



Business Paper

Shire Planning Committee

Monday, 5 February 2018

6.30pm

**Council Chambers,
Level 2, Administration Building,
4-20 Eton Street, Sutherland**

SUTHERLANDSHIRE

ORDER OF BUSINESS

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PLN027-18 Results of Exhibition of Draft SSDCP Amendment 1

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PLN002A-18 Recruitment of Community Representatives for the Independent Hearing
and Assessment Panel

PLN003A-18 Appointment of Expert Members for the mandatory Independent Hearing
and Assessment Panel

PLN026-18 SUTHERLAND SHIRE HOUSING AFFORDABILITY REPORT

Attachments: Nil

EXECUTIVE SUMMARY

- There is an increasing lack of affordable housing in Sutherland Shire that is evidenced in spatially clustered rental stress.
- Declining housing affordability affects the ability to achieve a diverse local population which ultimately affects the ability of business to attract key workers on low to moderate incomes.
- Council currently has very little ability to facilitate the delivery of affordable housing.
- NSW Planning & Environment has sought feedback on a draft amendment to State Environmental Planning Policy No.70 Affordable Housing (SEPP70). It proposes to add five new Councils to SEPP70 allowing them to levy new development towards the provision of affordable housing.
- It is recommended that Council make a submission requesting the broader application of the policy so that it could apply in Sutherland Shire.

REPORT RECOMMENDATION

That Council prepare a submission to draft amendment State Environmental Planning Policy No.70 Affordable Housing requesting the wider application of the policy.

PURPOSE

This report provides an overview of the issues surrounding affordable housing in Sutherland Shire and the planning mechanisms available to Council to increase supply.

BACKGROUND

On 21 August 2017 Council resolved (MOT004-18) that:

“Council receive a report on the current level of affordable housing and what options Council could pursue to increase the supply of affordable rental housing in the Sutherland Shire.”

This is timely because on 15 December 2017, NSW Planning & Environment commenced an exhibition to amend State and Environmental Planning Policy – Affordable Housing (revised schemes) (draft SEPP70). This report addresses these two issues.

In 2017, it was estimated that 373,000 households in NSW could not get into the housing market or were under rental stress, and this is predicted to increase to 678,000 of households by 2025. Research suggests that most of the more recent growth in housing supply in NSW has been in the mid-to-high range, rather than the low price range. This growth suggests that targeted market intervention will be needed to ensure an adequate supply of affordable housing.

Source: Rowley, S., Leishman, C., Baker, E., Bentley, R. and Lester, L. (2017) Modelling housing need in Australia to 2025, AHURI Final Report No. 287, Australian Housing and Urban Research Institute Limited, Melbourne, <https://www.ahuri.edu.au/research/final-reports/287>, doi:10.18408/ahuri-8106901.

DISCUSSION

What is Affordable Housing?

The provision and maintenance of affordable housing is one of the objectives of the Environmental Planning and Assessment Act 1979. Affordable housing is defined as accommodation for very low, low and moderate income households in terms of size, standards and access to services and facilities. Generally, housing is considered affordable if it costs less than 30% of gross household income. It usually refers to housing that has been developed with some assistance from the NSW and/or Commonwealth Governments through planning incentives.

Affordable housing is not the same as social housing. Social housing supports the most vulnerable people in our community. Affordable housing supports those on a broader range of household incomes and is generally managed more like a private rental.

By definition affordable rental housing is where the rental cost is 30% or less of a very low to moderate household's income. Affordable rental housing may be owned by private investors, Local Government, charitable organisations or community housing providers. It is usually managed by not for profit community housing providers.

The table below is reproduced from work by the Centre for Affordable Housing NSW. It shows the relationship between low to moderate income as a percentage of median household income. It highlights the employment categories that fall into very low, low and moderate income groups. These workers are critical to the efficient operation of businesses and the dynamics of our cities.

Low to Moderate Income Table

| Income level | Income % of Median | Income Range | Examples of Occupations/Life Situations |
|---------------------|---------------------------|------------------------|---|
| Very low | <50% | <\$874 per week | Retail, manufacturing, or on aged or disability pension or other government benefit |
| Low | 50-80% | \$875-\$1399 per week | Child care worker, secretary, cleaner |
| Moderate | 80-120% | \$1400-\$2100 per week | Teaching, policing, nursing, or working in career entry positions |

Source: 'Who are very low to moderate income earners', 2017, Centre for Affordable Housing - NSW Government website. Income range derived from Greater Sydney median household income of \$1,750 ABS 2016 Census.

Affordable Housing in Sutherland Shire

Greater Sydney is one of the least affordable housing markets globally and is the least affordable Australian city – posing challenges for purchasing and renting. Recent data from Economic Profile ID on housing price growth reflects the affordability pressures that are faced at a local level in Sutherland Shire LGA:

- For a house at June 2016, the Sutherland Shire LGA had a median valuation of \$1,105,951:
 - 16.5% higher than the median for Greater Sydney
- For an apartment at June 2016, the Sutherland LGA had a median valuation of \$699,292
 - 0.3% higher than the median for Greater Sydney
- For renting a house at June 2016, The Sutherland Shire LGA has a median rental yield of \$660:
 - 26.9% higher than the median for Greater Sydney
- For renting an apartment at June 2016, The Sutherland Shire LGA has a median rental yield of \$470:
 - -7.8% lower than the median for Greater Sydney
 - Comparatively, in 2011 it was -11.1% lower than the median for Greater Sydney

Source: Greater Sydney Commission Information Note 4 Affordable Rental Housing Targets (Revised October 2017), October 2017, Greater Sydney Commission.

While the median apartment rental remains below the Greater Sydney median, analysis shows clustering of rental stress in apartment around centres.

The statistics highlight that there are significant barriers to accessing housing for very low, low and moderate income earners in Sutherland Shire. This is significant for the Sutherland Shire area, as the ABS 2016 census showed approximately one third of Shire households were very low to low income households.

The latest data from the NSW Government's Centre for Affordable Housing found that in 2011 over 10,000 households in Sutherland Shire experienced purchase or rental stress (households where rent or mortgage payments are greater than or equal to 30% of household income), and that the percentage of very low to moderate income households in housing stress was above the Sydney average. As highlighted in the graph below, between 2006 and 2011 housing stress increased 13.2% overall with a 19.7% increase for rental households and an 8.9% increase for purchasing households.

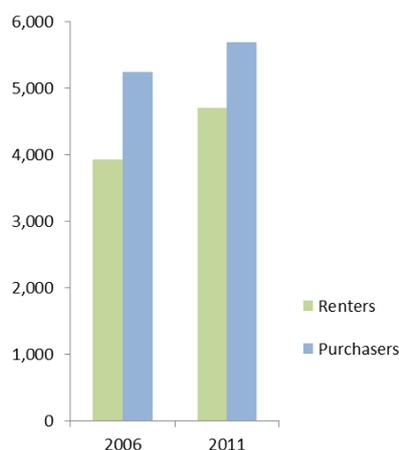


Figure: Number of Households in Housing Stress in 2006 and 2011 in the Sutherland Shire

Since the Affordable Rental Housing State and Environmental Planning Policy (ARHSEPP) came into effect in July 2009, there have been 523 affordable rental dwellings approved through 388 development applications in Sutherland Shire. As the table below illustrates secondary dwellings have been the most popular form of development constructed under the ARHSEPP in Sutherland Shire. However, there are no restrictions placed on the dwellings to actually be rented as affordable housing.

| Affordable housing type delivered through ARHSEPP | No. of Dwellings |
|---|------------------|
| Boarding Houses | 53 |
| Residential Flat Buildings | 85 |
| Multi Dwelling | 9 |
| Secondary Dwellings | 376 |

Figure: Affordable Housing Provision in the Sutherland Shire

Community Housing Provider - St George Community Housing has 72 affordable rental units in the Sutherland Shire. At this stage they do not have any further dwellings in construction or development phase.

Note: that there may be some crossover with this figure, as the properties managed by Community Housing Providers (CHP) may include some housing delivered under the ARHSEPP. This issue should be interrogated as part of a further study into affordable housing.

Planning Mechanisms that Supports the Delivery of Affordable Housing

Planning policy makes a distinction between “housing affordability” and “affordable housing”. “Housing affordability” is a general term used to describe people’s ability to enter the housing market. “Affordable housing” is by definition housing tailored to the income levels of very low, low and moderate income households. It is generally rental housing.

Addressing the shortage of affordable housing is a matter for all levels of Government. To date the main focus of Federal and State Government has been on increasing housing supply in an attempt to improve housing affordability. However, increased supply is yet to translate to improved affordability for purchasers or renters. The State Government has also released a Housing Affordability Package that includes a range of initiatives to make it easier for people to own their own home.

The State Government currently has two main planning mechanisms that aim to increase the supply of affordable rental housing:

1. State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARHSEPP)

This policy applies to all Councils across the State. The ARHSEPP is designed to increase the supply and diversity of affordable housing in NSW by providing incentives that increase yields. It includes infill affordable housing (medium density and residential flats), secondary dwellings (granny flats), boarding houses, supportive accommodation, and social housing residential flats near centres, developments of Housing NSW and group homes. It does not place rental restrictions on secondary dwellings constructed under the policy.

2. State Environmental Planning Policy No. 70 Affordable Housing (Revised Schemes)(SEPP70):

This policy applies to only two Councils (City of Sydney and City of Willoughby). It allows Councils to create an inclusionary zoning contribution scheme to assist with the supply of affordable housing. It works in a similar way to Section 94 allowing Councils to collect contributions for affordable rental housing. In most cases the housing is managed by a not for profit community housing provider.

The draft SEPP70 amendment currently on exhibition proposes to include five additional Councils (Inner West, City of Ryde, Canada Bay, Randwick and Northern Beaches). Each of these councils has taken a proactive approach to the issue of affordable rental housing and their inclusion in the policy is the result of concerted effort over many years. The Department required each Council to prepare a comprehensive Housing Affordability Study and financing mechanism.

However, housing data shows that affordable housing is affecting all Council areas across all of Greater Sydney. It is considered that there should be an easier path open to Councils wishing to facilitate the delivery of affordable rental housing. It is recommended that Council make a submission to the draft amendment seeking the broad application of SEPP70 to all councils in Greater Sydney.

The Greater Sydney Commission has elevated the importance of providing affordable rental housing across Greater Sydney. The draft Greater Sydney Region Plan recommends that the Government adopt Affordable Housing Rental Targets in future precincts that are entering the rezoning process. This target is likely to be 5% to 10%. However, this would have no impact on Sutherland Shire until large redevelopment precincts are released at some future date.

Voluntary Planning Agreements are another mechanism that may be used by State or Local Governments to secure affordable rental housing. To date there have been no voluntary planning agreements for affordable housing in Sutherland Shire. It should be noted that any such agreement would most likely be instead of Section 94 contributions for open space which Council's relies upon to deliver its works program.

Options Available to Council

If Council wants to take a proactive role in facilitating affordable rental housing in Sutherland Shire, the first step would be to make a submission to the Department of Planning and Environment requesting inclusion in SEPP 70). This could be made on the basis of the limited information currently available, including the information in this report.

The Department may request a more thorough justification for inclusion in the SEPP, which would require a substantial body of research to be prepared. This would analyse housing affordability in the Sutherland Shire by exploring existing housing stock, as well as study of population, income, employment, rental and purchasing trends and housing stress. It would examine the ability of the private rental market to facilitate housing for very low, low or moderate income households.

If successful in being included in SEPP 70, Council would be able to impose contributions on consents requiring a monetary contribution towards the provision of affordable rental housing or dedication of units. Council would ultimately have a portfolio of affordable rental units which could be managed by a community housing provider.

Consideration of affordable housing will need to be incorporated into Council's next Housing Strategy. The strategy will incorporate the 10 year housing target to be determined in conjunction with the Greater Sydney Commission over the next 18 months. The outcome of any request to be included in SEPP 70 or the need for further study can be considered in the Housing Strategy process also.

RESOURCING STRATEGY IMPLICATIONS

The Strategic Planning Unit will make the submission on draft SEPP70 within its operating budget. The preparation of an Affordable Housing Study, if required, would require significant resource allocation, which could be explored and reported on at a later date.

COMMUNITY ENGAGEMENT

This report was in response to a Council motion. No community engagement is required at this stage.

STRATEGIC ALIGNMENT

Making submissions is a means of undertaking advocacy on issues, which is deliverable 1N.1 in the 2017 Operational Plan.

| Community Strategic Plan Strategy | Delivery Program (2017-2021) Deliverables |
|--|---|
| 1.2 Our leadership empowers a broad range of stakeholders | 1L Review and implement the Governance Framework. |
| 1.3 The community is informed and empowered to rise to the challenge and opportunities presented by a changing world | 1N Advocate and maintain dialogue across all levels of government and with key stakeholders around issues impacting our community |

POLICY AND LEGISLATIVE REQUIREMENTS

There are no policy implications for Council at this stage.

CONCLUSION

There is an increasing lack of affordable housing in Sutherland Shire that is evidenced in spatially clustered rental stress. Poor housing affordability affects key workers on low to moderate incomes. Addressing housing affordability is critical to achieving a diverse local community where employers can find a diverse range of workers that do not need to commute long distances.

The need for affordable rental housing is highlighted in the draft Greater Sydney Region Plan and it is likely that the State Government will accept the recommendation to include affordable housing targets in future growth precincts. However, this will not address the scale of the problem and is unlikely to provide much relief in Sutherland Shire.

Inclusion in SEPP70 is a sensible way forward for Council because it allows a revenue stream to be developed to fund the provision of local affordable rental housing. While the five councils being included in the SEPP have undertaken comprehensive studies over several years to justify their

inclusion, it is open to Council to make a submission based on information currently available. If the Department requires further information, a subsequent decision can be made as to whether Council wishes to prioritise the allocation of resources for this purpose.

RESPONSIBLE OFFICER

The officer responsible for the preparation of this Report is the Manager Strategic Planning, Mark Carlon who can be contacted on 9710 0523.

File

Number:

2017/283845

PLN027-18 RESULTS OF EXHIBITION OF DRAFT SSDCP AMENDMENT 1

Attachments: Nil

EXECUTIVE SUMMARY

- Draft Sutherland Shire Development Control Plan 2015 (SSDCP2015) Amendment 1 was publicly exhibited between 13 November and 12 December 2017. The draft contains a number of minor amendments to ensure Sutherland Shire SSDCP2015 complies with recent changes to legislation and reflects more recent Council policy decisions.
- A single submission was received during this period. The submission does not support the proposal to increase the time for lapsed DAs from the existing 3 years to 5 years. The remaining matters the submission raises are not relevant to the document on exhibition. Instead, they are matters which may be considered in future amendment to SSDCP2015.
- Having considered the issues raised in the submission, it is recommended that Sutherland Shire Development Control Plan 2015 be approved as exhibited.

REPORT RECOMMENDATION

That Council adopt Sutherland Shire Development Control Plan 2015 – Amendment 1 as exhibited.

PURPOSE

This report informs Council on the results of the recent exhibition of Sutherland Shire Development Control Plan 2015 (SSDCP2015) Amendment 1, and seeks endorsement for the plan to be made as exhibited.

BACKGROUND

At its meeting on the 16 October 2017 (Minute No. 86 PLN016-18), Council resolved to exhibit a draft amendment to Sutherland Shire Development Control Plan 2015 (SSDCP2015). The proposed changes put forward in the amendment do not seek to alter the current planning policy. Instead, they are minor amendments that aim to streamline the operation of the plan and/or align with current policies of Council and current legislation.

The draft was publicly exhibited between 13 November and 12 December 2017. Council received a single submission during this period, from Sutherland Shire Environment Centre. The submission raises only one matter addressed in the draft DCP: the proposed increase in the time for lapsed DAs from the existing 3 years to 5 years. It also includes a number of recommendations for matters not included in draft amendment.

DISCUSSION

Chapter 42, Section 10.2 currently states that development consents lapse after three years (if not activated prior) and that a one-year extension may be granted upon application being made to do so. This has been Sutherland Shire Council's practice for many years.

On 15 May 2017, as part of its review of development assessment, panels and determinations processes, Council resolved (Minute No. 350 COR050-17)

THAT:

Development consents be issued with a lapse time of five years unless there are special circumstances.

This position was further refined on 16 October 2017 (Minute No. 86 PLN016-18), when Council resolved:

THAT:

Sutherland Shire Development Control Plan 2015 be amended with respect to Chapter 42 Administrative Provisions, as follows:

In accordance with the provisions of Section 95 of the Environmental Planning and Assessment Act, 1979, development consents shall lapse:

- *five years after the date from which it operates, where the estimated cost of development is up to \$500,000, or*

- *three years after the date from which it operates, where the estimated cost of development is greater than \$500,000, unless there are special circumstances and the consent authority imposes a period less than this as a trial period due to such special circumstances.*

The Sutherland Shire Environmental Centre's submission argues against the five year lapse proposal because LEPs are supposed to be reviewed every five years; it is therefore difficult for the public to envisage what is being proposed in an amended LEP if there are developments which have been approved but not yet even commenced.

When considering the merits of this policy change, Council considered the view that five years might be too long to have valid consents lying dormant, as the expectations of the community and planning controls may change in this time horizon (PLN023-17). However, it concluded that, in reality, planning controls are not so dynamic and are rarely 'wound back' to prevent development that might have been approved in the last five years. Furthermore, shorter life consents can present a difficulty for applicants to time the commencement of development with cycles in the property market. Requests to extend consents, and dealing with new DAs to replace similar DAs that have lapsed, is not an efficient use of resources. Accordingly, the position presented in the submission is not considered to be supported by new evidence that would justify a change to the draft DCP.

The additional issues raised in the submission (e.g., bicycle parking for multi-dwelling housing and residential flat building developments, provision of an established minimum number of electric car charging points, and improved environmental outcomes related to a range of development types) are not matters included in this draft DCP amendment. Instead, they are matters which may be considered in future amendments to SSDCP2015. The submission will be kept on file and be taken into consideration when Council reviews these issues in the future.

RESOURCING STRATEGY IMPLICATIONS

Any amendment to SSDCP2015 is the responsibility of the Strategic Planning Unit and will be carried out within existing resource allocation.

COMMUNITY ENGAGEMENT

Following a public notice in the St George and Sutherland Shire Leader and Liverpool Champion, Draft SSDCP2015 - Amendment 1 was on public exhibition between 13 November and 12 December 2017. The exhibition period was extended for five days beyond the mandatory 28-day exhibition period advertised to compensate for website anomalies that occurred at the start of the exhibition period. Hard copies were available for public viewing in all Sutherland Shire libraries and in the foyer of council's Administration Building on Eton Street, Sutherland. The content was also available digitally on the Join the Conversation platform, accessible through council's website. Submissions could be made via Join the Conversation facility or by post.

One submission was received during the exhibition period, via Join the Conversation platform.

STRATEGIC ALIGNMENT

The DCP amendment is consistent with following outcomes:

| Community Strategic Plan Strategy | Delivery Program (2017-2021) Deliverables |
|--|--|
| 1.1.1 Actively engage with the community to understand their views and aspirations | DP 6B manage new and existing development within a robust and effective framework. |
| 1.4.1 Ensure a strong governance framework that provides transparency, accountability and sustainability | 6C.2 Develop relationships with community and key stakeholders to inform future housing decisions. |

POLICY AND LEGISLATIVE REQUIREMENTS

The Draft amendment to SSDCP2015 is consistent with legislative requirements.

CONCLUSION

The public exhibition of draft SSDCP2015 - Amendment 1 resulted in the receipt of only one submission. That submission objected to the proposal to increase the time for lapsed DAs from the existing 3 years to 5 years. The arguments raised in the submission were considered, however on balance were not persuasive enough to change the draft provisions. Sutherland Shire Development Control Plan 2015 is therefore recommended to be made as exhibited.

RESPONSIBLE OFFICER

The officer responsible for the preparation of this Report is the Manager of Strategic Planning, Mark Carlon, who can be contacted on 9710 0523.

File

Number:

2017/284971

PLN028-18 PROPOSED LEP HOUSEKEEPING AMENDMENT 2018

Attachments: Appendix A

EXECUTIVE SUMMARY

- Sutherland Shire Local Environmental Plan 2015 (SSLEP2015) was made on 23 June 2015. A variety of relatively minor issues have subsequently been identified which can only be addressed through further amendments to the plan.
- The proposed SSLEP2015 mapping changes primarily resolve minor issues or conflicts which have arisen because of ongoing changes to land information.
- The proposed SSLEP2015 policy changes include the revision of the complying development provisions in zone E4; enabling construction of boundary and pool fences as exempt development in zone E4; consolidating strata subdivision requirements in zones E3 and E4; and replacing references to repealed clause 5.9.
- The proposed heritage changes are designed to correct administrative issues in the schedule and mapping.

REPORT RECOMMENDATION

THAT:

1. A planning proposal be prepared to implement the changes identified in Appendix A and also incorporates those matters as adopted by Council in PLN007-17.
2. The planning proposal is submitted to NSW Planning and Environment for a Gateway determination with a request that Council may make the plan under delegation.
3. Subject to an approval being granted at Gateway, the above planning proposal be exhibited in accordance with Council's policies and any conditions specified in the Gateway determination.

PURPOSE

The purpose of this report is to advise Council of a range of minor planning issues which have come to light through the operation of Sutherland Shire Local Environmental Plan 2015 (SSLEP2015) and to provide solutions to resolve these issues.

BACKGROUND

SSLEP2015 was gazetted on 23 June 2015. Experience with the operation of the plan has highlighted further issues that complicate its operation. This report seeks to resolve these issues.

In December 2016 Council resolved (PLN007-17) to finalise other amendments to the plan and also to prepare a further planning proposal to resolve matters which had been identified through submissions but which could not be included in that plan. Specifically Council resolved:

3. As part of a future planning proposal, the property at 284-286 Taren Point Road, Caringbah be removed from the Environmentally Sensitive Land – Terrestrial Biodiversity Map and the Heritage Item 1057 'Cronulla Linear Cultural Exotic Planting of Rail Embankment' be removed from Schedule 5 Environmental Heritage.

These matters will also be addressed in this planning proposal.

DISCUSSION

Part 1: Mapping Changes

Council's role as a custodian of land information requires that it continuously look for inconsistencies between cadastral information and planning provisions. When changes are identified they can only be resolved through a LEP amendment. To date the following issues have been identified:

| Identified Issue | Recommended Change |
|---|--|
| Land at Barden Ridge newly acquired by SSC for use as a public reserve. | Rezone to RE1 Public Recreation and remove redundant mapped development standards. |
| Land newly gazetted by NSW Government as National Park. | Rezone to E1 National Parks and Reserves and remove redundant development standards. |
| Correct a 2006/2015 zoning anomaly to match original 2006 zoning and adjacent land. | Rezone the affected land from W2 Recreational Waterways to E4 Environmental Living. |
| Waterfront properties have recently been resurveyed or subdivided - leading to changes to the mapped mean high water mark boundary or other boundaries. | Adjust the zoning and all other applicable LEP map layers to reflect the adjusted mean high water mark and property boundary for these properties. |
| FSR Maps incorrectly refer Area 7 to Clause 6.22 of the LEP. | Update the map key on all FSR map sheets to replace "6.22" with "6.21". |
| Land that has been acquired by the relevant acquisition authority and no longer needs to be reserved in the LEP. | Remove this land from the Land Reservation and Acquisition Maps in the LEP. |

| | |
|---|---|
| Boundary of the public park at South Village in Kirrawee does not align exactly to zone boundary. | Re-align the zone boundary to match the approved park boundary. |
|---|---|

Details of the specific affected properties are provided in a table in Appendix A.

Resolution of these issues will reduce the risk that individual land owners are unnecessarily restricted by SSLEP2015. It will ensure that SSLEP2015 maps are consistent with the latest land information available to Council and ensure that the appropriate development standards apply to the land.

Part 2: Policy Changes

Addressing these issues requires changes to the drafting of clauses in SSLEP2015. Specific issues and changes noted below apply to all properties within the relevant zones.

LEP Schedule 3 Complying Development

Issues have been identified in the Complying Development provisions which apply to dwelling houses and associated ancillary development in zone E4. These include:

- Incorrect or out of date references to other parts of the LEP.
- Conflicting, absent or inadequately specified provisions for dwelling houses and forms of ancillary development.
- Unnecessary requirements for bushfire assessment of swimming pools.
- The need for expanded provisions to permit outbuildings in the E4 zone

Complying development provisions aim to facilitate minor forms of development without the need for a development application. Inconsistent provisions pose a risk to Council and the public as they may allow inappropriate development or may restrict what is essentially benign development. The recommended changes will mitigate these risks.

Recommended Changes for Schedule 3:

- Correct clause 4 *Certain ancillary development* (1)(j) to refer to LEP clause 6.1 Acid Sulfate Soils
- Resolve the conflicting controls between clause 7(3) and 8(3) for fill associated with a dwelling house by deleting 7(3).
- Introduce new provisions into clause 7 *Setbacks* to clarify that the general boundary setbacks in 7(1) do not apply where other setbacks are defined for specific types of development.
- Revise section 8 *Earthworks and drainage* to provide consistent development standards for earthworks, retaining walls and structural support (see Appendix A).
- Exempt swimming pools from the bush fire prone land controls.
- Expand section 26 *Carports, gazebos, pergolas, decks and patios* to apply to balconies, terraces and verandahs.
- Expand section 28 *Swimming pools* to apply to spa pools.
- Add new section 32 to provide development standards for rainwater tanks (see Appendix A).

- Expand Division 3 and Amend Division 1 to permit construction and alteration of up to 45m² for outbuildings with appropriate development standards (see Appendix A).

LEP Clause 6.14 Landscaped Area and Schedule 3 Complying Development Certificate Conditions

The NSW Government recently amended SSLEP2015 to repeal clauses 5.9 and 5.9AA and replace them with *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*. Unfortunately the repealing instrument did not remove all references to the repealed clauses throughout the LEP. This has left two LEP provisions referring to the repealed clause 5.9, with an unclear impact on their operation which represents a risk to Council and applicants.

Recommended Changes: All remaining references to Clause 5.9 throughout the LEP be amended to refer to *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*.

Schedule 2 Exempt Development - Fences in Zone E4

The exempt development provisions for fencing in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* do not apply to the E4 zone. The State Policy incorrectly assumes that all E4 zones have a rural character and hence only allows agricultural style fences to be constructed as exempt development. Consequently residents in zone E4 must obtain development consent to construct a traditional suburban fence (lapped and capped 1.8m high) or a pool fence. This is inconsistent with the normal requirements where suburban boundary fences and pool fences are exempt development. Residents in the E4 zone often assume they do not need development consent. The recommended changes reduce the risk that residents in zone E4 Environmental Living will construct fences contrary to regulations.

Recommended Changes: Amend Schedule 2 of SSLEP2015 to allow construction of suburban style boundary fences and pool fences in zone E4 as exempt development, subject to the appropriate development standards and specified development requirements of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, Part 2, Division 1, Subdivisions 17 & 17A and additionally that pool fences on bushfire prone land must be constructed from non-combustible materials.

LEP Clause 4.1B Minimum lot sizes for strata subdivisions of dual occupancies in Zone E4

Dual occupancies in zone E4 Environmental Living under clause 4.1B of SSLEP2015 can only be strata subdivided if their site is larger than the minimum lot size applied by the LEP or if they were constructed prior to the gazettal of the LEP. However, there are no similar requirements for the strata subdivision of dual occupancies in zone E3 Environmental Management. Council specifically introduced a provision to support the retention of boat houses which occur in both the E3 and E4 zones. This anomaly is not consistent with the objectives and intention of the E3 and E4 zones.

Recommended Changes: Amend clause 4.1B of the LEP to extend it to dual occupancies in the E3 zone and specify that dual occupancies in the E3 zone can only be strata subdivided if they were constructed on or before 23 June 2015.

Part 3: Heritage Changes

The heritage schedule is contained in Schedule 5 of SSLEP2015 and it refers to LEP heritage maps. The recommended changes are designed to improve the integrity of the heritage schedule and maps by updating or correcting information such as:

- Update heritage schedule to correct the address and land description of specific items.
- Update heritage mapping to show correct item position, extent and label.
- Remove items from schedule and mapping where demonstrated to be a duplicate.
- Add a new State Heritage item to the schedule and mapping following recent State listing.

Details of the affected heritage items and the proposed changes are provided in a table in Appendix A.

RESOURCING STRATEGY IMPLICATIONS

Management of Council's LEP is conducted within the existing budget and resources of Strategic Planning.

COMMUNITY ENGAGEMENT

Subject to a positive Gateway determination, a Communication Action Plan will be prepared to coordinate Council's engagement activities for this planning proposal. The Community will be consulted in relation to these proposed changes as required by Council's policies, State Government requirements and the conditions of the Gateway Determination issued by NSW Planning and Environment. It is expected that the planning proposal will require the following activities to be undertaken:

- Public exhibition of the planning proposal on Council's Join the Conversation website for 28 days with the opportunity for members of the public to prepare submissions in response.
- Publication of an advertisement in a local newspaper prior to the exhibition commencing.
- Distribution of copies of the planning proposal and supporting documentation to all Sutherland Shire Council libraries and the Administration Building front counter for the public to read during the exhibition period.
- Notification letters will be distributed to the owner and neighbours of each property which is affected by a property specific mapping or heritage change.

Recent amendments to the EP&A Act 1979 create a role for IHAP in the consideration of Planning Proposals. Under Section 23L a Planning Proposal may be referred to an IHAP by either the Minister or Council. This step has been introduced as a further measure to improve transparency in decision making. However, as this Planning Proposal covers only very minor issues it does not warrant referral to IHAP, unless this is made a condition of Gateway approval.

STRATEGIC ALIGNMENT

The issues addressed in this report have connections to the goals and principles of the Sutherland Shire Community Strategic Plan, including:

| Community Strategic Plan Strategy | Delivery Program (2017-2021) Deliverables |
|--|--|
| 4.1 Create and strengthen community connections through shared cultural experiences. | DP 41 Implement legislative requirements to ensure environmental, archaeological and Aboriginal heritage are conserved and valued. |
| 4.1.1 Identify and appreciate places, spaces and stories that contribute to our Sutherland Shire identity. | DP 41.2 Implement Sutherland Shire LEP 2015 Clause 5.10 Heritage Conservation |
| 6.2.2 Develop and implement strategies to improve housing affordability. | 6B.6 Provide an effective Development Application (DA) process. |
| 2.2.3 Encourage responsible urban planning which balances growth with environmental sustainability. | |

POLICY AND LEGISLATIVE REQUIREMENTS

The State Government's policies require that Council submit all planning proposals for a Gateway Determination before placing them on public exhibition. The recommendations contained in this report will initiate the process to amend the LEP.

Recent amendments to the EP&A Act 1979 allow the Minister for Planning to issue directions under s117 of the Act which require the referral of planning proposals to an IHAP for advice, however a s117 direction on this matter had not yet been issued at the time this report was prepared. Item 4 of the recommended Council resolution has been designed to allow for referral of the planning proposal to the Sutherland Shire IHAP if it is required by a future order.

CONCLUSION

The proposed changes to SSLEP2015 are designed to address issues that have been identified since the plan was gazetted in June 2015. These issues result from changes to land information and issues in the drafting of the LEP which have become apparent through its use. Resolution of these issues will help to provide greater clarity for applicants and minimise the risk of future conflicts between Council, applicants and the Community. The recommendations contained in this report will be implemented through an amendment to the LEP.

RESPONSIBLE OFFICER

The officer responsible for the preparation of this Report is the Manager of Strategic Planning, Mark Carlon who can be contacted on 9710 0523.

File

Number:

2017/272970

Appendix A: Detailed Changes Affecting Policy, Specific Land and Property**Mapping Changes**

| Identified Issue | Affected Properties | Affected Land Parcels | Recommended Change |
|---|--|---|--|
| Land newly acquired by SSC for use as a public reserve requires appropriate zone to reflect intended use. | 150 Old Illawarra Road, Barden Ridge | Lot 102, DP 1028645 | Rezone to RE1 Public Recreation and remove redundant mapped development standards. |
| Land newly gazetted by NSW Government as National Park requires zone change to reflect their new status. | 1535-1547 Princes Highway, Waterfall 42-60 Eckersley Road, Waterfall 1-5 Eckersley Road, Waterfall 1865R Princes Highway, Waterfall 1770-1776 Princes Highway, Waterfall 1643 Princes Highway, Waterfall Kummera St Road Reserve, Waterfall where zoned IN1. | Lots 439, 723, 728, 888 and 942 in DP 752033; Lot 1 in DP 1030102; Lot 1 in DP 1030112; | Rezone to E1 National Parks and Reserves and remove redundant development standards. |
| Correct a zoning anomaly to match adjacent land. | 4 Hazel Place, Burraneer | Lot J in DP 12558 | Rezone from W2 Recreational Waterways to E4 Environmental Living. |
| Properties have recently been resurveyed or subdivided leading to change to the mapped mean high water mark | 25 Kangaroo Point Road, Kangaroo Point 111 Princes Highway, Sylvania | Lot 1 in DP 1218171; Lot 55 in DP 1215725; Lot 100 in DP 1229591; | Adjust the zoning and all other applicable LEP map layers to reflect the adjusted mean high water mark and property boundary |

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| boundary or other boundaries. The property boundaries are now out of alignment with the zoning and other mapped boundaries in the LEP. | 10 Gunnamatta Road, Cronulla | | for these properties. |
| FSR Maps incorrectly refer Area 7 to Clause 6.22 of the LEP when they should refer to clause 6.21 of the LEP. | N/A | N/A | Update the map key on all FSR map sheets to replace “6.22” with “6.21”. |
| Land has been acquired by the relevant acquisition authority and no longer needs to be mapped for land reservation and acquisition in the LEP. | <p>State of NSW & State Authorities:</p> <p>167 Forest Road, GyMEA</p> <p>12R South Street, GyMEA</p> <p>159 Sylvania Road, Miranda</p> <p>Como Parade, Como</p> <p>682 Old Illawarra Road, Menai</p> <p>531-533 Woronora River Frontages, Barden Ridge</p> <p>Sutherland Shire Council:</p> <p>2 Mawarra Avenue, Miranda</p> | <p>State of NSW & Authorities:</p> <p>Lot 54 DP 9303</p> <p>Lot 3 DP 882658</p> <p>Lot 7 DP 12683</p> <p>Lot 195 DP 1215612</p> <p>Lots 3 & 4 DP 1066190</p> <p>Part Lot 241 DP 8755</p> <p>Part Lot 240A DP 18174</p> <p>Sutherland Shire Council:</p> <p>Lot 15 DP 27544</p> <p>Lots 2 & 3 DP 1211461</p> <p>Lots 180 & 183 Section B DP 12157</p> | Remove this land from the Land Reservation and Acquisition Maps in the LEP. |

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|---|---|-----------------------|--|
| | 1R & 2R Gidji Road, Miranda 112/1R & 97/1R The Esplanade, Sylvania 159R-185R Woronora Crescent, Como | Lot 1 DP 1194852 | |
| Boundary of the public park at South Village in Kirrawee does not align exactly to zone boundary. | 45 Flora Street, Kirrawee 580 Princes Highway, Kirrawee | Lots 1 & 2 DP 1215969 | Re-align the zone boundary to match the approved park boundary. |

Detailed Policy Changes

LEP Schedule 3 Complying Development

- 1) Correct clause 4 Certain ancillary development (1)(j) to refer to LEP clause 6.1 Acid Sulfate Soils
- 2) Resolve the conflicting controls between clause 7(3) and 8(3) for fill associated with a dwelling house by deleting 7(3)
- 3) Introduce new provisions into clause 7 Setbacks to clarify that the general boundary setbacks in 7(1) do not apply where other setbacks are defined for specific types of development
- 4) Revise Section 8 Earthworks and drainage, to provide development standards for earthworks, retaining walls and structural supports

Amend Section 8 as follows:

- Rename to “8 Earthworks, drainage, retaining walls and structural supports”
- Amend the wording of 8(1) to refer to “finished ground level” rather than “finished ground floor level”.

Add the following development standards to Section 8.

- Fill for the purpose of any development under this part must not exceed 0.6m above existing ground level.
- Fill that is higher than 150mm above existing ground level and not contained within the footprint of a dwelling house or other building on the lot is limited to 50% of the landscaped area of the lot.
- If fill is to be imported to the site it must be free of building and other demolition waste, and only contain virgin excavated natural material (VENM) as defined in Part 3 of Schedule 1 to the Protection of the Environment Operations Act 1997.
- The finished ground level of fill must not be used for the purposes of measuring the height of any development under this part.
- Excavation for the purpose of development under this part must not exceed a maximum depth measured from existing ground level of 0.6m
- Earthworks for the purpose of development under this part must be contained by a retaining wall or other form of structural support that complies with the development standards in this section.
- A retaining wall or structural support under this part must meet the following requirements:
 - Not have a total height measured from the lowest to upper most portion of more than 1.2m
 - Be set back at least 1.5m from all property boundaries.
 - must be certified by a professional engineer as structurally sound including in relation to (but not limited to) the ability to withstand the forces of lateral soil load, if the total height of the retaining wall measured vertically from the lowest portion of the retaining wall to its uppermost portion exceeds 0.6m

- must have adequate drainage lines connected to the existing stormwater drainage system for the site.
- must be designed so as not to redirect the flow of any surface water or ground water, or cause sediment to be transported, onto an adjoining property.
- must be separated from all other retaining walls, structural supports and existing building foundations on the site by at least 2m, measured horizontally.
- must be installed in accordance with any manufacturer's specification.
- if the structural support is an unprotected sloping embankment or batter, the maximum slope of the surface must not exceed 20 degrees from horizontal and must include erosion protection and soil stabilisation measures to permanently hold the slope in place.

- 5) Exempt swimming pools from the bush fire prone land controls
- 6) Expand section 26 Carports, gazebos, pergolas, decks and patios to apply to balconies, terraces and verandahs
- 7) Expand section 28 Swimming pools to apply to spa pools
- 8) Add New Section 32 Rainwater Tanks

Rainwater tanks as complying development under this part must meet the following requirements:

- have a capacity of less than 10,000L.
- be located behind the building line of any road frontage.
- not rest on the footings of an existing building for support.
- be fitted with a screened rain head designed to ensure self cleaning and prevent leaf litter entering the tank.
- be fitted with a first flush device incorporating an automatic resetting valve that causes initial run-off rainwater to bypass the tank.
- be constructed or installed with inlets and outlets designed to prevent mosquitos breeding.
- must have overflow connected to an existing stormwater drainage system that does not discharge to an adjoining property, or cause a nuisance to adjoining owners.
- must have a sign affixed to the tank with a statement to the effect that the water in the tank is rainwater.

- 9) Amend Division 1 and Division 3 to Facilitate Outbuildings

Amend Section 4: Certain ancillary development

- Add garden sheds, sheds and garages as development specified for this part.

Amend Section 5: General exclusions from this Part

- Remove the exclusion applying to existing or new outbuildings used for a purpose specified in section 4 of this part.

New Section 33: Sheds, garden sheds and garages

Development for the purpose of sheds, garden sheds and garages under this part must comply with the following requirements:

- not occupy an area greater than 45m²
- not be greater than 4m in height above ground level (existing).
- be set back behind the building line
- not have a finished ground floor level more than 0.6m in height above or below existing ground level.
- garages must be constructed with vehicle access via driveways with sufficient manouvering space for vehicles to leave the site in a forward direction.
- Garage doors facing a road must have a width less than or equal to:
 - 3.2m if the lot is less than 12m wide (measured at the building line).
 - 6m if the lot is more than 12m wide (measured at the building line).
- A detached garage on a lot that has a width of less than 8m at the building line may only be erected if the vehicular access to the lot is from a secondary road, a parallel road or a lane.
- For garages, all off-street car parking spaces and vehicle access must comply with AS 2890.1:2004, Parking facilities—Off-street car parking.

LEP Clause 6.14 Landscaped Area and Schedule 3 Complying Development Certificate Conditions

All remaining references to Clause 5.9 throughout the LEP be amended to refer to State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017.

Schedule 2 Exempt Development - Fences in Zone E4

Amend Schedule 2 of SSLEP2015 to allow construction of suburban style boundary fences and pool fences in zone E4 as exempt development, subject to the appropriate development standards and specified development requirements of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, Part 2, Division 1, Subdivisions 17 & 17A and additionally that pool fences on bushfire prone land must be constructed from non-combustible materials.

LEP Clause 4.1B Minimum lot sizes for strata subdivisions of dual occupancies in Zone E4

Amend clause 4.1B of the LEP to extend it to dual occupancies in the E3 zone and specify that dual occupancies in the E3 zone can only be strata subdivided if they were constructed on or before 23 June 2015.

Heritage Changes

| Item No. | Property Address and Land/Location | Item Description | Recommended Change |
|-----------------|--|---|--|
| 2016 | 119 Fowler Road, Illawong Lot 202 DP1189575 | Boat shed, house, wharf and stone waterfront | Update the address details |
| 0610 | 1 Eurabalong Road, Burraneer Lot 2, DP 1199493 | House, boat shed and garden | Update lot, address details and mapping following recent subdivision |
| A1210 | 35B Waratah Road, Engadine Part Lot 1 and Part Lot 2, DP1190871; Part Lot 10, DP 1231293 | "The Boys Town" | Update lot and address details |
| 1205 | 35B Waratah Road, Engadine Part Lot 10, DP1231293 | Bakery Trade Industry building | Update lot and address details |
| 1206 | 35B Waratah Road, Engadine Part Lot 10, DP1231293 | Meat Trade Industry building and brick fence | Update lot and address details |
| 1017 | Fronting 144–146 Ewos Parade and 12 Orient Avenue In front of Lot 1, Section 1, DP 5414 | 4 street trees— Araucaria cunninghamii (Hoop Pine) and Araucaria heterophylla (Norfolk Island Pine) | Update mapping to show item |
| 1208 | 46-48 Waratah Road, Engadine Lot 361, DP 752033 | Memorial Hospital grounds | Remove from schedule and mapping (Unnecessary duplicate of item 1207) |
| 1027 | 28-30 Grosvenor Crescent, Cronulla Lots 13 and 14, DP 10350 | Garden | Update address details |
| A1074 | Nicholson Parade, on rise, east of Gunnamatta Baths Part of Lot 282, DP 752064 | Gunnamatta Park, including dressing pavilion | Update mapping to show item number |
| A4214 | Site of 1912 road bridge across the Woronora River, Menai Road MGA Zone 56, 319890°E, 6233836°N | Woronora Bridge | Correct mapping and coordinates to reflect original bridge location |
| 3616 | Eton Street and Old Princes Highway, Sutherland | Forby Sutherland Memorial Gardens | Update lot details and mapped area to match |

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| | Lot 1, DP 1087442; Part Lot 2, Sec 46, DP 802 | | the extent of the gardens. |
| New State Item | Part Lot 820 DP1011240, Part Lot 7038 DP 1027187, Part Lot 294 DP8755, Part Lot 7314 DP 1147726 | Lucas Watermills Archaeological Sites, Woronora Reserve Engadine - State Heritage listing of archaeological item | Add recent State Heritage listing to LEP mapping and heritage schedule |

CONFIDENTIAL REPORTS FROM OFFICERS

In accordance with Section 10A(1) of Local Government Act 1993, the following matters will be considered in the Closed Session:

PLN001A-18 APPOINTMENT OF MEMBERS TO COUNCIL'S DESIGN REVIEW FORUM**Section 10A(2)(a) Personnel Matters Concerning Particular Individuals:**

This matter is being considered in Closed session as it relates to personnel matters concerning particular individuals.

PLN002A-18 RECRUITMENT OF COMMUNITY REPRESENTATIVES FOR THE INDEPENDENT HEARING AND ASSESSMENT PANEL**Section 10A(2)(a) Personnel Matters Concerning Particular Individuals:**

This matter is being considered in Closed session as it relates to personnel matters concerning particular individuals.

PLN003A-18 APPOINTMENT OF EXPERT MEMBERS FOR THE MANDATORY INDEPENDANT HEARING AND ASSESMENT PANEL**Section 10A(2)(a) Personnel Matters Concerning Particular Individuals:**

This matter is being considered in Closed session as it relates to personnel matters concerning particular individuals.