

COUNCIL MEETING
8th DECEMBER 2009

ATTACHMENT E

HOUSEKEEPING AMENDMENTS TO LEICHHARDT LEP 2000

Attachment E – PLANNING PROPOSAL

ITEM 5

107 ELLIOT STREET (PELLEGRINI'S) & PARINGA RESERVE, BALMAIN

Part 1 – Objectives or Intended Outcomes

This amendment proposes to zone 107 Elliot Street, Balmain (currently unzoned land), to 'Open Space' and to reclassify that portion of Paringa Reserve currently used as a refreshment room from community to operational land.

Both amendments will ensure LEP 2000 reflects the uses occurring and allow Council to resolve the long standing leasing issues on the site.

Part 2 – Explanation of the Provisions

- Amend LEP 2000 Land Zoning Map as follows, to zone 107 Elliot Street Balmain, Lot 1 DP 852863 & Lot 26 DP 850832 (plan for lease purposes) to 'Open Space' (refer to Appendix 1).
- Reclassify from community to operational that part of Paringa Reserve, Lot E DP 36161, occupied by the refreshment room pursuant to the *Local Government Act 1993* (refer to Appendix 2) and amend the Leichhardt LEP 2000 table of *Classification and Reclassification of Public Land as Operational Land* accordingly.
- Insert a site specific provision on Lot 1 DP 852863, Lot 26 DP 850832 and that part of lot E DP 36161 which has been reclassified that allows refreshment room as a permissible use limited to the land currently occupied by Pellegrini's Restaurant (refer to Appendix 1 & 2).
- Exhibit the draft plan consistent with LEP practice note "Classification and reclassification of public land through a local environmental plan" (PN 09-003), (refer to Appendix 3).

Part 3 – Justification

Section A – Need for planning proposal

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

No, the planning proposal is to ensure LEP 2000 reflects the uses currently occurring and allow Council to resolve the long standing leasing issues on the site.

The rationale is discussed as follows:

This item relates to one building, including covered terrace, which has existed in its current form for about 15 years. It is constructed for use as a restaurant by one operator only and could not sensibly be partitioned into a number of separate premises. The building is constructed over 3 lots with different zonings and classifications:

- part of lot 26 DP 850832 which is owned by NSW Maritime and leased by it to Leichhardt Council, is classified as operational land under the Local Government Act 1993 and is unzoned;
- lot 1 DP 852863 which is owned by Leichhardt Council, is classified as operational land under the Local Government Act, 1993 and is unzoned;
- part of lot E DP 36161 which is owned by Leichhardt Council and known as Paringa Reserve, is classified as community land under the Local Government Act, 1993 and is zoned open space

It is sensible that the whole building be under the same zoning and the same classification, to ensure that Council and any lessee are able to deal with all parts of the building on a consistent basis. Otherwise, some parts of the building may legally be used for a purpose and the balance of the building may not be able to be used for the same purpose even though it is all one building, which would have adverse effects on its current use and on Council's ability to lease and deal with the building in the future to obtain the best outcome for the public.

It is considered in the public interest to zone the currently unzoned sections open space, like the part of Paringa Reserve which is zoned open space, and include a site specific provision to allow a restaurant (refreshment room) rather than seek to rezone the whole of the site of the restaurant building as Business which would allow use in the future which are non compatible with the location of the building on the entry to the wharf and reserve. It is sought only to formalise and legally permit the current use of restaurant, but in a way that would allow improvements to the building and its operation in the future.

For more information refer to Council Report "*Housekeeping Amendments to Leichhardt LEP 2000*".

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

The proposal involves statutory amendments to the Leichhardt LEP 2000 therefore it is considered that the planning proposal is the best way of achieving the intended outcomes and objectives.

3. *Is there a net community benefit?*

The planning proposal will enable the long standing lease issues to be resolved which will in effect ensure the effective management and operation of the site in the future.

Section B – Relationship to strategic planning framework.

4. *Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?*

The amendment proposed is consistent with the objectives and actions contained within the *Inner West Draft Subregional Strategy*. It is considered that there are no changes to policy and the proposed amendments are only to reflect the current use of the site.

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

The planning proposal is consistent with following objectives of Council's Community Strategic Plan '*Leichhardt 2020+*':

2.4 "Plan local community facilities, businesses and services to fit the places we live and the way we want to live" and

3.2 "Develop a clear consistent and equitable planning framework and process that enables people to develop our area according to a shared vision for the community".

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

The planning proposal is consistent with State Environmental Planning Policies (refer to Appendix 4 & 5).

7. *Is the planning proposal consistent with applicable Ministerial Directions (s.117 Directions)?*

The planning proposal is consistent with Section 117 Directions (refer to Appendix 6).

Section C – Environmental, social and economic impact

8. *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 does not apply to land that has been identified as containing critical habitat or threatened species, populations or ecological communities, or their habitats. Should it be discovered through community consultation, or by another means, that species, populations, communities or habitats may be adversely affected, this will be taken into consideration and the planning proposal will be modified if necessary.

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

The proposal being of minor significance will not have any environmental effects. Where future development applications are lodged a full merit assessment of environmental effects will be made at the time.

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

Given the nature of the proposal it is not expected that the proposal will have any social or economic effects, other than those previously discussed.

Section D – State and Commonwealth interests

11. *Is there adequate public infrastructure for the planning proposal?*

Given the nature (administrative changes) of the proposal the above question is not considered relevant.

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

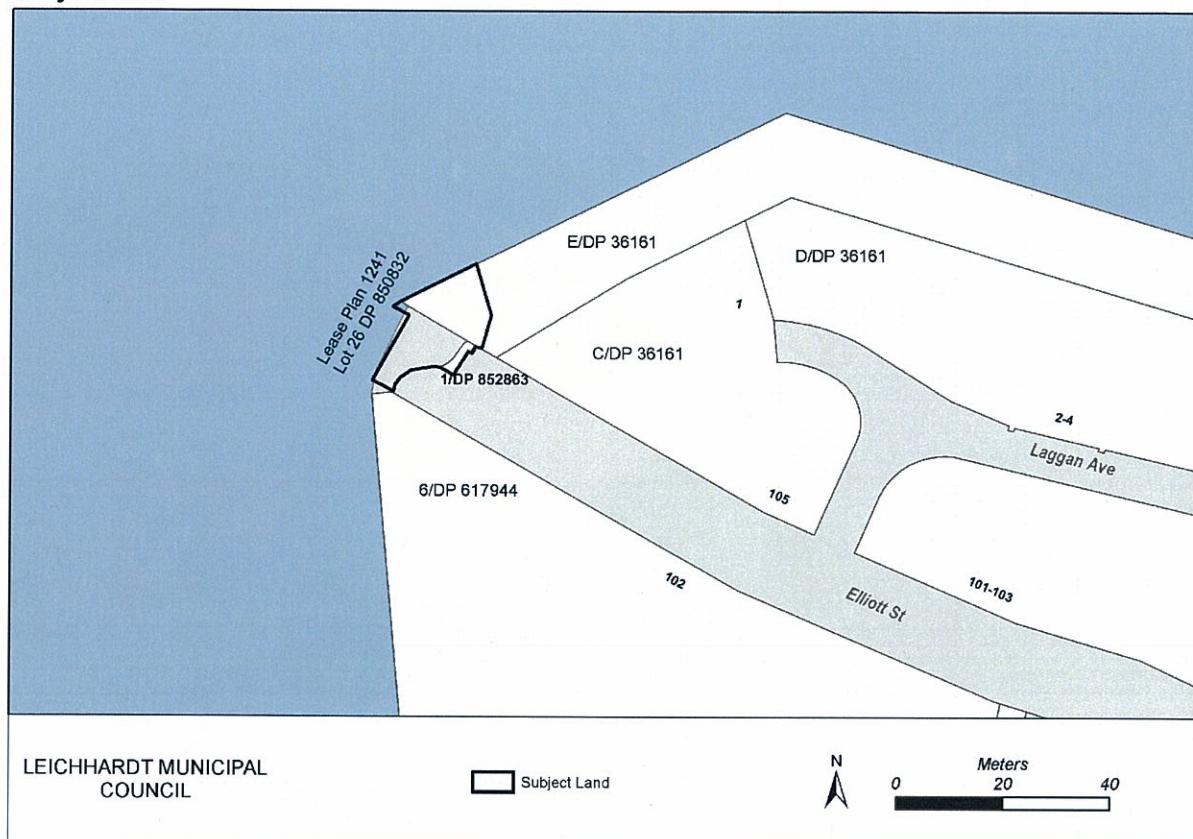
Consultation has not been carried out at this stage. This section of the planning proposal is completed following the gateway determination which identifies which State and Commonwealth Public Authorities are to be consulted. However; consultation is expected to be undertaken with NSW Maritime given that it is a land owner of a portion of the site.

Part 4 – Community Consultation

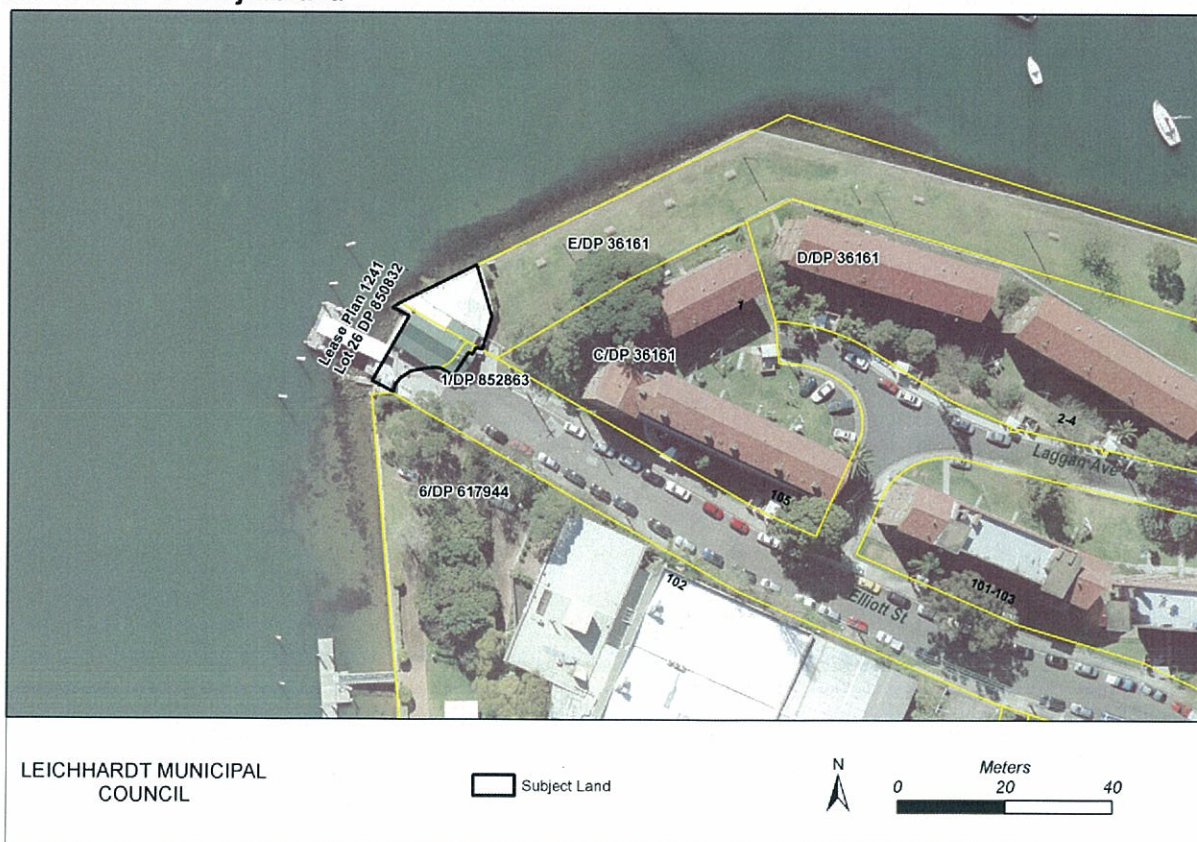
This component of the Housekeeping LEP involves a reclassification of public land; community consultation is proposed to involve an exhibition period of 28 days and a public hearing in accordance with "A guide to preparing local environmental plans". Additionally, it will be exhibited consistent LEP practice note "Classification and reclassification of public land through a local environmental plan" (PN 09-003).

Appendix 1:

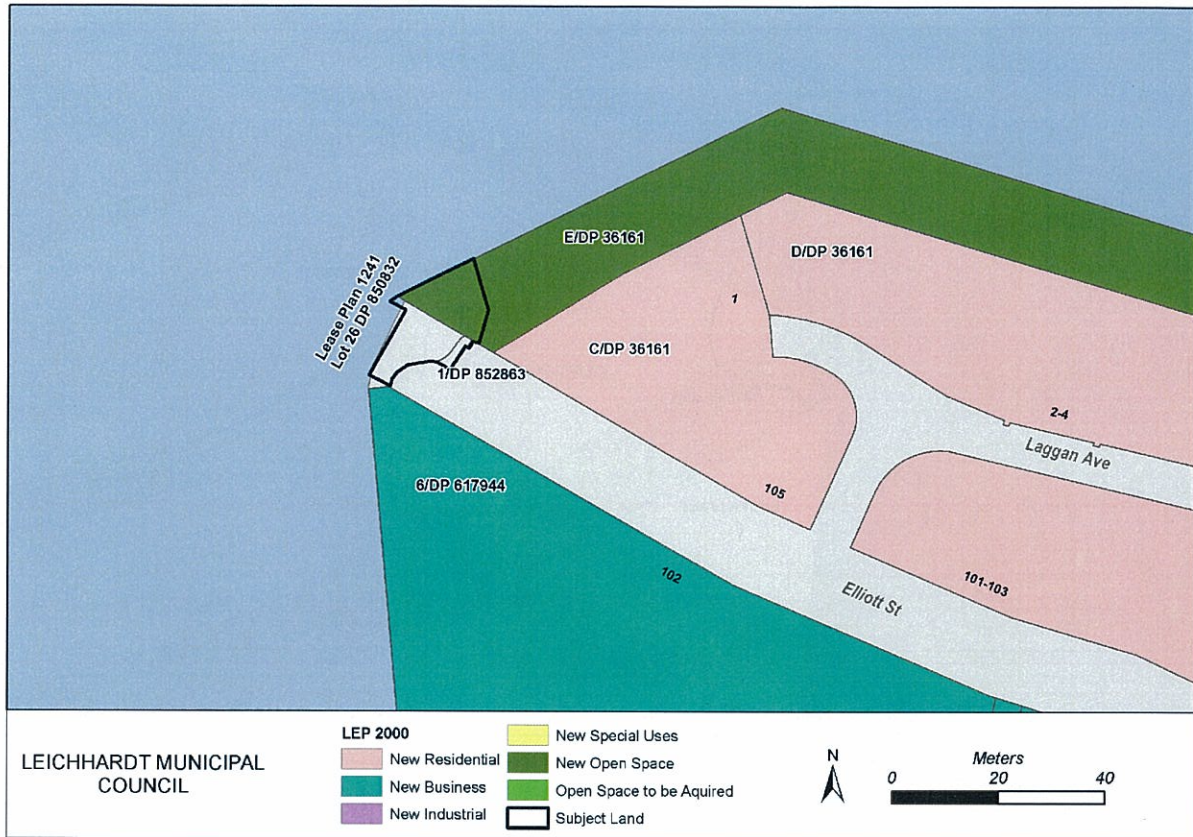
Subject land



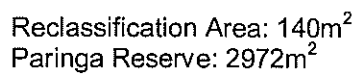
Aerial view of Subject land



Current Zoning of Subject Land



Reclassification area of Paringa Reserve



Reclassification Area: 140m²
Paringa Reserve: 2972m²

Appendix 3: Reclassification General Requirements (PN 09-003)

The following statements respond to the requirements for the reclassification of a portion of Paringa Reserve, Balmain under the *Environmental Planning & Assessment Act 1979 (PN 09-003)*

- ***Reasons why the draft LEP or planning proposal is being prepared including the planning merits of the proposal***

The planning proposal is required to ensure LEP 2000 reflects the uses currently occurring and allow Council to resolve the long standing leasing issues on the site. This will in effect ensure the effective management and operation of the site in the future.

- ***The current and proposed classification of the land***

Paringa Reserve, being lot E DP 36161 (2972m²) is currently classified as community land. The subject land (reclassification area) is a small part (140m²) of Paringa Reserve comprising the area of encroachment of the building and terrace.

- ***The reasons for the reclassification including how this relates to councils strategic framework, council's proposed future use of the land, proposed zones, site specific requirements***

This amendment proposes to zone 107 Elliot Street, Balmain (currently unzoned land), to 'Open Space' and to reclassify that portion of Paringa Reserve currently used as a refreshment room from community to operational land. *

Both amendments are required to ensure LEP 2000 reflects the uses currently occurring on the site. Furthermore it will bring the entire existing building under the one set of classifications, zoning and planning provisions to enable the long standing leasing issues to be resolved and the orderly and proper leasing of the building in the future.

The reclassification of a portion of Paringa Reserve is not about the disposal of Council land. Council's intention is to invite expressions of interest for a new lease of the restaurant; which is expected to bring both market rent and a necessary upgrade to the building.

- ***Council's ownership of the land, if this applies***

Council is the owner of Paringa Reserve, being lot E DP 36161 (2972m²), of which the subject land is a small part (140m²).

- ***The nature of council's interest in the land***

Leichhardt Council owns the land in fee simple and is the registered proprietor. The certificate of title notes that it is a public reserve.

- ***How and when the interest was first acquired***

Council acquired the land on 20 February 1959 when the Department of Housing published a notice in the Government Gazette vesting the land in Leichhardt Council. Council subsequently (in 2003) obtained the certificate of title in its name.

- ***The reasons council acquired an interest in the land***

The Department of Housing was the subdivider of DP 36161 and constructed public housing flats on lots A-D. The Department of Housing gazetted the vesting of lot E in Leichhardt Council as a public reserve.

- ***Any agreements over the land together with their duration, terms, controls, agreement to dispose of the land***

There is not currently a formal agreement in respect of the part of the land sought to be reclassified. However, that part is occupied by the lessee of the building which is substantially on the adjacent lands owned by Council and NSW Maritime and which building and terrace encroach onto the part of Paringa Reserve sought to be reclassified. The current lessee, who operates a restaurant in the building, is holding over from month to month. There is an intention, following reclassification, to invite expressions of interest for a new lease of the entire building for restaurant use but there is no agreement for this. There is no agreement or intention to dispose of the land.

- ***An indication of the magnitude of any financial gain or loss from the reclassification and the types of benefit that could arise***

The main aim of the proposed reclassification (together with the proposed zoning of adjacent land and the proposed site specific provisions) is to bring the entire existing building under the one set of classifications, zoning and planning provisions to enable the orderly and proper leasing of the building. Currently, council is unable to obtain market rent due to the various issues. Once the amendment is finalised, Council will be able to invite expressions of interest for a new lease. This will bring both market rent and a necessary upgrade to the building. However, it needs to be noted that part of the market rent will have to be paid to NSW Maritime as owner of one of the lots on which the building is constructed. The financial benefit to council is expected to be in the order of \$50,000 to \$100,000 per year.

- ***The asset management objectives being pursued, the manner in which they will be achieved***

The main aim of the proposed reclassification (together with the proposed zoning of adjacent land and the proposed site specific provisions) is to bring the entire existing building under the one set of classifications, zoning and planning provisions to enable the orderly and proper leasing of the building. Currently, council is unable to obtain market rent due to the various issues with the building being partly on council owned and leased land which is operational and partly encroaching onto Paringa Reserve. Once the amendment is finalised, Council will be able to invite expressions of interest for a new lease. This will bring both market rent and a necessary upgrade to the building.

- ***Whether there has been an agreement for the sale or lease of the land***

No, there has not been any agreement for the sale or lease of the land. As stated above, once the amendment is finalised for the small part of the reserve involved, Council will invited expressions of interest for a new lease of the entire restaurant building.

Council does not intend to sell the land.

Appendix 4:

Consideration of State Environmental Planning Policies (SEPPs)

SEPP Title	Applicable	Consistent	Reason for inconsistency
1. Development Standards	No	N/A	
4. Development without Consent and Miscellaneous Complying Development	Yes	Y	
6. Number of Storeys in a Building	No	N/A	
14. Coastal Wetlands	No	N/A	
15. Rural Landsharing Communities	No	N/A	
19. Bushland in Urban Areas	No	N/A	
21. Caravan Parks	No	N/A	
22. Shops and Commercial Premises	No	N/A	
26. Littoral Rainforests	No	N/A	
29. Western Sydney Recreation Area	No	N/A	
30. Intensive Agriculture	No	N/A	
32. Urban Consolidation (Redevelopment of Urban Land)	No	N/A	
33. Hazardous and Offensive Development	No	N/A	
36. Manufactured Home Estates	No	N/A	
39. Spit Island Bird Habitat	No	N/A	
41. Casino Entertainment Complex	No	N/A	
44. Koala Habitat Protection	No	N/A	
47. Moore Park Showground	No	N/A	
50. Canal Estate Development	No	N/A	
52. Farm Dams and Other Works in Land and Water Management Plan Areas	No	N/A	
53. Metropolitan Residential Development	No	N/A	
55. Remediation of Land	Yes	Y	
59. Central Western Sydney Regional Open Space and Residential	No	N/A	
60. Exempt and Complying Development	No	N/A	
62. Sustainable Aquaculture	No	N/A	
64. Advertising and Signage	No	N/A	
65. Design Quality of Residential Flat Development	No	N/A	
70. Affordable Housing (Revised Schemes)	No	N/A	
71. Coastal Protection	No	N/A	
SEPP Affordable Rental Housing 2009	No	N/A	
SEPP Building Sustainability Index: BASIX 2004	No	N/A	
Exempt and Complying Development Codes) 2008	No	N/A	
Housing for Seniors or People with a Disability 2004	No	N/A	
SEPP Infrastructure 2007	Yes	Y	
SEPP Kosciuszko National Park – Alpine Resorts 2007	No	N/A	
SEPP Major Development 2005	Yes	Y	
SEPP Mining, Petroleum Production and Extractive Industries 2007	No	N/A	
SEPP Rural Lands 2008	No	N/A	
SEPP Sydney Region Growth Centres 2006	No	N/A	
SEPP Temporary Structures and Places of Public Entertainment 2007	Yes	Y	
SEPP Western Sydney Employment Area 2009	No	N/A	
SEPP Western Sydney Parklands 2009	No	N/A	

Appendix 5:

Consideration of deemed State Environmental Planning Policies (SEPPs) (former Regional Environmental Plans (REPs))

REP Title	Applicable	Consistent	Reason for Inconsistency
5. Chatswood Town Centre	No	N/A	
8. Central Coast Plateau Areas	No	N/A	
9. Extractive Industry (No 2—1995)	No	N/A	
11. Penrith Lakes Scheme	No	N/A	
13. Mulgoa Valley	No	N/A	
16. Walsh Bay	No	N/A	
17. Kurnell Peninsula (1989)	No	N/A	
18. Public Transport Corridors	No	N/A	
19. Rouse Hill Development Area	No	N/A	
20. Hawkesbury-Nepean River (No 2—1997)	No	N/A	
24. Homebush Bay Area	No	N/A	
25. Orchard Hills	No	N/A	
26. City West	No	N/A	
28. Parramatta	No	N/A	
29. Rhodes Peninsula	No	N/A	
30. St Marys	No	N/A	
33. Cooks Cove	No	N/A	
SREP Sydney Harbour Catchment 2005	Yes	Y	

Appendix 6:

Consideration of Ministerial Directions

s.117 Direction Title	Applicable	Consistent	Reason for Inconsistency
1. Employment & Resources			
1.1 Business and Industrial Zones	Yes	Yes	
1.2 Rural Zones	No	NA	
1.3 Mining, Petroleum Production and Extractive Industries	No	NA	
1.4 Oyster Aquaculture	No	NA	
1.5. Rural lands	No	NA	
2. Environment & Heritage			
2.1 Environment Protection Zones	No	N/A	
2.2 Coastal protection	No	N/A	
2.3 Heritage Conservation	Yes	Yes	
2.4 Recreation Vehicle Areas	No	N/A	
3. Housing Infrastructure & Urban Development			
3.1 Residential Zones	Yes	Yes	
3.2 Caravan parks	No	N/A	
3.3 Home Occupations	No	N/A	
3.4 Integrating Land Use & Transport	No	N/A	
3.5 Development near licensed aerodromes	No	N/A	
4. Hazard & Risk			
4.1 Acid Sulphate Soils	No	N/A	
4.2 Mine Subsidence and Unstable land	No	N/A	
4.3 Flood Prone Land	Yes	Yes	
4.4 Planning for Bush Fire Protection	No	N/A	
5. Regional Planning			
5.1 Implementation of Regional Strategies	No	N/A	
5.2 Sydney Drinking Water Catchments	No	N/A	
5.3 Farmland of State and Regional Significant on the NSW Far North Coast	No	N/A	
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	No	N/A	
5.5 Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA)	No	N/A	
5.6 Sydney to Canberra Corridor (Revoked 10 July 2008. See amended Direction 5.1)	No	N/A	
5.7 Central Coast (Revoked 10 July 2008. See amended Direction 5.1)	No	N/A	
5.8 Second Sydney Airport: Badgerys Creek	No	N/A	
6. Local Plan Making			
6.1 Approval and Referral Requirements	Yes	Yes	
6.2 Reserving Land for Public Purposes	No	N/A	
6.3 Site Specific Provisions	Yes	Yes	
7. Metropolitan Planning			
Implementation of the Metropolitan Strategy	Yes	Yes	