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PLANNING PROPOSAL

The Planning Proposal seeks to reclassify Council owned land at Henry Kendall Crescent, Mascot (Lot 126A, DP 21810) from Community Land to Operational Land.

October 2015

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ATTACHMENTS

1. Deposited Plan and Certificate of Title
2. Council Report and Resolution – Policies and Priorities Meeting dated 26 August 2015
3. Council Resolution – Ordinary Council Meeting dated 26 August 2015
4. LEP Practice Note PN 09-003 – Written Statement
5. List of State Environmental Planning Policies

INTRODUCTION

The Planning Proposal relates to a Council owned property that adjoins the road reserve in Henry Kendall Crescent, Mascot (Lot 126A, DP 21810) which covers an area of 183sqm. As identified in the figures below and **Attachment 1** – Deposited Plan and Certificate of Title, the subject precinct is located at the top end of Henry Kendall Crescent between the road reserve and the northern side boundary of Nos. 10 and 12 Henry Kendall Crescent, Mascot. The property is currently zoned R2 – Low Density Residential and is classified as Community Land.

Council has been approached by the property owners of Nos. 10 and 12 Henry Kendall Crescent, Mascot to purchase the subject property. To sell the land, Council is required to reclassify it to Operational Land.

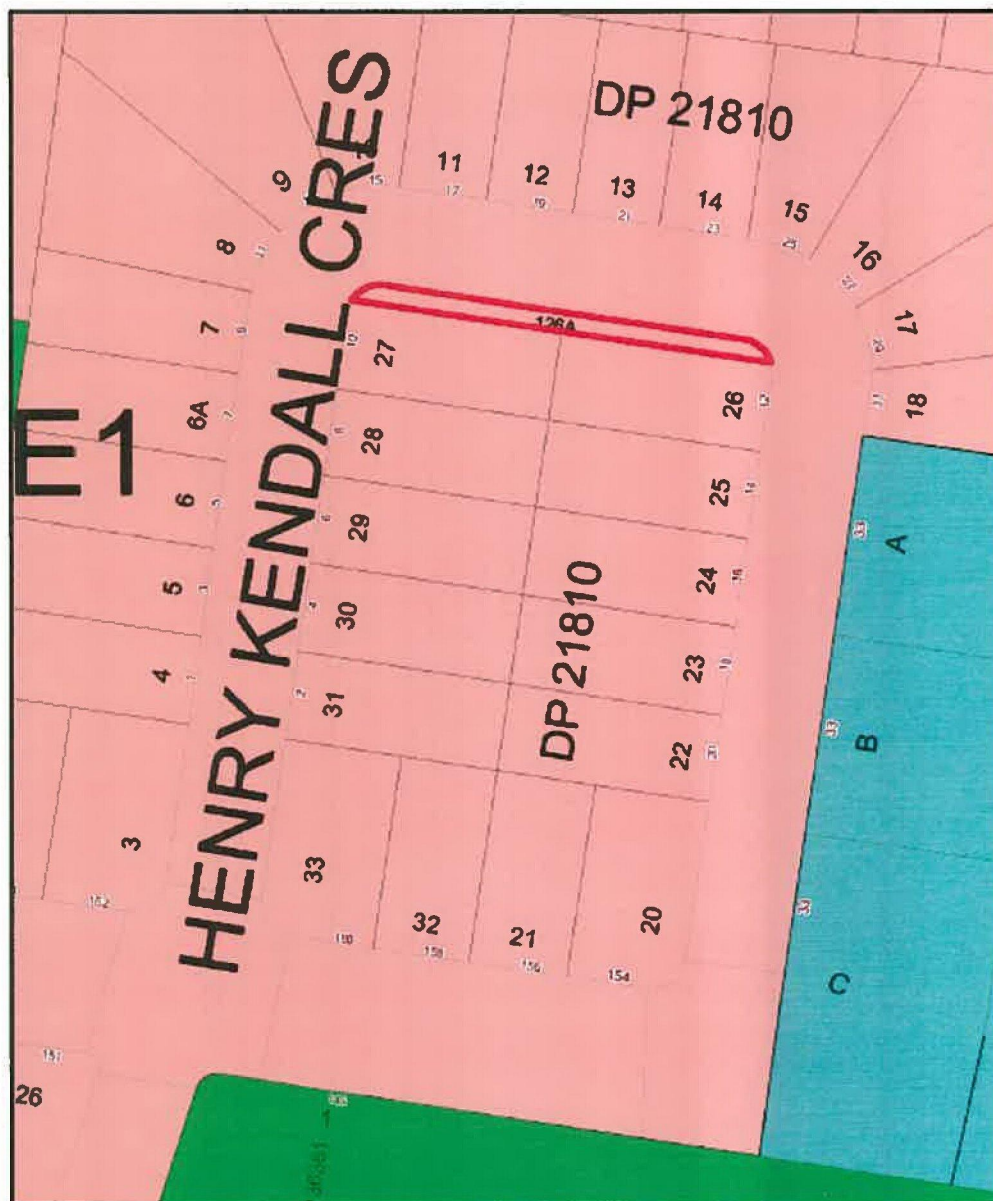


Figure 1 – Zoning map of the property affected by the Planning Proposal



Figure 2 – Aerial view of the property affected by the Planning Proposal

Relevant Planning Controls

The subject property is zoned R2 – Low Density Residential under the *Botany Bay Local Environmental Plan (BBLEP) 2013*.

The objectives of the R2 zone are as follows:

- To provide for the housing needs of the community within a low density residential environment.

- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To encourage development that promotes walking and cycling.

The R2 zone permits the following uses with development consent:

Attached dwellings; Bed and breakfast accommodation; Boarding houses; Building identification signs; Business identification signs; Child care centres; Community facilities; Dwelling houses; Environmental protection works; Flood mitigation works; Group homes; Health consulting rooms; Hospitals; Multi dwelling housing; Neighbourhood shops; Office premises; Places of public worship; Recreation areas; Residential flat buildings; Respite day care centres; Roads; Semi-detached dwellings.

Council Resolutions

At the Policies and Priorities Meeting held on 26 August 2015, Council considered a report relating to a request to purchase land that adjoins the road reserve in Henry Kendall Crescent, Mascot (i.e. the subject property).

Council resolved that:

1. The report be received and noted.
2. Council resolve to sell to the owner of 10 and 12 Henry Kendall Crescent, Mascot Lot 126A in DP 21810 at its assessed market valuation;
3. Council undertake the process required to change the land classification of Lot 126A from Community Land to Operational Land; and
4. The General Manager be authorised to sell Lot 126A on behalf of the Council.

A copy of the report and resolution is contained in **Attachment 2**.

The report was then referred to Council who considered it at its meeting held on 26 August 2015. Council resolved that the Minutes of the Policies and Priorities Committee held on 26 August 2015 be received and the recommendations contained therein be approved and adopted.

A copy of Council's resolution can be found in **Attachment 3**.

PART 1 - OBJECTIVES OR INTENDED OUTCOMES

Objective

The Planning Proposal seeks to reclassify Council owned land at Henry Kendall Crescent, Mascot (Lot 126A, DP 21810) from Community Land to Operational Land.

Intended Outcome

The intended outcome of the Planning Proposal is to enable the land classification to be consistent with the current zoning and enable Council the opportunity to sell the site for its integration within the adjoining properties at Nos. 10 and 12 Henry Kendall Crescent, Mascot. Given the size and location of the site, it is of little value to Council and selling the site would allow Council to reinvest the proceeds into purchasing new open space or upgrading existing assets which are of greater benefit to the public.

The Planning Proposal does not propose any changes to the zoning or development standards of the subject site.

In accordance with the NSW Department of Planning's LEP Practice Note PN09-003 '*Classification and reclassification of public land through a local environmental plan*', Council has provided a written statement in **Attachment 4** which specifies the changes resulting from the reclassification.

PART 2 - EXPLANATION OF PROVISIONS

The Planning Proposal seeks to reclassify land owned by Botany Bay Council from Community Land to Operational Land and discharge any trusts, estates, interests, dedications, conditions, restrictions and covenants affecting the land or any part of the land.

Proposed Amendment

The Planning Proposal seeks the following amendments to the *BBLEP 2013*:

1. Insert into Part 2 (Land classified, or reclassified, as operational land – interests changed) of Schedule 4 (Classification and reclassification of public land) the site to be reclassified from community to operational.

Column 1 Locality	Column 2 Description	Column 3 Any trusts etc not discharged
Botany Bay Council	Lot 126A, DP 21810, Henry Kendall Crescent, Mascot	Nil

PART 3 - JUSTIFICATION

Section A – Need for the planning proposal.

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

The Planning Proposal is not the result of any strategic study or report.

Council received a request from the owners of Nos. 10 and 12 Henry Kendall Crescent, Mascot to purchase Council owned land that adjoins the road reserve in Henry Kendall Crescent, Mascot for the purpose of its subdivision and incorporation into those two allotments held in private ownership. The subject site is currently classified as Community Land and it is proposed that the land be reclassified to Operational Land to enable it to be sold.

If Council agrees to sell the site to the adjoining property owners, any fees associated with the sale, such as legal, survey and the like would be accepted by the purchaser as a condition of sale. The obligation to effect a subdivision of the lot would also reside with the purchaser.

The subject property has no material benefit to Council and is a relatively small and 'low value' open space site which appears as a nature strip with no recreational value. The site is also located near existing parks of value, including Mascot Memorial Park Reserve, Mascot Oval Reserve and Lauriston Park.

The reclassification provides Council with the opportunity to sell underutilised land for its improved efficiency and highest and best use for residential development as part of Nos. 10 and 12 Henry Kendall Crescent. The sale of the site will rescind Council's maintenance costs of the site and proceeds from the sale of the property could be reinvested into purchasing new open space or upgrading existing assets which are of greater benefit to the public.

The excising of the subject site from what appears as a nature strip will leave a road reserve width of 15.24m which is consistent with the remainder of Henry Kendall Crescent.

The Planning Proposal makes provision to the effect that on commencement of the LEP, the subject site will be discharged from any trusts, estates, interests, dedications, conditions, restrictions and covenants affecting the land or any part of the land. The extinguishment of such interest from the land is necessary to provide Council with the opportunity to dispose of the surplus property and to remove restrictions from the site to facilitate its consolidation and redevelopment with the adjoining properties at Nos. 10 and 12 Henry Kendall Crescent, Mascot.

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

The Planning Proposal is the only means of achieving the objectives and intended outcomes as it involves a statutory amendment to the *BBLEP 2013*. Other possible options (i.e. community education and new administrative processes) are unable to achieve the outcomes sought by Council. The site is currently classified as Community Land which prohibits Council from developing, selling, exchanging or disposing of the land under the provisions of the *Local Government Act 1993*.

Section B – Relationship to strategic planning framework.

- 3 Is the planning proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

A Plan for Growing Sydney

A Plan for Growing Sydney establishes a long-term planning framework to manage Sydney's growth in a sustainable manner and strengthen its economic development whilst enhancing the unique lifestyle, heritage and environment of Sydney.

The following goals and directions apply to the Planning Proposal:

- **Goal 2** – A city of housing choice, with homes that meet our needs and lifestyles.
 - **Direction 2.1** – Accelerate housing supply across Sydney.
 - **Action 2.1.3** – Deliver more housing by developing surplus or under-used Government land.

Draft East Subregional Strategy

The draft *East Subregional Strategy* is an intermediate step in translating the Metropolitan Plan at a local level and acts as a broad framework for the long-term development of the area, guiding government investment and linking local and state planning issues.

The following directions and actions apply to the subject precinct:

- **B2** – Increase densities in centres whilst improving liveability.
- **B2.1** – Plan for housing in centres consistent with their employment role.
- **C1** – Ensure adequate supply of land and sites for residential development.
- **C2.1** – Focus residential development around centres, town centres, villages and neighbourhood centres.

The Planning Proposal proposes the reclassification of underutilised Council owned land near the Mascot Local Centre from Community Land to Operational Land. The reclassification will provide Council with the opportunity to sell the parcel of land to the adjoining owners to incorporate on their sites for residential development. Accordingly, the Planning Proposal is consistent with *A Plan for Growing Sydney* and the draft *East Subregional Strategy*.

4. Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?

Botany Bay Planning Strategy 2031

The *Botany Bay Planning Strategy 2031* (the Strategy) establishes a framework for growth and development for the Botany Bay LGA and addresses the draft *East Subregional Strategy* dwelling and employment targets. The Strategy also provides the foundation for the development of the *BBLEP 2013*.

The following direction, objectives and actions apply to the subject precinct:

- **Strategic Direction 2** – Revitalising Botany Road & Traditional Centres

- **Objective 2.2.2** – Increase residential density potential at Rosebery on either side of Botany Road and behind Gardeners Road to Harris Street.

The Planning Proposal is consistent with the Strategy as it may result in underutilised land near Botany Road being developed for residential purposes.

5. Is the planning proposal consistent with applicable State Environmental Planning Policies?

Attachment 5 summarises the Planning Proposal's consistency with State Environmental Planning Policies (SEPPs) and relevant deemed SEPPs.

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

Ministerial Directions (s.117 directions) directly applicable to the Planning Proposal are addressed below.

3.1 Residential Zones

The intent of this direction is to encourage a variety and choice of housing types to provide for existing and future housing needs; to make efficient use of existing infrastructure and services to ensure that new housing has appropriate access to infrastructure and services; and to minimise the impact of residential development on the environment and resource lands.

The subject site is located within an established residential area with existing infrastructure and services.

The Planning Proposal is consistent with the direction for the following reasons:

- The Planning Proposal will retain the existing residential zone and will not impact upon the supply of residential land or housing supply; and
- The Planning Proposal will make more efficient use of existing infrastructure and services.

3.5 Development Near Licensed Aerodromes

The intent of this direction is to ensure the effective and safe operation of aerodromes; their operation is not compromised by development that constitutes an obstruction, hazard or potential hazard to aircraft flying in the vicinity; and development for residential purposes or human occupation incorporates appropriate mitigation measures so that the development is not adversely affected by aircraft noise.

The property is situated between 20 and 25 ANEF contours.

The Planning Proposal will not impact on the effective and safe operation of Sydney Airport as the land use zone (i.e. R2 – Low Density Residential) and maximum permissible height of buildings (i.e. 9m) will remain unchanged in the *BBLEP 2013*.

Furthermore, model local provisions (i.e. *Clause 6.8 – Airspace Operations and Clause 6.9 – Development in areas subject to aircraft noise*) have already been incorporated into the *BBLEP 2013*.

Future developments that penetrate the Limitation or Operations Surface will be referred to the “relevant Commonwealth body” (i.e. Sydney Airport Corporation Limited) for comment. Any impacts on the effective and safe operation of aerodromes can be addressed during the development application stage. Hence, the Planning Proposal is consistent with the direction.

4.1 Acid Sulfate Soils

The intent of this direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils. The direction requires an acid sulfate soils study to be prepared if the planning proposal requires an intensification of land uses.

A model local provision (i.e. Clause 6.1 – Acid Sulfate Soils) and an Acid Sulfate Soils Map have been incorporated into the *BBLEP 2013*.

The subject property is identified as Class 4 Acid Sulfate Soils.

Future developments (i.e. any works below the natural ground surface or are likely to lower the watertable) are subject to Council’s consent and lodgement of an acid sulfate soils management plan. No works are proposed as part of the Planning Proposal. Any significant adverse environmental impacts resulting from future developments can be addressed during the development application stage. Hence, the Planning Proposal is consistent with the direction.

6.1 Approval and Referral Requirements

The intent of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development.

The Planning Proposal does not introduce any LEP provisions that result in any additional requirements for concurrence, consultation or referral to a Minister or public authority.

6.2 Reserving Land for Public Purposes

The intent of this direction is to facilitate the provision of public services and facilities by reserving land for public purposes; and to facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition.

The Planning Proposal seeks to reclassify Council owned land at Henry Kendall Crescent, Mascot (Lot 126A, DP 21810) from Community Land to Operational Land.

The Proposal is seeking the approval of the Director General to revoke the Community Land status of the site. It is considered that the Director General grant concurrence on the basis that the property serves a limited purpose as community land, such as a public reserve due to its small size. The site is currently of limited value to the public.

The site is currently zoned R2 – Low Density Residential and permits dwelling houses. The Planning Proposal does not involve a change to the zoning of the site.

6.3 Site Specific Provisions

The objective of this direction is to discourage unnecessarily restrictive site specific planning controls.

The Planning Proposal seeks to reclassify Council owned land at Henry Kendall Crescent, Mascot (Lot 126A, DP 21810) from Community Land to Operational Land.

Note: *The zoning and development standards will remain unchanged.*

The Planning Proposal is not inconsistent with the objective of the direction as it will not introduce restrictive site specific planning controls or impose any additional development standards/requirements to those already contained in the R2 zone.

7.1 Implementation of A Plan for Growing Sydney

The intent of this direction is to give legal effect to the planning principles; directions; and priorities for subregions, strategic centres and transport gateways contained in *A Plan for Growing Sydney*.

As discussed above, the Planning Proposal is consistent with the Strategic Directions and Actions of *A Plan for Growing Sydney*.

Section C – Environmental, social and economic impact.

7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

The proposal will not impact upon any critical habitat, threatened species, populations or ecological communities or their habitats as the site does not contain any of the above communities.

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

There are no likely environmental effects as a result of the Planning Proposal as the subject site will remain as residential zoned land. However, it is noted that the property is located within the ANEF 20-25 contour as identified by the *Australian Noise Exposure Forecast 2033 (ANEF) Chart*. Accordingly, any development on this property will be subject to compliance with the *Australian Standard 2021 (AS 2021)*.

Furthermore, model local provisions (i.e. *Clause 6.8 – Airspace Operations and Clause 6.9 – Development in areas subject to aircraft noise*) have already been incorporated into the *BBLEP 2013*.

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

Social effects: The Planning Proposal is unlikely to impact on items or places of European or Aboriginal cultural heritage; existing social infrastructure; and existing retail centres.

The Planning Proposal will not rezone the site or alter the land use table contained in the *BBLEP 2013*. The proposal is also unlikely to generate additional permanent population in the Botany Bay LGA. Hence, it is unlikely the Planning Proposal will place additional pressure on existing social infrastructure (including schools and hospitals).

The subject site is zoned residential. The social impact is considered to be low as the current space is underutilised and surplus to Council's and the public's needs. The site does not contain any recreational facilities and is too small to fulfil any recreational needs.

Economic effects: By reclassifying the subject site from Community Land to Operational Land, the Planning Proposal will provide Council with the opportunity to dispose of surplus land. Since the property owners of Nos. 10 and 12 Henry Kendall Crescent, Mascot have approached Council to purchase the site, the Planning Proposal will likely result in the sale of the property. Council could reinvest the proceeds into purchasing new open space or upgrading existing assets which are of greater benefit to the public. Disposal of the land would also enable Council to rationalise its current maintenance cost and redirect resources toward more functional reserves that provide a greater public benefit, such as open space that meets the recreational needs of the community.

Section D – State and Commonwealth interests

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

The subject site and adjoining properties at Nos. 10 and 12 Henry Kendall Crescent, Mascot are serviced by existing public transport infrastructure, utility services, roads and essential services.

The Planning Proposal is unlikely to place additional demands or pressures on existing public infrastructure.

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

No consultation has been carried out with State and Commonwealth public authorities. Consultation will occur with relevant public authorities identified as part of the Gateway Determination.

PART 4 - MAPPING

The Planning Proposal does not require amendments to any of the maps contained in the *BBLEP 2013*.

PART 5 - COMMUNITY CONSULTATION

Council proposes that the Planning Proposal be exhibited as follows:

- In accordance with section 57 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*, the Planning Proposal will be placed on public exhibition for 28 days; and
- Any other requirements as determined by the Gateway under section 56 of the *EP&A Act*.

At the conclusion of the public exhibition period, Council will hold a public hearing for the reclassification of land from Community Land to Operational Land pursuant to the provisions of the *Local Government Act 1993*.

PART 6 - PROJECT TIMELINE

The project timeline for the Planning Proposal is as follow:

<i>Timeframe</i>	
<i>Anticipated commencement date</i>	November 2015
<i>Anticipated timeframe for the completion of required technical information</i>	N/A
<i>Timeframe for government agency consultation (pre and post exhibition as required by Gateway Determination)</i>	December-January 2015
<i>Commencement date for public exhibition period</i>	February-March 2016
<i>Date of public hearing</i>	May 2016
<i>Timeframe for consideration of submissions</i>	May-June 2016
<i>Timeframe for the consideration of a proposal post exhibition</i>	June-July 2016
<i>Date of submission to the Department to finalise the LEP</i>	August 2016
<i>Anticipated date RPA will make the plan (if delegated)</i>	September 2016
<i>Anticipated date RPA will forward to the Department for notification</i>	October 2016

Table 1 – Proposed Timeframe

* Subject to NSW Department of Planning & Environment approval and timeframe

PART 7 - CONCLUSION

In summary, the Planning Proposal seeks to reclassify Council owned land at Henry Kendall Crescent, Mascot (Lot 126A, DP 21810) from Community Land to Operational Land. The reclassification will enable Council the opportunity to sell an underutilised asset with no public value to the adjoining property owners of Nos. 10 and 12 Henry Kendall Crescent, Mascot who have approached Council to purchase the subject property. Proceeds from the sale of the property could be reinvested into purchasing new open space or upgrading existing assets which are of greater benefit to the public.

The Planning Proposal does not propose any changes to the zoning or development standards of the subject site.

The Planning Proposal is generally consistent with relevant State and local legislation, directions, policies and strategic documents and will have a minimal environmental, social and economic impact.

ATTACHMENTS

1. Deposited Plan and Certificate of Title
2. Council Report and Resolution – Policies and Priorities Meeting dated 26 August 2015
3. Council Resolution – Ordinary Council Meeting dated 26 August 2015
4. LEP Practice Note PN 09-003 – Written Statement
5. List of State Environmental Planning Policies

Attachment 1 – Deposited Plan and Certificate of Title

CONVERSION TABLE ADDED IN
 REGISTRAR GENERAL'S DEPARTMENT

FEET INCHES	METRES
- 0 1/2	0.013
- 0 5/8	0.016
- 1	0.025
- 1 3/4	0.044
- 3 1/4	0.076
- 3 1/2	0.083
- 3 5/8	0.089
- 4 1/2	0.113
- 5 1/2	0.133
- 6 1/2	0.152
- 7 1/2	0.165
- 8 1/2	0.176
- 9 1/2	0.191
- 10 1/2	0.229
- 10 3/4	0.241
- 11	0.254
- 11 1/2	0.273
- 12	0.292
- 12 1/2	0.307
- 13	0.310
- 13 1/2	0.314
- 14	0.319
- 14 1/2	0.322
- 15	0.326
- 15 1/2	0.329
- 16	0.333
- 16 1/2	0.336
- 17	0.340
- 17 1/2	0.343
- 18	0.346
- 18 1/2	0.349
- 19	0.352
- 19 1/2	0.355
- 20	0.358
- 20 1/2	0.361
- 21	0.364
- 21 1/2	0.367
- 22	0.370
- 22 1/2	0.373
- 23	0.376
- 23 1/2	0.379
- 24	0.382
- 24 1/2	0.385
- 25	0.388
- 25 1/2	0.391
- 26	0.394
- 26 1/2	0.397
- 27	0.400
- 27 1/2	0.403
- 28	0.406
- 28 1/2	0.409
- 29	0.412
- 29 1/2	0.415
- 30	0.418
- 30 1/2	0.421
- 31	0.424
- 31 1/2	0.427
- 32	0.430
- 32 1/2	0.433
- 33	0.436
- 33 1/2	0.439
- 34	0.442
- 34 1/2	0.445
- 35	0.448
- 35 1/2	0.451
- 36	0.454
- 36 1/2	0.457
- 37	0.460
- 37 1/2	0.463
- 38	0.466
- 38 1/2	0.469
- 39	0.472
- 39 1/2	0.475
- 40	0.478
- 40 1/2	0.481
- 41	0.484
- 41 1/2	0.487
- 42	0.490
- 42 1/2	0.493
- 43	0.496
- 43 1/2	0.499
- 44	0.502
- 44 1/2	0.505
- 45	0.508
- 45 1/2	0.511
- 46	0.514
- 46 1/2	0.517
- 47	0.520
- 47 1/2	0.523
- 48	0.526
- 48 1/2	0.529
- 49	0.532
- 49 1/2	0.535
- 50	0.538
- 50 1/2	0.541
- 51	0.544
- 51 1/2	0.547
- 52	0.550
- 52 1/2	0.553
- 53	0.556
- 53 1/2	0.559
- 54	0.562
- 54 1/2	0.565
- 55	0.568
- 55 1/2	0.571
- 56	0.574
- 56 1/2	0.577
- 57	0.580
- 57 1/2	0.583
- 58	0.586
- 58 1/2	0.589
- 59	0.592
- 59 1/2	0.595
- 60	0.598

CONVERSION TABLE ADDED IN
 REGISTRAR GENERAL'S DEPARTMENT

FEET INCHES	METRES
65 1 1/2	19.830
70	21.336
75 3 1/2	22.949
77	23.470
77 5 1/2	23.609
83 4 1/2	25.413
83 11	25.483
84	25.902
84 11	26.213
87 3 1/4	26.500
94 6 5/4	26.693
94 11 1/2	30.092
99 4	30.150
99 9 1/2	30.277
100	30.480
100 1 1/2	30.505
103 3 1/2	31.493
104 9 3/4	31.664
110	33.526
110 1 3/4	33.532
110 2 1/2	33.582
110 4 1/4	33.630
110 8 3/4	33.689
111 3 1/2	33.722
112 6 3/4	34.350
113 6	34.595
113 1	35.077
115 11 3/4	35.156
123 1 3/4	37.535
143 9 1/4	43.821
156 1	48.184
176 2 3/4	54.324
183 4 1/2	55.093
212 5	64.745
277 5 1/2	84.559
287 3 1/4	87.550
298 10 3/4	97.504
707 9	215.722
AC RD P	SO M
- 16 1/4	411
- 16 1/2	417.3
- 18 1/4	455.3
- 20 1/4	461.6
- 21 3/4	512.2
- 23 1/4	550.1
- 27 1/4	609.2
- 29 3/4	752.5
- 36 3/4	929.5
- 1	1012
- 1 29	5792
1 3 3/4	7961



**Land & Property
Information**

A division of the Department of **Finance & Services**

LAND AND PROPERTY INFORMATION NEW SOUTH WALES - TITLE SEARCH

FOLIO: 126A/21810

SEARCH DATE	TIME	EDITION NO	DATE
27/7/2015	10:26 AM	-	-

VOL 15296 FOL 109 IS THE CURRENT CERTIFICATE OF TITLE

LAND

LOT 126A IN DEPOSITED PLAN 21810

AT MASCOT

LOCAL GOVERNMENT AREA BOTANY BAY

PARISH OF BOTANY COUNTY OF CUMBERLAND

TITLE DIAGRAM DP21810

FIRST SCHEDULE

THE COUNCIL OF THE MUNICIPALITY OF BOTANY

SECOND SCHEDULE (1 NOTIFICATION)

1 RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)

NOTATIONS

UNREGISTERED DEALINGS: NIL

*** END OF SEARCH ***

**Attachment 2 – Council Report and Resolution – Policies and Priorities Meeting dated
26 August 2015**

CONFIDENTIAL**6.1 PROPOSED SALE OF LAND ADJACENT TO HENRY KENDALL ROAD RESERVE, MASCOT**

File No: ROAD-139

Report Author: Rodger Dowsett - Manager of Executive Projects

Responsible Director: Ms Lara Kirchner - General Manager

Date of Preparation: 20 August 2015

EXECUTIVE SUMMARY

This report relates to a request to purchase land that adjoins the road reserve in Henry Kendall Crescent, Mascot. It is recommended that the request be agreed to.

REPORT

Council is in receipt of a request from the owner of 10 and 12 Henry Kendall Crescent, Mascot to purchase land that adjoins the road reserve in Henry Kendall Crescent, Mascot. This would allow the land's incorporation into those two allotments held in private ownership.

The road configuration of Henry Kendall Crescent is depicted below with the two open ends connecting directly with Coward Street. At the top end of Henry Kendall Crescent, that part that is parallel with Coward Street, the nature strip part of the road reserve on its southern aspect has a width of 8 metres (approx.).



The southern part of the nature strip contains as an adjunct to the road reserve an elongated allotment of land irregular in shape of the following dimensions:

Northern Boundary	-	56.7m
Southern Boundary	-	65.8m
Western Boundary	-	5.2m (at curve)
Eastern Boundary	-	5.2m (at curve)
Land Area	-	183m ²

The two adjoining lots, 10 and 12 Henry Kendall Crescent to the elongated allotment each back onto one another and are owned by the one person.

A search of records has revealed that the elongated strip of land between the road reserve of Henry Kendall Crescent and the northern side boundary line of 10 and 12 Henry Kendall Crescent is owned by the Council.

The strip of land identified in the Attachment is owned by Council and is known as Lot 126A in DP 21810. Although it appears to be part of the road reserve, it is not and stands as a separate lot. Therefore subject to process of reclassification from community land to operational land, the land of Lot 126A is capable of subdivision into two approximately equal lots and their sale to the owner of 10 and 12 Henry Kendall Crescent, Mascot for their separate incorporation into the allotments of 10 and 12. The excising of Lot 126A from what is now seen as nature strip will leave a road reserve width of 15.24m which is consistent with the remainder of Henry Kendall Crescent.

The land of Lot 126A has no material benefit to Council.

If Council agrees to selling these parcels of land at highest and best use market value to the adjoining owner, any fees associated with the sale eg. legal, survey and the like would be accepted by the purchaser as a condition of sale. The obligation to effect a subdivision of the lot would also reside with the purchaser.

Conclusion

There is an opportunity to dispose of redundant land owned by the Council to the owner of private land that adjoins this land.

RECOMMENDATION

THAT:

1. The report be received and noted.
2. Council resolve to sell to the owner of 10 and 12 Henry Kendall Crescent, Mascot Lot 126A in DP 21810 at its assessed market valuation;
3. Council undertake the process required to change the land classification of Lot 126A from Community Land to Operational Land; and

4. The General Manager be authorised to sell Lot 126A on behalf of the Council.

1 MEMBERS ONLY REPORTS

CONFIDENTIAL

1.1 PROPOSED SALE OF LAND ADJACENT TO HENRY KENDALL ROAD RESERVE, MASCOT

File No: ROAD-139

On the motion of Councillor Castle, seconded Councillor Glinatsis

THAT:

1. The report be received and noted.
2. Council resolve to sell to the owner of 10 and 12 Henry Kendall Crescent, Mascot Lot 126A in DP 21810 at its assessed market valuation;
3. Council undertake the process required to change the land classification of Lot 126A from Community Land to Operational Land; and
4. The General Manager be authorised to sell Lot 126A on behalf of the Council.

Attachment 3 – Council Resolution – Ordinary Council Meeting dated 26 August 2015

**10.4 MINUTES OF THE POLICIES AND PRIORITIES COMMITTEE MEETING
HELD ON 26 AUGUST 2015**

RECOMMENDATION

THAT: The Minutes of the Policies and Priorities Committee held on 26 August 2015 be received and the recommendations contained therein be approved and adopted.

Attachment 4 - LEP Practice Note PN 09-003 – Written Statement

In accordance with the NSW Department of Planning's LEP Practice Note PN09-003 '*Classification and reclassification of public land through a local environmental plan*', Council must provide a written statement which addresses the specific requirements for the reclassification of public land.

Council intends to reclassify Council owned land at Henry Kendall Crescent, Mascot (Lot 126A, DP 21810) from Community Land to Operational Land via the Planning Proposal process. The Planning Proposal does not propose any changes to the zoning of the subject site.

The changes resulting from the reclassification are addressed in the table below.

LEP Practice Note: PN 09-003	
Classification and reclassification of public land through a local environmental plan	
Requirement	Response
Reason why the Planning Proposal is being prepared	The Planning Proposal is being prepared to reclassify the land to Operational Land to allow Council the option of selling the subject site.
Current and proposed classification	The land is currently classified as Community Land and it is proposed that the land be reclassified to Operation Land.
Reason for the classification	The reclassification would enable the land classification to be consistent with the current zoning and enable opportunities for the integration of the site within the adjoining properties at Nos. 10 and 12 Henry Kendall Crescent, Mascot.
Council's ownership of the land	The subject site is owned by Council.
Nature of Council's interest in the land	The subject site is owned by Council.
How and when the interest was first acquired	Council acquired the land in 1948.
The reasons Council acquired an interest in the land	Council acquired the land as a reserve. However, it has not been used as a public reserve.
Any agreements over the land	There are no agreements over the land.
An indication of any financial loss or gain from the reclassification	According to a recent valuation of No. 10 Henry Kendall Crescent, Mascot the land value is approximately \$1,575 per square metre. The subject site is 189 square metres, equating to a land value of approximately \$297,500.
The asset management objectives being pursued	Council would like to have a greater number of options available for the management of the site, including having the option to sell the site. If the site was sold, Council would not be responsible for ongoing maintenance costs and could reinvest the proceeds into purchasing new open space or upgrading

	existing assets which are of greater benefit to the public.
Whether there has been an agreement for the sale or lease of the land	Council have been approached by the owners of Nos. 10 and 12 Henry Kendall Crescent, Mascot to purchase the site. At its meeting on 26 August 2015, Council resolved to sell the site to the adjoining property owners at its assessed market value. If Council agrees to sell the parcel of land to the adjoining owners, any fees associated with the sale eg. legal, survey and the like would be accepted by the purchaser as a condition of sale. The obligation to effect a subdivision of the lot would also reside with the purchaser.
Relevant matters required in plan making under the <i>Environmental Planning and Assessment Act</i>	The reclassification is proposed to be carried out in accordance with: Section 55 Relevant authority to prepare a planning proposal Section 56 Gateway Determination Section 57 Community Consultation
A copy of the practice note	The NSW Department of Planning's LEP Practice Note PN09-003 '<i>Classification and reclassification of public land through a local environmental plan</i>' forms part of the public exhibition and is attached. Council is seeking to reclassify land via the process in Column 2 of Attachment 1 of PN09-003 entitled "<i>Requirements after commencement of the 2008 Part 3 Amendment to the EP&A Act when it applies to a proposal</i>".



Note	PN 09–003
Date	12 June 2009
Related	Supersedes (re)classification advice in Best Practice Guideline (1997)

Classification and reclassification of public land through a local environmental plan

The purpose of this practice note is to update (and supersede) previous guidance on the process to classify or reclassify public land through a local environmental plan including a principal plan in accordance with the Standard Instrument.

Introduction

'Public land' is any land (including a public reserve) vested in, or under the control of, council. Exceptions include roads, land to which the *Crown Lands Act 1989* applies, a common, or land to which the *Trustees of Schools of Arts Enabling Act 1902* applies.

'Community' land is generally open to the public, for example, parks, reserves or sports grounds.

'Operational' land may be used for other purposes, for example, as works depots or garages, or held by council as a temporary asset.

'Classification' of public land refers to the process when this land is first acquired and first classified as either 'operational' land or 'community' land.

'Reclassification' of public land refers to the process of changing the classification of 'operational' land to 'community' land or from 'community' land to 'operational' land.

How is public land classified or reclassified?

Depending on circumstances, this is undertaken by either:

- resolution of council under section 31, 32 or 33 of the *Local Government Act 1993* (LG Act) [through section 27(2)], or
- a local environmental plan (LEP) under the *Environmental Planning and Assessment Act 1979* (EP&A Act) [through section 27(1) of the LG Act].

In both cases, it is not possible for councils to delegate their decision to classify or reclassify public land [section 377(1) of the LG Act]. Councils are encouraged to classify or reclassify land through the LG Act wherever circumstances conform to sections 31, 32 or 33 of the LG Act.

The remaining parts of this practice note identify the key areas councils must consider when proposing to classify or reclassify public land by means of a local environmental plan (LEP) under the second option.

This practice note supersedes the sections relating to classification and reclassification in *LEPs and council land*, Best Practice Guideline (Department of Urban Affairs and Planning 1997).

Procedure under the EP&A Act

Where classification or reclassification is proposed through an LEP, council is advised to include the proposal as early as possible in the draft LEP or planning proposal. If the public land to be classified or reclassified is not owned by council, landowner's consent is required prior to either section 54 or section 56 of the EP&A Act (when the Part 3 amendment to the EP&A Act applies).¹

The proposal would then form part of the material presented through either section 54 or section 56 of the EP&A Act (when the Part 3 amendment to the EP&A Act applies).

¹ In relation to the Part 3 amendment, council should also check the changes to the EP&A Act and Regulation once these commence.

To assist councils, the steps in preparing material either as a draft LEP or planning proposal are summarised in Attachment 1. Column 1 of Attachment 1 sets out the requirements in accordance with the EP&A Act **prior** to the Part 3 amendment commencing. Column 2 of the attachment sets out the requirements **after** the Part 3 amendment commences. In relation to the Part 3 amendment, council should also check the savings and transitional arrangements under the EP&A Act, once these commence.

Where land is proposed to be reserved for a public purpose such as provision of public services and facilities, section 117 Direction 6.2—Reserving Land for Public Purposes applies. The Direction also sets out requirements when a reservation of public land for such purposes is no longer required.

A summary of relevant matters that need to be available at the time the planning proposal is first forwarded are listed in Attachment 2 under 'Exhibition'. Other matters for exhibition and later stages are listed separately in that attachment.

Provisions in the Standard Instrument

The following Standard Instrument provisions are relevant to the classification and reclassification of public land.

Clause 5.2—Classification and reclassification of public land

The purpose of this clause is to enable councils to classify or reclassify public land identified in Schedule 4 of the Standard Instrument. Only public land to be classified or reclassified by publication on the NSW legislation website of that principal LEP is to be identified in the schedule. Schedule 4 must not contain a reference to any land already classified or reclassified.

Part 1 Schedule 4—change to 'operational' land, no interest changes

Land is identified in Part 1 of Schedule 4 where the trusts, estates, interests, dedications, conditions, restrictions or covenants over the land are to remain after reclassification to 'operational land', i.e. where no interests will change.

Part 2 Schedule 4—change to 'operational' land and an interest will change

Land is identified in Part 2 of Schedule 4 where the land is to be classified or reclassified as 'operational land' and some of the trusts, estates, interests, dedications, conditions, restrictions, or covenants over the land remain. The interests to remain are identified in column 3 of this part of the schedule.

Part 3 Schedule 4—change to 'community' land

Land proposed to be classified or reclassified as 'community land' through the LEP is identified in Part 3 of the schedule.

Where there is no land to be classified or reclassified through the LEP, the clause remains with the schedule empty.

General requirements for exhibition

Public exhibition of the LEP occurs after certification of the LEP (in accordance with section 66 of the EP&A Act). Public exhibition of a planning proposal may occur in accordance with section 57(2) (when the Part 3 amendment to the EP&A Act commences). To assist the public in understanding an exhibited draft LEP or planning proposal to classify or reclassify land, requirements are summarised in Attachment 2.

A copy of council's response to these requirements together with a copy of this practice note is to be part of material displayed during public exhibition of an LEP or planning proposal to reclassify or classify public land.

Public hearing

A public hearing must be held when 'community land' is proposed to be reclassified as 'operational land'.

To ensure council and the community have sufficient time to consider relevant matters associated with the proposed change, the public hearing is held **after** the close of the exhibition period under section 68 of the EP&A Act (section 29 of the LG Act) for an LEP and in accordance with section 57(6) (when the Part 3 amendment to the EP&A Act commences).

Public hearing provisions are set out in the EP&A Regulation (clause 14) and public notice of a hearing must be sent or published **at least 21 days** before the start of the public hearing.

The independence of the person chairing the public hearing and requirements relating to the preparation and inspection of reports from the hearing are specified in section 47G of the LG Act.

Further information

A copy of this practice note, Standard Instrument, and other specific practice notes and planning circulars on using the Standard Instrument, can be accessed on the Department's website <http://www.planning.nsw.gov.au/lep/index.asp>

Authorised by:

Sam Haddad, Director-General

List of attachments:

1. Main steps (in sequence) for classifying and reclassifying public land under the *Environmental Planning and Assessment Act 1979*
2. General requirements for classification or reclassification of land through local environmental plans and planning proposals

Attachment 1. Main steps (in sequence) for classifying and reclassifying public land under the *Environmental Planning and Assessment Act 1979*

Requirements prior to commencement of the 2008 Part 3 amendment to the EP&A Act	Requirements after commencement of the 2008 Part 3 amendment to the EP&A Act when it applies to a proposal
Council notifies the Department of a decision to prepare a draft LEP including a proposal to classify or reclassify public land (section 54 of the EP&A Act). This notification is accompanied by an appropriate level of information including for the following: - a justification for the proposal - reasons why council acquired an interest - details that would also accompany a plan at exhibition stage (see Attachment 2) - any proposal to extinguish or retain other interests in the land through the reclassification - a justification /explanation as to why such interests are being extinguished - any rezoning associated with the classification/ reclassification - any preliminary comments by a relevant government agency, including agency's consent where land is vested or held by an agency other than council - consideration of any relevant directions e.g. section 117 Direction 6.2—Reserving Land for Public Purposes, where appropriate.	A planning proposal is forwarded by council to the Minister (new section 56 of the EP&A Act), including a proposal to classify or reclassify public land. This proposal contains an appropriate level of information including for the following: - a justification for the planning proposal - reasons why council acquired an interest - details that would also accompany a plan at exhibition stage (see Attachment 2) - any proposal to extinguish or retain other interests in the land through the reclassification - a justification /explanation as to why such interests are being extinguished - any rezoning associated with the classification/ reclassification - any preliminary comments by a relevant government agency, including an agency in which the land is vested or held - consideration of any relevant directions, e.g. section 117 Direction 6.2—Reserving Land for Public Purposes, where appropriate.
Consultation with relevant public agencies and other stakeholders (section 62 of the EP&A Act).	See below.
After consultation, council submits a draft LEP to the Department and, subject to the issue of a section 65 certificate, the draft LEP is exhibited for a minimum of 28 days and the public invited to provide written submissions to the exhibited LEP within the exhibition period.	Following review, at the gateway, if the planning proposal is to proceed, requirements for the various stages of the proposal, including consultation requirements, will be provided to council (new section 56(1), 56(2) of the EP&A Act).
Where a draft LEP includes reclassification of 'community' land to 'operational' land, council holds a public hearing into the proposal in accordance with section 68 of the EP&A Act (section 29 of the Local Government Act). *	Where a planning proposal includes reclassification of 'community' land to 'operational' land, council holds a public hearing into the proposal in accordance with new section 57(6) of the EP&A Act. *
Such a hearing follows the requirements of clause 14 of the EP&A Regulation including that a notice of the details for the hearing must be published in a local newspaper and sent to any person requesting a hearing a minimum of 21 days prior to the hearing.	Such a hearing follows the requirements of clause 14 of the EP&A Regulation including that a notice of the details for the hearing must be published in a local newspaper and sent to any person requesting a hearing a minimum of 21 days prior to the hearing.
Where it is considered appropriate, the draft LEP is submitted to the Director-General together with details of all submissions and the report of the public hearing, together with a statement of other matters set out in section 68 of the EP&A Act.	Consultation for a planning proposal under new section 57 of the EP&A Act is completed when council has considered any submissions made concerning the proposed instrument and the report of any public hearing. Where the planning proposal is to proceed, the Director-General makes arrangements for the drafting of the LEP to give effect to the final proposal (new section 59 of the EP&A Act).
The Director-General furnishes a report to the Minister if the Director-General is satisfied that the draft LEP has been prepared in accordance with any applicable standard instrument under section 33A (section 69 of the EP&A Act).	
The Minister determines whether to make the LEP under section 70 of the EP&A Act. **	The Minister (or Minister's delegate) determines whether to make the LEP under new section 59 of the EP&A Act. **

Notes:

* Where a proposal includes a classification of 'operational' land to 'community' land, a public hearing is not generally required.

** Where a reclassification proposes to extinguish other interests in the land, the approval of the Governor is required in accordance with section 30 of the LG Act.

Attachment 2. General requirements for classification or reclassification of land through local environmental plans and planning proposals

Exhibition

When exhibiting a planning proposal or draft LEP to classify or reclassify public land, council must provide a written statement including the following:

- the reasons why the draft LEP or planning proposal is being prepared including the planning merits of the proposal, e.g. the findings of a centres' strategy, council's intention to dispose of the land, provision of open space in a town centre
- the current and proposed classification of the land
- the reasons for the reclassification including how this relates to council's strategic framework, council's proposed future use of the land, proposed zones, site specific requirements, e.g. heritage controls, anticipated physical or operational changes resulting from the reclassification
- council's ownership of the land, if this applies
- the nature of council's interest in the land, e.g. council has a 50 year lease over the site
- how and when the interest was first acquired, e.g. the land was purchased in 20XX through section 94
- the reasons council acquired an interest in the land, e.g. for the extension of an existing park; council was given responsibility for the land by a State agency
- any agreements over the land together with their duration, terms, controls, agreement to dispose of the land, e.g. whether any aspect of the draft LEP or planning proposal formed part of the agreement to dispose of the land and any terms of any such agreement
- an indication, as a minimum, of the magnitude of any financial gain or loss from the reclassification and of the type(s) of benefit that could arise e.g. council could indicate the magnitude of value added to the land based on comparable sites such as the land is currently valued at \$1500 per square metre, nearby land zoned for business development is valued at between \$2000 and \$5000 per square metre
- the asset management objectives being pursued, the manner in which they will be achieved and the type of benefits the council wants, i.e. without necessarily providing details of any possible financial arrangements, how the council may or will benefit financially
- whether there has been an agreement for the sale or lease of the land; the basic details of any such agreement and, if relevant, when council intends to realise its asset, either

immediately after rezoning/reclassification or at a later time

- Relevant matters required in plan making under the EP&A Act
- A copy of this practice note must be included in the exhibition material to assist the community in identifying information requirements. Council staff may wish to identify the column in Attachment 1 that applies.

Post-exhibition

Once a decision has been made regarding whether the draft LEP or planning proposal proceeds, everyone who made a written submission must be notified in writing of the decision.

Written notification must occur within 14 days of the decision and needs to clearly identify the reasons for council's decision. An explanation must be included of how issues raised in submissions were addressed including the reasons for council's decision.

The final report after exhibition to either the Director-General or the Minister should include:

- a brief summary of council's interest in the land
- issues raised in any relevant submissions
- the dates of the exhibition and the hearing
- an explanation of how issues raised were addressed or resolved.

Additional matters to be addressed when the Governor's approval is required

The Governor's approval is required for the extinguishment of public reserve status and other interests in land which a council proposes to reclassify from 'community' to 'operational' status under the LG Act.

Council must provide sufficient information in accordance with this practice note to inform the Minister of any public reserve and/or other third party property interests (e.g. trust, covenant, easement) that are proposed to be extinguished upon the making of such a draft LEP or planning proposal.

Important note

This note does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this note.

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Attachment 5 - List of State Environmental Planning Policies

State Environmental Planning Policy (SEPP)	Consistent with applicable State Environmental Planning Policies
<i>No.1 – Development Standards</i>	Not applicable
<i>No.14 – Coastal Wetlands</i>	Not applicable
<i>No.15 – Rural Landsharing Communities</i>	Not applicable
<i>No.19 – Bushland in Urban Areas</i>	Not applicable
<i>No.21 – Caravan Parks</i>	Not applicable
<i>No.26 – Littoral Rainforests</i>	Not applicable
<i>No.29 – Western Sydney Recreation Area</i>	Not applicable
<i>No.30 – Intensive Agriculture</i>	Not applicable
<i>No.32 – Urban Consolidation (Redevelopment of Urban Land)</i>	Consistent The Planning Proposal will reclassify underutilised Council owned Community Land to Operational Land which will permit the sale of the site to the adjoining property owners for residential development. The Proposal promotes the orderly and economic use and development of this surplus land.
<i>No.33 – Hazardous and Offensive Development</i>	Not applicable
<i>No.36 – Manufactured Home Estates</i>	Not applicable
<i>No.39 – Spit Island Bird Habitat</i>	Not applicable
<i>No.44 – Koala Habitat Protection</i>	Not applicable
<i>No.47 – Moore Park Showground</i>	Not applicable
<i>No.50 – Canal Estate Development</i>	Not applicable
<i>No.52 – Farm Dams and Other Works in Land and Water Management Plan Areas</i>	Not applicable
<i>No.55 – Remediation</i>	Not applicable
<i>No.59 – Central Western Sydney Regional Open Space and Residential</i>	Not applicable
<i>No.62 – Sustainable Aquaculture</i>	Not applicable
<i>No.64 – Advertising and Signage</i>	Not applicable
<i>No.65 – Design Quality of Residential Apartment Development</i>	Not applicable
<i>No.70 – Affordable Housing (Revised Schemes)</i>	Not applicable
<i>No.71 – Coastal Protection</i>	Not applicable
<i>Affordable Rental Housing (2009)</i>	Not applicable
<i>Building Sustainability Index: BASIX (2004)</i>	Consistent The Planning Proposal does not contain provisions that contradict or would hinder application of this SEPP.
<i>Exempt and Complying Development Codes (2008)</i>	Consistent The Planning Proposal does not contain provisions that contradict or would hinder application of this SEPP.
<i>Housing for Seniors or People with a Disability (2004)</i>	Not applicable

<i>Infrastructure (2007)</i>	Consistent The Planning Proposal does not contain provisions that contradict or would hinder application of this SEPP.
<i>Kosciuszko National Park – Alpine Resorts (2007)</i>	Not applicable
<i>Kurnell Peninsula (1989)</i>	Not applicable
<i>Major Development (2005)</i>	Not applicable
<i>Mining, Petroleum Production and Extractive Industries (2007)</i>	Not applicable
<i>Miscellaneous Consent Provisions (2007)</i>	Not applicable
<i>Penrith Lakes Scheme (1989)</i>	Not applicable
<i>Rural Lands (2008)</i>	Not applicable
<i>SEPP 53 Transitional Provisions (2011)</i>	Not applicable
<i>State and Regional Development (2011)</i>	Not applicable
<i>Sydney Drinking Water Catchment (2011)</i>	Not applicable
<i>Sydney Region Growth Centres (2006)</i>	Not applicable
<i>Three Ports (2013)</i>	Not applicable
<i>Urban Renewal (2010)</i>	Not applicable
<i>Western Sydney Employment Area (2009)</i>	Not applicable
<i>Western Sydney Parklands (2009)</i>	Not applicable
<i>Sydney Regional Environmental Plan No.8 - Central Coast Plateau Areas</i>	Not applicable
<i>Sydney Regional Environmental Plan No. 9 – Extractive Industry (No. 2 – 1995)</i>	Not applicable
<i>Sydney Regional Environmental Plan No. 16 – Walsh Bay</i>	Not applicable
<i>Sydney Regional Environmental Plan No. 18 – Public Transport Corridors</i>	Not applicable
<i>Sydney Regional Environmental Plan No. 19 – Rouse Hill Development Area</i>	Not applicable
<i>Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No. 2 – 1997)</i>	Not applicable
<i>Sydney Regional Environmental Plan No. 24 – Homebush Bay Area</i>	Not applicable
<i>Sydney Regional Environmental Plan No. 26 – City West</i>	Not applicable
<i>Sydney Regional Environmental Plan No. 30 – St Marys</i>	Not applicable
<i>Sydney Regional Environmental Plan No. 33 – Cooks Cove</i>	Not applicable
<i>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</i>	Not applicable