

# SUTHERLAND LEP INDEPENDENT REVIEW

## WEBSITE SUBMISSION

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<b>Organisation:</b> N/A	<b>Suburb:</b> Bundeena, NSW
<b>Email address:</b> N/A	<b>Privacy:</b> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
<b>Comment:</b> To whom it may concern,  There is a perception that the LEP has been developed without the appropriate authorities being consulted. Planning law may have been ignored. Hopefully your review will be able to shed some light on this. My specific interest is the the ex-scout land in Bundeena.  Section 34A Environmental Planning and Assessment Act 1979 Has Council consulted the Director-General of the Office of Environment and Heritage regarding the additional permissible uses of recreation camp and eco-tourism facility for the Scout land, with particular reference to the likely extent of the clearings required for APZs under these uses and the potential impacts of these uses to threatened species, populations, ecological communities or their habitats both in the Scout land and on the wetlands and surrounding areas in the Royal National Park that will or may be adversely affected by the planning proposal? Can Council inform the community of the comment it has received from the Director-General?  Section 117 Ministerial Directive 2.1 Environmental protection zones 2.1.4&5 LEP must not reduce environmental protection standards (4) A planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas. (5) A planning proposal that applies to land within an environment protection zone or land otherwise identified for environment protection purposes in a LEP must not reduce the environmental protection standards that apply to the land (including by modifying development standards that apply to the land). The inclusion of "Recreation Camp" and "Eco-tourist facility" within the E2 zoning proposed for the Scout land reduces the environmental protection standards that should apply under E2 zoning, especially the protection of the EECs on the Scout land and downstream on the neighbouring wetland in the RNP due to the likely impacts of the APZs required for development under these uses. Under the definition in the draft LEP, a "recreation camp" can be a function centre, conference centre, training centre or spiritual retreat - additionally providing accommodation. What in this definition differentiates a "recreation camp" from a holiday resort or hotel? They all provide short term accommodation for holiday making, sport and recreation and nothing in this definition limits the size and scale of a tourist operation described as a "recreation camp". There are no objectives in the definition that promote environmental conservation, the appreciation of nature, habitat regeneration or any of the objectives of environmental conservation zoning.  There is no detail provided in the definition of "Recreation Camp" that differentiates this land use from many of the other land uses allowed under RE2 Private Recreation zoning which Council (and the community) concluded are not appropriate uses for this environmentally sensitive land (as per the public submissions report '59. Scout Land, Bundeena' and the subsequent changing of the zoning to E2 in the exhibited draft LEP). The report states that many of the uses allowed under RE2 are not appropriate for the environmental sensitivity of the land and gives hotels or motels as examples of inappropriate uses. The Scout land is not a remote or large site. It is only 5.6 hectares,	

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barely large enough, given its slope, shape and the riparian nature of the land, to fit an SFPP APZ for just one building. The land immediately adjoins eighteen residential neighbours.

### Consistency in relation to ENVIRONMENT PROTECTION ZONES

Below is an excerpt taken from Section 117 Ministerial Directive 2.1.6.

(6) A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are:

(a) justified by a strategy which:

- i. gives consideration to the objectives of this direction,
- ii. identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and
- iii. is approved by the Director-General of the Department of Planning, or

(b) justified by a study prepared in support of the planning proposal which gives consideration to the objectives of this direction, or

(c) in accordance with the relevant Regional Strategy or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or

(d) is of minor significance.

The gateway determination document exhibited by Council makes no mention of this inconsistency with the Standard Instrument LEP.

I pose the following questions:

Can council advise whether the Director General of the Department of Planning and Infrastructure has provided written approval for the use of "Recreation Camp" as defined in the amended draft LEP 2013 as an appropriate land use for E2 Environmental Conservation?

What justification did Council provide to the Director General to argue that this land use is consistent with the protection and conservation of the Scout land as an environmentally sensitive area?

Did Council inform the Director General of the extent to which the land is a riparian corridor, that it forms a vital part of the Bundeena catchment area and feeds the floodplain and that it contains several endangered ecological communities?

Did Council inform the Director General that the land is bushfire prone land and that development under the use of recreation camp could require substantial clearing of the forest and understory for APZs?

Is Council satisfied that the additional permissible use of eco-tourism facility for the Scout land is consistent with the protection and conservation of this environmentally sensitive land as well as the wetland and EECs on the land and the neighbouring National Park land especially given the extent of APZs likely to be required by any development under the use of eco-tourism facility?

Has Council sought the authority of the Director-General of Planning with a proposal justifying the inconsistency of the use of eco-tourism and the protection of these environmentally sensitive lands given the extent of likely clearing required for APZs under this land use? What is the justification Council provided the Director General. What response was received by the Director General to the justification?

Will council provide the information that will answer these questions to the community and demonstrate to the community that this ministerial directive has been complied with?

### Section 117 Ministerial Directive 4.4 - Planning For Bushfire Protection

It is inconsistent that Council is proposing to remove dual occupancy as a permissible use from the adjoining residential zone in Bundeena due to bushfire risk, while proposing additional uses of

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“recreation camp” and “eco-tourism facility” for the Scout land. If the residential zone is too dangerous for dual occupancy then it is not logical to consider additional permissible uses for tourism on the most bushfire prone and isolated property in Bundeena. The social and economic cost/benefit of this inconsistency does not seem justified.

We pose the following questions:

Has council evaluated whether implementing standard acceptable solutions for Special Fire Protection Purposes Asset Protection Zones under integrated development will be possible on the Scout land giving consideration to the vegetation types, land slope and location of EECs and riparian zones?

Has council sought and/or received advice from the RFS on the likely Special Fire Protection Zone APZ requirements for development under the additional permissible uses listed in Schedule 1 for the Scout land?

Has Council identified whether the objectives of E2 zoning can be maintained under the additional permissible uses given the extent of clearing likely to be required for asset protection zones?

Has Council identified whether the objectives of “Eco-tourism accommodation” as defined in the draft LEP can be achieved on this land given the environmental sensitivity of the land and the likely APZ requirements?

Is council satisfied that the additional permissible uses identified for the Scout land are considered consistent with the terms of Section 117 Ministerial Directive 4.4 and if not, has Council sought written advice from the Commissioner that the Commissioner does not object to the progression of the proposed LEP?

Will council provide the information that will answer these questions to the community and demonstrate to the community that this ministerial directive has been complied with?

At its August meeting the Bundeena RFS were unanimous in its objection to any development taking place in Spring Gully and has communicated that view to the District Manager Sutherland Fire Control. The brigade opinion is based solely on fire management principles as Bundeena RFS are the responsible agency for any fire in that location.

State Environmental Planning Policy No 19 - Bushland in Urban Areas s2. Aims, Objectives

(1) The general aim of this Policy is to protect and preserve bushland within the urban areas referred to in Schedule 1 because of:

- (a) its value to the community as part of the natural heritage,
- (b) its aesthetic value, and
- (c) its value as a recreational, educational and scientific resource.

(2) The specific aims of this policy are:

- (a) to protect the remnants of plant communities which were once characteristic of land now within an urban area,
- (b) to retain bushland in parcels of a size and configuration which will enable the existing plant and animal communities to survive in the long term,
- (c) to protect rare and endangered flora and fauna species,
- (d) to protect habitats for native flora and fauna,
- (e) to protect wildlife corridors and vegetation links with other nearby bushland,
- (f) to protect bushland as a natural stabiliser of the soil surface,
- (g) to protect bushland for its scenic values, and to retain the unique visual identity of the landscape,
- (h) to protect significant geological features,
- (i) to protect existing landforms, such as natural drainage lines, watercourses and foreshores,
- (j) to protect archaeological relics,
- (k) to protect the recreational potential of bushland,
- (l) to protect the educational potential of bushland,

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(m) to maintain bushland in locations which are readily accessible to the community, and  
(n) to promote the management of bushland in a manner which protects and enhances the quality of the bushland and facilitates public enjoyment of the bushland compatible with its conservation. Conservation of the bushland on the Scout land meets all the objectives of section 2. Development of this bushfire prone land under the additional permissible uses will be inconsistent with the objectives because of the extent of the bushland removal that will be mandated by the required APZs and the negative impact on the environment.

s9. Land adjoining land zoned or reserved for open public space

1) This clause applies to land which adjoins bushland zoned or reserved for public open space purposes.

(2) Where a public authority:

(a) proposes to carry out development on land to which this clause applies, or

(b) proposes to grant approval or development consent in relation to development on land to which this clause applies, the public authority shall not carry out that development or grant the approval or development consent unless it has taken into account:

(c) the need to retain any bushland on the land,

(d) the effect of the proposed development on bushland zoned or reserved for public open space purposes and, in particular, on the erosion of soils, the siltation of streams and waterways and the spread of weeds and exotic plants within the bushland, and

(e) any other matters which, in the opinion of the approving or consent authority, are relevant to the protection and preservation of bushland zoned or reserved for public open space purposes.

The land adjoins the Royal National Park. Bushland and wetland containing several EECs runs across the adjoining land. The land is steeply sloping, the soil is loose, sandy and infertile and the undergrowth is fragile. Due to the land being bushfire prone and the large APZs that would be required, any development application submitted under the additional permissible uses of the draft LEP is unlikely to satisfy condition 9.2c and 9.2d of the planning policy.

s10. Preparation of local environmental plans When preparing draft local environmental plans for any land to which this Policy applies, other than rural land, the council shall:

(a) have regard to the general and specific aims of the Policy, and

(b) give priority to retaining bushland, unless it is satisfied that significant environmental, economic or social benefits will arise which outweigh the value of the bushland. The additional permissible uses for the Scout land in the amended draft LEP are inconsistent with the general and specific aims of the policy and are inconsistent with s10a.

The environmental, economic and social costs to the community from developing this land under the additional permissible uses will exceed the benefits. Please make available a cost/benefit analysis used to support the inclusion of the additional permissible uses for this land

LEP Practice Note PN 09-006 - Providing for tourism in Standard Instrument local environment plans. LEP practice note PN 09-006, in relation to planning for tourism, states (p4): "The strategy should consider opportunities and constraints as a result of conservation and natural resource strategies in the areas and ... the likely effects of tourism on natural, cultural and historic values of environmentally sensitive areas."

The environmental sensitivity of the land and the area and the constraints posed by the bushfire prone nature of the land have not been sufficiently addressed in the LEP specifically in relation to the required APZs for development under the additional permissible uses for the Scout land. Due consideration of the constraints would deem the additional permissible uses for this property

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inappropriate in the LEP.

Standard Instrument LEPs CLAUSE 2.5 Direction 2 & Land Use Table direction 5 and additional permitted uses Standard Instrument LEPs Reg 2.5 Additional permitted uses for particular land [compulsory]

(1) Development on particular land that is described or referred to in Schedule 1 may be carried out:  
(a) with development consent, or  
(b) if the Schedule so provides-without development consent, in accordance with the conditions (if any) specified in that Schedule in relation to that development.

(2) This clause has effect despite anything to the contrary in the Land Use Table or other provision of this Plan.

Direction 1: While this clause and Schedule 1 are compulsory, it is not compulsory to include any items in the Schedule when the Plan is first made.

Direction 2: A type of development may be included in Schedule 1 only if it is a type of development listed in

Direction 5 at the beginning of the Land Use Table.

In relation to Reg. 2.5 direction 2 we note that “Recreation Camp”<sup>2</sup> is not a land use identified in the Standard LEP Instrument in Direction 5 at the beginning of the Land Use Schedule.

STANDARD INSTRUMENT LEP AMENDMENT (MISC) ORDER 2011 - FILE NMBR LP/06/675654  
COUNCIL MEETING 15/08/2011 SDC012-12

There are also instances where the specific uses cannot be accommodated within the existing defined land uses. It is therefore recommended that Council propose additional uses and definitions for inclusion in the Standard Instrument LEP. Whilst it is uncertain whether the Department of Planning and Infrastructure will permit additions to the LEP Dictionary, other Councils have successfully achieved the inclusion of new definitions in specific clauses of their gazetted Standard Instrument LEPs. It is therefore recommended that Council propose the following definitions for inclusion in Schedule 1: Recreation camp means a building or place that provides temporary or short-term accommodation (whether or not for the purpose of financial gain) for the purpose of sport or recreation, holiday making or spiritual retreat. It may include permanent caretaker accommodation and facilities for the holding of events, functions, training, conferences and the like. This definition is required because none of the related Standard Instrument terms (those under the tourist and visitor accommodation, camping ground, caravan park, eco-tourist facility, function centre, place of public worship recreation facility (outdoor), business premises or community facility) adequately describe the land use currently permitted at Camp Coutts (Waterfall), Rathane Telford Road and Gundamaian Road in the Royal National Park and the Scout Camp, Freeman Road, Engadine.

It would appear from the above report, that the definition of Recreation Camp has been instigated for existing facilities and developments elsewhere and not for the former Scout land at Bundeena. There can be no claim of existing use/zoning rights as this land has never been developed. The land was originally a recreation area with a focus on community use, and it appears, in hindsight, to have been a poor planning decision to have designated this land for use as a “recreation camp”<sup>2</sup> in the 2000 and 2006 LEP which continues into the draft 2013 LEP, as this was and remains an inappropriate and impractical use for the land.

Our Shire Our Future 2030, Sutherland Shire Strategic Plan Nature

We need to conserve our abundant native flora and fauna through addressing the problem of

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declining bio-diversity ... In Sutherland Shire there are currently 10 endangered vegetation communities that need to be protected.

The extensive bushland and tree canopy in the Shire is ideal for native birds and animals, and strategic linkages between habitats are important to their safety and preservation. Wetlands and waterways play a critical function in ecological processes and are valuable breeding sites for a large range of species and help sustain the food chain for wildlife.p33

The Scout land contains several endangered ecological communities including wetland, extensive bushland and tree canopy, important habitat and is a strategic riparian habitat corridor. The clearings for APZs required by development under the proposed additional permissible uses would be inconsistent with the nature objectives of the strategic plan.

Nature Direction 1. Minimisation of the environmental, economic and social impacts of disaster. Recent bushfires devastated the Royal National Park which needs time and careful management to recover.

The Scout land cannot be developed under the proposed additional permissible uses in a manner that minimises the environmental, economic and social impacts of disaster. The risk of bushfire on this remote bushfire prone site which is isolated from the road system is high.

With the increase in frequency and intensity of storms, it is becoming more important for relevant organisations to work with individuals to reduce risks.

The Scout land contains the head waters of Spring Creek and several tributary streams. The large APZ clearings that would be required by development under the additional permissible uses proposed for the Scout land, which slopes greater than 18 degrees and which forms a large portion of the Bundeena catchment area, would increase the risks of flooding in the flood prone residential areas of Bundeena through soil erosion and increased run-off during storms.

Nature Direction 2. Abundant and healthy native flora and fauna. Improved tree canopy, vegetation corridors and native bushland...

The protection of existing bio-diversity corridors...

Addressing the problem of noxious weeds...

The quality and extent of the natural environment is what attracts people to the Shire in the first place and we need to ensure that this is maintained or improved. A number of threatened plant species have been found growing in the Shire and these need to be monitored to prevent their extinction. Development of the Scout land under the proposed additional permissible uses is inconsistent with Nature Direction 2. The large clearings that would be required for APZs around development would create negative outcomes in opposition to Direction 2. They will require removal of a large amount of the tree canopy, vegetation corridors and native bushland, degradation of the existing bio-diversity corridor which includes endangered ecological communities and will increase the risk of weed infestation on the land, the wetland and the adjoining national park.

Nature Direction 4. Cleaner, healthier waterways, beaches and wetlands with healthy marine life, cleaner stormwater run-off. Development of the Scout land under the additional permissible uses poses unacceptable risks to the health of the Bundeena catchment area including Spring Creek, the freshwater wetland, Bundeena Creek including the mouth at Hordern's beach and the flood prone areas of Bundeena.