

Draft Sutherland Shire Local Environmental Plan 2015 - Amendment to enable complying development in zone E4 Environmental Living

Proposal Title : **Draft Sutherland Shire Local Environmental Plan 2015 - Amendment to enable complying development in zone E4 Environmental Living**

Proposal Summary : **The planning proposal seeks to to enable complying development in zone E4 Environmental Living, by amending Schedule 3 of the draft Sutherland Shire LEP 2015 to insert local provisions for dwelling houses and ancillary development.**

PP Number : **PP_2014_SUTHE_003_00** Dop File No : **14/16648**

Proposal Details

Date Planning Proposal Received : **25-Nov-2014** LGA covered : **Sutherland**

Region : **Metro(CBD)** RPA : **Sutherland Shire Council**

State Electorate : **CRONULLA
HEATHCOTE
MENAI
MIRANDA** Section of the Act : **55 - Planning Proposal**

LEP Type : **Housekeeping**

Location Details

Street :

Suburb : City : Postcode :

Land Parcel : **The proposal applies to all land zoned E4 Environmental Living within the Sutherland Shire.**

DoP Planning Officer Contact Details

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Land Release Data

Growth Centre :		Release Area Name :	
Regional / Sub Regional Strategy :		Consistent with Strategy :	
MDP Number :		Date of Release :	
Area of Release (Ha) :		Type of Release (eg Residential / Employment land) :	
No. of Lots :	0	No. of Dwellings (where relevant) :	0
Gross Floor Area :	0	No of Jobs Created :	0

The NSW Government Lobbyists Code of Conduct has been complied with : **Yes**

If No, comment :

Have there been meetings or communications with registered lobbyists? : **No**

If Yes, comment :

Supporting notes

Internal Supporting Notes :

BACKGROUND

Prior to February 2014, complying development was permissible on residential areas in the Sutherland Shire zoned for environmental protection under Sutherland Shire LEP 2006 (SSLEP 2006). These residential properties could, by means of clause 1.6 (1) (b) of the SEPP (Exempt and Complying Development Codes) 2008, undertake complying development under the General Housing Code. This was facilitated through the existing environmental zones being considered equivalent to residential zones due to the land uses they contain e.g. dwelling houses.

Sutherland Shire LEP 2006 (SSLEP 2006) widely applied environmental protection zones to residential areas with a suburban character. Council has advised the application of the zones were based on an assessment of environmental value. This plan is currently in force until the notification of the draft Sutherland Shire LEP 2015 (draft Principal LEP). Zone 1 Environmental Housing (Environmentally Sensitive Land) currently applies to the Shire's most environmentally sensitive low density residential foreshore areas. Zone 2 Environmental Housing (Scenic Quality) and Zone 3 Environmental Housing (Bushland) applies to residential properties with a landscaped housing character and these properties are proposed to be zoned E4 Environmental Living under the draft Principal LEP.

In February 2014, amendments were made to the Codes SEPP, including Clause 1.6, which resulted in the restriction of complying development for properties zoned E4 Environmental Living under the draft Principal LEP. This amendment resulted in the General Housing Code applying only to named residential zones. This applies where standard instrument LEPs have been publicly exhibited. Subsequently, this has resulted in the restriction of complying development for properties zoned E4 in the Sutherland Shire.

In response to the restriction of complying development and an increase in the number of development applications, Council forwarded a planning proposal to the Department dated 22 September 2014 to facilitate the continuation of complying development on the affected properties.

On 25 November 2014, Council submitted an amended planning proposal (dated 18 November 2014) containing additional information, as requested by the Department. The additional information required included a background on the application of the E4 zone, further justification for the proposal, complete assessment against State policy and a completed request for local plan-making delegation.

PROPOSAL

The proposal relates to 22, 947 parcels of land zoned E4 Environmental Living, under the draft Principal LEP. Where an applicant proposes development outside the scope of these provisions, a development application may be lodged for merit based consideration.

The plan seeks to introduce local complying development provisions for dwelling houses and ancillary development, including; awnings, carports, gazebos, pergolas, shade structures, sunshades, decks, patios, fences, swimming pools, driveways, hardstand spaces, pathways and paving.

The proposal intends to exclude the provisions from certain land including:

- land affected by a draft heritage item;
- land affected by a heritage item;
- land mapped as Class 1 or class 2 Acid Sulfate Soils;
- land mapped as Environmentally sensitive land;
- land within a foreshore area;
- internal lots; and
- land identified within a Development Control Plan as contaminated risk land.

The proposal also excludes detached garages, basements, roof top terraces, and detached studios from the complying development provisions.

The plan does not exclude bushfire prone land, flood prone land or land affected by the ANEF (Kurnell). Council has identified that these constraints can be addressed through the certification process and relevant standards.

ASSESSMENT

It is noted that Council should give full strategic consideration to overarching State policy when determining the application of any zone under a Principal LEP. In this case, the E4 zone and its subsequent impact for 22, 947 residential properties within the Sutherland Shire (e.g. restrictions on complying development).

The proposal intends to reduce merit consideration for residential properties zoned E4 by providing an avenue for streamlined development. Notwithstanding, Council has justified the proposal ascertaining that land parcels zoned E4 Environmental Living are inherently suburban in nature, the properties have been undertaking complying development until February 2014, and that the exclusions and provisions safeguard the amenity and landscaped character of those areas.

Council has identified that the intent is to incorporate the proposal into the notification of the draft Principal LEP. Notwithstanding, if the plan proceeds to finalisation it should amend the Principal LEP, once made. This course of action ensures the proposal does not impact the anticipated timeframe for completion of the Principal LEP and provides greater transparency in the plan making process.

INTERNAL POLICY ADVICE

Internal policy advice was sought by the planning team regarding potential State policy implications. Advice received 10 October 2014 revealed a technical avenue to insert local development types and standards within Schedule 3 of the LEP, given the effect of Clause 1.9(1) and 1.10(1) of the State policy. As the proposal contains zones of interest that differ to those contained within the State policy, the proposal can be implemented without undermining the application of the Codes SEPP.

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RECOMMENDATION

Given the varying reasons for application of the E4 Environmental Living zone for each Council area across the State, a State-wide blanket policy approach to permit complying on zone E4 is not appropriate. Council's objective is best achieved at a local level through the Local Environmental Plan. Therefore Council's proposal has merit be considered as an amendment to the draft Plan.

Consideration has been given to the suburban nature of the land zoned E4. It is considered the exclusion of environmentally sensitive land provides adequate protection of land with high environmental value. The proposal contains conservative provisions which aim to safeguard amenity and landscaped character of land zoned E4. Supporting the proposal to proceed to public exhibition will enable public consultation and the option for streamlined approval for an additional 22, 947 properties within the Shire.

DELEGATION

The Planning team has considered the nature of Council's proposal and recommends that the Minister's plan-making functions be delegated to Council for the purpose of this plan.

External Supporting
Notes :

Council has prepared a planning proposal that seeks to incorporate local provisions for complying development within the Sutherland Shire. The plan aims to instate tailored development standards into the draft Principal LEP, once made. The proposal aims to provide a streamlined approval process for dwelling houses and ancillary development on land zoned E4 Environmental Living.

Council has resolved that including conservative forms of dwelling development for land zoned E4 will not compromise the environmental values of the area or adversely impact surrounding development.

The proposal seeks to omit certain land from the provisions to safeguard environmental sensitive land and reduce the environmental impacts of development. The proposal excludes environmentally constrained land, land in a foreshore area, heritage items and draft heritage items, internal lots and environmentally sensitive land.

Where an applicant proposes more intense forms of development than permitted under the proposed standards, a development application will trigger merit based consideration of the proposal.

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment : The primary objective of the planning proposal is to facilitate complying development for approximately 22,947 residential properties zoned E4 Environmental Living under the draft Principal LEP. The proposal aims to reduce the number of development applications received in Council by facilitating the option of a streamlined approval process.

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment : To achieve the objective of the planning proposal, the plan seeks to amend the draft Principal LEP, once made, by:
- Amending Schedule 3 'Complying Development' to permit dwelling houses and ancillary development, on land zoned E4 Environmental Living.

The planning proposal provides indicative development standards that are more conservative than those under the draft LEP used for merit assessment of development applications.

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **No**

b) S.117 directions identified by RPA :

* May need the Director General's agreement

2.1 Environment Protection Zones

3.1 Residential Zones

4.3 Flood Prone Land

4.4 Planning for Bushfire Protection

6.1 Approval and Referral Requirements

7.1 Implementation of the Metropolitan Plan for Sydney 2036

Is the Director General's agreement required? **No**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

SEPP (Exempt and Complying Development Codes) 2008

e) List any other matters that need to be considered :

SECTION 117 DIRECTIONS

The planning proposal is generally consistent with Section 117 Directions:

- **2.1 Environmental Protection zones;**
- **3.1 Residential zones;**
- **4.3 Flood Prone Land;**
- **4.4 Planning for Bushfire Protection;**
- **6.1 Approval and Referral requirements; and**
- **7.1 Implementation of A Plan for Growing Sydney**

2.1 Environmental Protection zones

The purpose of this direction is to protect and conserve environmentally sensitive areas. This direction requires that a planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas. It also specifies where a planning proposal applies to land within an environmental protection zone; an LEP must not reduce environmental protection standards.

Council have identified that the proposal is generally consistent with the objectives of this direction and considers the plan provides adequate protection for environmentally sensitive land through land exclusions and conservative provisions. An exclusion will apply to a draft a Heritage Item, Heritage Item or State Heritage Item; land identified as containing Class 1 or 2 Acid Sulfate Soils on Council's Acid Sulfate Soils Mapping series; or land identified as Environmentally Sensitive Land on Council's Environmentally Sensitive Land Mapping series.

The proposal is considered consistent with this Direction as it does not reduce development standards applying to the E4 Environmental Living zone.

3.1 Residential zones

The planning proposal is consistent with this direction as:

- it does not propose to reduce the permissible residential density of land;
- provisions encourage appropriate low impact residential development; and
- the proposal contains provisions ensuring adequate services are provided for development.

4.3 Flood Prone Land

The proposal is consistent with this direction as it contains provisions that ensure development on flood prone land is commensurate with the flood hazard and is consistent with the principles of the Floodplain Development Manual 2005.

4.4 Planning for Bushfire Protection

The proposal is consistent with this direction as it has regard to the principles contained in Planning for Bushfire Protection 2006 and provides standards that manage development on bushfire prone land.

6.1 Approval and Referral requirements

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The proposal is consistent with the terms of this direction as it encourages a more streamlined option for the assessment of development.

7.1 Implementation of A Plan for Growing Sydney

The Plan for Growing Sydney was implemented in December 2014 and although the proposal does not address the Plan, the proposal is generally consistent with the overall intent of the the Plan and does not undermine its aims, outcomes or directions.

Have inconsistencies with items a), b) and d) being adequately justified? **Yes**

If No, explain :

Council has identified that the proposal is consistent with all relevant SEPPs. Notably, the proposal does not contravene the SEPP (Exempt and Complying Development Codes) 2008. The proposal is considered consistent with all s117 Directions identified as relevant to the proposal.

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment :

Council has provided a indicative map identifying all land zoned E4 Environmental Living under the draft Principal LEP. The Mapping provided is considered adequate for public exhibition.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment :

Council has identified a 28 day community consultation period. The Department has considered a period of 28 days is satisfactory, given the proposal affects 22,947 properties within the Sutherland Shire.

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment :

The amended proposal meets the adequacy criteria within the Departments' "A Guide to preparing Planning Proposals".

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP :

The Principal LEP recently underwent a third round of community consultation. It was subsequently endorsed by Council and forwarded to the Department for finalisation on 7 November 2014. The Principal LEP is anticipated to be finalised in the first quarter in 2015 and this planning proposal seeks to amend the Principal LEP, once made.

Assessment Criteria

Need for planning proposal :

The planning proposal is the result of recommendations made from Council's Environmental Planning Unit (DAP018-15), for the inclusion of complying development provisions into the local planning instrument. The recommendation was made in response to the reduction in complying development options for residential properties and the corresponding increase in development applications received by Council.

Council has provided the following justification for the proposal:

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- Sutherland Shire have remained in the top five Councils issuing Complying Development Certificates (CDCs) for the past three years;
- 22, 947 residential properties within Sutherland Shire are unable to undertake complying development under the General Housing code;
- Council has observed a 25-30% increase in the number of Development Applications lodged since 2011;
- 70 development applications are currently being assessed by Council that could otherwise be considered complying development;
- the development standards are tailored for the zone and conservative in nature;
- recent state policy changes restricted complying development for 22, 947 residential properties;
- the provisions are essentially a hybrid of the General Housing Code and Schedule 3 of SSLEP 2006;
- modest forms of complying development are appropriate for zone E4;
- the proposal will reduce the number of DAs and streamline development;
- the proposal provides the option of streamlined approval for 22, 947 properties;
- the provisions are excluded from environmentally sensitive land; and
- the development standards are conservative do not compromise the environmental values of the area.

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Consistency with strategic planning framework :

The planning proposal is generally consistent with the relevant strategic framework:

- A Plan for Growing Sydney;
- Draft South Sub-regional Strategy; and
- Sutherland Shire Community Strategic Plan – 'Our shire our future: our guide for shaping the shire 2030'.

A PLAN FOR GROWING SYDNEY

The proposal is generally consistent with the Plan and does not undermine its goals, directions and actions, specifically the proposal is consistent with:

- Goal 2. A city of housing choice, with homes that meet our needs and lifestyles
 - accelerate housing supply across Sydney; and
- Goal 4. A sustainable and resilient city that protects the natural environment and has a balanced approach to the use of land and resources
 - manage the impacts of development on the environment.

STATE ENVIRONMENTAL PLANNING POLICY (EXEMPT AND COMPLYING DEVELOPMENT CODES) 2008

Under the General Housing Code, complying development is not permissible in environmental protection zones under state policy. Given the E4 Environmental Living zone is a different zone to the 'named zones' within the Code SEPP, this proposal is not located on 'the same land' (i.e. named zones) specified within the State policy. This facilitates an avenue to instate local complying development provisions for the E4 Environmental Living zone, without contravening the State policy. This position has been supported by internal policy advice on 10 October 2014.

DRAFT SUTHERLAND SHIRE LEP 2015

Sutherland Shire Council has been preparing a draft Principal LEP since 2007 which is largely a translation LEP. Under the Principal LEP, foreshore residential areas, which are the most environmentally sensitive in the Shire, have been applied the E3 Environmental Management zone. Land with a more suburban character, located within a landscaped setting and land subject to bushfire evacuation risk, has been applied an E4 Environmental Living zone. Low density residential areas that did not contain environmental values were applied the R2 zone.

ENVIRONMENTAL ZONES - Practice Note 09-002

The Department's Practice Note 09-002 gives guidance on the application of environmental protection zones for LEPs. The E4 Environmental Living zone is intended for land with special environmental or scenic values to accommodate low impact residential development. Careful consideration is required to distinguish between residential zones and environmental zones. On land where there are few environmental considerations, a residential zone may be more appropriate.

The practice note recommends environmental zones to be applied consistently so that their value is not diminished by permitting incompatible development. In selecting development for E4 zones consideration should be given to the mandatory zone objectives. It is important that Council's maintain the integrity of the Environmental zones by including only uses and development consistent with the zone objectives.

Council have not included an assessment against the mandatory or local zone objectives. It is recommended that this assessment accompany exhibition to demonstrate how the proposal maintains the integrity of the zone.

E4 ENVIRONMENTAL LIVING ZONE

Under the draft Principal LEP, Council considered the wide application of the E4 Environmental Living zone an appropriate means to ensure consistent land uses with the low density character and environmental sensitivities of certain residential areas. In addition, the bushfire risk of those areas made particular vulnerable uses inappropriate for inclusion within the E4 Environmental Living zone. Generally, Council have applied the E4 Environmental living zone to residential areas with a bushland setting, having particular regard to the character, quality of vegetation, landform and environmental value of the

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area. The application of this zone was determined based on a criteria assessment.

The application of the R2 Low Density Residential zone would achieve Council's objective to enable complying development for the affected properties. However, Council have considered that the R2 Low Density Residential zone is not adequate to protect the scenic values of the land.

CONCLUSION

Council have argued that permitting conservative forms of complying development will not impact the integrity of the zone or diminish the environmental value of that land. In the absence of a comprehensive reconsideration of the criteria used to distinguish between the R2 and E4 zones, the proposal has merit to proceed to public exhibition.

The planning team considers the proposal is generally consistent with the strategic planning framework and therefore has merit to proceed to gateway.

Environmental social
economic impacts :

ENVIRONMENTAL

The planning proposal does not result in adverse environmental impacts for critical habitat, threatened species and ecological communities within the local government area. The proposal excludes the application of those provisions from land mapped as environmentally sensitive land, including terrestrial biodiversity, natural landforms, riparian land, watercourses and groundwater vulnerability. The development standards proposed are modest in nature, being more conservative than those contained within the draft LEP and used for the merit assessment of development applications.

SOCIAL & ECONOMIC

The planning proposal provides a net community benefit by facilitating the option for complying development for nearly 22, 947 properties zoned E4 Environmental living zone under the Principal LEP.

Assessment Process

Proposal type : **Routine** Community Consultation Period : **28 Days**

Timeframe to make LEP : **9 months** Delegation : **RPA**

Public Authority
Consultation - 56(2)
(d) :

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons : **Yes, subject to conditions.**

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

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Identify any internal consultations, if required :

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
Planning Proposal (2).pdf	Proposal	Yes
Delegation form.doc	Proposal	Yes
LEP3_E4_Environmental_Living.pdf	Map	Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions: **2.1 Environment Protection Zones**
 3.1 Residential Zones
 4.3 Flood Prone Land
 4.4 Planning for Bushfire Protection
 6.1 Approval and Referral Requirements
 7.1 Implementation of the Metropolitan Plan for Sydney 2036

Additional Information : **It is recommended that the planning proposal proceed, subject to the following conditions:**
 1. Prior to undertaking public exhibition of the proposal, the planning proposal is to be revised to include an assessment against the mandatory and local zone objectives for zone E4 Environmental Living;
 2. Prior to undertaking public exhibition, the planning proposal is to be revised to demonstrate consistency with 'A Plan for Growing Sydney', released on 14 December 2014
 4. The planning proposal be considered as routine and exhibited for a period of 28 days;
 5. A public hearing is not required;
 6. The planning proposal be finalised within 9 months from the date of Gateway determination; and
 7. Council be given authorisation for plan making delegation.

Supporting Reasons : **The proposal should be allowed to proceed as:**
 • **the proposal is of local significance and should be addressed at a local level;**
 • **the proposal is consistent with relevant Strategic Planning Framework and does not contravene State policy;**
 • **Schedule 3 of the local plan provides the avenue for councils to instate local provisions for complying development;**
 • **it will allow for public consultation of the plan;**
 • **consistency with E4 zone objectives will be further assessed by council prior to public exhibition;**
 • **conservative development standards aim to safeguard amenity and local character;**
 • **the proposal will reduce the number of development applications for Council; and**
 • **an additional 22, 947 properties will have the option of a more streamlined approval process.**

Signature:



Printed Name:

MARTIN COOPER

Date:

29/01/2015