

DLEP 2013 Review

9th February 2014

Marian Pate

Sutherland LEP Review

NSW Department of Planning and Infrastructure

Introduction.

Spokesman for Save Our Shire.

Save Our Shire was formed on 27 February 2013 by a group of ten Shire residents who were alarmed at the way the Liberal controlled council was proposing to expand development potential in the Shire. We all felt that that this was not reasonable development to address the needs of residents, but was excessive development to pander to developers. The overwhelming number of submissions opposing council's DLEP indicated that many residents held similar views.

Our aim was to provide information to residents about the DLEP2013, mainly on our facebook page, web site, letters and news items in the Leader and a street stall in Cronulla.

The council posted letters to all residents about the DLEP which detailed the process, but did not provide information about the changes in the DLEP. There was excellent coverage of the DLEP on the council web site, but not many of the public were willing or able to trawl through the complex site. It was information over load. In previous exhibitions, council provided simple explanations in leaflets or had street meetings where residents could talk to a planner on their turf. Council staff even shared their stall at Westfield with a resident group which had opposing views.

In effect, council left an information vacuum which we endeavoured to fill by personal contact and social media. Our Cronulla mall stall generated 350 letters on the day, all opposing the DLEP.

We had a strict policy of no names and no personal attacks, we focused on the issues.

The first draft of the LEP increased the potential for such excessive development in the Shire that there was a public outcry. In all, there were 2131 submissions, 1900 against elements of the DLEP and 231 for some.

For the amended DLEP there were 1500 submissions, with the ratio of against and for about the same as the first draft.

The staff wrote an extensive report, around 700 pages, and a 70 page summary which did respond to some of the residents' objections and suggestions.

The council meeting where councillors debated the issues raised by residents and staff in front of an over- flowing gallery descended into farce. The Mayor presented a 25 page Mayoral Minute to councillors at 5.10 PM that evening. The staff report was not discussed. There was no real debate as the Labor and Shire Watch councillors did not have time to absorb all the changes in the Mayoral Minute. The Mayor proposed a few minor changes in response to submissions, but over all, the 1900 residents' submissions and the recommendations in the staff report were largely ignored.

The Mayor was well aware of residents' views on the DLEP as demonstrated by his statement in the Mayoral Minute. (Page 3)

“Consideration of Submissions

At the conclusion of the submission period, a total of 2131 public submissions were received. The key issues which received the largest number of submissions to draft SSLEP2013 are proposed zoning changes, issues concerning multi dwelling development and the implementation of the Housing Strategy. Submissions were received which specifically objected to the draft plan as many considered that the plan does not preserve the Shire’s amenity, the lifestyle of residents, or sufficiently protect the natural environment. Many were concerned that the draft plan promotes overdevelopment.”

Despite the objections to excessive development in the DLEP, the Mayoral Minute increased heights and floor space ratios in major centres and added more re-zonings for higher density. Staff were not requested to determine how many extra dwellings would result from the changes in the Mayoral Minute.

We noted that there were no reasons given for changes in the Mayoral Minute. Staff reports give reasons to justify their recommendations. We asked staff why there were not the usual explanations. We were told staff did not prepare the Mayoral Minute, it was written by an outside person, and they had no direct input to it.

We understand that council is required to implement state government policy on providing more development, but this council went beyond statutory requirements for the centres and had no valid reason to downgrade the landscape controls and increase floor space ratios in all residential zones.

The staff report on the first exhibition was written before the Mayoral Minute further increased development potential.

Staff conclusion to their DLEP2013 Report

“Council is faced with a difficult task of meeting the future housing and employment needs of Sutherland Shire’s residents, while also trying to maintain the qualities of the Shire that make it such an attractive place to live. Council’s vision for the future of the Shire must integrate with the State’s vision for Sydney and its role in the global economy. It is an extremely difficult task to get this balance right. Hearing the views of the community is a key element of arriving at a balanced position. The input of the community during the exhibition has informed the final content of the draft plan. Recommendations have been made through this report in light of this public consultation. It is considered that some of the recommended amendments to the draft plan can be made to the plan now, before referral of the plan to the Minister to be made, as the changes do not result in any substantially change from the exhibited draft plan.

However, other submissions justify substantial changes to development standards and or the permissibility of development. It is considered that such changes would result in a draft plan that is substantially different from the exhibited plan, and therefore re-exhibition is required. It is considered that this includes changes to increase height and density provisions, changes to zoning, or changes to permitted uses. In light of the recent court decisions and the significance of the plan to the community evident in the number of submissions received, it is recommended that the plan be re-exhibited incorporating the changes as recommended. Re-exhibition of the plan will also require an amended Gateway determination, which will outline the minimum exhibition period required for re-exhibition”

The dual lists below compare the recommendations in the Mayoral Minute, with no explanations, with the recommendations in the staff report with detailed reasons for their decisions. This suggests an ad hoc approach to the planning process or complete disdain for the 1900 submissions which opposed the DLEP.

This approach is also evident in relation to the changes to the landscape and floor space ratio controls which are detailed later

Mayoral Minute

3. With respect to Chapter 8: FSR and Landscape Area:

i. The Landscape Area maps be amended to indicate a minimum landscaped area of:

- 35% in the R2 Low Density Residential zone
- 35% in the E3 Environmental Management Zone and E4 Environmental Living zone
- 30% in the R3 Medium Density Residential zone
- 30% in R4 High Density Residential zone

LEP 2006 Landscape 40% to 55%

9. Not Accepted

Staff Report

In response, it is recommended that the FSR as exhibited be maintained and the landscape area requirements be increased:

- R2 Low Density Residential zone - 35%
- E3 Environmental Management zone and E4 Environmental Living zone - 40%
- R3 Medium Density Residential zone and R4 High Density Residential zone – 30%

It is also recommended that a Site Coverage control be introduced, with the following maximum site coverage specified:

- R2 Low Density Residential zone - 50%
- E3 Environmental Management zone and E4 Environmental Living zone - 40%
- R3 Medium Density Residential zone – 60%
- R4 High Density Residential zone – 50%

LEP2006 Landscape 40% to 55%

9. Building Heights and Amenity Impacts in the Low and Medium Density zones

Submissions were concerned about the streetscape, privacy and solar impacts associated with a 9 metre height limit in the low and medium density residential zones. A development should not unreasonably harm a neighbour's amenity through loss of solar access, overlooking or visual intrusion. A proposal that meets the standards set by the planning framework is generally considered acceptable because it is within the anticipated building envelope. Increasing building height to 9m will result in greater amenity impacts than currently are acceptable. Consequently, it is recommended that an 8.5m height limit apply to the lower density zones and in the neighbourhood business zone.

Mayoral Minute

Cronulla

16. With respect to Chapter 30: Cronulla

i. The Height of Building Maps be amended to indicate a maximum height of 16 metres for the following:

- the area of South Cronulla residential flat zone which is located north of Richmount Street, including the block bounded by Coast Avenue and Inglara Avenue.

ii. The Floor Space Ratio Map be amended to indicate a maximum FSR of 1.2:1 for the following:

- the area of South Cronulla residential flat zone which is located north of Richmount Street, including the block bounded by Coast Avenue and Inglara Avenue.

South Cronulla height increases

removed

North Cronulla retains increased heights

Engadine

No mention, so heights will not be reduced

Sutherland

For the land bounded by Clio St, Toronto Pd, Glencoe St, and Old Princes Highway- the land be rezoned R4 High Density Residential with a FSR of 1.5:1, Height 20m and Landscaped Area of 30%

Sutherland Entertainment Centre

The land at 30 Eton Street, Sutherland (Lots 9 & 10, Sec 46 DP 802), 'Sutherland Entertainment Centre,' be reclassified from 'community' to 'operational' in accordance with the provisions of the EP&AAct.

This was one of the most controversial issues of the DLEP. Submissions were overwhelmingly opposed to the council's action.

Staff Report

Cronulla

In response to submissions and concern about adverse amenity impacts, it is recommended that the development controls be reduced for the residential flat zones in **South Cronulla** (north of Richmount Street) and **North Cronulla** (bounded by Hume Road, Wyanbah Road, Judd Street, Mitchell Road, Burke Road and traversed by Elouera Road, and the North Cronulla extension to residential flat zone, bounded by Marlo Road, Mitchell Road and Burke Road). It is recommended that the development potential be reduced to a maximum height of 16 metres (from 20m) and FSR reduced to 1.2:1 (from 1.5:1).

Engadine

9 Waratah Street supports potential for up to 20 metres and FSR 1.5:1 as it makes it financially viable. However, due to adverse impacts in the R4 zone generally, it is recommended that controls be reduced and amended to a maximum height of 16 metres and FSR 1.2:1 for the whole R4 zone.

Sutherland

As area is in the proposed urban activation precinct, staff recommended re-examining later

Sutherland Entertainment Centre

reclassification. It is recommended that the reclassification from „community□ to „operational□ be postponed until such time as a Development Application or masterplan/concept plan consistent with the community□s expectation for the future use of the site has been received and undergone initial assessment.

Mayoral Minute

2-8 Cook Street

For 2, 2A, 4, 6 and 8 Cook Street, Sutherland (Lots 110, 111, 112, 113 and 114 DP

132732 and Lot 15 DP16164) a 20% FSR bonus be provided by replacing subclause 4.4(3)(e) with the following: (3) Despite subclause 4.4 (2), the floor space ratio for a building may exceed the maximum floor space ratio allowed under that subclause by up to: (e) 0.3:1 – if the building is located in Area 12 and on an amalgamated lot with a site area greater than 2,500 square metres.”

The FSR Maps be amended along the south side of Flora Street between Merton Street and Glencoe Street, Sutherland to reflect an FSR of 2.5:1 and a height of 30 metres.

For 41-47 Eton Street, Sutherland – The height be increased to 40m and FSR increased to 4:1

10-22 Merton St Sutherland - The height be increased to 40m and FSR increased to 4:1

Staff Report

2_-8 Cook Street

A submission opposes increases in development potential. Another submission requests an increase in development potential so that the FSR on an amalgamated site should be 1.8:1 not 1.7:1 as set out in the exhibited draft LEP. Draft proposals suggest that this increased FSR could be difficult to achieve and should therefore not be supported. However it appears that it was Council’s intention to grant the request and an appropriate clause has been drafted.

152-154 Flora Street and Southern side of Flora Street request additional height from 20m to 28/30m, and corresponding increased FSR from 2:1 to 3:1. It is recommended that there be an increase in FSR to 2.5:1 along Flora Street and that Area 12 on the Floor Space Ratio Map be reduced accordingly. An increase in height could not be supported due to adverse impacts on southern properties. The area is nominated as an Urban Activation Precinct. If successful, the planning context of the area will be re-examined.

41-47 Eton Street request to increase height from 30m to 40m and FSR from 3.5:1 to 4:1. The draft plan FSR and building height are considered appropriate given the location of the site within the centre, and the separation between development sites along the proposed higher western „edge“ to the Town Centre of the Old Princes Highway and the transitional area of Eton Street. The request to increase the height and FSR therefore is not supported.

10-14 Merton Street request an increase in development standards from FSR 1.5:1 and 20m height. Development is constrained by topography and the location of development of adjoining land. The area is nominated as an Urban Activation Precinct. If successful, the planning context of the area will be re-examined. Should a more urban setting may be considered appropriate, additional height and FSR could be considered for this precinct.

Mayoral Minute

Land fronting President Avenue known as 551 President Avenue (from Merton Street to Belmont Street) be zoned for a FSR of 2.5:1 and a height of 30 meters.

1-3 Oxford St Sutherland - The height be increased to 40m and FSR increased to 4:1

660-666 Old Princes Highway and 66-68 Glencoe Street Sutherland - The height be increased to 30m and FSR increased to 2.5:1

Miranda

For the area bounded by Kiora Road, Karimbla Road, Wandella Road and Public Recreation land:

- the Zoning Map be amended to rezone the land from R2 Low Density Residential to R3 Medium Density Residential
- Corresponding consequential amendments be made to the map series to apply the development standards and other provisions reflective of the proposed R2 zone to the land.

With respect to Chapter 53: Rezoning of the land at 19 Kiama Street / 86-110 Bellingara Road, Miranda (Lot 1 DP 1097917)

- i. The Zoning Map be amended to rezone the land from R2 – Low Density Residential to R3 – Medium Density Residential.
- ii. The Height of Building Maps be amended to indicate a maximum height of 20 metres.
- iii. The Floor Space Ratio Map be amended to indicate a maximum FSR of 0.75:1.
- iv. Corresponding consequential amendments be made to the map series to apply the other development standards and other

Staff Report

No staff report

1-3 Oxford Street (service station) request an increased FSR from 2:1 to 3:1 and increased height from 30m to 40m. The draft FSR and building height proposed for the site are considered inappropriate given the location of the site on the fringe of the centre and the limited size of the site. The area is nominated as an Urban Activation Precinct. If successful, the planning context of the area will be re-examined. Should a more urban setting may be considered appropriate, additional height and FSR could be considered for this precinct.

No staff report

Miranda

Area bounded by Kiora Road and Karimbla Road (Adina Street)- A submission has been received seeking the rezoning of the land from the exhibited R2 Low Density Residential land under draft LEP 2013 to R4 High Density Residential. It is recommended that for the area bounded by Kiora Road, Karimbla Road, Wandella Road and Public Recreation land, Miranda, the plan be amended from R2 Low Density Residential to R3 Medium Density Residential, with a corresponding FSR of 0.7:1 and 9m height limit, for this land.

Mayoral Minute

provisions reflective of the proposed R3
Environmental Conservation zone to the land.

Staff Report

No staff report

It was interesting to note that the Labor and Shire Watch councillors objected to the brief time to read and absorb the contents of the Mayoral Minute.

Not one Liberal councillor objected or asked for more time.

It was also difficult to respond to the Mayoral Minute as the document did not indicate what the changes were – up or down. The Labor and Shire Watch councillors had come prepared to consider the staff report, the usual practise, but were caught right out. There was a limited ineffective debate, for a short time, on what could be considered to be the most vital issue to come before a council. This DLEP will directly or indirectly affect every resident in the Shire, for better or worse.

(Many years ago at a council meeting, the position of a garage window was robustly debated for two hours)

Amendment 20 and DLEP2013 – Landscape and FSR changes

The plan to reduce landscape area and increase FSR in all residential lots was adopted by council (Mayoral Minute) in October 2012 to be achieved by an amendment to LEP2006.

Landscape area would be reduced from 40%-55% to 30%. This process was adopted so that the changes could be achieved in the shortest possible time. The same plan would also be in the DLEP2013. The staff did not agree with this action as quoted below:

“It is considered that planning reforms discussed in this report could be introduced through the SI almost as fast as an amending LEP. Making the changes to floor space ratio controls and landscape controls through the SILEP would be far more efficient for the both the EPU and the DoPI because there would be no duplication of work. As such this approach is recommended.”

The exhibition period allowed, 2 weeks, in the school holidays was patently inadequate. How could you class a plan as low impact when it affects every residential lot in the Shire? The Department of Planning extended it to 4 weeks.

Detrimental effect on the Shire

We objected to the changes to the Landscape areas and FSRs as these are the two most important controls which maintain the Shire's special green, leafy, open character. The Shire is different to many other council areas. It appears that this council is determined to make it the same as the others and destroy its special ambience.

This warning by staff about some of the consequences was noticeably absent from the Mayor's letter to all residents. In fact his description of the changes to landscaping was brief.

“More flexible landscape requirements for property owners”

“However it should be noted that increasing the amount of built form on a site will result in less landscaped area and potentially a change in the landscape character of the Shire. Increasing the permitted gross floor area of dwellings will reduce the standard of amenity of neighbours of new development in low density areas, due to the proximity and extent of built form”.

Cost

Planning staff warned that there will be increased run-off and extra load on the drainage system. Owners will be required to install onsite detention measures. These can be very expensive and often include pumps which need on-going maintenance. This could preclude the average resident from taking advantage of the reduced landscape area because of cost.

“It should be noted that reduced landscaped area will increase the amount of impervious area of a site. In order to protect Council’s drainage system, neighbouring amenity, and localised flooding impacts, dwellings that do not have 45% landscaped area will be required to implement on site detention measures. This will increase construction costs for landowners.”

Process

The two quotes below demonstrate that these planning control changes were made on the run, in a hurry to achieve a pre-determined result. They are not in the interests of the majority of residents or the Shire as a whole.

Explanation by staff about Mayoral Proposal.

Need for planning proposal

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

The planning proposal is the result of a Mayoral Minute (Appendix 1) which outlines a need to review Sutherland Shire’s planning controls in relation to floor space ratios (FSR), landscaped area and waterfront controls to allow for a simpler planning system which will remove barriers to development. The changes also seek to promote clarity and assurance for land owners.

Then, how the current controls were determined by staff for LEP2006

“It should be noted that SSLEP2006 zones and development controls were developed using robust, science based controls which came into effect after extensive community consultation. The current plan recognises that some areas are more environmentally sensitive than others and that vulnerable areas should be afforded greater protection. Council employed an environmental risk assessment methodology which underpinned the development of the current LEP. This approach focused on key sustainability risks and led to the development of appropriate controls for each locality. The work was widely regarded. The Australian Planner journal, published quarterly by Planning Institute of Australia, commended the approach stating that it was ‘scientifically justifiable’ (Australian Planner Volume 41 No 1 2004).”

We did not campaign against amendment 20 on exhibition. We felt that people would not respond as the same material was included in the DLEP which was on exhibition at the same time.

Council received just 8 submissions, all opposing the plan.

We complained to the Department of Planning about the process and we were told that they would have a word with the council. The plan was later shelved. Attempts to revive it were made a couple of times without success and finally the Minister on 19/11/13 agreed to Mayor Simpson’s request that Amendment 20 to LEP2006 not proceed.

The whole process had been a considerable waste of time and money, both for council and residents.

The changes to the landscape area and FSR are currently in the DLEP. The Mayoral Minute allowed a small increase to 35% in 3 zones but would not accept the staff recommendation that a site area be included.

Landscape area and FSR had a total of 1320 against the changes and 10 supporting them.

We request that the landscape and FSR remain as in LEP2006, first preference.

If this is not accepted, and a lower landscape area, and a higher FSR are adopted, then the staff recommendation for a site area control should be introduced.

Waratah Park Residential Flat Threat

In the latest version of the council's DLEP2013, the private open space land to the north of Waratah Park is now designated DM, Deferred Matter. It will be considered later outside the DLEP as a separate development, when there will be less scrutiny by the public.

More importantly, the public open space land, the 13,346m² of Waratah Park, which the developer wants to add to their land, has not been marked DM. It still has the 30m height limit and 1:1 FSR shown on the zone map.

Unless council removes these controls, they will be law under the new LEP.

Flats could be built up to the swimming pool fence, see photo below.

And surprise, the development which was originally described as being for aged accommodation, medical services and new facilities for Sylvanvale, has now morphed into 79% flats and and limited space left over for the original idealistic proposal.

Council has invited the developer to lodge a DA for development on their site after the DLEP process is over.



This issue received the second largest direct number of submissions in the exhibition. 947

*** We request that the controls added to the public open space land above be deleted from the DLEP.**

Sutherland Entertainment Centre

It is not mandatory to reclassify land that has been rezoned.

The SEC land can be rezoned and maintain its community classification.

The Mayor has stated that council will not exit the SEC. We assume this means it will not be sold. As there is no intention to sell the site then there is no need to reclassify it.

The Council has offered Sutherland to the State Government as an Urban Activation Precinct.. If this action were to proceed then neither the council nor the residents would have any control over the SEC's future.

By maintaining the community classification it provides a level of protection for the site and would provide some comfort to the community.



*** We request that the classification of Sutherland Entertainment Centre be retained as community land as recommended by staff.**

In regard to Term of Reference 2, some of the provisions in the second draft are inappropriate

as the changes recommended by staff to particular clauses are omitted. eg. Building Heights 9m to 8.5m, or substantially varied, eg, 41-47 Eton St.

We request the panel to consider the following actions:

- * Delete the entire Mayoral Minute, (MM6/13-14, 29 July 2013). from DLEP2013
(When deleted, the housing numbers would still exceed the State Planning Department's target.)
- * The second DLEP would then be identical to the first DLEP.
- * **reconsider** staff recommendations on mooring pens (EHR039-13) and waterfront controls (DAP012-13).
- * Add changes requested by public authorities as listed in Mayoral Minute, subject to scrutiny.
- * Re-consider the DLEP using the staff report prepared after the 1st exhibition as the guiding document, which included responses to residents' submissions.
- * Add or delete recommendations for change from the panel on issues that have arisen as a result of the submissions, written and oral, from the public.
- * If the panel makes recommendations that require a re-exhibition and the Minister accepts them, an administrator be appointed to complete the process.

It should be noted that residents have been asked to write submissions five times so far about this DLEP and if the Minister recommends substantial changes then a sixth would be required. If serious changes are recommended that respond to residents' complaints or suggestions, or that implement the recommendations in the staff report, then another exhibition will be required.

There may well be a better alternative to what is suggested above, but unless due credence is given to the clear objections of residents to this DLEP then the principle of inviting public participation in the planning process is not working.

Submission from Save Our Shire
Spokesman Neil deNett