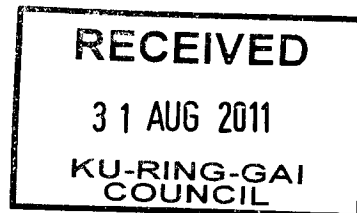




Mr John McKee
General Manager
Ku-ring-gai Council
Locked Bag 1056
Pymble NSW 2073

11/15730



Dear Mr McKee

Planning Proposal – rezoning and reclassification of land at South Turramurra

I refer to Council's letter of 14 February 2011 requesting that the above planning proposal be actioned so that the instrument be drafted and finalised.

As you may be aware, since receiving this request the Department has arranged for the Parliamentary Counsel to draft an appropriate statutory instrument to give effect to the planning proposal. The proposal has also been referred to the Planning Assessment Commission to review its reasonableness, given the role of the Minister as a landowner in the broader precinct.

Unfortunately, upon reviewing the material to be presented to the Governor for the finalisation of the plan, it has been noticed that the planning proposal, as exhibited, does not foresee the complete discharge of interests under s.30 of the *Local Government Act 1993*, as outlined in the draft plan prepared by Parliamentary Counsel, and agreed to by Council.

The planning proposal (under 'Explanation of Provisions') mentions that a declaration of trust will be discharged on Lot 1 DP 840228, but this section makes no reference to any other lots in respect of discharging of interests. Further on in the planning proposal there is a reference to a caveat being removed from Lot 2 DP 840228 (under 'Extinguishment of interests in the land and explanation of why the interests are proposed to be extinguished').

However, the planning proposal is not considered to clearly and satisfactorily identify with certainty:

- which sites in particular will be the subject of a discharge under s.30 of the *Local Government Act 1993*, and
- whether only the public reservation is to be discharged, and
- whether all interests in particular land will be discharged under the *Local Government Act 1993*.

The discharge of interests under section 30 of the *Local Government Act 1993* affects private property rights. Despite the land being owned by Council, adjoining landowners, other private parties or public authorities may have an interest in the land to be reclassified, such as easements, covenants or estates. These parties ought to have been made aware of the intention to discharge those interests, and given an opportunity to make a submission during the community consultation of the planning proposal.

In this instance, it would be difficult for a member of the public (including any of the persons with interests in the sites) to know what interests will be discharged on which sites, and therefore to make a submission on the matter.

As mentioned above, Section 30 of the *Local Government Act 1993* may infringe on private property rights and, in order to do so, the Minister must recommend to the Governor that she approve of the reclassification. If such a recommendation was made with reference to a planning proposal that was not clear in its terms, there may be a risk of successful legal challenge to the local environmental plan which gives effect to the planning proposal.

In this light, the Department recommends Council re-exhibit the planning proposal, and to ensure the exhibition material is clear regarding intention, exhibit the draft plan prepared by Parliamentary Counsel (copy attached to this letter) and the associated map. Council should also consider exhibiting explanatory material outlining the reasons for the re-exhibition of the planning proposal.

If you or your staff have any questions regarding this matter, please contact Tim Archer (Team Leader, Sydney West) on 02 9873 8542.

Yours sincerely



29/8/2011

Peter Goth
Regional Director
Sydney West



New South Wales

Ku-ring-gai Local Environmental Plan No 216

under the

Environmental Planning and Assessment Act 1979

I, the Minister for Planning and Infrastructure, make the following local environmental plan under the *Environmental Planning and Assessment Act 1979*.
(10/05183)

Minister for Planning and Infrastructure

Ku-ring-gai Local Environmental Plan No 216

under the

Environmental Planning and Assessment Act 1979

1 Name of Plan

This Plan is *Ku-ring-gai Local Environmental Plan No 216*.

2 Commencement

This Plan commences on the day on which it is published on the NSW legislation website.

3 Land to which Plan applies

- (1) To the extent that this Plan zones land, it applies to certain unzoned and unformed parts of Warner Avenue and Hall Street, South Turramurra, as shown coloured light scarlet, with dark red edging and lettered "2 (c)" on the map marked "Ku-ring-gai Local Environmental Plan No 216" deposited in the office of Ku-ring-gai Council.
- (2) To the extent that this Plan reclassifies public land, it applies to the following land at South Turramurra:
 - (a) Lot 74, DP 216500, Lot 1, DP 847214 and Lot 1, DP 746618, Barwon Avenue,
 - (b) Lot 3, DP 746618 and Lots 1 and 2, DP 840228, Chisholm Street.

Schedule 1 Amendment of Ku-ring-gai Planning Scheme Ordinance

[1] Clause 4 Interpretation

Insert in alphabetical order in clause 4 (1):

Community land has the same meaning as in the *Local Government Act 1993*.

Operational land has the same meaning as in the *Local Government Act 1993*.

Public land has the same meaning as in the *Local Government Act 1993*.

Note. The term is defined as follows:

public land means any land (including a public reserve) vested in or under the control of the council, but does not include:

- (a) a public road, or
- (b) land to which the *Crown Lands Act 1989* applies, or
- (c) a common, or
- (d) land subject to the *Trustees of Schools of Arts Enabling Act 1902*, or
- (e) a regional park under the *National Parks and Wildlife Act 1974*.

[2] Clause 4 (1), definition of "Scheme map"

Insert in appropriate order:

Ku-ring-gai Local Environmental Plan No 216

[3] Clause 61K

Omit the clause. Insert instead:

61K Classification and reclassification of public land

- (1) The objective of this clause is to enable the Council to classify or reclassify public land as "operational land" or "community land" in accordance with Part 2 of Chapter 6 of the *Local Government Act 1993*.

Note. Under the *Local Government Act 1993*, "public land" is generally land vested in or under the control of a council (other than roads, Crown reserves and commons). The classification or reclassification of public land may also be made by a resolution of the Council under section 31, 32 or 33 of the *Local Government Act 1993*. Section 30 of that Act enables this Plan to discharge trusts on which public reserves are held if the land is reclassified under this Plan as operational land.

- (2) The public land described in Part 1 or Part 2 of Schedule 10 is classified, or reclassified, as operational land for the purposes of the *Local Government Act 1993*.
- (3) The public land described in Part 3 of Schedule 10 is classified, or reclassified, as community land for the purposes of the *Local Government Act 1993*.
- (4) The public land described in Part 1 of Schedule 10:
 - (a) does not cease to be a public reserve to the extent (if any) that it is a public reserve, and
 - (b) continues to be affected by any trusts, estates, interests, dedications, conditions, restrictions or covenants that affected the land before its classification, or reclassification, as operational land.
- (5) The public land described in Part 2 of Schedule 10, to the extent (if any) that it is a public reserve, ceases to be a public reserve when the description of the land is inserted into that Part and is discharged from all trusts, estates, interests, dedications, conditions, restrictions and covenants affecting the land or any part of the land, except:
 - (a) those (if any) specified for the land in Column 3 of Part 2 of Schedule 10, and
 - (b) any reservations that except land out of the Crown grant relating to the land, and
 - (c) reservations of minerals (within the meaning of the *Crown Lands Act 1989*).

Note. In accordance with section 30 (2) of the *Local Government Act 1993*, the approval of the Governor to subclause (5) applying to the public land concerned is required before the description of the land is inserted in Part 2 of Schedule 10.

[4] Schedule 10

Omit the Schedule. Insert instead:

Schedule 10 Classification and reclassification of public land

(Clause 61K)

Part 1 Land classified, or reclassified, as operational land—no interests changed

Column 1	Column 2
Locality	Description
Barwon Avenue, South Turramurra	Lot 74, DP 216500
Barwon Avenue, South Turramurra	Lot 1, DP 847214
Barwon Avenue, South Turramurra	Lot 1, DP 746618
Chisholm Street, South Turramurra	Lot 3, DP 746618

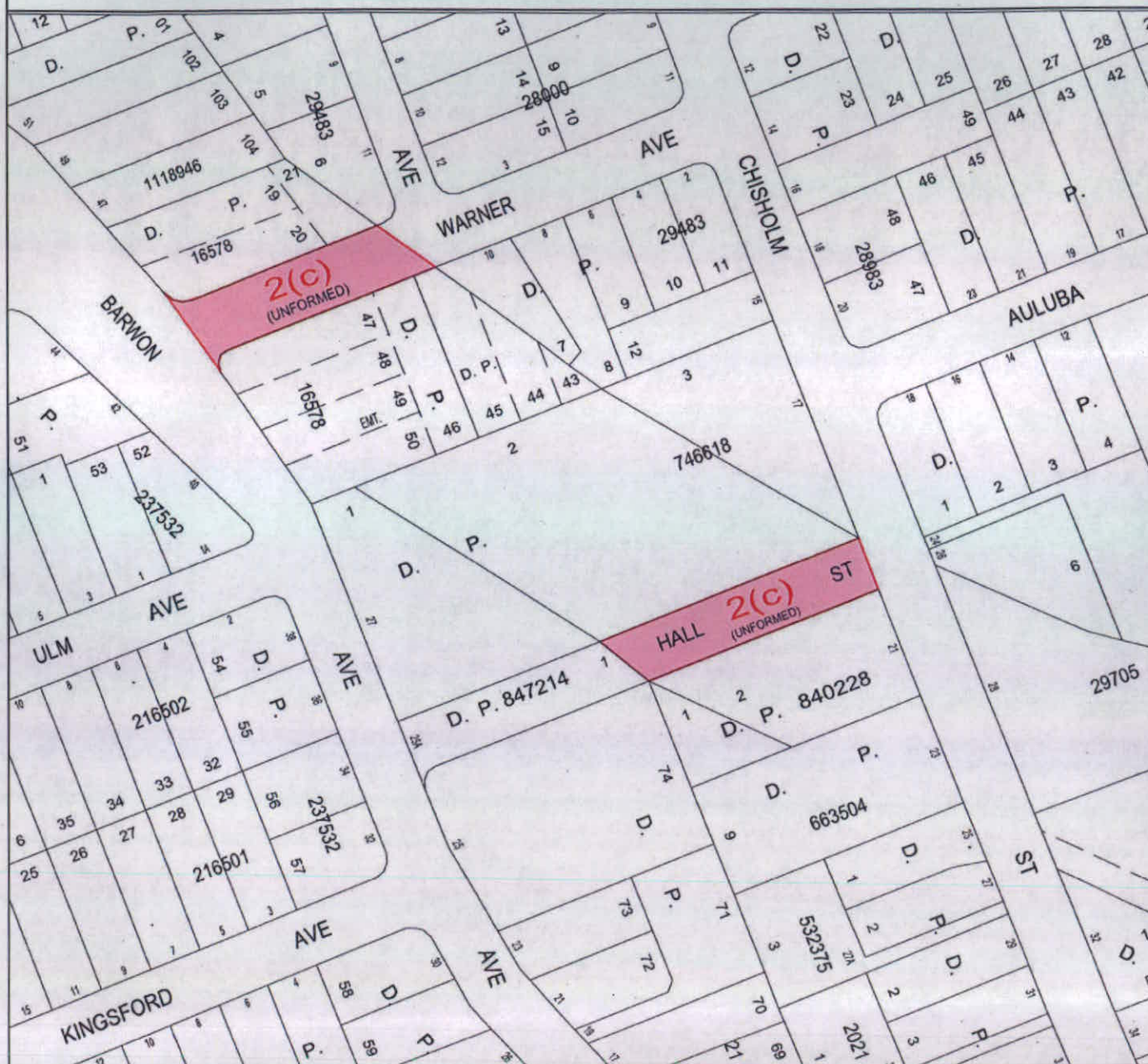
Part 2 Land classified, or reclassified, as operational land—interests changed

Column 1	Column 2	Column 3
Locality	Description	Any trusts etc not discharged
Chisholm Street, South Turramurra	Lot 1, DP 840228	Nil
Chisholm Street, South Turramurra	Lot 2, DP 840228	Nil

Part 3 Land classified, or reclassified, as community land

Column 1	Column 2
Locality	Description
Nil	Nil

ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979
KU-RING-GAI COUNCIL
KU-RING-GAI LOCAL ENVIRONMENTAL PLAN No 216

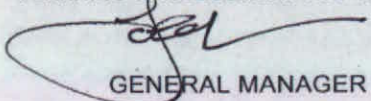


NORTH



2(c)

RESIDENTIAL "C"

DRAWN BY: COUNCIL'S CORPORATE MAPPING SYSTEM	STATEMENT OF RELATIONSHIP WITH OTHER PLANS AMENDS THE KU-RING-GAI PLANNING SCHEME ORDINANCE
PLANNING OFFICER: ANTONY FABBRO	
COUNCIL FILE NO.	
DEPT. FILE NO.	CERTIFIED IN ACCORDANCE WITH THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979, AND REGULATIONS.  GENERAL MANAGER 1/4/11 DATE
CERTIFICATE ISSUED UNDER SEC.65 E.P.A.ACT	
DATE	
Plan published on the NSW Legislation website on	