



the bushland shire

creating a living environment

BUSINESS PAPER

PLANNING MEETING

**Wednesday, 1 June, 2011
at 6.30pm**

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AGENDA AND SUMMARY OF RECOMMENDATIONS

PRESENT

NATIONAL ANTHEM

OPENING PRAYER/S

Rev Dawson of Thornleigh Community Baptist Church, Thornleigh will be opening the meeting in prayer.

ACKNOWLEDGEMENT OF RELIGIOUS DIVERSITY

Statement by the Chairperson:

"We recognise our Shire's rich cultural and religious diversity and we acknowledge and pay respect to the beliefs of all members of our community, regardless of creed or faith."

ABORIGINAL RECOGNITION

Statement by the Chairperson:

"We acknowledge we are on the traditional lands of the Darug and Guringai Peoples. We pay our respects to elders past and present."

AUDIO RECORDING OF COUNCIL MEETING

Statement by the Chairperson:

"I advise all present that tonight's meeting is being audio recorded for the purposes of providing a record of public comment at the meeting, supporting the democratic process, broadening knowledge and participation in community affairs, and demonstrating Council's commitment to openness and accountability. The recordings will be made available on Council's website once the Minutes have been finalised. All speakers are requested to ensure their comments are relevant to the issue at hand and to refrain from making personal comments or criticisms."

APOLOGIES / LEAVE OF ABSENCE

POLITICAL DONATIONS DISCLOSURE

Statement by the Chairperson:

"In accordance with Section 147 of the Environmental Planning and Assessment Act 1979, any person or organisation who has made a relevant planning application or a submission in respect of a relevant planning application which is on tonight's agenda, and who has made a reportable political donation or gift to a Councillor or employee of the Council, must make a Political Donations Disclosure Statement."

If a Councillor or employee has received a reportable political donation or gift from a person or organisation who has made a relevant planning application or a submission in respect of a relevant planning application which is on tonight's agenda, they must declare a non-pecuniary conflict of interests to the meeting, disclose the nature of the interest and manage the conflict of interests in accordance with Council's Code of Conduct."

DECLARATIONS OF INTEREST

Clause 52 of Council's Code of Meeting Practice (Section 451 of the Local Government Act, 1993) requires that a councillor or a member of a Council committee who has a pecuniary interest in a matter which is before the Council or committee and who is present at a meeting of the Council or committee at which the matter is being considered must disclose the nature of the interest to the meeting as soon as practicable. The disclosure is also to be submitted in writing (on the form titled "Declaration of Interest").

The Councillor or member of a Council committee must not be present at, or in sight of, the meeting of the Council or committee:

- (a) at any time during which the matter is being considered or discussed by the Council or committee.*
- (b) at any time during which the Council or committee is voting on any question in relation to the matter.*

Clause 51A of Council's Code of Meeting Practice provides that a Councillor, Council officer, or a member of a Council committee who has a non pecuniary interest in any matter with which the Council is concerned and who is present at a meeting of the Council or committee at which the matter is being considered must disclose the nature of the interest to the meeting as soon as practicable. The disclosure is also to be submitted in writing (on the form titled "Declaration of Interest").

If the non-pecuniary interest is significant, the Councillor must:

- a) remove the source of conflict, by relinquishing or divesting the interest that creates the conflict, or reallocating the conflicting duties to another Council official.*

OR

- b) have no involvement in the matter by absenting themselves from and not taking part in any debate or voting on the issue as if the provisions of Section 451(2) of the Act apply.*

If the non-pecuniary interest is less than significant, the Councillor must provide an explanation of why they consider that the interest does not require further action in the circumstances.

CONFIRMATION OF MINUTES

THAT the Minutes of the Planning Meeting held on 4 May, 2011 be confirmed; a copy having been distributed to all Councillors.

PETITIONS

MAYORAL MINUTES

NOTICES OF MOTION

RESCISSION MOTIONS

MATTERS OF URGENCY

ITEMS PASSED BY EXCEPTION / CALL FOR SPEAKERS ON AGENDA ITEMS

Note:

Persons wishing to address Council on matters which are on the Agenda are permitted to speak, prior to the item being discussed, and their names will be recorded in the Minutes in respect of that particular item.

DEVELOPMENT APPLICATIONS

A WARD DEFERRED

Nil

A WARD

Nil

B WARD DEFERRED

Nil

B WARD

Nil

C WARD DEFERRED

Nil

C WARD

Nil

GENERAL BUSINESS**Page Number 1****Item 1 **PLN46/11 DRAFT COMPREHENSIVE LOCAL ENVIRONMENTAL PLAN - CONSULTATION WITH PUBLIC AUTHORITIES******RECOMMENDATION**

THAT:

1. Council endorse the revised draft Comprehensive Local Environmental Plan attached to Executive Manager's Report No. PLN46/11 for public exhibition.
2. A submission be made to the Department of Planning and Infrastructure pursuant to Section 64 of the *Environmental Planning and Assessment Act, 1979* requesting certification to enable the draft Comprehensive Local Environmental Plan to be placed on public exhibition.
3. Should conditions of certification only require minor amendment to the draft Comprehensive Local Environmental Plan, the General Manager be delegated authority to endorse and exhibit the Plan for a minimum of sixty days in accordance with the consultation strategy attached to Executive Manager's Report No. PLN92/10.
4. Following exhibition of the draft Comprehensive Local Environmental Plan, a report on submissions be presented to Council for its consideration.

Page Number 11**Item 2 **PLN48/11 WAHROONGA (NORTH) HERITAGE CONSERVATION AREA PLANNING PROPOSAL - REPORT ON SUBMISSIONS******RECOMMENDATION**

THAT:

1. Council forward the Wahroonga (North) Heritage Conservation Area Planning Proposal attached to Executive Manager's Report No. PLN48/11 to the Minister for Planning and Infrastructure for gazettal pursuant to section 59 of the Environmental Planning and Assessment Act 1979.
2. Submitters be advised of Council's resolution.

SUPPLEMENTARY AGENDA

CONFIDENTIAL ITEMS

QUESTIONS OF WHICH NOTICE HAS BEEN GIVEN

QUESTIONS WITHOUT NOTICE

1 DRAFT COMPREHENSIVE LOCAL ENVIRONMENTAL PLAN - CONSULTATION WITH PUBLIC AUTHORITIES

EXECUTIVE SUMMARY

In December 2010, Council endorsed a draft Comprehensive Local Environmental Plan (CLEP) for consultation with relevant public authorities pursuant to Sections 34A and 62 of the *Environmental Planning and Assessment (EP&A) Act, 1979*. Council has received a number of submissions from public authorities. Council has also received feedback on the drafting of the Plan from the Department of Planning and Infrastructure (DP&I). A revised draft CLEP has been prepared having regard to the issues identified by relevant public authorities, the latest version of the *Standard Instrument* and recent amendments to planning legislation.

It is recommended that Council endorse the revised draft Plan for public exhibition.

PURPOSE

The purpose of this report is to review submissions in response to consultation with public authorities in the preparation of the draft CLEP.

BACKGROUND

At its meeting on 1 December 2010, Council considered Executive Manager's Report No. PLN92/10 presenting a draft CLEP for endorsement for consultation with relevant public authorities and public exhibition. The report noted that the preparation of Council's draft Plan has principally been a process of transferring Council's current planning instrument, the *Hornsby Shire Local Environmental Plan 1994 (HSLEP)*, into the NSW Government's *Standard Instrument* LEP format. The report also noted that the draft Plan has been informed by local planning studies undertaken by Council to respond to obligations under regional planning strategies and to satisfy Section 33A of the *EP&A Act* concerning the making of a new principal LEP for the Shire. Council resolved that:

1. *Council endorse the draft Comprehensive Local Environmental Plan attached to Executive Manager's Report No. PLN92/10 for consultation with relevant authorities and adjoining councils pursuant to Section 62 of the Environmental Planning and Assessment Act, 1979.*
2. *Should no objection or comments requiring significant amendment to the draft LEP be received from adjoining councils and/or the State Government agencies consulted pursuant to Sections 34A and Section 62 of the Environmental Planning and Assessment Act, 1979, the General Manager be delegated authority to make a submission to the Department of Planning pursuant to Section 64 of the Environmental Planning and Assessment Act, 1979 requesting certification to enable the draft LEP to be placed on public exhibition.*

3. *Upon certification for public exhibition, the draft Comprehensive Local Environmental Plan be exhibited for a minimum of 60 days in accordance with the consultation strategy attached to Executive Manager's Report No. PLN92/10.*
4. *The General Manager be delegated authority to endorse exhibition material, including the preparation of an Information Brochure for distribution to the community.*
5. *Following exhibition of the draft Comprehensive Local Environmental Plan, a report on submissions received in response to the public exhibition be presented to Council for its consideration.*

In accordance with Council's resolution, between December 2010 and February 2011, fifty five public authorities were consulted pursuant to Sections 34A and 62 of the *EP&A Act*. Council is in receipt of twenty two submissions. The Department has also provided feedback on the drafting of the Plan. Issues identified in a number of the submissions require amendments to be made to the draft CLEP.

On 25 February 2011, the *Standard Instrument* was amended in response to feedback received during the exhibition of the DP&I's 2010 options paper titled "*Potential Amendments to the Standard Instrument*". The DP&I has advised that the primary objective of the revised *Standard Instrument* is to improve the efficiency of delivery of *Standard Instrument* based LEPs throughout NSW councils.

The DP&I has advised that all *Standard Instrument* based LEPs that have not been certified for public exhibition should be revised in accordance with the latest version of the *Standard Instrument* prior to receiving certification. Further, since December 2010, there have been a number of other significant changes to planning legislation which have implications for the preparation of Council's draft CLEP. Accordingly, this report presents a revised Plan to Council for endorsement for public exhibition.

DISCUSSION

The following discussion provides a summary of the consultation undertaken with relevant public authorities, and key changes to the *Standard Instrument* and other relevant planning legislation. The discussion also presents key revisions to the draft CLEP.

1. Consultation with Relevant Authorities and Adjoining Councils

Fifty five authorities and adjoining councils were provided with a CD containing the draft CLEP (written instrument and maps), Explanatory Notes and Council report presenting the draft Plan. Council has received twenty two submissions providing comments on the draft CLEP. A summary of submissions and recommended response is attached. Council officers also met with officers from the DP&I in February 2010 and received feedback on the drafting of the Plan.

Minor amendments to the draft CLEP resulting from issues raised in submissions are addressed in the summary of submissions. The main amendments to the draft CLEP resulting from issues raised in submissions and by the DP&I are discussed below under the heading "Revised Draft Comprehensive LEP".

2. Revised Standard Instrument

On 25 February 2011, a revised *Standard Instrument* was made and can be viewed on the DP&Is website under the directory “Local Planning - Standard Instrument”. The Department has advised that the revised *Standard Instrument* aims to:

- update clauses to conform with changes in legislation including various State Environmental Planning Policies (SEPPs);
- clarify the intention of zones through new and amended directions, objectives, mandatory land uses and the renaming of the RU4 zone; and
- ensure existing land use terms do not overlap across definitions and the relationship between definitions is clarified through the inclusion of new terms, amendments to existing terms and cross referencing the group term/sub term relationships.

In summary, three new clauses have been included in the *Standard Instrument* and seven existing clauses have been amended. The objectives of six zones have been amended and additional mandated land use terms have been included in nineteen zones. There have been seventy seven new, renamed and/or amended definitions included in the Dictionary and six definitions have been consolidated or removed.

Amendments to the draft CLEP resulting from the revised *Standard Instrument* are discussed below under the heading “Revised Draft Comprehensive LEP”.

3. Amended Planning Legislation and Council Resolutions

Since Council endorsed the draft CLEP for consultation and public exhibition, there have been a number of amendments to planning legislation and new LEP practice notes which have implications for the preparation of Council’s draft Plan. These include:

- *SEPP (Infrastructure) 2007 (as amended)*;
- *SEPP (Exempt and Complying Development Codes) 2008 (as amended)*;
- *Coastal Protection and Other Legislation Amendment Act 2010*;
- *LEP Practice Note PN10-001 - Infrastructure in LEPs*;
- *LEP Practice Note PN11-001 - Preparing LEPs: standard clauses*;
- *LEP Practice Note PN11-002 - Preparing LEPs: standard zones; and*
- *LEP Practice Note PN11-003 - Preparing LEPs: definitions.*

There have also been subsequent Council resolutions that require amendment to Council’s draft Plan. At its meeting on 1 December 2010, Council considered Executive Manager’s Report No. PLN68/10 concerning the change of use of an existing industrial premise to a sex services premises (i.e. brothel) at property Nos. 142-144 George Street, Hornsby. The report noted that the property is zoned Business G (Town Centre Support) under the *HSLEP*. Council resolved to prohibit “sex services premises” in all zones other than the IN1 - General Industrial and IN2 - Light Industrial zones under the draft CLEP. Council has subsequently resolved to write to the Minister for Planning and Infrastructure requesting that the *Standard Instrument* be reviewed to remove requirements that mandate the permissibility of sex service premises within CLEPs.

At its meeting on 2 February 2011, Council considered Executive Manager’s Report No. PLN16/11 reviewing submissions received in response to the exhibition of the *Townhouse Planning Proposal*. The report notes that the *Proposal* aims to rezone land to permit townhouses in out of centre locations along transport corridors in Hornsby, Asquith and

Mount Colah to assist increase the supply of this form of housing and ensure Council's dwelling target under the *draft North Subregional Strategy* is met. Council resolved to forward the *Townhouse Planning Proposal* to the Minister for Planning and Infrastructure for gazettal. The proposed rezonings should be reflected in the draft CLEP.

Amendments to the draft CLEP resulting from the amended planning legislation, LEP drafting directions and subsequent Council resolutions are discussed below under the heading "Revised Draft Comprehensive LEP".

4. Revised Draft Comprehensive LEP

The revised draft CLEP (available for viewing at www.hornsby.nsw.gov.au/clep) comprises 6 parts, schedules a dictionary and maps. The revised draft Plan is supported by a set of explanatory notes (also available for viewing at www.hornsby.nsw.gov.au/clep) that presents the main provisions of the Plan and outlines the translation process. The main amendments to Council's draft CLEP and the reasons for revision are outlined below.

Part 1 - Preliminary

- The "Aims of the Plan" relating to Council's vision and the sustainable development of the Shire have been clarified by redrafting same.
- The latest model provisions concerning "Savings provisions relating to development applications" and "Suspension of covenants, agreements and instruments" have been included.

Part 2 - Permitted or Prohibited Development

- Provisions establishing where earthworks require consent have been relocated to Part 6 of the Plan (i.e. Clause 6.7) and redrafted having regard to the latest "Earthworks" model provision (as requested by the DP&I) and recommendations of the *Waterways Review*.
- The Land Use Tables have been redrafted having regard to the new terms, amendments to existing terms and new group term/sub term relationships in the revised *Standard Instrument*.
- The revised *Standard Instrument* mandates new development types be permitted and prohibited in the Land Use Tables for various zones. Development that has become permitted without consent, with consent and prohibited is identified by the Land Use Table Comparison in the Explanatory Notes.
- **Rural Land Use Zones:** The name and mandated objectives of the RU4 zone have been amended in the *Standard Instrument* to clarify that it is a rural zone for agricultural uses, not a rural-residential zone. Specifically, the RU4 - Rural Small Holdings zone has been replaced with the RU4 - Primary Production Small Lots zone in the Land Use Table. The new RU4 zone has been applied to land north of Galston Village and south of Glenorie Village in recognition that the land is most suitable for agriculture and is characterised by a two hectare subdivision pattern. The RU1 - Primary Production zone continues to apply to land north of Glenorie Village. The RU2 - Rural Landscape zone has been applied to land south of Galston Village as the zone best recognises the rural-residential nature of the land.

- The RU1 - Primary Production, RU2 - Rural Landscape and RU4 - Primary Production Small Lots zone objectives have been amended to encourage land uses that support primary production and industry, including tourist and visitor accommodation and the provision of farm produce directly to the public.
- **Residential Land Use Zones:** The R2 - Low Density Residential, R3 - Medium Density Residential and R4 - High Density Residential zone objectives have been amended to clarify that development should be compatible with the character and within the infrastructure capacity of the respective areas.
- In accordance with the *Townhouse Planning Proposal*, low density residential zoned lands in Hornsby, Asquith and Mount Colah have been zoned R3 - Medium Density Residential to permit town house type development. The revised draft CLEP retains the proposed rezoning of the *Housing Strategy* precincts. The Plan would be amended to reflect the outcomes of discussion with the DP&I and Minister of Planning and Infrastructure concerning the progression of the *Housing Strategy* following the exhibition process.
- **Business Land Use Zones:** The B6 - Enterprise Corridor zone has been amended in the *Standard Instrument* by inclusion of an additional mandated objective that must be included if any type of residential accommodation is permitted in the zone. The B2 - Local Centre, B4 - Mixed Use, B5 - Business Development and B6 - Enterprise Corridor zones all seek to permit “shop top housing” with consent. Accordingly, the objective has been included in all the zones to “provide for residential uses, but only part of a mixed use development”.
- **Industrial Land Use Zones:** Dwelling-houses (but only as part of a mixed use development) were permitted with consent in the industrial zones in the draft CLEP to provide the opportunity for temporary overnight accommodation or a caretaker’s residence to be established on industrial sites. The DP&I has advised that the qualifier (but only as part of a mixed use development) is no longer allowed to be used in the Land Use Tables. Accordingly, “dwelling-houses” and the associated land use “group homes” have been prohibited in the IN1 - General Industrial and IN2 - Light Industrial zones. However, caretaker’s residences would continue to be permissible with consent as ancillary development.
- In accordance with advice from the DP&I, the IN4 - Working Waterfront zone has been applied to lands proposed to be zoned B2 - Local Centre zone at Berowra Waters and Brooklyn. The IN4 - Working Waterfront zone permits marinas and other maritime land uses.
- **Special Purpose Land Use Zones:** Cemeteries were zoned SP1 - Special Activities in the draft CLEP in accordance with guidelines published by the then Department of Planning in 2008. *LEP Practice Note PN10-001 - Infrastructure in LEPs* was released in December 2010 and now requires cemeteries to be zoned SP2 - Infrastructure. Accordingly, cemeteries have been zoned SP2 - Infrastructure and the SP1 Land Use Table deleted.
- The DP&I advises that an alternative strategy to permit tourism based land uses in part of the E3 - Environmental Management zone at Wiseman’s Ferry should be investigated. The Hills Council has requested that Council apply the SP3 - Tourist zone to the Wiseman’s Ferry Commercial Centre to promote consistency of zoning in the area.

Accordingly, the SP3 zone (which has already been applied to facilitate a similar tourist based land use strategy for land in Brooklyn) has been extended over the subject E3 zoned land at Wiseman's Ferry.

- **Recreation Land Use Zones:** The DP&I advises that a number of agricultural and infrastructure based land uses proposed for inclusion in the RE1 - Public Recreation and RE2 - Private Recreation zones are inconsistent with the mandated *Standard Instrument* zone objectives, and suggests prohibition of same. It is acknowledged that these land uses are inconsistent with the future intended use of the land for recreational purposes. However, the uses were permitted to provide private owners of recreation zoned properties (many of which are located in the rural areas of the Shire) with development options. A review of the properties affected by the zonings identifies that they are covered with native bushland. Accordingly, Land Use Tables for the RE1 and RE2 zones have been amended to prohibit "aquaculture", "cemeteries", "crematoria", "extensive agriculture", "farm buildings", "forestry", "intensive livestock agriculture", "intensive plant agriculture" and "water storage facilities".
- **Environmental Protection Land Use Zones:** The DP&I advises that intensive agriculture uses, which are proposed as permitted land uses in the E3 - Environmental Management zone, are inconsistent with the zone objectives, and suggests prohibition of same. The E3 zone has been applied to steep lands and floodplains in the Shire. The steep lands are covered by native bushland and the floodplains contain acid sulfate soils. Accordingly, it is acknowledged that it is inappropriate to permit intensive agricultural uses, it being noted that "extensive agriculture" will continue to be permitted without consent in the zone. Accordingly, the E3 zone has been amended to prohibit "intensive livestock agriculture" and "intensive plant agriculture".
- **Waterways Land Use Zones:** The W1 - Waterways zone objective has been amended to clarify that the zone provides for a limited range of development that facilitates access to the waterways.
- Cowan Creek was incorrectly zoned W1 in the draft CLEP. Cowan Creek has been zoned E1 - National Parks and Nature Reserves to reflect the boundaries of the Ku-Ring-Gai National Park and recommendations of the *Waterways Review*.

Part 3 - Exempt and Complying Development

- The draft CLEP includes additional circumstances (based on those contained in Council's Exempt and Complying DCP) that development must comply to be exempt or complying development. The DP&I advises that the mandated exempt and complying development circumstances cannot be modified. However, the additional circumstances could be considered for inclusion as development criteria in the schedules. The schedules have been amended accordingly.

Part 4 - Principal Development Standards

- **Minimum Subdivision Lot Size:** The draft CLEP included local minimum lot size provisions for strata and community title subdivision as these subdivision forms were not addressed by the *Standard Instrument*. The revised *Standard Instrument* now includes a mandatory clause for community title subdivision. However, the clause does not cover strata subdivision. Accordingly, the local clause has been redrafted as "Clause 4.1B Minimum subdivision lot size for a strata plan".

- The DP&I suggests an alternate model clause for calculating lot sizes for properties with dual zonings. Accordingly, the local clause has been redrafted as “Clause 4.1C Minimum subdivision lot sizes for certain split zones”.
- The DP&I advises that minimum property width controls cannot be included within a LEP. Accordingly, the local clause has been deleted and minimum property width requirements for high density housing precincts in Hornsby and Waitara will be included in Council’s Comprehensive DCP. The Land Zoning and Land Reservation and Acquisition maps have been amended to reflect the acquisition of properties to establish the village green at Waitara.
- **Height of Buildings:** The Height of Buildings Map included a maximum building height limit of 9m for the rural, R2 - Low Density Residential, SP3 - Tourist and E3 - Environmental Management zones. The *Exempt and Complying Development Codes SEPP* has been amended to establish 8.5m and 10m building height limits for dwelling-houses for residential and rural zones, respectively. To ensure a consistent height standard for dwelling-houses, the Height of Building Map has been amended having regard to the *SEPP*.
- **Floor Space Ratio:** The Floor Space Ratio (FSR) bonus provisions have been amended having regard to other similar gazetted LEP provisions and to only include terms defined in the dictionary.
- The DP&I advises that it does not support the inclusion of a clause to establish a minimum FSR for residential flat buildings on high density residential zoned land. The intent of the clause (i.e. to ensure the land is not underutilised and the Waitara village green is realised) has been achieved through the inclusion of alternative provisions in the draft CLEP and DCP. Accordingly, the clause has been deleted.

Part 5 - Miscellaneous Provisions

- In accordance with direction from the DP&I, “Clause 5.1A Development on land intended to be acquired for a public purpose” has been amended based on similar provisions used in recently gazetted LEPs. The new clause restricts development to the intended use of the land.
- “Clause 5.4 Controls relating to miscellaneous permissible uses” has been amended to specify a 100m² maximum floor area for “industrial retail outlets”, consistent with the size limit for “neighbourhood shops” to service the daily convenience needs of workers in industrial areas.
- The *Standard Instrument* mandates the use of “Clause 5.5 Development within the coastal zone” if the LEP applies to land in the coastal zone. The clause was not originally adopted as Hornsby Council was not recognised as being in the Coastal Zone. The *Coastal Protection and Other Legislation Amendment Act 2010* was made in October 2010 and largely commenced on 1 January 2011. The *Act* establishes that Hornsby Council is now a coastal council. Accordingly, the “Development within the coastal zone” clause has been included.
- The *Standard Instrument* mandates the use of “Clause 5.7 Development below MHWM” if the LEP applies to land which contains tidal waters. The clause requires development consent to carry out development below MHWM. The draft CLEP did not include this

provision as the waterways are proposed to be zoned in accordance with the recommendations of the *Waterways Review*. The DP&I notes that Hawkesbury River and its tributaries are tidal and advises that Council has no discretion other than to include the clause. Accordingly, the “Development below MHW” clause has been included in the revised Plan.

Part 6 - Local Provisions

- The DP&I advises that the model “Foreshore building line” provision has been revised to delete the need to consider sea level rise or change of flooding patterns as a result of climate change when determining an application within the “foreshore area”. “Clause 6.1 Foreshore building line” has been amended in accordance with same.
- The local provision “Restriction on sex services premises” has been replaced with the latest model provision which requires Council to consider specified impacts in determining an application rather than prohibiting sex services premises in sensitive locations. The provision is now called “Clause 6.2 Location of sex services premises”.
- The *Exempt and Complying Development Codes SEPP* was recently amended to permit complying development in flood planning areas where determined to be of low risk. A development application will only be required to be submitted for merit based assessment on flood planning areas determined to be of high risk. Accordingly, “Clause 6.5 Flood planning areas” and the associated map (covering mainstream flooding in the Wisemans Ferry area) has been renamed and amended to refer to “high risk flood planning areas”. A planning proposal to include new maps (covering both mainstream and overland flow maps in the urban areas of the Shire) in the CLEP will be progressed should Council adopt the Flood Prone Land maps currently being prepared by Council’s Works Division.
- “Clause 6.7 Earthworks” aims to prohibit earthworks in the E2 -Environmental Conservation, W1 - Natural Waterways and W2 - Recreational Waterways zones. These zones comprise land below MHW. Accordingly, the local provision in the draft CLEP declaring dredging (i.e. defined as “earthworks” under the *Standard Instrument*) below the MHW as designated development has been deleted.

Schedules

- Five additional permitted uses have been deleted as they have become permitted with consent through changes to other provisions in the revised draft CLEP.
- The Exempt and Complying development schedules were prepared to include development contained in Council’s *Exempt and Complying Development DCP* not covered by the then State Government policy. Various State Government policies have subsequently been amended to cover development types included in the schedules. Accordingly, the schedules have been amended to no longer include such development types.
- The complying development certificate conditions contained in the draft CLEP were based on those contained in the *Exempt and Complying Development SEPP*. In accordance with the *Standard Instrument*, these have been deleted and a single condition has been included to require compliance with the conditions in the *SEPP*.

- There are 801 heritage listed items contained in the heritage schedule of the revised draft CLEP. A number of minor amendments have been made, including insertion of Kangaroo Point, Brooklyn as a heritage item of local significance. Council's application for inclusion of the site on the State Heritage Register was not supported by the then Minister for Planning in 2009. However, the opportunity for its inclusion as a local item in the draft CLEP was noted.

Dictionary

There are a total of 285 general, land use and group terms listed under the revised *Standard Instrument* dictionary. As previously reported, the Land Use Tables for all zones have been redrafted having regard to the new terms, amendments to existing terms and new group term/sub term relationships.

Maps

A number of the 232 maps prepared to implement the draft LEP have been revised in response to issues identified in submissions and as a result of change to legislation. The maps that have been revised are the Land Zoning Map, Lot Size Map, Floor Space Ratio Map, Height of Buildings Map, Land Reservation Acquisition Map and Heritage Map.

STATUTORY CONSIDERATIONS

Statutory considerations were addressed in Executive Manager's Report No. PLN92/10 considered at Council's meeting on 1 December 2010. This report provides a summary of the submissions received from public authorities pursuant to Section 62 of the *EP&A Act* and how the draft CLEP has been amended to address the issues identified. The report identifies how the draft CLEP has been amended in response to changes in legislation, including the latest revision of the *Standard Instrument*. The report also presents a revised draft CLEP for endorsement for public exhibition. Should Council endorse the draft Plan, a submission would be made to the DP&I seeking certification under Section 65 of the *EP&A Act* to exhibit the draft Plan.

BUDGET

The preparation of Council's new Comprehensive LEP has been prepared with resources allocated to the Town Planning Services Branch under the adopted Strategic Planning Program.

In March 2011, \$89,600 was granted to Council by the DP&I as part of its *Local Environmental Plan Acceleration Fund*. The funding was granted for Council for additional planning and GIS mapping services to assist with the accelerated delivery of its Plan. The funding agreement includes a timeframe to submit the draft Plan to the Department for gazettal (i.e. end of December 2011). Expressions of interest have been sought from planning consultants to assist in tasks including a peer review of the draft *CLEP* and reviewing submissions following exhibition of the draft Plan.

CONSULTATION STRATEGY

A Consultation Strategy for the draft CLEP was outlined in Executive Manager's Report No. PLN92/10 and endorsed by Council at its meeting on 1 December 2010. In summary, the draft Plan is proposed to be exhibited for a minimum of 60 days, including advertisement in local newspapers and on Council's website, notification of relevant public authorities and

community and interest groups, distribution of a brochure and use of the 'Bang the Table' website.

TRIPLE BOTTOM LINE SUMMARY

The Triple Bottom Line Summary for the draft CLEP was addressed in Executive Manager's Report No. PLN92/10.

CONCLUSION

Council has undertaken consultation with relevant public authorities pursuant to Sections 34A and 62 of the *EP&A Act* and submissions received. Council has also received feedback on the drafting of the Plan from the DP&I. A revised draft Comprehensive LEP has been prepared having regard to the issues identified by relevant public authorities, the latest version of the *Standard Instrument* and recent amendments to planning legislation.

It is recommended that Council endorse the revised draft Plan for public exhibition.

RECOMMENDATION

THAT:

1. Council endorse the revised draft Comprehensive Local Environmental Plan attached to Executive Manager's Report No. PLN46/11 for public exhibition.
2. A submission be made to the Department of Planning and Infrastructure pursuant to Section 64 of the *Environmental Planning and Assessment Act, 1979* requesting certification to enable the draft Comprehensive Local Environmental Plan to be placed on public exhibition.
3. Should conditions of certification only require minor amendment to the draft Comprehensive Local Environmental Plan, the General Manager be delegated authority to endorse and exhibit the Plan for a minimum of sixty days in accordance with the consultation strategy attached to Executive Manager's Report No. PLN92/10.
4. Following exhibition of the draft Comprehensive Local Environmental Plan, a report on submissions be presented to Council for its consideration.

JAMES FARRINGTON
Acting Executive Manager
Planning Division

Attachments:

1. Section 62 Summary of Submissions
File Reference: F2007/00692-03
Document Number: D01671571

2 WAHROONGA (NORTH) HERITAGE CONSERVATION AREA PLANNING PROPOSAL - REPORT ON SUBMISSIONS

EXECUTIVE SUMMARY

At its meeting on 3 November 2010, Council considered a report presenting the findings of a review of the *Wahroonga (North) Heritage Conservation Area Study*. The report also presented a Planning Proposal which aims to establish a new Heritage Conservation Area (HCA) within Wahroonga (North) bounded by Edgeworth David Avenue, Sydney-Newcastle Freeway, Alexandria Parade and Myra Street.

Council resolved to forward the *Planning Proposal* to the Department of Planning and Infrastructure (DP&I) requesting authorisation for public exhibition. A Gateway Determination was received indicating that the *Planning Proposal* could be exhibited. Accordingly, the *Proposal* was placed on public exhibition from 24 March 2011 to 22 April 2011.

A total of eight submissions were received in response to the exhibition. The key issues raised in submissions are addressed in this report. It is recommended that Council forward the *Planning Proposal* attached to this report to the DP&I for gazettal.

PURPOSE

The purpose of this report is to review submissions received in response to the exhibition of the *Wahroonga (North) Heritage Conservation Area Planning Proposal*.

BACKGROUND

On 17 August 2005, Council considered Executive Manager's Report No. PLN224/05 presenting the findings of the *Wahroonga (North) Heritage Conservation Area Review (GML Study)* conducted by Godden Mackay Logan assessing the heritage significance and streetscape qualities of the Wahroonga (North) Study Area. The *GML Study* recommends the establishment of a HCA. At its meeting on 2 November 2005, based on advice from the DP&I, Council resolved to defer the establishment of the Wahroonga (North) Heritage Conservation Area and investigate the heritage conservation area for inclusion in Council's Comprehensive Local Environmental Plan (LEP).

Given the time that has elapsed since the *GML Study* was completed, Council's heritage consultant, Sue Haertsch Planning, was requested to review the findings and recommendations of the *GML Study* having regard to developments in the area since 2005, applying current best practice methods. At its meeting on 3 November 2010, Council considered Executive Manager's Report No. PLN76/10 presenting the findings of the review and a Planning Proposal concerning the establishment of a new HCA within Wahroonga bounded by Edgeworth David Avenue, Sydney-Newcastle Freeway, Alexandria Parade and Myra Street. Council resolved (in part) to forward the *Planning Proposal* to the Minister seeking a Gateway Determination under Section 56 of the *Environmental Planning and Assessment (EP&A) Act 1979*.

In accordance with Council's resolution, the *Planning Proposal* was forwarded to the DP&I on 9 November 2010. A Gateway Determination was received on 10 January 2011, indicating that the *Planning Proposal* should be exhibited for 28 days. Following clarification from the DP&I concerning a condition of the Gateway Determination, the *Wahroonga (North) Heritage Conservation Area Planning Proposal* was placed on public exhibition from 24 March 2011 to 22 April 2011.

DISCUSSION

This report discusses submissions received in response to the exhibition of the *Wahroonga (North) Heritage Conservation Area Planning Proposal*.

Exhibition and review of submissions

The *Wahroonga (North) Heritage Conservation Area Planning Proposal* was exhibited from 24 March 2011 to 22 April 2011. The consultation met the statutory requirements of the Gateway Determination including a requirement that the *Proposal* be exhibited for 28 days and notified through a local newspaper, on the Council website and sent to relevant public authorities. The *Planning Proposal* and supporting documentation were displayed at Council's Administration Centre, at Hornsby Library, and on Council's website. Letters were sent to property owners within the draft HCA and property owners within the vicinity. Letters were also sent to relevant community groups and public authorities, and referrals were sent to other Divisions of Council.

A total of eight submissions have been received. Five submissions raise objection to the *Planning Proposal*, two submissions make enquiries concerning access to submissions and the impact of the *Proposal* on an existing development consent, and one submission supports the establishment of a HCA as it would assist preserve the built and landscape heritage qualities of the area. No submissions were received from community groups or public authorities.

Key issues raised in submissions concerning the *Planning Proposal* include the heritage significance of the draft HCA, implications for future development and community consultation. The issues raised in submissions are addressed below.

Heritage Significance of the draft Wahroonga (North) HCA

Three submissions question the heritage values of the draft HCA given the presence of a number of recent developments within the area. One submission comments that the majority of dwellings were built after the 1960s and as such, the area does not contain a strong collection of federation residential buildings. Two submissions refute that the draft HCA demonstrates the post 1892 residential development of the area.

One submission suggests that the proposed HCA not be progressed and that only the individual properties identified as displaying specific heritage character be provided protection by being listed.

Comment: The heritage conservation values of the draft Wahroonga (North) HCA have been evaluated by two independent expert heritage consultants in accordance with guidelines published by the NSW Heritage Office. Based on this criterion, the two consultants found the area has local heritage significance in relation to historic, historic associative, aesthetic/creative, research, rarity and representiveness criterion.

The consultant's reports are based on analysis of historical documentary evidence and physical evidence within the locality. In addition to drawing upon the background information provided within the original *GML Study*, the recent *Review* by Council's heritage consultant also incorporates:

- recent inspections of the area;
- review of development approvals and court decisions since 2005;
- review of sites identified as contributory within the *GML Study*;
- review of opportunities and threats in the context of heritage and/or streetscape qualities of the area; and
- the application of current best practice heritage methods.

The *Review* provides a building contribution analysis of heritage items and confirms the locations of potential heritage items and contributory items. The *Review* identifies 5 items for listing under Schedule D of the *Hornsby Shire Local Environmental Plan 1994* and 118 contributory items within the area.

The *Review* acknowledges the presence of a number of recent developments within the area. However, it is recognised that notwithstanding the recent developments, the area is aesthetically distinctive, with a strong collection of Federation residential building and post 1892 residential development. The later of which exhibit built and landscape qualities that are becoming rare within Hornsby Shire.

Resolve: It is recommended that no amendments be made to the *Planning Proposal* as a result of submissions concerning the heritage significance of the draft Wahroonga (North) HCA.

Request for exclusion of area bounded by Woonona Avenue, Sydney-Newcastle Freeway and Edgeworth David Avenue

One submission objects to the inclusion of the area bounded by Woonona Street, Sydney-Newcastle Freeway and Edgeworth David Avenue on the basis that it is not referred to within the *Review*, that there are no properties of significance identified in this area and that the report identifies properties only on the western side of Woonona Avenue.

Comment: The area bounded by Woonona Avenue, the Freeway and Edgeworth David Avenue forms part of the area recommended for inclusion in the draft HCA by both the *GML Study* (page 4) and the *Review* (page 4). The *GML Study* states that the draft HCA consists of a compilation of subdivisions of historic estates. Subdivision of these estates began in 1892 with the first sales of the Bundarra Estate. The area is defined by a combination of local arterial streets and the physical boundaries provided by the North Shore Railway Line and the Northern Freeway. Myra Street and Edgeworth David Avenue are important local arterials derived from the early land grants and estates. These local arterial roads along with the railway and Freeway set the area aside as a recognisable, distinct precinct. The *Review* identifies 12 contributory items within the area bounded by Woonona Avenue, the Freeway and Edgeworth David Avenue.

Resolve: It is recommended that no amendments be made to the *Planning Proposal* as a result of the request for exclusion of the area bounded by Woonona Avenue, Sydney-Newcastle Freeway and Edgeworth David Avenue from the draft HCA.

Request for exclusion of property Nos. 26-28 Myra Street

One submission objects to the inclusion of property Nos. 26-28 Myra Street, Wahroonga in the draft Wahroonga (North) HCA. The submission comments that the property should be excluded from the *Planning Proposal* as the owners are intending to implement a current development consent for demolition of the existing dwelling and subdivision of one allotment into three.

Comment: The significance of the Wahroonga (North) area is associated (in part) with the subdivision of several historic estates, including the 'Hordern Estate'. Property Nos. 26-28 Myra Street was created as part of the 'Hordern Estate'. The progression of the draft HCA would not affect existing development approvals as long as works approved in any Development Consent are commenced within the period specified on the consent. However, future development within the draft HCA would need to consider the provisions of Council's Heritage Development Control Plan (DCP) and be sympathetic to the significant elements of the area. The Heritage DCP advocates new development which would relate sensitively to the scale, form, siting and character of heritage items and conservation areas.

The purpose of the *Proposal* is to establish a HCA within the Wahroonga (North) area as identified by the *GML Study* and the *Review*. It is acknowledged that certain dwellings do not contribute directly to the heritage value of the draft HCA. However, the area as a whole has been found to have a consistent development theme and significant integrity to justify listing as a HCA.

Resolve: It is recommended that no amendments be made to the *Planning Proposal* as a result of the submission requesting the exclusion of property Nos. 26-28 Myra Street from the draft HCA.

Land and Environment Court Decision

One submission comments that the initial process of establishing a HCA was commenced to prevent development of land within Myra/Oleander Street and that the heritage values of the Wahroonga (North) area were subsequently denied by the Land and Environment Court (LEC) in approving the development.

Comment: Development Application No. 1563/2004 for the demolition of four dwellings and the erection of a seniors living development at properties Nos. 25-27 Highlands Avenue and Nos. 24-28 Myra Street, Wahroonga was the subject of appeal in the LEC. The LEC gave consideration to the proposed heritage listing of property Nos. 26-28 Myra Street as part of its consideration of the development application. The LEC found that the house did not have sufficient significance to warrant its conservation. However, the court appeal did not consider the heritage significance of the Wahroonga (North) area as a whole and the proposed establishment of a HCA.

Resolve: It is recommended that no amendments be made to the *Planning Proposal* as a result of the submission concerning the LEC decision.

Removal of heritage listed items

One submission questions the ability of the draft HCA to provide protection for elements of heritage significance and references the loss of heritage listed trees within the Woonona

Avenue road reserve as a consequence of the subdivision of property No. 44 Woonona Avenue, Wahroonga.

Comment: The purpose of listing an item or area as heritage is to protect and manage the significant elements of the item. Listing of an item or area as heritage is not intended to prohibit development. Heritage is only one element that needs to be taken into account and balanced with other considerations during the assessment of a development application. Development Application No. 545/1995 for the erection of a two storey dwelling and torrens title subdivision was approved by Council in 1996. A request to Council was made in 2000 for the removal of one Poplar tree impeding the construction of the proposed driveway. On inspection, it was noted that the tree was in poor condition, with substantial degree of dieback within the canopy and that the construction of the driveway would result in cutting of the roots of the tree to the extent that the tree would become unstable. Accordingly, the tree was removed due to safety concerns and to enable access to the proposed dwelling, facilitating development within the area.

The primary purpose of Council's Heritage DCP is to manage heritage in Hornsby Shire and to provide guidance and outline specific controls for development relating to heritage items and HCAs. The DCP proposes to encourage sympathetically designed development, which will contribute to the conservation of the Shire's heritage resources and the quality of the environment. In doing this, the established heritage values and the quality of the environment would be maintained or improved, resulting in attractive streetscapes and providing an appealing place to live. The establishment of a HCA within Wahroonga (North) would provide increased protection for the heritage and streetscape qualities of the area in line with the provisions of the Heritage DCP.

Resolve: It is recommended that no amendments be made to the *Planning Proposal* as a result of the submission concerning the removal of heritage listed items.

Future Development

One submission comments that the establishment of a HCA and associated heritage controls would prohibit landowners from undertaking development currently permitted on the land. Another submission questions why Council is not progressing a recommendation of the *Review* to divide the area into two precincts with different planning controls.

Comment: Progression of the draft HCA would not result in the rezoning of land. The land would continue to be zoned Residential A – Low Density under the *Hornsby Shire Local Environmental Plan 1994*. Accordingly, the identification of the HCA would not result in any changes to the range of uses currently permitted within the Residential A zone. However, should the HCA be established, the provisions within Council's Heritage DCP would apply to the land.

The *Review* recommends that the area be divided into two precincts, Northern and Southern. The Northern precinct contains regular lots with small single storey houses, characteristic of Inter War/Post War building styles from 1913-1950. The Southern precinct contains large irregular lots with large two storey houses, characteristic of Federation and Inter War building styles from 1892-1939. The purpose of the *Planning Proposal* is to establish a HCA within the area which includes the Northern and Southern precincts.

The *Review* also recommends that appropriate development controls be tailored to reflect the differing historic subdivision patterns and building stock of the precincts. At its meeting on 3 November 2010, Council resolved (in part) that development controls for the area be

prepared for inclusion in the heritage section of Council's Comprehensive DCP. If the *Proposal* is progressed, statements of significance and development controls tailored to the characteristic elements of the two precincts would be prepared and included within the Comprehensive DCP.

Resolve: It is recommended that no amendments be made to the *Planning Proposal* as a result of submissions concerning future development within the draft HCA.

Funding

One submission suggests that funding and grants should be available to property owners to undertake heritage works should the draft HCA be gazetted.

Comment: Council has offered a Local Heritage Assistance Fund since 1994. The Local Heritage Assistance Fund has been established by Council to assist and encourage property owners to conserve identified heritage items in the Shire.

Resolve: It is recommended that no amendments be made to the *Planning Proposal* as a result of the submission concerning funding of heritage works.

Community Consultation

Three submissions raise concerns regarding the community consultation undertaken throughout the proposed establishment of the draft HCA within Wahroonga (North). One submission suggests that a number of property owners were not consulted on the initial Study and that the length of consultation that did occur was not adequate. An extension of the exhibition is requested with one submission suggesting that the exhibition should be at least 6 months. Another submission requests that a referendum of all affected households be held prior to the proposal proceeding.

Comment: The matter of establishing a HCA within Wahroonga (North) has been the subject of investigation by Council and consultants since 2003. Consultation concerning the original Study was undertaken in 2005, and involved two community information meetings, where property owners and other interested community members were invited to attend. In 2006, Council deferred the progression of the Conservation Area based on advice from the (then) Department of Planning that the establishment of heritage conservation areas would not be supported until Council's strategy for meeting future housing demand was finalised. Council has submitted its *Housing Strategy* to the DP&I to meet its housing obligations and is now looking to progress the establishment of the HCA.

The *Wahroonga (North) Heritage Conservation Area Planning Proposal* was endorsed by Council for the purposes of public exhibition to seek feedback from the community to assist Council in making a decision concerning the progression of the *Proposal*. The consultation met the statutory requirements of the Gateway Determination with the *Proposal* made publicly available for a period of 28 days. An advertisement was placed in the *Hornsby Advocate* on two occasions. The *Planning Proposal* and supporting documentation were also displayed at Council's Administration Centre, the Hornsby Library and on Council's website. Approximately five hundred letters were sent to property owners within the draft HCA and immediately adjacent lands, with eight submissions having been received.

Resolve: It is recommended that no amendments be made to the *Planning Proposal* as a result of submissions concerning community consultation.

STATUTORY CONSIDERATIONS

As part of the consideration of Planning Proposals, Council is required to consider the relevance of any State Environmental Planning Policy (SEPP) or Ministerial Direction under Section 117 of the *EP&A Act 1979*. An assessment of relevant SEPPs and Section 117 Directions is contained within the attached *Wahroonga (North) Heritage Conservation Area Planning Proposal*. The *Proposal* is not inconsistent with any SEPP or relevant Section 117 Directions.

To facilitate the gazettal of the *Wahroonga (North) Heritage Conservation Area Planning Proposal*, Council must submit the *Proposal* to the DP&I for the legal instrument (the LEP) to be drafted and made by the Minister.

CONSULTATION

On 9 November 2010, Council forwarded the *Wahroonga (North) Heritage Conservation Area Planning Proposal* to the DP&I seeking a Gateway Determination by the Minister in accordance with Section 56 of the *EP&A Act 1979*. On 10 January 2011, the DP&I issued a Gateway Determination enabling exhibition of the *Planning Proposal*. Council consulted with relevant Government agencies and no objections were received.

The *Planning Proposal* was exhibited for community comment in March and April 2011. Eight submissions have been received and are addressed in this report.

TRIPLE BOTTOM LINE SUMMARY

Triple Bottom Line is a framework for improving Council decisions by ensuring accountability and transparency on social, environmental and economic factors. It does this by reporting upon Council's strategic themes.

A Triple Bottom Line summary was provided in respect of *Wahroonga (North) Heritage Conservation Area Planning Proposal* in Executive Manager's Report No. PLN76/10, considered by Council on 3 November 2011.

CONCLUSION

The *Wahroonga (North) Heritage Conservation Area Planning Proposal* proposes to establish a new HCA within Wahroonga (North) bounded by Edgeworth David Avenue, Sydney-Newcastle Freeway, Alexandria Parade and Myra Street.

The *Proposal* has been exhibited in accordance with the Gateway Determination issued by the DP&I. Eight submissions were received and are addressed in this report. Key issues raised in submissions include heritage significance of the draft HCA, implications for future development and community consultation. The submissions do not raise any issues that would prevent the progression of the *Planning Proposal*.

It is recommended that Council forward the *Planning Proposal* to the DP&I for gazettal.

RECOMMENDATION

THAT:

1. Council forward the Wahroonga (North) Heritage Conservation Area Planning Proposal attached to Executive Manager's Report No. PLN48/11 to the Minister for Planning and Infrastructure for gazettal pursuant to section 59 of the Environmental Planning and Assessment Act 1979.
2. Submitters be advised of Council's resolution.

JAMES FARRINGTON
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Attachments:

1. Wahroonga (North) Heritage Conservation Area Planning Proposal
2. Summary of Submissions

File Reference: F2010/00623
Document Number: D01673907