

Our Ref: BP:20130227

8 January 2014

Ms Marian Pate
Sutherland LEP Review
NSW Department of Planning & Infrastructure
GPO Box 39
SYDNEY NSW 2001



Level 1, 570 President Avenue
Sutherland NSW 2232

P 02 9589 6666
F 02 9589 6699

Correspondence

PO Box 1065
Sutherland NSW 1499

DX 4535 Sutherland

E mcw@mcwlaw.com.au

www.mcwlaw.com.au

Dear Sir/Madam

RE: INDEPENDENT REVIEW - SUTHERLAND DRAFT LEP 2013

We act for Mr and Mrs Yewdall, the proprietors of 91 and 93 Parraweena Road, Taren Point.

We are instructed to make submissions to the Independent Review to complement earlier submissions made to the Sutherland Shire Council at the time the draft LEP was placed on public exhibition and to the subsequent amended draft LEP.

Please find **enclosed** for your attention, our client's submissions dated 7 January 2014.

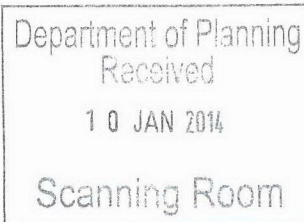
If the Panel requires any further documentation or assistance please do not hesitate to contact Brian Phillips on 9589 6666.

Yours faithfully,
MCW LAWYERS


B PHILLIPS

Writer's email Address: bphillips@mcwlaw.com.au

Encl.



Principals

Donal Minehan LL.B.
Accredited Specialist
Family Law

Ian Connor B.Com. LL.B.
Litigation
Deceased Estates

Jon Prowse LL.B.
Accredited Specialist
Commercial Litigation

Kylie Holmes B.A. LL.B.
Accredited Specialist
Family Law

Senior Associates

Brian Phillips B.Leg.S.
Land & Environment Law

Elizabeth McDonald Dip Law
Accredited Specialist
Personal Injury Law



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8 January 2014

**SUBMISSION TO THE REVIEW PANEL RELATING TO THE
SUTHERLAND SHIRE COUNCIL'S DRAFT LOCAL ENVIRONMENTAL
PLAN 2013
PROPERTIES: 91 AND 93 PARRAWEENA ROAD, CARINGBAH**

INITIAL SUBMISSIONS TO DRAFT LEP 2013

During the course of the public exhibition of the Draft LEP 2013 our clients made submissions, under cover of correspondence dated 18 April 2013 and 11 September 2013. To assist the Review Panel we include copies of both documents.

Our clients' submissions sought the rezoning of their properties from IN1 General Industrial to B5 Business Development.

The arguments supporting the rezoning were based on the following:

- Prospects of amalgamation of the 2 lots;
- Utilisation of the amalgamated lots for bulky goods purpose; and
- A more logical and practical adjustment of the physical boundaries between properties zoned IN1 and B5, affecting our clients' property.

Subsequent to the closing of submissions for the Draft LEP a voluminous report, referred to as the Council Staff Report was prepared.

Following that report a Mayoral Minute, no 6/13-14, dated 29 July 2013 was made public. The Mayoral Minute responded to submissions made to

the draft LEP 2013. It was the omission of any mention in the Mayoral Minute of our clients' properties that generated the second submission of 11 September 2013 to the Draft LEP 2013.

CURRENT SUBMISSIONS TO INDEPENDENT REVIEW

The following submissions effectively draw attention to the Council Staff Report in which it is recommended 91 and 93 Parraweena Road should be rezoned to B5, whereas, the Mayoral Minute fails to mention, let alone address or consider 91 and 93 Parraweena Road.

Numbers 93 and 91 Parraweena Road are located on the eastern side of Taren Point Road.

Although our clients do not own 89 Parraweena Road, all submissions made on behalf of our clients, include number 89 Parraweena Road. The latter property is located on the corner of Erskine and Parraweena Roads, and is adjacent to 91 Parraweena Road. Hence, the inclusion of 89 would form a natural boundary for the continuation of the B5 zoning commencing at the corner of Taren Point and Parraweena Roads to terminate at the corner of Erskine Road. This reflects the B5 zoning on the opposite side of Parraweena Road terminating at Willarong Road.

COUNCIL STAFF REPORT ("the Report")

In the "Summary Report" at page 26 at section **71.T Taren Point Bulky Goods** it is suggested, *"that extending the existing Taren Point Bulky Goods Precinct to the corner of Parraweena Road and Erskine Road (i.e. 89,91 and 93 Parraweena Road) is consistent with the approach applied elsewhere in the zone and should proceed."*

Section 71 of the Report addresses "Taren Point Bulky Goods".

This section commences by referring to, *"8 submissions from landownersto include their properties (rezoned for B6 (sic) Business Development)."*

The Panel will note the report commences by identifying those properties for which submissions were made, all of which sought rezoning from IN1 to B5. These properties included:

- 91-93 Parraweena Road, Caringbah;
- 94-98 Parraweena Road, Caringbah;
- 100 Parraweena Road, Caringbah'
- 119-121 Parraweena Road, Caringbah;
- 181-187 Taren Point Road, Caringbah;
- 191-193 Taren Point Road, Caringbah.

The Report then proceeds to deal with general matters associated with all the nominated properties and at page 4 deals with the *"extension of bulky goods precinct: 91 and 93 Parraweena Road, Caringbah"*.

Under the heading **"Summary of issues"** (p4) the Report deals specifically with the proposed rezoning submissions for numbers 91, 93 and 89 Parraweena Road from IN1 to B5.

After analysing the submission for rezoning of 91, 93 and 89 Parraweena Road the Report, under the heading **"Response to issues"** (p6), recommended:

"..... that numbers 89, 91 and 93 Parraweena Road, Caringbah from SSLEP2013, be rezoned from IN1 General Industrial to B5 Business Development. This will require re-exhibition."

The Report then proceeds to analyse the issues relating to the proposed rezonings for:

- 94-98 Parraweena Road;
- 100-104 Parraweena Road;
- 119-121 Parraweena Road;
- 181-187 Taren Point Road;
- 191-193 Taren Point Road.

The Report identifies prospective flooding issues associated with those properties and recognises the risk of flooding was a significant issue in assessing whether the properties should be rezoned.

In addition, other planning issues were identified. The unequivocal conclusion was that the proposed rezonings for the nominated properties should not be supported.

In its "**Response to issues**" (p11) the Report identified the sites by their addresses and suggests, the respective owners should consider matters associated with, *"the flooding constraints (and) safe movement of vehicles"* and other peripheral planning issues. The Report concludes by suggesting reconsideration of the zoning of the identified properties would be entertained subject to the landowners putting forward a planning proposal and master plan for all those properties.

Incidentally, we draw to the Panel's attention, numbers 89, 91 and 93 Parraweena Road fall outside the Flood Planning Area as identified in the Flood Planning Map. Further, in terms of their spatial location the above properties could be described as being discrete from those properties also seeking rezoning in the immediate neighbourhood.

MAYORAL MINUTE No 6/13-14 OF 29 JULY 2013 ("the Minute")

The principal purpose of the Minute was to collate all submissions made to the Draft LEP 2013 and make further recommendations and/or alterations to the draft LEP 2013.

The Mayoral Minute was tabled at a Special Council Meeting on 29 July 2013.

The first reference to the proposed rezonings in the Taren Point commercial/bulky goods retailing area is at page 4. The Minute suggests, *"(T)here is merit in supporting the redevelopment of 94-98 Parraweena Road and 173, 175, 177, 181-187, 189 and 191-193 Taren Point Road, Taren Point as a new focus in the precinct"*. Conspicuous by its absence in the Minute is any reference to 89, 91 and 93

Parraweena Road. All these properties, as the Panel will note, were the subject of the Report, referred to above.

The Minute proceeds to recommend the draft LEP should be re-exhibited with all subsequent submissions considered by Council.

The Minute does not clearly state precisely what the re-exhibited draft LEP is to contain other than "*with all subsequent submissions*". This ambiguity could suggest the re-exhibited draft LEP, in its *Amended* form should incorporate the suggestions or recommendations made in the Report and included in the body of the Minute.

An examination of the Amended Draft LEP did not make any alterations to the proposed rezoning of 89, 91 and 93 Parraweena Road to reflect the Report's recommendation that those properties should be rezoned from IN1 Industrial to B5 Business Development. It is suggested such recommendation should have been made in the Amended draft LEP.

Turning to page 22 of the Minute, at paragraph 36 the Minute deals with Section 71 of the Report.

Paragraph 36 refers to, "*the landowners for 94-98 Parraweena Road and 173, 175, 177, 181-187, 189 and 191-193 Taren Point Road, Taren Point*".

Paragraph 36 is concise and simply makes a recommendation that the landowners of the subject properties should consider the further submission of a planning proposal and master plan for reconsideration of the zoning of their land.

Again, conspicuous by its absence is there any reference to 89, 91 and 93 Parraweena Road. In point of fact, there is nowhere within the entirety of the Mayoral Minute any reference to 89, 91 and 93 Parraweena Road.

There is no conceivable reason why 89, 91 and 93 Parraweena Road was omitted from the Mayoral Minute. Whether the omission is a slip or intentional are questions

our clients are unable to answer because no further reference has been made to our client's properties and that of 89.

Subsequent submissions to Council were prepared on receipt of and in response to the Mayoral Minute. The further submissions were made dated 11 September 2013 and enclosed with a covering letter dated 12 September 2013. There is another explanation as to why numbers 89, 91 and 93 Parraweena Road were not incorporated into the Minute. It could reasonably be argued absence of those properties in the Mayoral Minute arose because the Mayor had no intention to rezone the properties. If so, it was incumbent on the Mayor to furnish reasons as to why the properties should not be rezoned. This would have been in conformity with the intent of the Minute and the reasons why all the other properties, other than 89, 91 and 93, were not recommended for rezoning, at this point in time.

In view of the above submissions, it is considered appropriate numbers 89, 91 and 93 Parraweena Road should be rezoned from IN1 Industrial General to B5 Business Development as per the recommendation put forward in the Council Staff Report. It is our clients' submission there are no cogent reasons why the rezoning should not go ahead as recommended in the Report despite the glaring absence of any mention in the Mayoral Minute of our clients' properties and that of 89. The absence is, at the very least, questionable.



B PHILLIPS

Lawyer and Town Planner

Writer's email Address: bphillips@mcwlaw.com.au

COPY MCW LAWYERS

Our Ref: BP:20130227
Your Ref: LP/03/252376

11 September 2013

Level 1, 570 President Avenue
Sutherland NSW 2232

P 02 9589 6666
F 02 9589 6699

HAND DELIVERED

Correspondence
PO Box 1065

Sutherland NSW 1499

DX 4535 Sutherland

E mcw@mcwlaw.com.au

www.mcwlaw.com.au

The General Manager
Sutherland Shire Council
Eton Street
SUTHERLAND NSW 2232

Dear Sir

RE: DRAFT AMENDED SUTHERLAND SHIRE LEP 2013

We refer to the above.

As Council records will show, we act for Mr and Mrs Yewdall, who made submissions to the draft LEP 2013.

Please find **enclosed** a copy of our client's original submissions dated 18 April 2013.

Our client has instructed, after making enquiries with Council officers, he was advised the Mayoral Minute of 29 July 2013 inadvertently omitted to include our clients' properties at pg 22, Item 36, "With respect to 71. Taren Point Bulky Goods".

At item 71, referred to above, the report clearly includes our client's properties as being suitable for re-zoning. However, as pointed out above, the Mayoral Minute did not include 91 and 93 Parraweena Road for re-zoning.

Please find **enclosed** the Mayoral Minute dated 29 July 2013, together with the report containing item 71.

In view of the Council's recommendation, we re-submit our client's submissions dated 18 April 2013 seeking 91 and 93 (and indeed 89) Parraweena Road, to be incorporated into the B5 Zone.

Principals

Donal Minehan LL.B.
Accredited Specialist
Family Law

Ian Connor B.Com. LL.B.
Litigation
Deceased Estates

Jon Prowse LL.B.
Accredited Specialist
Commercial Litigation

Kylie Holmes B.A. LL.B.
Accredited Specialist
Family Law

Senior Associates

Brian Phillips B.Leg.S.
Land & Environment Law

Elizabeth McDonald Dip Law
Accredited Specialist
Personal Injury Law



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MCW LAWYERS PTY. LIMITED
ABN 79 128 754 987

Our client trusts Council will accept its professional staff's original recommendations to incorporate our client's land as mentioned above.

Yours faithfully,
MCW LAWYERS

B PHILLIPS

Writer's email Address: bphillips@mcwlaw.com.au

Encl.

Cc: Department of Planning and Infrastructure

Our Ref: BP:JS:20130227
Your Ref:

18 April 2013

 COPY

SUBMISSIONS TO THE DRAFT LEP 2013
PROPERTIES: 91 AND 93 PARRAWEENA ROAD, CARINGBAH

The following submissions are made on behalf of our clients Mr and Mrs Yewdall the owners of 91 and 93 Parraweena Road, Caringbah ("the subject sites").

Our clients' instructions are to seek to have the proposed zone IN1 General Industrial for the subject sites changed to B5 Business Development.

The suggested re-zoning of the subject sites will add two (2) allotments to the proposed B5 zone to the allotment on the eastern side of Taren Point Road between Box Road and Parraweena Road.

Under the proposed zoning, the B5 zone along this section of Taren Point Road includes number 97 (the Strathfield Car Radio site) on the north-eastern corner of Taren Point Road and Parraweena Road. The B5 zone then continues along Parraweena Road in an easterly direction to include the adjacent property at number 95 Parraweena Road. At this point the B5 zone terminates on the northern side of Parraweena Road. The 3 properties east of 95, ie. 93, 91 and 89 Parraweena Road are all zoned IN1 – General Industrial, together with all those properties either side of Erskine Road.

The proposed boundary between the B5 and IN1 zones excludes number 93 Parraweena Road, in that the boundary line between the zones, run in

a north/south direction, rather than continuing in a straight line to include 93 Parraweena Road. Instead the north/south boundary line assumes a dog-leg to the west thereby **excluding** number 93 Parraweena Road. This curvilinear zoning boundary should not be encouraged.

An examination of the zoning map of the local area establishes, the boundaries between zones run in straight lines and terminate at road junctions. For example, the B5 and IN1 zones interface at Taren Point Road and Box Road, and along Parraweena Road and Willarong Road.

The interface of IN1 and R2 zones also take place at the junction of Parraweena Road and Willarong Road.

The interface between zone boundaries could be described as the 'natural' boundary.

Neither of the examples above reflect the interface of zones between numbers 95 and 93 Parraweena Road.

In view of the standard interface of zones not incorporating dog-leg changes our clients submit the B5 zone should extend to include 93 Parraweena Road.

It is further submitted, as our clients are the proprietors of number 91 Parraweena Road, it too should be included in the B5 – Business Development zone. Such a re-zoning would then permit the 2 properties to be utilised more efficiently and economically within the same zone, for the purposes of future development. Such an example is readily observed at the junction of Box Road and Taren Point Road, where the single allotment extends to the east along Box Road.

Although our clients are not the owners of 89 Parraweena Road, it is sought in these submissions the 'natural boundary' for the B5 zone should include 89, thereby ending the B5 zone at a 'natural boundary' with Erskine Road. This would then create a level of uniformity of the B5 zone, extending from Toorak Avenue south

along Taren Point Road and the B5 zone on the southern side of Parraweena Road extending to the 'natural boundary' at Willarong Road.

A fundamental reason for seeking the inclusion of 91 and 93 Parraweena Road in the B5 zone relates to the future use of the land.

It is our client's intention, once the re-zoning proceeds and the LEP is gazetted, to amalgamate the 2 properties into one allotment. The consolidation of the 2 lots increases the size of the lot thereby facilitating a greater opportunity for the future development of the land. If the opportunity arose, our client would consider purchasing the adjoining allotment at 89 Parraweena Road and allowing further consolidation to create a large allotment. As it is, 91 on its own, is a larger allotment than the vast majority of the allotments north of Parraweena Road.

We are instructed, over the years, our clients have been receiving a large number of enquiries from prospective tenants. These enquiries overwhelmingly suggest tenants are not interested in using the land for general industrial purposes. On the contrary, these enquiries relate to bulky goods premises, office premises, retail outlets and other uses associated with those permitted in the B5 zone. It is in the nature of such enquiries our clients have concluded amalgamation of 91 and 93 would be the most economical and optimal use of their land.

Following an inspection of Taren Point Road from Bay Road to Captain Cook Drive, the land usage along that section of Taren Point Road would fall within the classification of uses in the B5 zone, as opposed to the IN1 – General Industrial zone.

It is assumed the pressure for floor space is accountable for the large floor space required for B5 uses as opposed to the IN1 zone land uses. The pressure for space increases, the building form changes intensively at particular nodal points or zonings. Based on our clients' research, on the enquiries made for the use of their land, the size of their individual allotments, their intention to consolidate 91 and 93, the changing nature of the land uses in the Taren Point area and the reduction in

industrial land uses it would seem reasonable to suggest the nodal point should include our clients' land and 89 within the B5 zoning.

When cross referencing the uses along the section described above, it becomes clear such uses do not all conform with Zone 11 – Employment in the SSLEP 2006.

The land uses referred to above appear to confirm Council's observations in its Employment Strategy ("ES") document, forming part of the compendium of documents on public exhibition.

In the ES it is recognised, *"structural changes in the labour market and the decline in traditional manufacturing"* have, over the years, become evident in the Shire. The ES continues by asserting Council's desire is to create, *"the conditions that allow new businesses to establish and grow"*. This has been observed in the business community and reflected in the nature enquiries made of our clients for the future use of 91 and 93.

Council has further recognised in the ES *"the Shire's centres have generally not attracted the kind of development that can deliver sufficient job growth to meet Sutherland Shire's employment target."* This concern is reinforced by prospective tenants seeking to use 91 and 93 for a variety of uses compatible with the land use table in the B5 zone..

In our submissions it is argued, the addition of 91 and 93 Parraweena Road will not drastically reduce the available land for the permissible uses in the IN1 General Industrial zone. When viewed against the ES and the changing characteristics of the overall economy, where small industrial uses are moving off-shore and replaced with a new form of economic activity, it is hardly surprising for our client to receive the types of enquiries for use of their land.

The above observations are further reinforced by Council's ES where it is further recognised, *"structural changes in the economy have escalated the closure of manufacturing, construction and warehouse activities, resulting in industrial sites being vacant or under utilised"*.

Returning to the relevant proposed zoning map, it is to be observed the majority pattern of subdivisions north of Parraweena Road up to Box Road take the form of small allotments. Small allotments are not conducive to bulky goods premises, retail establishments, hardware and building supplies, and garden centres to nominate a few of the uses in a B5 zone.

Consolidation of small allotments into larger allotments offers the opportunity to promote the B5 zone and comply with the objectives of the zone by creating large floor areas and enhancing the visual appearance of developments.

The existing pattern of allotments does little to satisfy the overall objectives of the zone and they act as a restriction to developers who seek large floor areas in a changing economy.

Our clients intention to amalgamate 91 and 93 may, down the track, act as a galvanising force to other land owners to consider the amalgamation of smaller lots once they recognise the benefits associated with large allotments in the B5 zone.

For the reasons cited above, 91 and 93 (and, indeed 89) Parraweena Road should be incorporated into the B5 zone. In addition, such inclusion complies with the relevant objectives of section 5 of the EP&A Act that encourages and promotes the orderly and economic development of land.



B PHILLIPS

Lawyer and Town Planner

Writer's email Address: bphillips@mcwlaw.com.au

Draft Local Environment Plan (LEP) 2013

Enter your address



Change Map ▼ Land Zoning

OR right click on the map to select a property.

LEP 2013 Info

LEP Downloads



▼ Results

▼ Legend

Land Zoning

Zone

- B1 Neighbourhood Centre
- B2 Local Centre
- B3 Commercial Core
- B4 Mixed Use
- B5 Business Development
- B6 Enterprise Corridor
- B7 Business Park
- E1 National Parks and Nature Reserves
- E2 Environmental Conservation
- E3 Environmental Management
- E4 Environmental Living

