundary to be incorporated into their properties. In order to sell the land, the drainage reserve would be required to be reclassified from 'Community Land' to 'Operational Land'. Council is prohibited from disposing of any 'community land' under the Local Government Act 1993.

The drainage reserve or pathway is approximately 225 square metres in area. Council's Stormwater Division has confirmed that no public infrastructure exists within the reserve and that there is no intention to utilise the drainage reserve in the future. In 2011, requests from the adjoining owners sought the closure of the drainage reserve. Council officers in conjunction with Miranda Local Area Command had analysed Council and NSW Police Force data which indicated no recorded incidents of criminal or anti-social activity. At that time Council officers did not support the closure of the pathway.

Council's Asset Management Group has suggested that the whole drainage reserve be reclassified from 'Community Land' to 'Operational Land'. The matter was considered at the Land Management Committee meeting in which no objection was raised to the proposed reclassification from 'Community Land' to 'Operational Land' and any subsequent sale, subject to a resolution of Council. However, the proposal to reclassify and sell the land has not come to the attention of the Environmental Planning Unit until now. It is considered

that the decision to sell the land should be reconsidered in light of the proposed rezoning of the area for high density residential flat buildings as part of Draft Sutherland Shire Local Environmental Plan 2013. The reserve forms part of the Pinnacle Street Precinct at Miranda.



Subject land: Lot 31 DP11987



Proposed residential flat zone: Pinnacle Precinct

Benefits/Disadvantages/Alternatives

Under DSSLEP2013 an area bounded by the Kingsway to the north, the F6 transport reservation, the railway line and the public school to the east, is proposed to be rezoned from Zone 4 Low Density Residential to Zone R4 High Density Residential, with maximum allowable height increased from two

(2) storeys to 25m (7-8 storeys) and maximum allowable floor space ratio increased from 0.45:1 up to FSR 2:1. The proposal is part of Council's Housing Strategy to increase dwelling numbers within walking distance of centres and this area is close to Miranda centre. Assuming that the proposed changes are in the LEP as ultimately gazetted, the area, known as the Pinnacle Street Precinct, will be developed with high density residential flats, with a corresponding substantial increase in population. With a large increase in residents, good pedestrian connectivity across this new high density residential precinct will be vital to making it a good place to live. Residents will walk to local shops, schools and the railway station on a daily basis and Council should seek to make this walk as direct and safe as possible. Large lot amalgamation will be necessary for the land to be developed to the maximum allowable floor space ratio, but the rezoning will significantly increase the value of the land.

The existence of this Council owned pedestrian pathway in the Pinnacle Precinct is extremely fortunate. This path improves connectivity across the precinct, providing a pedestrian shortcut from Pinnacle Street to the Kingsway and hence to the shops, services and train station, as well as the bus stop on the Kingsway. The pathway may prove to be even more valuable once the F6 is built. It would be preferable if the pathway was wider with improved paving and lighting as this would make the space safer and more attractive for the user. It is suggested that the future DCP should include requirements to improve the pathway when adjacent lots are redeveloped.

It is considered essential that a pedestrian pathway is provided. However, in considering potential lot amalgamations to facilitate redevelopment, a better location for the path is parallel to the existing location, approximately 30m to the east, on the eastern edge of the two (2) lots at 680 Kingsway and 11 Pinnacle Street (shown on illustration below). This location would allow a larger amalgamation of lots to occur, while increasing options for better design outcomes if the owners decide to amalgamate lots and redevelop their land. This location would also allow or a better transition of building density to the existing multi dwelling development to the east. Moving the pathway could become feasible if the owners of all four (4) lots (at 682 Kingsway, 680 Kingsway, 13 Pinnacle Street and 11 Pinnacle Street) were in agreement and an agreement is also reached with Council.

The option of relocating the pathway would only be facilitated if the existing path was reclassified from Community to Operational. As the process of reclassification is a lengthy one, it is recommended that the reclassification proceed now, but the sale of the land should not be pursued. Reclassification will simply give Council officers greater flexibility to achieve a good public outcome as the precinct develops. It should be noted that reclassification does not affect the continuing function of the path in its current location, but will make it easier to relocate the path in the future.

Council's Property Unit have confirmed that, given the strategy for the Pinnacle Precinct outlined above, Council should not pursue plans to sell the land. However, the reclassification of the pedestrian path is supported.



Preferred location of path shown with red lines.

The Sutherland Shire Development Control Plan is currently being prepared to work with the new LEP. The DCP will include a locality strategy and controls for this new precinct, including controls to enlarge the existing path and improve its amenity and safety.

Conclusion

That the drainage reserve/path be reclassified, but remain in Council ownership. However, a land swap to move the pathway to the east to improve its function as a pedestrian access way serving the future residents of this high density precinct is a better public outcome. The adjoining land owners who expressed an interest in buying this land should be advised of Council's decision and encouraged to seek a larger amalgamation pattern and relocate the access way to the east.

5. Rezoning in association with proposed transfer of playing fields at Loftus, Heathcote and Grays Point from NPWS to Council

At its meeting of 24 June 2013, Council resolved that a report be prepared by Manager - Environmental Planning on any necessary rezoning associated with the transfer of the sporting fields at Loftus, Heathcote and Grays Point, being part of Lot 356 MP144 (Royal National Park), from the State of New South Wales National Parks and Wildlife Service (NPWS) to Sutherland Shire Council (FIN153-13).

Current Situation

The ovals at Loftus, Heathcote and Grays Point are located within the gazetted boundaries of the Royal National Park (RNP) and have been managed by Sutherland Shire Council as a recreational resource for almost 40 years. This arrangement was formalised as a 20 year licence agreement in 1979. Council's licence agreement over the three (3) sporting fields has expired and Council has tried without success to negotiate a licence renewal or land exchange since 2000.

On 16 May 2013, Council staff met with NPWS officers who expressed an interest in exchanging the three (3) playing fields within the Royal National Park for the Bundeena Sanitary Depot. The most recent correspondence received from the National Parks and Wildlife Service (a letter to Property Services dated 21/01/14) advises that a report on the proposed revocation of the three (3) subject playing fields - covering a total area of approximately 13 hectares - has been prepared by Cabinet and is scheduled to go before Parliament in this first part of this year. If supported, the revocation would be carried out by an Act of Parliament amending the *National Parks and Wildlife Services Act 1974*. Once the amending *Act* becomes operative, the subject lands will be revoked from the Royal National Park and will become fee simple land which the Minister can transfer to Council.



Aerial overview of north-west corner of RNP and subject sporting ovals/revocation sites (outlined in red)

A requirement for revocation is that the subject parcels have a legal description as a lot in a deposited plan and that they be appropriately zoned for their intended future uses. The exact boundaries and land size will be determined following a surveyed with the input of NPWS so they can be satisfied that a sufficient buffer zone is provided.

For the purposes of this stage of the LEP amendment process, the boundaries of the parcels to be transferred are indicative only. The maps below are supplied by NPWS. The Planning Proposal is seeking in principle

support for the rezoning of these sites. Once the *Act* is amended and the parcels subject to a formal survey, their legal descriptions will become part of the Planning Proposal.



Proposed revocation
of Loftus Oval
Approx. 2.1 ha



Legend

-  estate_ad
-  proposed revocation
-  Cadastral boundary
-  Travelling Stock Reserve

Proposed revocation of
Loftus Oval
from Royal National Park



Environment,
Climate Change
& Water



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22 January 2010

Map: 28 Royal NP



Legend

-  proposed revocation
-  Cadastral boundary
-  Travelling Stock Reserve
-  estate_ad

Proposed revocation of
Grays Point Oval
from Royal National Park



Environment,
Climate Change
& Water



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22 January 2010

Map: 27 Royal NP



Proposed revocation of Heathcote Oval
Approx. 8.2 ha

ROYAL NATIONAL PARK



Legend

- estate_ad
- proposed revocation
- Cadastral boundary
- Travelling Stock Reserve

Proposed revocation of Heathcote Oval from Royal National Park



Environment, Climate Change & Water



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RELU - AP
22 January 2010

Map: 25 Royal NP

Each of the three (3) sporting fields is designated as Zone 20 – National Parks, Nature Reserves and State Conservation Areas in SSLEP2006. Under draft SSLEP2013 they are proposed to be zoned as E1 National Parks and Reserves. It is intended that once transferred to Council, these sites will continue to be used as a public sporting fields.

Sporting fields come under the ‘recreation area’ land use definition in the Standard Instrument Dictionary. Consistent with how this use has been accommodated elsewhere in draft SSLEP2013, it is considered that the most appropriate future zoning for these sites is RE1 Public Recreation.

Objectives of the RE1 zone include:

- To enable land to be used for public open space or recreational purposes;
- To provide a range of recreational settings and activities and compatible land uses; and
- To protect and enhance the natural environment for recreational purposes.

As exhibited in draft SSLEP2013, uses proposed to be permitted with consent in the RE1 zone are:

Environmental facilities; Community facilities; Food and drink premises; Helipads; Information and education facilities; Kiosks; Passenger transport facilities; Recreation areas; Recreation facilities (indoor); Recreation facilities (outdoor); Roads.

Benefits/Disadvantages/Alternatives

The proposed addition of the three (3) sporting fields to Council:

- Will have a social benefit as it will secure the tenure of these playing fields for the future recreational use by residents of the Shire;
- Will allow for improvements at these three (3) sites to be made without the difficulty of NPWS approval;
- Is not expected to have a significant financial impact as council is already maintaining these playing fields, the sporting organisations are maintaining the facilities and the land;
- Will not result in a change of usage;
- Is not expected to pose any new environmental issues as council already maintains these ovals, and the sporting clubs who use the facilities maintain them.

Although the formal process to revoke these lands has not yet come before Parliament, the proposal is considered to be non-contentious and a decision imminent. It is therefore considered reasonable to progress the rezoning of these parcels in anticipation of an amendment to the *NPWS Act 1974* to revoke these lands in favour of Sutherland Shire Council. Should this outcome not eventuate, this part of the Planning Proposal can be withdrawn.

Conclusion

That those parts of Lot 356 MP144 (Royal National Park) being the Loftus, Grays Pont and Heathcote sporting ovals be rezoned from SSLEP2006 Zone 20 – National Parks, Reserves and State Conservation Areas to a public recreation zone in a Planning Proposal to amend the Sutherland Shire LEP, conditional upon a legal description of the subject lands being provided by the NPWS. Should the requested amendment to the *National Parks and Wildlife Services Act 1974* not be made, this matter should be removed from the draft LEP amendment prior to referral to the Minister for finalisation.

6. Rezoning of 691 Old Illawarra Road, Illawong

Council staff, in consultation with the E Ward Councillors, has been investigating a number of sites to determine a preferred site for the relocation of the Menai Men's Shed BDS006-14. As a result of this work and preliminary consultation with interested parties, it is considered that the site at 691 Old Illawarra Road (Lot 7 DP 831160) which adjoins the Rural Fire Service (RFS) station, is the best option for the relocation of this use. The Illawong Rural Fire Service Station site is located at 697 Old Illawarra Road, Illawong (Lot 499 of DP752034). This report addresses the proposal to rezone 691 and 697 Old Illawarra Road, Illawong as SP2 Infrastructure (Community Facility) with the aim of maintaining the existing permissibility of the Fire Station while also providing permissibility for a men's shed at this location.

Current Situation

The Menai Men's Shed is an important community resource serving the needs of the local community. While it currently operates out of the Alfords Point Community Hall in Coachwood Drive, this location was always intended as a temporary measure until a permanent site could be found either on Council land or on other land. It has become clear that the workshop nature of the Shed makes it incompatible to share with other users. As a consequence, the need to find a permanent location for the Shed has become more important. Council staff have investigated a number of sites for their suitability to house a new facility for the Menai Men's Shed. (Criteria include: a flat site to minimise construction costs; a building area of approximately 20m²; connection to water, sewer and telephone services; and accessibility to a bus route.) These investigations have led them to consider part of 691 Old Illawarra Road, Illawong (Lot 7 DP 831160) as the preferred future site of this facility.

The subject site is vacant Crown Land located between Old Illawarra Road and Alfords Point Roads in Illawong. Deferred under SSLEP2006, it has retained its SSLEP2000 zoning as 5(d) Special Uses Future Arterial Road. The adjoining site at 697 Old Illawarra Road is zoned for Special Use (Community) in SSLEP2006. Under draft SSLEP2013, the subject land at 691 Old Illawarra Road is proposed to be zoned consistent with the adjoining property, being SP2 Infrastructure (Fire Services). See maps below.



Aerial view 691 Old Illawarra Road



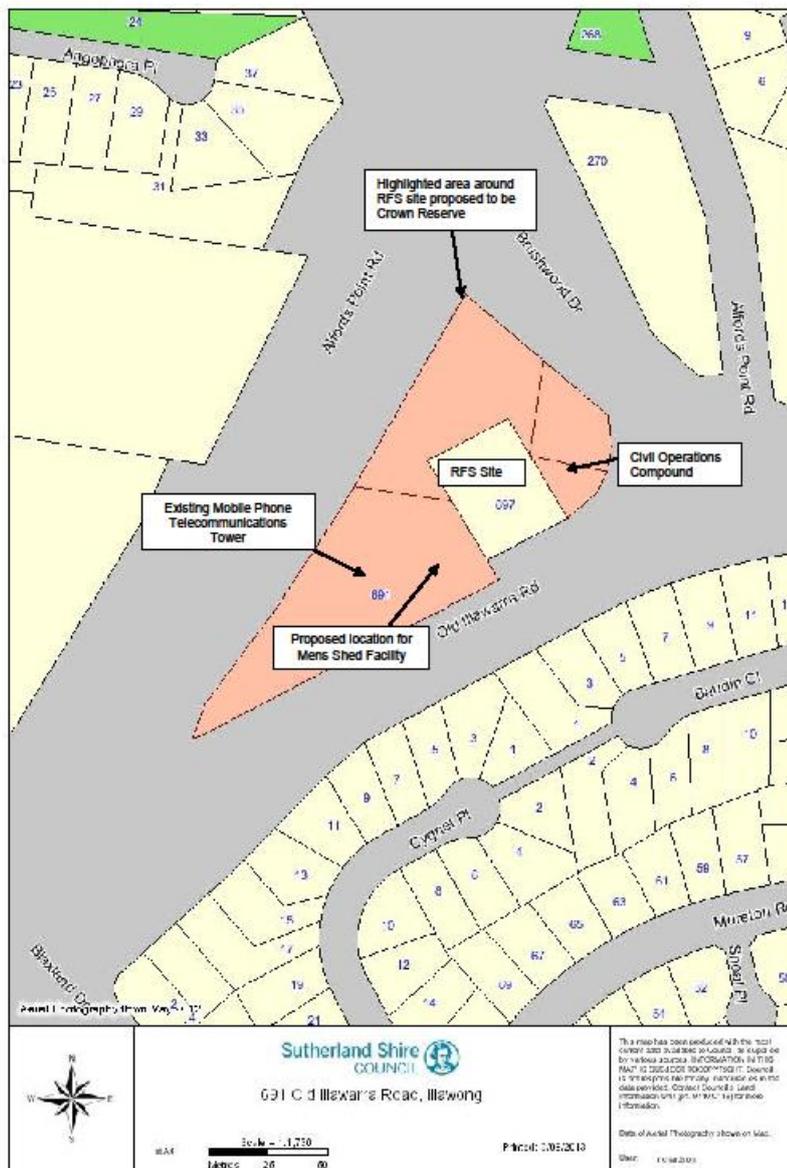
Zoning Map SSLEP2006
697 Old Illawarra Rd designated Zone 12 Special Uses (Community Services)
Deferred land signified by black diagonal lines



Zoning Map Draft SSLEP2013
Area zoned SP2 (Fire Services) outlined in red is proposed to be rezoned as SP2 (Community Services)

With regard to Council's interest in this land, on 26 August 2013 Council resolved to make representations to the Crown Lands division of Department of Trade and Investment, Regional Infrastructure and Services urgently seeking the reservation of land for community and recreation purposes, and appointing Council reserve trust manager (FIN033-14). Crown Lands have

responded to Council’s application advising that Lots 7 - 10 of DP 831160 (691 Old Illawarra Road) are currently subject to Reserve 752034 for future public requirements and communication facilities. However, they will consider the revoking of that reservation, to be replaced with a new reservation for public recreation, community purposes and communication facilities. The proposed uses for this land are illustrated below.



Detail of subject site: Proposed Men’s Shed adjoins western boundary of 697 Old Illawarra Road

When applying a Standard Instrument ‘SP’ zone to land, the annotation after the zone name indicates its purpose, i.e., the use permitted with consent in the zone, including any development that is ordinarily incidental or ancillary to development for that purpose. In addition to this use, Council has exercised

its discretion to add other complimentary uses to the zone therefore 'food and drink premises' and 'roads' are also proposed uses permitted with consent in the SP2 zone. With respect to 697 Old Illawarra Road, the SP2 Infrastructure (Fire Services) designation is very specific and therefore very restrictive.

The issue is that the proposed Men's Shed is considered to be a 'community facility', i.e., a use not permissible under the SSLEP2013 designation. As defined in the LEP a 'community facility' means:

a building or place:

- (a) owned or controlled by a public authority or non-profit community organisation,*
- and*
- (b) used for physical, social, cultural; or intellectual development or welfare of the community,*

but does not include educational establishment, hospital, retail premises, place of public worship or residential accommodation.

It is considered that this definition is comprehensive enough to also include the existing Illawong Rural Fire Service facility 697 Old Illawarra Road. Therefore, rezoning 691 and 697 Old Illawarra Road from draft SSLEP2013 zone SP2 Infrastructure (Fire Station) to SP2 Infrastructure (Community Facilities) would both maintain the current permissibility of the Illawong Rural Fire Service facility pursuant to the SEPP Infrastructure (Clause 47), and permit the development of the proposed Menai Men's Shed on Lot 7 of DP 831160.

Benefits/Disadvantages/Alternatives

The existing Menai Men's Shed is an important community resource serving the needs of the local community. The provision of a new, purpose built Menai Men's Shed facility/service at this location is considered to be capable of better fulfilling this important social need. It also addresses the Key Direction 'To provide ...Resilient and sustainable local community organisations', articulated in Sutherland Shire's strategic policy document: *Our Shire, Our Future: Our guide to Shaping the Shire to 2030*.

As stated in Council Report FIN033-14, the subject land at 691 Old Illawarra Road has been identified as the best available option to locate the proposed facility with regard to the provision of power, waste services and parking. It is also considered to be sufficiently separated from neighbouring properties and screened by bushland vegetation.

No endangered communities exist on or in the vicinity of the site, and it is considered that there are no likely environmental effects from the proposed zoning and use of the subject land for this purpose. Nor is it likely that rezoning will result in any significant economic effects.

The site is identified as bushfire prone land (see map below).

Private Recreation, and that the adjoining property at 69-71 Loftus Street, Bundeena (Lot 1 in DP 1077138) be rezoned from E3 Environmental Management to RE2 Private Recreation. This decision will also be incorporated in the Planning Proposal the subject of this report.

Conclusion

Five (5) of the six (6) minor reclassification/rezoning matters assessed in this report are considered appropriate for inclusion in a planning proposal. As such it is recommended that a Planning & Infrastructure to amend the Sutherland Shire LEP be progressed to Gateway.

That the Environmental Planning Unit submits a Planning Proposal to Planning and Infrastructure to:

1. Reclassify 34R-36R Caravan Head Road, Oyster Bay (Lot 219 DP25965) from 'community' to 'operational' land in accordance with Section 29 of the *Local Government Act 1993*.
2. Reclassify a drainage reserve pedestrian pathway located at 13R Pinnacle Street, Miranda (Lot 31 in DP 11987) from 'community' to 'operational' land in accordance with Section 29 of the *Local Government Act 1993*. This land is to remain in Council ownership to facilitate better public access to the future high density housing precinct. However, Council supports this land being swapped for land to move the pathway to the east to improved in its function as a pedestrian access way. The adjoining land owners who expressed an interest in buying this land are to be advised of Council's decision and encouraged to seek a larger amalgamation pattern and relocate the access way to the east.
3. Rezone those parts of Lot 356 MP144 (Royal National Park) being the Loftus, Grays Pont and Heathcote sporting ovals from SSLEP2006 Zone 20 – National Parks, Reserves and State Conservation Areas to RE1 Public Recreation, conditional upon the amendment of the *NPWS Act 1974* and the provision of a legal description for the subject lands by the NPWS.
4. Rezone 691 Old Illawarra Road, Illawong (being Lots 7, 8, 9 &10 of DP 831160) and 697 Old Illawarra Road, Illawong (being Lot 499 of DP 752034) for SP2 Infrastructure (Community Services) to facilitate the relocation of the Menai Men's Shed.
5. Rezone approximately 183m² of Bundeena Reserve (as mapped), located at 75 Loftus Street, Bundeena (Lot 5 DP 663309) for public recreation.
6. Rezone 69-71 Loftus Street, Bundeena (Lot 1 in DP 1077138) for private recreation.

That the Environmental Planning Unit submits a Planning Proposal to Planning and Infrastructure to:

1. Reclassify 34R-36R Caravan Head Road, Oyster Bay (Lot 219 DP25965) from 'community' to 'operational' land in accordance with Section 29 of the *Local Government Act 1993*.
2. Reclassify a drainage reserve pedestrian pathway located at 13R Pinnacle Street, Miranda (Lot 31 in DP 11987) from 'community' to 'operational' land in accordance with Section 29 of the *Local Government Act 1993*. This land is to remain in Council ownership to facilitate better public access to the future high density housing precinct. However, Council supports this land being swapped for land to move the pathway to the east to improved in its function as a pedestrian access way. The adjoining land owners who expressed an interest in buying this land are to be advised of Council's decision and encouraged to seek a larger amalgamation pattern and relocate the access way to the east.
3. Rezone those parts of Lot 356 MP144 (Royal National Park) being the Loftus, Grays Point and Heathcote sporting ovals from SSLEP2006 Zone 20 – National Parks, Reserves and State Conservation Areas to RE1 Public Recreation, conditional upon the amendment of the *NPWS Act 1974* and the provision of a legal description for the subject lands by the NPWS.
4. Rezone 691 Old Illawarra Road, Illawong (being Lots 7, 8, 9 &10 of DP 831160) and 697 Old Illawarra Road, Illawong (being Lot 499 of DP 752034) for SP2 Infrastructure (Community Services) to facilitate the relocation of the Menai Men's Shed.
5. Rezone approximately 183m² of Bundeena Reserve (as mapped), located at 75 Loftus Street, Bundeena (Lot 5 DP 663309) for public recreation.
6. Rezone 69-71 Loftus Street, Bundeena (Lot 1 in DP 1077138) for private recreation.

(Councillor Scaysbrook / The Mayor, Councillor Simpson)

That the Environmental Planning Unit submit a Planning Proposal to Planning and Infrastructure to:

1. Reclassify 34R-36R Caravan Head Road, Oyster Bay (Lot 219 DP25965) from 'community' to 'operational' land in accordance with Section 29 of the *Local Government Act 1993*.

2. Reclassify a drainage reserve pedestrian pathway located at 13R Pinnacle Street, Miranda (Lot 31 in DP 11987) from 'community' to 'operational' land in accordance with Section 29 of the *Local Government Act 1993*. This land is to remain in Council ownership to facilitate better public access to the future high density housing precinct. However, Council supports this land being swapped for land to move the pathway to the east to improved in its function as a pedestrian access way. The adjoining land owners who expressed an interest in buying this land are to be advised of Council's decision and encouraged to seek a larger amalgamation pattern and relocate the access way to the east.
3. Rezone those parts of Lot 356 MP144 (Royal National Park) being the Loftus, Grays Pont and Heathcote sporting ovals from SSLEP2006 Zone 20 – National Parks, Reserves and State Conservation Areas to RE1 Public Recreation, conditional upon the amendment of the *NPWS Act 1974* and the provision of a legal description for the subject lands by the NPWS.
4. Rezone 691 Old Illawarra Road, Illawong (being Lots 7, 8, 9 &10 of DP 831160) and 697 Old Illawarra Road, Illawong (being Lot 499 of DP 752034) to SP2 Infrastructure (Community Services) to facilitate the relocation of the Menai Men's Shed.
5. Rezone approximately 183m² of Bundeena Reserve (as mapped), located at 75 Loftus Street, Bundeena (Lot 5 DP 663309) for public recreation.
6. Rezone 69-71 Loftus Street, Bundeena (Lot 1 in DP 1077138) for private recreation.
7. That the proposed rezoning of the identified element of Part Lot 5 DP 26325 and Part Lot 4 DP 26325 proceed to Gateway Determination and community consultation. However, the rezoning must not proceed to finalisation without a formal written Agreement being in place to provide a Right of Carriageway for public access over the subject land at a location and compensation price that is agreed between Council and the proprietors. Should this not be in place before this matter is next considered by Council, this matter will be removed from the draft LEP amendment. The land owners are to be advised of this decision and the need to come to an agreement prior to the end of the exhibition period.

(Councillor Schreiber / Councillor Cook)

25/03/2014

CCL034-14 Additional Report - Outstanding Matters Excluded from draft SSLEP2013

File Number: LP/06/640581

Director: Planning & Environment Division (LW:MC)

Purpose

This report seeks to correct the officer's recommendation for DAP099-14 to include one item omitted in error. This report should be read in conjunction with DAP099-14.

Summary

The office's recommendation for the rezoning of part of 1-3 and 2-4 Gidji Road, Miranda was omitted from the officer's recommendation. This report provides council with the complete recommendation.

Purpose and Background

At the direction of Council, the Environmental Planning Unit has considered a number of relatively minor rezoning and reclassification matters that have not progressed to date due to the delay in finalisation of draft SSLEP2013. DAP099-14 addresses six (6) relatively such matters. The report reviews the merits of each of the proposals.

One of these proposals was the rezoning of part of 1-3 and 2-4 Gidji Road, Miranda which is part of the Ewey Creek open space corridor. The planning merits of the proposed rezoning are addressed in the body of the DAP report. Essentially the issue at hand is that the owners want the tongue of land between the two properties to be rezoned so that the two lots in family ownership can be amalgamated for the purpose of redevelopment. However, this tongue of land is essential for the provision of public access to the Ewey Creek recreation corridor for residents of Gidji Road and other residents to the south.

After eight (8) years of negotiation, agreement over value of the open space portion of land to be acquired at 1-3 and 2-4 Gidji Road, Miranda is yet to be reached. However, the proprietors have now agreed to a Right of Way being located over their land to provide public access to Ewey Creek corridor from Gidji Road. This means that public access to the recreation corridor could be provided without the purchase of the tongue of land. This solution requires the zoning of the tongue of land between the two (2) lots from Zone 13 - Public Open Space to the appropriate residential zone (R2 Low Density Residential under the new draft LEP).

Conclusion

The creation of a right of way is a good outcome that will ensure public access yet not frustrate the landowner's plans to develop their land. However, to date the land owners are yet to enter into an agreement with council in relation to the right of way. As such DAP099-14 concludes that the proposed rezoning of part of Part Lot 5 DP 26325 and Part Lot 4 DP 26325 should proceed to Gateway Determination and community consultation. However, the rezoning must not proceed to finalisation without a formal written Agreement being in place to provide a Right of Carriageway for public access over the subject land at a location and compensation price that is agreed between Council and the proprietors. Should this not be in place before this matter is next considered by Council, the rezoning of the land should be removed from the draft LEP amendment because it is essential that public access to the open space corridor be assured. The land owners should be advised of this decision and the need to come to an agreement prior to the end of the exhibition period.

Unfortunately this conclusion was not carried into the recommendation of DAP099-14. As such the following point 7 should be added:

7. That the proposed rezoning of part of Part Lot 5 DP 26325 and Part Lot 4 DP 26325 proceed to Gateway Determination and community consultation. However, it must not proceed to finalisation without formal written Agreement being in place to provide a Right of Carriageway for public access over the subject land at a location and compensation price that is agreed between Council and the proprietors. Should this not be in place before this matter is next considered by Council, this matter will be removed from the draft LEP amendment. The land owners are to be advised of this decision and the need to come to an agreement prior to the end of the exhibition period.

Point 7 has been added to the DAP recommendation below.

That the Environmental Planning Unit submits a Planning Proposal to Planning and Infrastructure to:

1. Reclassify 34R-36R Caravan Head Road, Oyster Bay (Lot 219 DP25965) from 'community' to 'operational' land in accordance with Section 29 of the *Local Government Act 1993*.
1. Reclassify a drainage reserve pedestrian pathway located at 13R Pinnacle Street, Miranda (Lot 31 in DP 11987) from 'community' to 'operational' land in accordance with Section 29 of the *Local Government Act 1993*. This land is to remain in Council ownership to facilitate better public access to the future high density housing precinct. However, Council supports this land being swapped for land to move the pathway to the east to improved in its function as a pedestrian access way. The adjoining land owners who expressed an interest in buying this land are to be advised of Council's decision and

encouraged to seek a larger amalgamation pattern and relocate the access way to the east.

3. Rezone those parts of Lot 356 MP144 (Royal National Park) being the Loftus, Grays Pont and Heathcote sporting ovals from SSLEP2006 Zone 20 – National Parks, Reserves and State Conservation Areas to RE1 Public Recreation, conditional upon the amendment of the *NPWS Act 1974* and the provision of a legal description for the subject lands by the NPWS.
4. Rezone 691 Old Illawarra Road, Illawong (being Lots 7, 8, 9 &10 of DP 831160) and 697 Old Illawarra Road, Illawong (being Lot 499 of DP 752034) to SP2 Infrastructure (Community Services) to facilitate the relocation of the Menai Men's Shed.
5. Rezone approximately 183m² of Bundeena Reserve (as mapped), located at 75 Loftus Street, Bundeena (Lot 5 DP 663309) for public recreation.
6. Rezone 69-71 Loftus Street, Bundeena (Lot 1 in DP 1077138) for private recreation.
7. That the proposed rezoning of the identified element of Part Lot 5 DP 26325 and Part Lot 4 DP 26325 proceed to Gateway Determination and community consultation. However, the rezoning must not proceed to finalisation without a formal written Agreement being in place to provide a Right of Carriageway for public access over the subject land at a location and compensation price that is agreed between Council and the proprietors. Should this not be in place before this matter is next considered by Council, this matter will be removed from the draft LEP amendment. The land owners are to be advised of this decision and the need to come to an agreement prior to the end of the exhibition period.

This matter was considered in conjunction with DAP099-14. For Council Resolution, refer to Minute No. 672.

(Councillor Schreiber / Councillor Cook)

Development Assessment and Planning

Minute Number: 551

Council Meeting Date: 10/02/2014

03/02/2014

DAP077-14 Proposed rezoning of 69-71 and 75 Loftus Street, Bundeena

File Number: LP/06/43259

Director: Director Planning and Environment (LW:MC)

Purpose

This report is in response to Council Resolution WKS027-14, which requests that a report be prepared to rezone 69-71 Loftus Street, Bundeena (the Bundeena RSL Club) and that part of the adjoining Bundeena Reserve proposed to be leased for use by the Club as an outdoor eating area. It recommends that the rezoning be supported and submitted to the Department of Planning & Infrastructure as a Planning Proposal.

Summary

In 2012 the CEO of the Bundeena RSL Club approached Council requesting consent to lease part of the adjoining Bundeena Reserve for its exclusive use as an outdoor seating/deck facility attached to the Club. The deck would extend beyond the Club's rear wall and around to the western side of the club. While Council has expressed its support for the proposal in principle, it has twice deferred a decision regarding it pending a review of the lease area requirement. That area has now been confirmed as approximately 183m². Council has determined that this size will not have any significant impact on the Reserve and has requested a report concerning the rezoning of the area to allow the proposal to go forward (WKS027-14).

The proposed seating area/decking is considered to be an extension of the existing RSL Club (categorised as a 'registered club'). As the proposed works require a Development Consent, the subject part of the Reserve must be rezoned from RE1 Public Recreation (as proposed in draft SSLEP2013) to RE2 Private Recreation. This is the most appropriate zone a registered club is a use permitted with consent in RE2. Council also resolved to zone the land occupied by the RSL Club (zoned for residential and operating under exiting use rights) for RE2 Private Recreation.

Council's direction has been reviewed from a planning perspective and it is concluded that the decision has planning merit. However, because of the timing of this request, the proposed rezoning cannot be considered as part of Sutherland Shire's new LEP because the second exhibition has finished. There are a number of other relatively minor matters where Council has resolved to reclassify land which have similarly not progressed due to the delay in finalisation of draft SSLEP2013. It is recommended that the subject proposal and other outstanding matters be grouped into a single Planning Proposal and referred to the Department of Planning and Infrastructure for

Gateway Determination. This will facilitate the exhibition of the Planning Proposal. Once submissions have been considered it can then either proceed as Amendment 1 to the new plan or be incorporated into draft SSLEP3012 if it is not yet made.

Background

In 2012 the CEO of the Bundeena RSL Club approached Council requesting consent to lease approximately 1807m² of Bundeena Reserve for its exclusive utilisation as an outdoor facility attached to the Club. The proposal includes the erection of a small deck to extend beyond the Club's rear wall and around to the western side of the club. The use of the outdoor deck is proposed to be limited to general outdoor recreational uses such as seating and refreshments. The proposed works require a Development Consent.

The proposal was discussed at Council's Land Management Committee (LMC) on 17 December 2012, which did not support it for the following reasons:

- Alienation of public recreational land is not desirable, particularly at this location where the land is used for picnics etc;
- The loss of potential habitat for flora and fauna as it will prevent/limit the future planting of trees.

While Council has expressed its support for the proposal in principle, it has twice deferred a decision pending a review of the lease area requirement in conjunction with RSL Management, Councillors and Council staff, and for a site inspection (FIN115-13 and WKS004-14). The outcome of these appraisals was reported to Council on 9 December 2013 (WKS027-14) where it was concluded that an amended lease area of approximately 183m², as set out in revised RSL plans, would not have any significant impact on the Reserve.

Regardless of any other considerations, a lease over the area cannot be entered into until the land is appropriately zoned for the proposed use. Therefore, Council resolved that a report be prepared for the rezoning of 69-71 Loftus Street, Bundeena (the Bundeena RSL Club) and that part of the adjoining Bundeena Reserve (75 Loftus Street, Bundeena) that has been requested for an outdoor deck for the Club. This would allow the proposed decking with consent.

The land occupied by the Bundeena RSL Club is within Zone 1 - Environmental Housing (Environmentally Sensitive Land) under SSLEP2006, a zone where registered clubs are prohibited. (The RSL operates under existing use rights on that site). Likewise, the proposed lease area within Bundeena Reserve (currently designated as Zone 13 – Public Open Space) is in a zone which also prohibits registered clubs. Under draft SSLEP2013 the subject lands are proposed to be transferred to their equivalent Standard Instrument zones. This means that the club falls in the E3 Environment Management zone and the open space is zoned RE1 Public Recreation, neither of which includes registered club as a permitted use.

Subject Lands

69-71 Loftus Street, Bundeena has an area of 1670m² (Lot 1 in DP 1077138). It is owned by RSL Custodian Pty Ltd and occupied by the Bundeena RSL Club (also referred to as the Bundeena RSL Memorial Club). The site and surrounding properties to the north, south and east are currently designated Zone 1 - Environmental Housing (Environmentally Sensitive Land), consistent with the low density residential character of the area and its proximity to the Port Hacking waterfront. The site's western - and part of its northern - boundary adjoins the Council owned Bundeena Reserve.

Following a request by the Returned Sailors', Soldiers' and Airmen's Imperial League of Australia (RSL) to establish a club in Bundeena, Council resolved on 5 February 1945 to sell a portion of the Bundeena Reserve comprising approximately 1000m². Upon subdivision, the subject allotment is comprised of 1669m², described at the time as Lot 1 in DP 355404, was sold to the RSL for a sum of £150. At the time of sale and because the land once formed part of a public reserve, Council placed a caveat on title restricting the use of the land for that of a site of an 'RSL club only'. The caveat is described as Dealing D557525 within the Certificate of Title for Lot 1 in DP 1077138 and is still current today. The current and future operation of the RSL club on this site relies on existing use rights.

In the exhibited drafts of SSLEP2013, this site is proposed to be zoned E3 Environmental Management. This is essentially a transfer of the existing zone.



Figure 1

**Aerial overview of subject properties:
The RSL site is outlined in red. Bundeena Reserve is outlined in blue.**

75 Loftus Street, Bundeena is a Council owned site (Lot 5 DP 663309), designated as Bundeena Reserve. It covers approximately 17376m², all of which is classified as Community Land designated for 'general community use'. Under SSLEP2006, the site is split zoned as Zone 13 - Public Open Space and Zone 14- Public Open Space (Bushland).

The area of the Reserve designated as Zone 14 - Public Open Space (Bushland) contains remnant Coastal Escarpment Littoral Rainforest (an Endangered Ecological Community), a heritage listed sandstone cliff formation fronting onto Gunyah Beach. Crown Land to the north (draft SSLEP2013 Schedule 5 - Environmental Heritage, Part 1 Heritage item 0606) contains a known site of Aboriginal heritage significance.

That part of Bundeena Reserve currently zoned for Public Open Space (SSLEP2006 Zone 13) comprises a band approximately 28m to 50m along the southern end of the Reserve which accounts for an area of approximately 5755m² or one third the size of the total Reserve area. This zone is more heavily disturbed than the bushland area to the north, and contains a Council maintained car park and amenity block (located on the corner of Brighton and Loftus streets) and the RSL Memorial. Under the exhibited drafts of SSLEP2013, it is proposed to be zoned for Public Recreation (RE1).



Figure 2

Proposed zoning under draft SSLEP2013

RSL site, proposed as Zone E3 Environmental Management, outlined in red
Zoning of land on which decking/lease area proposed under draft SSLEP2013 (Zone RE1) in green

The Proposal

The figure below (Figure 3) provides a detailed view of the proposed 183m² L-shaped parcel of land proposed by the Bundeena RSL Club as the decking and lease area.

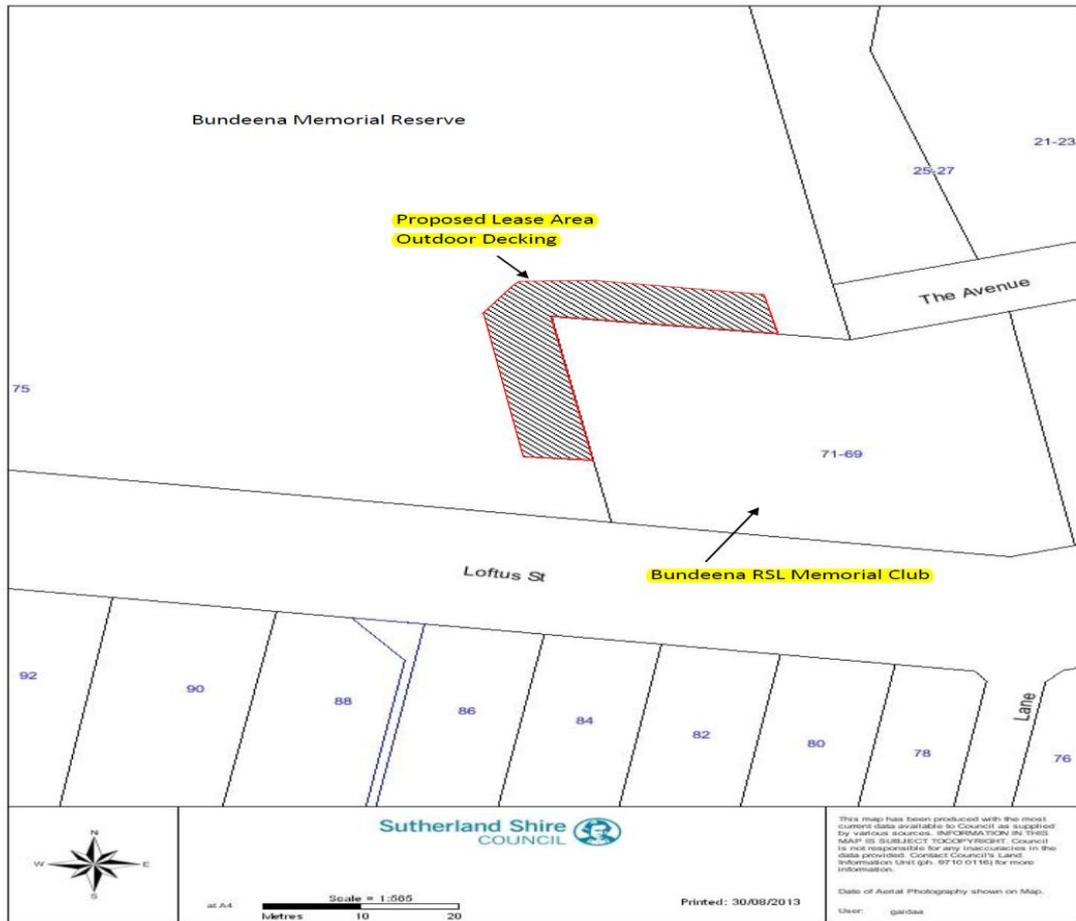


Figure 3
Detailed view of proposed lease area/decking in association with Bundeena RSL Club



Figure 4
Aerial detail of interface of Bundeena RSL and Reserve (proposed lease area)

There is a Sydney Water sewerage pit and main line located within the area that the RSL have proposed to build their deck. Advice received from Sydney Water is that the pit cannot be built over and that any structure would have to be built to allow at least 600 mm clearance around the pit for access. As such, the 183m² area is an approximate area only and is subject to a formal survey/design. The proposed outdoor deck area would require formal Development Consent from Council, which would advise on the final area and location of the lease area. Rezoning the lease area to allow the 'registered club' would allow the deck to be built with consent.

Implications of the Proposed Rezoning

In the exhibited draft of SSLEP2013, 69-71 and 75 Loftus Street, Bundeena are proposed to be zoned as E3 Environmental Management and RE1 Public Recreation, respectively. As resolved in WKS027-14 both properties are proposed to be rezoned as RE2 Private Recreation.

A table detailing the objectives and land uses permitted in the zones proposed to be applied to these properties under drafts SSLEP2013 and RE1 Public Recreation is provided below.

ZONE/LOCATION		ZONE OBJECTIVES	USES PERMITTED WITH CONSENT IN ZONE
	E3 Environmental Management	<i>To protect, manage and restore areas with special scientific, cultural or aesthetic</i>	<i>Bed and breakfast accommodation; boat sheds; dwelling houses;</i>

As exhibited in draft SSLEP2013	69-71 Loftus Street, Bundeena	<p>values.</p> <p>To provide for a limited range of development types that does not have an adverse effect on those values.</p>	<p>environmental protection works; flood mitigation works; health consulting rooms; home business; home industries; recreation areas; roads and secondary dwellings</p>
	<p>RE1</p> <p>Public Recreation</p> <p>75 Loftus Street, Bundeena</p>	<p>To enable land to be used for public open space or recreational purposes.</p> <p>To provide a range of recreational settings and activities and compatible land uses.</p> <p>To protect and enhance the natural environmental for recreational purposes.</p>	<p>Environmental facilities; community facilities, food and drink premises; helipads; information and education facilities; kiosks; passenger transport facilities; recreation areas; recreation facilities indoor); recreation facilities (outdoor); roads</p>
As Proposed	<p>RE2</p> <p>Private Recreation</p> <p>69-71 and 75 Loftus Street, Bundeena</p>	<p>To enable land to be used for private open space or recreational purposes.</p> <p>To provide a range of recreational settings and activities and compatible land uses.</p> <p>To protect and enhance the natural environmental for recreational</p>	<p>Animal boarding or training establishments; car parks; community facilities; entertainment facilities; environmental facilities; hotel or motel accommodation; kiosks; marinas; passenger transport facilities; recreation areas; recreation</p>

		<p><i>purposes.</i></p> <p><i>To ensure the scale, density and form of development reflects the nature of the recreational use of the land is compatible with the surrounding urban form and natural setting.</i></p>	<p><i>facilities (indoor); recreation facilities (outdoor); registered clubs; restaurants or cafes; roads; small bar; water recreation structures</i></p>
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Table 1

Advantages

The primary advantage of the rezoning an approximately 183m² parcel of Bundeena Reserve for Private Recreation (RE2) is that it has the potential to support the viability of the Bundeena RSL Club. Allowing the development of a deck/outdoor eating area would help to make the club more 'family friendly' facility. The RSL considers that an outdoor eating area will allow parents to supervise their children whilst playing in the reserve. (Currently parents are restricted to occupying the first floor of the club, which makes it very difficult for supervision).

The deck would also add to the overall attractiveness of the club because it would offer bush views and water glimpses to Port Hacking, making it more attractive to visitors and residents. Given the orientation of the existing building to the boundary the Club cannot realise this potential any other way.

Should the Bundeena RSL Club business model fail to successfully respond to the changing requirements of its patrons, the proposed deck can be removed and the land returned to its current condition and use with minimal disruption.

- As specified in the mandatory 'Clause 1.9A Suspension of covenants agreements and instruments [local]' in draft SSLEP2013, the Council imposed covenant on the use of 69-71 Loftus Street, Bundeena (i.e., Dealing D557525, as described above) will continue to apply regardless of the future zoning of the land. However, it is sensible to take this opportunity to rezone this land as RE2 Private Recreation such that it is compatible with the use of site.

Disadvantages

- The proposed rezoning of part of Bundeena Reserve (albeit only 183m² or 1% of the total Reserve area) for Private Recreation alienates public land in and as such, it is likely that the proposal will be subject to community opposition.
- Construction of the proposed deck will require the removal of a tree on the north side of the Club.
- As resolved by Council in CSV034-12, smoking is prohibited on all future leases of council owned or managed land for 'Outdoor (alfresco) dining areas (commercial dining areas)' from 6 July 2015 (being the commencement date of the Tobacco Legislation Amendment Act 2013). Therefore, the proposed decking could not be used by the Club to comply with legislative changes relating to the provision of outdoor smoking areas. An alternative response to the need for outdoor smoking areas will need to be found within the lot.

Process

Because of the advanced stage in the preparations of draft SSLEP2013, the proposed rezoning request concerning these properties cannot be considered for inclusion in Sutherland Shire's new LEP. Therefore, should Council resolve to proceed with the rezoning request, it must initiate the preparation of a 'planning proposal', using the process set out in *Environmental Planning and Assessment Act, 1979* (EP&A Act). There are a number of other relatively minor matters where council has resolved to reclassify land which have similarly not progressed due to the delay in finalisation of draft SSLEP2013. It is recommended that the subject proposal and other outstanding matters be grouped into a single Planning Proposal and referred to the Department of Planning and Infrastructure for Gateway Determination. This will facilitate the exhibition of the Planning Proposal. Once submissions have been considered it can then either proceed as Amendment 1 to the new plan or be incorporated into draft SSLEP2013 if it is not yet made.

Conclusion

The rezoning of a very small area of Bundeena Reserve to facilitate the construction of an outdoor deck off the RSL Club is a worthwhile proposal. The loss of access to public land is minimal and the benefit to the Club, community of Bundeena and visitors is significant. Accordingly it is recommended that Council move to prepare a Planning Proposal and submit it to the Department of Planning and Infrastructure for Gateway Determination. For efficiency this matter should be group with other outstanding matters to form a single Planning Proposal.

1. That the Environmental Planning Unit prepare a formal Planning Proposal for Gateway to rezone the following land as RE2 Private Recreation:

- 69-71 Loftus Street, Bundeena (Lot 1 in DP 1077138); and
 - approximately 183m² of 75 Loftus Street, Bundeena (Lot 5 DP 663309) - with the area to be confirmed by the Asset Management Group.
2. That the Planning Proposal be part of a larger more comprehensive Planning Proposal that includes other outstanding matters that were not included in draft SSLEP2013.
-
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 2. That the Planning Proposal be part of a larger more comprehensive Planning Proposal that includes other outstanding matters that were not included in draft SSLEP2013.

(Councillor Provan / Councillor Scaysbrook)

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2. That the Planning Proposal be part of a larger more comprehensive Planning Proposal that includes other outstanding matters that were not included in draft SSLEP2013.

(Councillor Schreiber / Councillor Pesce)

Council

Minute Number: 696

Council Meeting Date: 25/03/2014

25/03/2014

CCL036-14 **Reclassification of Community Land to Operational Land at 9 Kingsway, Cronulla**

File Number: LP/06/552122, LP/03/951984

Director: Commercial Operations (TD)

Purpose

To consider the reclassification of a parcel of land from community land to operational land situated at 9 Kingsway, Cronulla being Lot 1 in DP 700935.

Summary

Council is the registered proprietor of a parcel of land situated at 9 Kingsway, Cronulla. The land is classified as community land and was earmarked for reclassification to operational land as an amendment to the Sutherland Shire Local Environmental Plan 2006. However this parcel was overlooked and unfortunately was not included in a report to Council PLN002-09 and EAP009-11 which was part of an overall consideration of a number of amendments.

Purpose and Background

Council is the registered proprietor of a parcel of land situated at 9 Kingsway, Cronulla being Lot 1 in Deposited Plan 700935. The land is classified as community land and was earmarked for reclassification to operational land as an amendment to the Sutherland Shire Local Environmental Plan 2006. However this parcel was overlooked and unfortunately was not included in a previous report to Council PLN002-09 and EAP009-11 [Link](#) as part of an overall consideration of a number of amendments to the Sutherland Shire Local Environmental Plan 2006.

Due to its land locked location and the public being unaware of its existence the parcel of Council land currently acts a car parking area for the adjoining owners only and has no particular public use or amenity. Please see Appendix A.

The purpose of this report is to seek Council resolution to reclassify Lot 1 in DP 700935 from community land to operational land and tidy up an administrative oversight.

Current Situation/Alternatives/Benefits

The land at 9 Kingsway, Cronulla is to be considered for reclassification from community land to operational land. Due to its land locked location and the public being unaware of its existence the parcel of Council land currently acts a car parking area for the adjoining owners only and has no particular public

use or amenity. The car park is accessed via a Right of Carriage Way over the properties at 13-23 Kingsway, Cronulla.

Reclassification to operational land provides Council with greater flexibility to deal with the land.

Conclusion

It is therefore suggested that Lot 1 DP 700935 be reclassified from community land to operational land.

1. That a planning proposal be prepared to reclassify Lot 1 in DP 700935 from community land to operational land in accordance with Section 29 of the Local Government Act 1993 and the Planning proposal be referred to the Department of Planning Infrastructure for a gateway determination.
2. That the Planning proposal be publicly exhibited for a period of 28 days in accordance with the Gateway Determination and statutory requirements.

1. That a planning proposal be prepared to reclassify Lot 1 in DP 700935 from community land to operational land in accordance with Section 29 of the Local Government Act 1993 and the Planning proposal be referred to the Department of Planning Infrastructure for a gateway determination.
2. That the Planning proposal be publicly exhibited for a period of 28 days in accordance with the Gateway Determination and statutory requirements.

(Councillor Awada / Councillor Pesce)

Appendix/Other

Reclassification of Community Land to Operational Land at 9 Kingsway, Cronulla



Annexure A - 9 Kingsway Cronulla.pdf

Development Assessment and Planning

16/06/2014

DAP139-14

2R Alexander Avenue, Taren Point

File Number:

LP/06/640581

Director:

Corporate Services (TH)

Purpose

To correct an omission from the Council resolution when Council considered reports relating to Outstanding Matters Excluded from draft SSLEP2013 at its meeting held on 25 March 2014.

Purpose and Background

At its meeting held on 25 March 2014, Council considered two (2) reports relating to Outstanding Matters Excluded from draft SSLEP2013 (see DAP099-14 [Notes Link](#) and CCL034-14 [Notes Link](#)). Both reports were considered in conjunction and Council subsequently resolved as follows:

That the Environmental Planning Unit submit a Planning Proposal to Planning and Infrastructure to:

- 1. Reclassify 34R-36R Caravan Head Road, Oyster Bay (Lot 219 DP25965) from 'community' to 'operational' land in accordance with Section 29 of the Local Government Act 1993.*
- 2. Reclassify a drainage reserve pedestrian pathway located at 13R Pinnacle Street, Miranda (Lot 31 in DP 11987) from 'community' to 'operational' land in accordance with Section 29 of the Local Government Act 1993. This land is to remain in Council ownership to facilitate better public access to the future high density housing precinct. However, Council supports this land being swapped for land to move the pathway to the east to improved in its function as a pedestrian access way. The adjoining land owners who expressed an interest in buying this land are to be advised of Council's decision and encouraged to seek a larger amalgamation pattern and relocate the access way to the east.*
- 3. Rezone those parts of Lot 356 MP144 (Royal National Park) being the Loftus, Grays Pont and Heathcote sporting ovals from SSLEP2006 Zone 20 – National Parks, Reserves and State Conservation Areas to RE1 Public Recreation, conditional upon the amendment of the NPWS Act 1974 and the provision of a legal description for the subject lands by the NPWS.*

4. *Rezone 691 Old Illawarra Road, Illawong (being Lots 7, 8, 9 & 10 of DP 831160) and 697 Old Illawarra Road, Illawong (being Lot 499 of DP 752034) to SP2 (Community Services) to facilitate the relocation of the Menai Men's Shed.*
5. *Rezone approximately 183m² of Bundeena Reserve (as mapped), located at 75 Loftus Street, Bundeena (Lot 5 DP 663309) for public recreation.*
6. *Rezone 69-71 Loftus Street, Bundeena (Lot 1 in DP 1077138) for private recreation.*
7. *That the proposed rezoning of the identified element of Part Lot 5 DP 26325 and Part Lot 4 DP 26325 proceed to Gateway Determination and community consultation. However, the rezoning must not proceed to finalisation without a formal written Agreement being in place to provide a Right of Carriageway for public access over the subject and at a location and compensation price that is agreed between Council and the proprietors. Should this not be in place before this matter is next considered by Council, this matter will be removed from the draft LEP amendment. The land owners are to be advised of this decision and the need to come to an agreement prior to the end of the exhibition period.*

At the meeting held on 25 March 2014, the motion in relation to these matters that was moved by Councillor Schreiber, seconded by Councillor Cook and subsequently resolved unanimously by Council, contained an additional point for the reclassification of part of a public reserve at 2R Alexander Avenue, Taren Point (known as the Taren Point Shorebird Reserve) from 'Community Land' to 'Operational Land', to allow its sale to the adjoining owners. This additional point was omitted from the resolution in the Council minutes when they were considered by Council at the following Council meeting on 15 April 2014.

To correct this omission, this report will recommend the reclassification of part of a public reserve at 2R Alexander Avenue, Taren Point (known as the Taren Point Shorebird Reserve) from 'Community Land' to 'Operational Land', to allow its sale to the adjoining owners. Following further consideration of the matter, the Environmental Planning Unit advises that if it is Council's intention to facilitate the ultimate development of the land in conjunction with the adjoining residential property, the land also needs to be rezoned from RE1 Public Recreation to E4 Environmental Living.

Referral to Gateway Process

A Planning Proposal containing the seven (7) minor rezoning and reclassification matters approved in Council resolutions DAP099-14 and CCL034-14 (as above) was prepared by the Environmental Planning Unit and submitted to Planning & Infrastructure on 2 May 2014 for Gateway approval. The Planning Proposal, referred to as Amendment 1 of Sutherland Shire's new LEP, has progressed but has not been determined by the Gateway to date.

Following the recent discovery of the omission in the Council minutes regarding the reclassification of 2R Alexander Avenue, Taren Point, the Environmental Planning Manager sought advice from Planning & Infrastructure. Council was advised to submit an amended Planning Proposal in accordance with Section 55 of the Environmental Planning and Assessment Act, 1979, to contain all required justification and maps relevant to the omitted reclassification, and that submission of

the amended Planning Proposal will not result in a delay in the Gateway determination process.

In the course of reviewing the amendment, it is considered that in order to secure the proposed outcome in a timely manner, that the Planning Proposal also seek to rezone the subject land at 2R Alexander Avenue from RE1 Public Recreation to E4 Environmental Living.

That the Environmental Planning Unit prepare and submit an amended 'Planning Proposal: Amendment 1 of Sutherland Shire's new LEP' to Planning and Infrastructure to Reclassify approximately 75.5m² of land in 2R Alexander Avenue (Part of Lot 1 in DP 234622) from 'Community Land' to 'Operational Land', and rezone the land from RE1 Public Recreation to E4 Environmental Living.

That the Environmental Planning Unit prepare and submit an amended 'Planning Proposal: Amendment 1 of Sutherland Shire's new LEP' to Planning and Infrastructure to Reclassify approximately 75.5m² of land in 2R Alexander Avenue (Part of Lot 1 in DP 234622) from 'Community Land' to 'Operational Land', and rezone the land from RE1 Public Recreation to E4 Environmental Living.

(Councillor Provan / Councillor Scaysbrook)

That the Environmental Planning Unit prepare and submit an amended 'Planning Proposal: Amendment 1 of Sutherland Shire's new LEP' to Planning and Infrastructure to Reclassify approximately 75.5m² of land in 2R Alexander Avenue (Part of Lot 1 in DP 234622) from 'Community Land' to 'Operational Land', and rezone the land from RE1 Public Recreation to E4 Environmental Living.

(Councillor Walton / Councillor Schreiber)