

Submission to the Independent Planning Review of the Sutherland Shire draft LEP

**Submitted by the Spring Gully Protection Group
February 2014**

Contact:

Mark Da Silva
Spring Gully Protection Group
52 Bournemouth St, Bundeena NSW 2230
mark.dasilva@springgully.org
9527 9327
0423 112 114

[Please remove personal contact details from public view]

Summary

This submission addresses concerns in the community regarding the proposed LEP and its compliance with the Environmental Planning and Assessment Act 1979, the adequacy of Council's response to public submissions and community concerns that have been raised with Council, and matters of serious concern in the community regarding the conduct of Council in relation to decisions made primarily concerning the former Scout land, but also the other contentious lands in Spring Gully, being Council's former Sanitary Depot and the unmade road reserves in Spring Gully.

This submission calls for the retention of E2 zoning for the Scout land in the proposed LEP and for the removal of the additional permissible uses of recreation camp and eco-tourism facility listed for the land in Schedule 1 of the proposed LEP.

Scout land

Lot 3 DP 213927
60-70 Bournemouth St, Bundeena

Council's former Sanitary Depot

Lots 15-18, Section K, DP 1782
10-40 Sussex St, Bundeena

Sussex St and Bournemouth St Unmade Road Reserves

Residue of DP 1782

Scout land, Spring Gully, Bundeena

Spring Gully runs east to west along the southern edge of the Bundeena Township. It contains Spring Creek, several tributary springs and the Bundeena wetland which joins with Yarmouth swamp. Spring Gully and its wetland make up an important portion of the Bundeena catchment and floodplain. Low lying areas of the Bundeena township are flood prone. Both the Spring Gully wetland and Yarmouth Swamp feed Bundeena Creek which flows into the Hacking estuary at the eastern end of Hordern's Beach (near the ferry wharf).

To the north of the gully lies the residential area of Bundeena. Most of the gully itself is within the Royal National Park (RNP). Although the gully was part of the original crown land grant of the 1830s and was subdivided in the 1886 subdivision, all of the gully and the wetland has been gazetted to the RNP piece by piece over many decades. The exceptions are the Scout land in Spring Gully (5.6Ha) and the adjoining 8Ha of council owned bushland to the south. Both these properties are considered to be in-holdings by the National Parks and Wildlife Service (NPWS) as they are surrounded by National Park and remote from the public road system (Michael Patrick, NPWS, Round table stakeholder consultations November 2013) (Council report WKS037-14 to the Infrastructure Projects and Works Standing Committee).

Other land further down the gully, the disused caravan park, has been reserved for compulsory acquisition for open space bushland.

The former Scout land is 5.6 hectares of bushland located in Spring Gully at the south east corner of Bundeena. Located along the Southern side and gully floor, eighteen residences directly adjoin the property and many more overlook the property and the surrounding bushland.

The land is highly visible from the opening stretch of the famous Coast Track (a.k.a. the Coast Walk) – the most popular walking track in the RNP. It is also highly visible from the roads which approach the RNP – Eric St and Beachcomber Ave.

History of the Land

Scout land dedicated as “Recreation Area” under the Pacific Waters Estate subdivision.

In 1961 the sealed road into Bundeena was completed.

In 1962 three large lots of land were created in deposited plan 213924 from lots in the original 1886 subdivision.

Lot 3 was developer dedicated as a “recreation area” and gifted under trust to Scouts as community land. CH Degotardi (Sales) Pty Ltd pegged-out the Pacific Waters Estate subdivision and produced a land sale map from which it sold lots in the proposed subdivision of lots 1&2 in 1962. The land sale map clearly marks the Scout land as “Recreation Area”. This sales map was also included in a caveat that was placed on the land title, as documentation of the “seller guarantee” of the subdivision; that is, to document the promise of the vendor to develop the subdivision as per the land sale map. Subdivision of Lots 1 & 2 was approved on the premise that Lot 3 had been dedicated as a recreation area and that it had been gifted to Scouts under trust as community land. The deposited plan of subdivision of the Pacific Waters Estate was registered in 1965.

Until this day the land has remained effectively under conservation as community land reserved for the benefit of the local community and used for passive recreation and as open space bushland.

Current Zoning reflects dedication for Community Benefit

Currently the land is Zone 12, Special Uses “Recreation Camp”. The objectives of Zone 12 in the 2006 LEP are:

- (a) to provide for a range of community facilities and services to meet the needs of the community,*
- (b) to allow for development by public authorities,*
- (c) to provide for a variety of development in accordance with local educational, religious or similar community demand,*
- (d) to ensure the scale and nature of new development is compatible with the surrounding urban form and natural setting of the zone,*

(e) to recognise critical requirements, as identified by the Commonwealth, relating to the use of Commonwealth land for defence purposes.

One problem with the draft LEP is that there do not appear to be zonings which recognise the nature of privately owned land that is reserved for community use. The local community are deeply concerned that the dedication of the land for the benefit of the local community is lost in the zoning under the draft LEP even though E2 Environmental Conservation seems to be the most appropriate zone for the land and is supported by a substantial body of evidence.

The Local Government Act 1993 recognises that community land can exist under private ownership (sections 37 & 39). Unfortunately, unlike the zone objectives of the current zoning (Zone 12) the zone objectives of E2 Environmental Conservation do not include objectives requiring that use of community land should meet local community demand.

2013 Sale of Scout land & Attempted Community Purchase.

In 2013 Scouts put the property onto the market for sale. Scouts had offered the land to NPWS in 2011. OEH and NPWS documents obtained by the SGPG indicate that the land was found to be of high environmental conservation value and it had been approved internally for purchase by NPWS (Email from De Gail, Lee, Reserve Establishment Coordinator, OEH, NPWS, 15 March 2013) . The Foundation for NPW also received an in principle agreement from NPWS that it would accept management of the land if purchased by the Foundation. NPWS wrote to the FNPWS asking whether the local community would be willing to perform bushcare on the land should it be purchased by FNPW and the SGPG responded that the local community would be prepared to and that there already is a bushcare group operating in a site in Spring Gully.

The explanation given to the community for it not being purchased was that there was insufficient budget. NPWS documents indicate that NPWS asked the Scouts if they were willing to donate the land. (NPWS documents confirm that the land remains on their land acquisition database as land of high conservation value desirable for addition to the Royal National Park reserves.)

In late February 2013 the Scouts placed the land for sale with a real estate agent. Several community meetings were held to discuss the future of the land and consider a community offer to purchase the land for environmental conservation. The Spring Gully Protection Group (SGPG) was formed and approached the Foundation for National Parks and Wildlife (FNPW) which agreed to purchase the land with community funds for donation to the

NPWS. Both the SGPG and the FNPW approached Scouts to attempt to negotiate a purchase. Scouts refused to meet with or discuss a sale to the foundation.

The SGPG met with the local MLA, The Hon. Mr Lee Evans and with then Deputy Mayor Cr. Kevin Schreiber in March 2013 to seek help with the local community's aim of purchasing the land for donation to national parks via the foundation for national parks and wildlife.

Environmental Conservation is appropriate and backed by evidence.

LEP Practice Note PN 09–002 “Environmental Protection Zones” identifies that the E2 Environmental Conservation Zone should be applied to:

- *lands with very high conservation values such as old growth forests, significant wildlife, wetlands or riparian corridors or land containing endangered ecological communities (p5)*

The Scout land is mapped by Sutherland Shire Council (SSC) as riparian land, as biodiverse and core greenweb corridor (refer to the maps of the Draft SSC LEP 2013, SSC LEP 2006 and DCP 2006). The headwaters of spring creek flow from two adjoining upland swamps and through the Scout land which contains the upper reaches of Spring Creek and the freshwater wetland of the Bundeena floodplain. Several other tributary springs flow over the Scout land and into the wetland.

Sydney Catchment Management Authority mapping shows the Scout land as under “Effective Conservation” and the Sydney Catchment Management Plan identifies the Bundeena wetland as a high priority site for remediation due to the prevalence of endangered and threatened species and ecological communities along the riparian corridor.

The Scout land contains several endangered ecological communities. Council mapping, NPWS records and Sydney Metropolitan Catchment Management Authority Mapping indicate the following Endangered Ecological Communities (EECs) are present on the land and bordering in adjoining land:

- Sydney Freshwater wetland,
- Bangalay Sand Forest of the Sydney Basin and South East Corner bioregions,

- Swamp sclerophyll forest on coastal floodplains of the NSW North Coast, Sydney Basin and South East Corner bioregions.

Upstream in the adjoining RNP & Sanitation Depot in-holding:

- Kurnell dune forest in the Sutherland Shire and the City of Rockdale,
- Coastal Upland Swamp in the Sydney Basin Bioregion

Downstream in the RNP

- Swamp Oak Floodplain Forest of the NSW North Coast, Sydney Basin and South East Corner bioregions,
- As well as continuation of EECs on Scout land.

NPWS records indicate there are aboriginal heritage items on the Scout land. Spring Gully is a treasure trove of aboriginal heritage. Collectively, there is a substantial amount of artwork and habitation sites located in Spring Gully and in the adjoining Bundeena Gully.

NPWS assessment of the Scout land has identified several vulnerable and endangered species recorded in the area including Rosenbergs goanna, little lorikeet, swift parrot, koala, eastern pygmy possum and grey headed flying fox.

Of significance is that the land and the bordering lands contain several boundaries and transitions between several highly intact EECs. The linkages and transition between significant land forms and EECs within this riparian corridor, from the ancient Aeolian cliff dunes formed in the quaternary period, the Kurnell dune forest and the upland swamps down through the sandstone gully forest into the freshwater wetland, swamp sclerophyll forest and swamp oak floodplains, all in the context of the RNP, make this area particularly valuable habitat and ecological land. Also of significance is that the area is the only place on the Sydney coast where coastal cliff dunes remain intact with their native vegetation communities.

Also of great scientific significance is the unique bloodwood mallee forest that forms a narrow transitional band which wraps around the top of the eastern end of Spring Gully between the Kurnell dune forest and coastal heath mallee at the top of the gully (the vegetation exposed to coastal conditions) and the forest within the gully. The uniqueness and scientific value of this forest has been documented in several environmental appraisals of the area and also highlighted in the book "First National Park, A Natural for World Heritage" by Dr Geoff Mosely promoting the RNP for world heritage listing. It has been cited as an excellent example of coastal scleromorphy which is a key scientific justification for world heritage listing.

The bloodwood mallee forest comprises hundreds of bloodwood trees which corpus from giant underground lignotubers (hundreds of years old and covering vast areas) – an adaptation to the coastal Aeolian processes and frequent fire events. This forest runs across the RNP, the Scout land and council's former Sanitary depot. Removal or degradation of this forest for development or asset protection zones poses a high risk of destabilisation and erosion of the sandy soils of the eastern end of Spring Gully and siltation of the wetland. It is evident from observing the markings on the bloodwoods that sugar gliders extensively feed on the bloodwoods.

The Preliminary Report, Flora and Fauna Assessment, Bundeena-Maianbar Watercycle Management Strategy, by Kevin Mills & Associates April 1993 for the Waterboard, Sydney states *"The site is mainly naturally vegetated with a low woodland (mallee) – shrubland community that is peculiar to this corner of the Royal National Park because of the extensive dune system overlying the Hawkesbury Sandstone."*

The bloodwood mallee forest warrants specific heritage protection as a natural and scientific asset of great value.

Also of significance are the two upland swamps on the adjoining council land either side of the cliff dune which are significant in being at low altitude, so close to the coast. They are the first of a succession of upland swamps that stretch along the southern slopes of the Sydney basin, starting in the RNP and further south ascending into the Illawarra catchment and Southern Highlands. They are an excellent example of the geomorphology of the Sydney basin.

A report (EHC316-01) presented to SSC Environment and Health standing committee (Minute Number: 1301 Council Meeting Date: 21/05/01) summarised a NPWS assessment of the cliff dunes which border and slope into Spring Gully at the South-East mouth of the gully:

"The National Parks and Wildlife Service has indicated its desire to ensure the long term protection of this area. The area in question forms part of a sand dune system between Gibbon and Marley that is of particular geomorphological interest. The dunes are relic cliff top dunes formed during the sea level rise of some 6000 to 10,000 years ago and are the most extensive and best preserved examples in NSW. The dune system supports an assemblage of large shrub species which covered the eastern suburbs peninsula of Sydney and is now restricted in the Sydney region."

The freshwater wetland located in Spring Gully and on the Scout land was also documented in the Kevin Mills & Associates Flora and Fauna Assessment 1993:

“This wetland has a moderate to high value, because of its uniqueness as a vegetation type in the Royal National Park area and its fauna habitat value. Although a common community along the NSW Coast, Casuarina glauca swamp is not very common in the study area or nearby. The wetland is not of great significance for wetland birds but has a considerable local value for amphibians and reptiles and possibly some mammal species. The wetland is in a good natural condition and would be a worthwhile addition to the adjacent national park”.

The Sydney Metropolitan Catchment Management Authority (SMCMA) Catchment Action Plan 2010 identified the Bundeena wetland, which lies partially on the Scout land, as a high priority site due to the presence of vulnerable, threatened and endangered species and communities listed in the Federal Environmental Protection and Biodiversity Conservation Act 1999 and the NSW Threatened Species Conservation Act. The Bundeena wetland received funding from the SMCMA for weed management and floodplain management works which were carried out in conjunction with the SCC and NPWS during 2010-12.

The SMCMA Catchment Management Authority Catchment Action Plan also highlights the importance of maintaining and improving biodiversity especially on riparian land that contains endangered ecological communities (EECs). The action plan states:

“healthy riparian and other vegetation corridors are fundamental to improved habitat connectivity in the region”. Priority areas are “along streams with high recovery potential within Mitchell Landscapes and EECs ... Riparian corridors leading into or connecting existing National Park or Nature Reserve, or large parcels of healthy bushland.”

It is no exaggeration to describe Spring Gully, its coastal context, and its position as the start of the south-eastern corner of the incline of the Sydney basin as a treasure trove of environmentally valuable vegetation with land forms of great natural heritage, scientific and educational value.

There is ample documented evidence that justifies the Scout land and the adjoining council land being zoned E2 for environmental conservation.

The Minister for Environment and Heritage’s office prepared a report into the Scout land in April 2013 endorsing environmental zoning for the Scout land, recommending that “The Council could, under the local environment plan revise the zoning of Lot 3 to afford it greater protection (ie, an environmental zoning)”. The report also suggested that the land would be afforded better environmental protection under public ownership than private ownership.

Although the community supports E2 zoning of the Scout land, the SGPG is concerned that Council has not conducted sufficient study of the land and of the adjoining lands (notably the former Sanitary Depot and road reserves also proposed for E2 zoning) to adequately identify the water courses which flow across the land, the extent and location of the several EECs on the land and on the adjoining land, especially those around the freshwater wetland and the upland swamps which feed Spring Creek and the wetland and the location of significant natural features such as ravines and waterfalls. We are concerned that the application of the additional permissible uses for the land in Schedule 1 of the proposed LEP have not been considered and justified against sufficient analysis of the constraints and vulnerabilities of the site including the location and extent of EECs and other environmentally sensitive and significant features such as the cliff dunes and the bloodwood mallee.

The SGPG argues that careful consideration of the environmental sensitivity and values on the site and the adjoining land would conclude that the additional permissible uses identified for the site are inappropriate and incompatible with environmental conservation of the land, the health of the wetland and catchment and the adjoining RNP, especially in the context of the requirements of the Rural Fire Service Planning for Bushfire Prone Land 2006 (PBP) controls in relation to the site. For example, that the land mostly slopes at greater than eighteen degrees and that the flatter areas are in the wetland or creek bed, should inform council that development on this site that meets the Sutherland Shire DCP 2006 development controls is unlikely for this reason and also that under the PBP asset protection zones (APZ) cannot be formed over land that slopes greater than eighteen degrees.

Non-Compliance of LEP with the Standard Instrument Principal Local Environment Plan

The Deputy Commissioner, Department of Planning and Infrastructure, provided a gateway determination on 12 August 2013 that the amended draft Sutherland Shire LEP should be prepared “in the Standard Instrument format”.

The introduction to the Planning Proposal, Sutherland Shire Draft Principle Local Environment Plan, (Amended proposal August 2013) states that:

This planning proposal aims to implement a Standard Instrument Local Environmental Plan for the Sutherland Shire local government area. (p3)

The planning proposal does not comply with the Standard Instrument Local Environment Plan.

Recreation Camp as a land use is not allowed by the Standard Instrument Principal LEP

Part 2.5, Direction 2 of the Standard instrument principal Local Environment Plan states:

“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.”

Recreation Camp is not a land use identified in the Standard instrument principal Local Environment Plan, Land Use Table, Direction 5.

Recreation Camp has been included in Schedule 1 of Council’s proposed LEP for “Land at 60-70 Bournemouth Street, Bundeena being Lot 3 DP 21392” and for other land in contravention of Part 2.5 Direction 2.

SDC012-12, SSC Strategy and Direction Standing Committee and Council Meeting Minute Number: 139, 22/08/11

A report (SDC012-12) concerning “Standard Instrument (Local Environmental Plans) Amendment (Miscellaneous) Order 2011 (LP/06/675654)” was prepared by Council’s Director of Environmental Services and presented to the Strategy and Direction Standing Committee on 15/08/2011.

The report states:

Sutherland Shire Council is currently preparing a new comprehensive Local Environmental Plan that is consistent with the format of the Standard Local Environmental Plan Order...

A new direction has been added to Clause 2.5 which allows for specific additional uses to be permitted on specified land. This directs that only land uses identified in the list of land uses which can be included in the land use table can be listed in Schedule 1. Council has resolved to include a number of uses which do not meet this requirement in Schedule 1...

*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...

The report's recommendations were adopted by Council on 22/08/2011. Our first observation is that the proposed land use definition of "recreation camp" was recommended to Council to accommodate existing land uses at specific locations which do not include the Scout land at Bundeena.

There are no existing usage rights that can be argued to apply to the Scout land other than open space bushland and passive recreation area as no development has ever occurred on the land.

LEP Practice Note PN 11-001

LEP Practice Note PN 11-001 "Preparing LEPs using the Standard Instrument: standard clauses" Attachment A, Part 2.5 Additional permissible uses for particular land states:

*Councils may insert a list of additional permitted uses in Schedule 1 for particular land, e.g. by lot and DP number. Listings in the LEP Schedule 1 should be minimised, with **appropriate justification provided to the Department** for any inclusions. Wherever possible, land uses should be governed by the Land Use Table and **Schedule 1 should only be used where council has demonstrated why this cannot be achieved.***

What justification has been provided to the Department of Planning and Infrastructure for the use of "Recreation Camp" as an additional permissible use in Schedule 1 of the LEP specifically in relation the Scout land? Has it been accepted? Why hasn't this justification been included in the planning proposal document and exhibited with the draft LEP?

LEP Practice Note PN 11-003

LEP Practice Note PN 11-003 “Preparing LEPs using Standard Instruments: definitions” states:

Introduction

The Standard Instrument for preparing local environmental plans (LEPs) includes a Dictionary of standard definitions relating to land uses and other terms relevant to the interpretation and application of LEPs. This means that all LEPs across NSW will soon use the same planning language, including the same definitions for developments such as ‘business premises’, ‘industry’ and ‘shops’. The Dictionary is a mandatory provision and will be included in its entirety in all LEPs. To maintain consistency in planning language across the State, councils are not able to alter the standard definitions or directly add definitions to the Dictionary. (p1)

also:

Additional standard definitions

To maintain consistency across the State, LEPs may not alter the standard definitions or directly add definitions to the Dictionary. However councils may suggest new terms to the Department of Planning to be included in the Dictionary for all councils to use. The reasons why a definition is required should be clearly articulated.

If there is sufficient justification that the existing standard definitions will not adequately address a particular matter and that the common dictionary meaning of the word is insufficient, the definition may be added in a future amendment to the Standard Instrument. Until the term is added to the dictionary, it cannot be included in the Land Use Tables.

(pp3-4)

Did Council submit a proposal to the Director General, Department of Planning and Infrastructure for the addition of council’s definition of “recreation camp”, as it has been included in the proposed LEP dictionary, prior to exhibiting the proposed LEP? What was the justification? Why hasn’t the proposal and the Director General’s response been exhibited with the draft LEP?

Of particular concern is council’s definition of Recreation Camp. There is nothing in the definition that promotes the objective of meeting community needs or a focus on youth development and education including physical education, self-development, the appreciation of nature or environmental conservation; which we suggest, would be included

in the common understanding in the community of the meaning and purpose of a recreation camp. In fact, a development described as “a building for the purpose of commercial gain for the purpose of holiday making and holding of events and functions” would satisfy Council’s definition of Recreation Camp. We argue that such a development would bear no practical difference to a hotel or resort which is a prohibited land use in the E2 Environmental Conservation zone under the standard instrument LEP.

In any case it is self evident that “Recreation Camp” is not a land use listed under Direction 5 of the Standard Instrument – Principal Local Environment Plan and that it is not in the Standard Instrument dictionary as published at the NSW legislation website and it was not listed as a land use at the time council resolved to use it in schedule 1 nor at the time the draft LEP was exhibited.

Use of “Recreation Camp” in schedule 1 of the LEP is in contravention of the Standard Instrument – Principal Local Environment Plan, Clause 2.5 Direction 2 as admitted in Council’s own report (SDC012-12).

LEP Practice Note PN 11-003 states that Councils cannot add land uses or dictionary definitions prior to their adoption by the Department of Planning and Infrastructure in the Standard Instrument – Principal Local Environment Plan.

Furthermore, PN 11-003 requires that “*The reasons why a definition is required should be clearly articulated.*” Whereas the report (SDC012-12) presented to Council recommending the adoption of “recreation camp” as a non-standard land use clearly stated that the land use was being adopted for the situation of existing land use rights, at locations other than the Scout land, this explanation has been omitted from the planning proposal, which includes the following statement without any further explanation or justification:

Council has identified a number of land uses which are specific to the local area, and which are not adequately encapsulated within any of the land uses defined in the Dictionary. As these land uses relate to Additional Permitted Uses to be specified in Schedule 1, specific definitions are proposed to be included in this schedule for the following uses:

- *Bus Parking*
- *Recreation camp*
- *Sailing club*

The proposed LEP as exhibited does not clearly articulate the reason why its definition of “recreation camp” is required as a land use or provide adequate justification for its

definition or as to why its definition as a land use is appropriate or compatible for use within the E2 Environmental Conservation zone.

Additional Permissible Uses are not appropriate for the land or consistent with its E2 Environmental Conservation Zoning.

Bushfire Prone Land

Spring Gully is identified as bushfire prone land under s146 of the EP&A Act. It is steeply sloping with a gradient greater than eighteen degrees over much of the property. The flatter areas are creek bed, wetland and floodplain and cannot be developed. The land is heavily forested and contains a substantial understory of mature banksias.

Due to the steepness of the land the size of the clearings required for APZs are so large, and pose too many potential impacts including key endangering processes to the EECs.

The National Parks and Wildlife Service fire management plan 2003 warns that “Spring Gully is dangerous in extreme wildfire conditions”. Spring Gully, including the Scouts’ land was extensively burnt out in the 1994 and 1974 fires.

Spring Gully is the most bushfire prone land in Bundeena. A photograph of the entire southern ridge of Spring Gully ablaze in what can only be described as an inferno of fire hangs in the meeting room at the Bundeena Community Centre.

RFS Planning for Bushfire Protection 2006

As bushfire prone land, any development of the Scout land will require compliance with the RFS Planning for Bushfire Protection 2006 (PBP).

The size of required asset protection zones (APZs) clearings is primarily determined by the physical character of the land, namely the slope and vegetation on the land.

Asset protection zones require canopy reduction to a maximum of 15% canopy cover and also reduction of the understory and management of the ground cover fuel load.

The ability of the land to meet standard acceptable solutions for bushfire protection is also dependent on the infrastructure servicing the land; primarily road access and water supply that meets PBP requirements.

Other characteristics of the development also determine PBP requirements including whether Special Fire Protection Purposes (SFP) APZs (s100B RF Act) are required (for example, for integrated developments under s.91 EP&A Act), whether the development needs to meet infill development, or subdivision requirements, etc, of the PBP.

Council planning staff have confirmed that development of the Scout land will be classified as an integrated development which will require SFP APZs.

As well as being steep the land is forested with an unbroken canopy of *angophora costata* and an understory of banksia trees. The soil is loose and sandy due to the relic cliff dunes at the mouth of the gully.

Currently there is no physical road access to the Scout land. There is no prospect of physically achieving the two access roads (with one being a maximum of 200m from any dwelling) required for Special Fire Protection Purposes development in the PBP.

The Scout land slopes over eighteen degrees over most of the property including over several steep ravines through which springs flow. The only flat areas of the property are in the creek bed and in the wetland. There is no standard acceptable solution to the creation of an APZ on land that slopes greater than 18 degrees. PBP states (p57):

Location of APZs on slopes greater than 18 degrees is not supported for new developments on wooded vegetation, due to environmental constraints and difficulties in managing vegetation. In addition, vegetation could carry a canopy fire along these steep slopes where an understorey would otherwise normally be required to support a sustained crown fire. (p58)

Standard acceptable solution SFP APZs would need to be huge (100m down-slope from the building envelope and 60 upslope/level) in excess of 2 hectares for just one fire refuge building and will definitely extend into steep ravines, the creek bed, the endangered species buffer zone and the wetland itself and most probably could not fit on the block and would require “exceptional circumstances” approval to spill onto the adjoining lands zoned E1 and E2. NPWS say they won’t allow the APZs to spill onto National Park. We note however, that in the December 2013 council meeting, despite resolving to transfer its land to NPWS at the June 2013 meeting, Council resolved to defer its promised transfer of the adjoining land to National Parks which is of deep concern to the community.

We note that the first proposal the current owner of the Scout land, and proponent of an eco-tourism development, put to the community required the APZ to substantially encroach onto neighbouring land proposed for E2 zoning including the land that Council resolved to transfer to NPWS in June 2013.

We note that the amended proposal which the proponent presented to the round table stakeholder consultations convened by Council in November 2013, labelled as the “current proposal” in the document titled “Bundeena Bush Valley CONFIDENTIAL, Alternative sites concept analysis v1.2” still proposed APZs that encroach onto adjoining land (which NPWS stated they were opposed to) and also proposed a reduction in the down-slope APZ to 50m by proposing that the entire property minus the wetland (some 4.5Ha) would be mechanically slashed on an annual basis. The “current proposal” included slashing the undergrowth within the endangered species buffer zone (as mapped in the Sutherland Shire LEP 2006). Such a harsh regime of undergrowth removal is completely incompatible with the ecological sensitivity and riparian nature of the site and is not ecologically sustainable given the nature of the site. As to how this would be achieved over 4.5 hectares of land comprised of loose sandy soil which mainly slopes at greater than 18 degrees without causing significant environmental damage is difficult to imagine. The proponent’s proposal states “We will transform the slopes and the suitable parts of the valley into a park-like zone...”. This proposal is completely unacceptable and contrary to the objectives of environmental conservation zoning and highlights the conflict that exists between the additional permissible uses, the requirements of PBP and the environmental conservation of the site.

It should be noted that the PBP only allows APZs to encroach onto adjoining land under exceptional circumstances. We argue it is not acceptable for APZs to encroach on neighbouring public land which is zoned for E2 Environmental Conservation especially when that land has been reserved for addition to the RNP.

Council’s previously published environmental policy specific to the land (Bundeena Maianbar DCP 2006) stated that:

“The environmental qualities of the site shall be maintained in any proposal to provide an appropriate facility on this site. In particular the significant tree canopy is to be conserved together with significant understory.”

The subsequent publication of the PBP makes any development on this land inconsistent with that policy and inconsistent with the community’s expectations for the conservation of the local environment.

The zoning of the Scout land was debated at the Council meeting of 5th August 2013. Mr Mark Carlon of SSC stated in the Council meeting of 5 August 2013 that he could not see how a development proposal could be put up on the land given the challenges the land poses. The report presented to the Council meeting stated:

It is evident that any development of the site will require bushfire risk to be addressed and this will need to be balanced with the ecological values of the land. In the past, reduced

bushfire protection measures may have been considered acceptable for eco-tourist facilities, based on strict operational arrangements (limiting the season for use and the numbers of occupants). However, in light of the Victorian bushfire Commission of Inquiry, it is likely that a more precautionary approach may be taken by the RFS to such uses in the future.

...

The land is bush fire prone, slopes steeply, contains significant vegetation and has no current means of vehicular access. Development of the land is significantly constrained and any development of the land will need to address the associated environmental impacts.

The PBP allows concessions that allow smaller residential APZs rather than SFP APZs for Eco-tourism development if certain criteria are met. These criteria are documented in NSW Rural Fire Service Community Resilience Fast Fact 10/07 “Eco-tourism” which states:

- *Ecotourism developments are required to adhere to standard residential subdivision requirements for APZs as per **s4.1.3 of PBP**.*
- *Ecotourism developments are required to adhere to Special Fire Protection Development requirements for access, services, emergency and evacuation planning and all other specifications in accordance with **s.4.2.7 of PBP**.*

PBP s4.1.3 Standards for Bush Fire Protection Measures for Residential and Rural Residential Subdivisions.

PBP s4.1.3 states:

A proponent should not diminish the ecological integrity of adjoining bushland, and APZs should be designed to minimise the impacts on any environmental features in the landscape. (p18)

Because of the steep slope of the Scout land even eco-tourism APZs, if permissible, would be very large, would impact watercourses and encroach into the endangered species buffer zone (as mapped in Sutherland Shire LEP 2006). Standard solution APZs under the eco-tourism concessions would still extend 60m down-slope and 20m upslope. The slope of the land and the loose sandy nature of the soil would expose the EECs located on the bushland and wetland on the site and the adjoining RNP to several key threatening processes (outlined further below) that are not consistent with E2 zoning and not consistent with SSEP 19 Bushland in Urban Areas.

The performance criteria and acceptable solutions for APZs under s4.1.3 states (p19):

<i>Performance Criteria</i>	<i>Acceptable Solution</i>
-----------------------------	----------------------------

<i>APZ maintenance is practical, soil stability is not compromised and potential for crown fires is negated.</i>	<i>The APZ is located on lands with a slope less than 18 degrees.</i>
--	---

If we assume just one fire refuge building, the APZ required by an eco-tourism development on the Scout land would need to cover an area of about one hectare and extend over land that slopes greater than 18 degrees for which there is no standard acceptable solution for APZs.

PBP 4.2.7 Standards for Bush Fire Protection Measures for Special Fire Protection Purpose Developments

Access

For internal roads, at least one alternative access road needs to be provided for individual dwellings or groups of dwellings more than 200 metres from a public through road. The routes of these roads should be selected to ensure that both roads are unlikely to be simultaneously cut by a fire...

roads should be planned for suitable widths to permit access into and out of the area during such situations.

(p34)

Acceptable solutions (p35):

- internal roads are two-wheel drive, sealed, all-weather roads;*
- internal perimeter roads are provided with at least two traffic lane widths (carriageway 8 metres minimum kerb to kerb) and shoulders on each side, allowing traffic to pass in opposite directions;*
- the internal road surfaces and bridges have a capacity to carry fully-loaded firefighting vehicles (15 tonnes).*

(note: only relevant acceptable solutions cited above)

Of particular concern is that there does not seem to be any realistic prospect of providing the physical road access that meets PHB 4.2.7 as required for SFP APZs and as required for Ecotourism development. The fact that there currently is no legal and physical road access servicing the Scout land raises the question of how the additional permissible uses under schedule one of the proposed LEP can be deemed to be suitable for this land. Furthermore,

the proposed road access utilising the fire trail at the end of Beachcomber Ave is some 500 metres from the development site being proposed by the owner of the Scout land.

The NPWS stated, at the November round table stakeholder consultation, that it would not provide easements over the RNP but that it would consider providing an access license. This license would require a proposal that met the NPWS environmental impact assessment criteria, an ecological sustainability feasibility study and that all costs of upgrading the fire trail to the standard required by PBP would need to be borne by the developer. Council's report into the Scout land (59. Scout Land, Bundeena) following the public consultations to the first draft of the proposed LEP makes reference to ecotourism only requiring residential APZs and cites Section 4.1.3 and 4.2.7 of the PBP. It is unfortunate that Council's analysis of the site and of the PBP was not sufficient to recognise that there currently is no physical road access to the property, and that there does not appear to be any prospect of being able to provide the road access required by 4.2.7 in order to allow the reduced APZs for ecotourism.

The SGPG suggests that, until a planning proposal is presented that addresses the issue of road access to the site and establishes whether the requirements of s4.1.3 and 4.2.7 of the PBP are feasible, it is not appropriate for additional permissible uses to be added to the land in Schedule 1 of the LEP.

EP&A Act - Section 117 - Ministerial Directive 4.4 – Planning For Bushfire Protection

The RFS PBP states in relation to the preparation of LEPs and DCPs:

If a proposed amendment to land use zoning or land use affects a designated BPA, then the section 117(2) Direction No 19 must be applied (section 117 of the EP&A Act provides for the minister for Planning to direct a council, in relation to the preparation of a draft LEP, to apply the planning principles specified in that direction).*

The section 117 Direction No 19 requires councils to:

- consult with the Commissioner of the RFS under section 62 of the EP&A Act, and to take into account any comments by the Commissioner; and*
- have regard to the planning principles of PBP below.*

If a council proceeds with a draft LEP that does not comply with the provisions in the section 117 Direction, the council must obtain written advice from the Commissioner of the RFS to the effect that the RFS does not object to that noncompliance.

** note that s117 Direction no 19 has been replaced by s117 Direction no 4.4.*

The SGPG and other members of the community have written to the Commissioner, RFS imploring him to pay particular attention to the challenges of the Scout land and the appropriateness of the existing fire trail access, potential physical road access and the character of the gully – its slope, geology and vegetation. The Spring Gully Protection Group has also implored the RFS to provide the SSC and the community with written advice as to the likely extent of APZs required and to assess whether standard acceptable solutions for the proposed additional permissible uses are achievable on the site.

Likewise, the SGPG has implored Council to seek advice from the RFS specific to the Scout land and the feasibility of the additional permissible uses listed in Schedule 1 of the proposed LEP and the likely APZ requirements of development under those uses.

The only response received from the two letters the SGPG wrote to the Commissioner, RFS was a letter from Jeff Lucas, Group Manager, Customer Service & Support, which, in relation to our enquiry concerning s117 Ministerial Directive 4.4 stated:

“Please note that whilst discussions have been held with the proponents regarding this site, no formal Development Application has been received at this point”.

Further requests made by the community through GIPA revealed that the RFS has provided no advice specific to the Scout land in Spring Gully, despite having provided advice advocating changes to development standards and acceptable land uses in the adjoining E4 zone.

We believe the community has not been informed of the likely environmental impacts and the extensive clearing that will be required by the additional permissible uses in this E2 area.

We are concerned that without such analysis Council has not considered the feasibility of the additional permissible uses proposed for the land and whether they are consistent with the objectives of the Environmental Conservation zone and whether development can be achieved that would meet the definition and objectives of eco-tourism as defined in the LEP and as defined by Tourism Australia. We believe this is evidenced in the public consultations report (59. Scout Land, Bundeena) referred to above in that Council does not appear to have sufficiently analysed whether ecotourism APZs are achievable on the land given the requirements of PBP 4.1.3 and 4.2.7 and the prospect of achieving the required road access to the land.

The SPGP is aware that a pre-DA meeting was held on 26 August 2013 attended by Ms Michelle Streeter (Team Leader, Development Assessment and Planning, Rural Fire Service), Council’s director of environmental planning, Council property managers, all three A ward

councillors, Mr Ron van Ardenne of RVA Australia Pty Ltd (the current owner of the Scout land) and NPWS management to discuss the feasibility of an eco-tourism development on the Scout land. We are aware that Ms Streater gave advice as to the PBP requirements of developing the land and gave specific advice as to APZ requirements.

What was the advice? Was it minuted? If not, why not? Why hasn't this advice been documented and exhibited with the proposed LEP especially given that LEP practice notes state that appropriate justification is required to be provided for the inclusion of additional permissible uses to specific land in Schedule 1 of the LEP?

Why has the RFS attended consultations with Council staff and the owner of the Scout land but refused to give written advice under s117 Ministerial Directive 4.4 specific to the Scout land?

Public Authorities Report, Appendix 5, Planning Proposal

Council's report of public authority consultations, as exhibited in Appendix 5 of the draft LEP, in relation to the advice received from the RFS states:

The Rural Fire Service submission notes the proposed use of the E4 zone. It provides advice that within this zone, consideration should be given to ensuring appropriate access is available to the lots. The submission also advises that where an increase in density or a special fire protection purpose development is permissible, roads should provide satisfactory level of service for evacuation. The RFS also notes that an adequate water supply will be needed to supply developments or areas with water for fire services.

This advice is consistent with the approach adopted in the application of the E4 Environmental Living zone, which aims to limit an increase in density in the zone, and prohibit the development of any new special fire protection purposes development in the zone so as to ensure that there is a sufficient opportunity for evacuation from existing development.

The E2 land in Spring Gully adjoins the E4 residential area. The only physical road access to the proposed E2 zone is the fire trail that runs from the E4 zone. There is no prospect of achieving the required road access standards for SFP development.

Owners of E4 land in the residential area are having their permissible uses constrained (no dual occupancy) and the economic value of their land constrained due to the risks of bushfire. It is not logically consistent that the E2 zone which adjoins the E4 zone and which can only be accessed through the E4 zone, and which is the most bushfire risk land in

Bundeena, should be developed at all and should have permissible uses which require SFP APZs.

Ms Streater of the RFS met with council staff, the owner of the Scout land, the NPWS and others in August 2013 to discuss development of the Scout land. Council staff were advised that development on the Scout land would require SFP APZs to meet standard acceptable solutions to the RFS bushfire building code. Why hasn't the RFS put that advice in writing and why hasn't it been included in the LEP exhibition materials? How can land uses that will require SFP APZs be allowed to be added to the E2 land in Spring Gully (the most bushfire prone and land in Bundeena) when council is prohibiting SFP development in the adjoining E4 land (through which the E2 would need to be accessed in case of emergency) and is removing dual occupancy as a permissible land use based on the basis of emergency evacuation and bushfire risk?

It is not equitable that the land owners adjoining the Scout land are having the economic value of their properties restricted by removal of dual occupancy due to bushfire risk but additional permissible uses are being applied to the adjoining land in the E2 zone which has no existing usage rights in place. What is the cost benefit analysis that justifies this inequity?

Opposition to development in Spring Gully and on the Council's sanitary depot land by the local emergency services is unequivocal and based on operational concerns and safety.

The RFS Bundeena Brigade voted unanimously to oppose any development in Spring Gully solely on an operational basis. The brigade wrote to the district command with their concern.

The NSWFR Bundeena Brigade Captain has advised the community fire units along the northern side of Spring Gully that Spring Gully is outside its operational area and the brigade will not enter Spring Gully and the Scout land in the case of a bushfire.

EP&A Act - Section 34A - Special consultation procedures concerning threatened species

2. Before an environmental planning instrument is made, the relevant authority must consult with the Director-General of the Department of Environment, Climate Change and Water if, in the opinion of the relevant authority, critical habitat or threatened species, populations or ecological communities, or their habitats, will or may be adversely affected by the proposed instrument.

Council is obliged to advise the Director General of OEH with regard to the potential impacts of the LEP on threatened species, populations, ecological communities and their habitats.

The extent of clearings required by APZs on this steep riparian land increases the risks of the following key threatening processes (as identified by the NSW Scientific Committee under the Threatened Species Conservation Act 1995) to the threatened species, populations, ecological communities and their habitats that have been identified both on the Scout land and downstream in the Royal National Park including:

- Loss of Hollow Bearing Trees*
- Removal of deadwood and trees.
- Clearing of native vegetation.
- Loss and degradation of native plant and animal habitat by invasion of escaped garden plants, including aquatic plants.+
- Degradation of Native Riparian Vegetation.

* The Scientific Committee finding notes that hollow bearing trees within riparian zones are particularly important in providing wildlife habitat.

+ The Scientific Committee finding notes that loss of native vegetation greatly increases the risk of weed invasion. The regular removal of ground cover and canopy cover to maintain the APZs as required by PBP will significantly increase the risk of weed invasion and further degradation of the native vegetation and habitat in the area including the adjoining RNP.

The documented presence of threatened and endangered species and ecological communities on this environmentally sensitive and ecologically valuable land, and within the area, including the other E2 zoned land and the RNP, warrant application of “the precautionary principle” to planning for this land. The SGPG argues that it is vital that s34 of the EP&A Act has been fully adhered to in relation to planning for this land in the LEP. We are concerned as to whether the appropriate consultations have been carried out in compliance with S34. We do not believe that sufficient consideration has been given to the potential impacts on endangered and threatened communities and species and their habitats from key threatening processes by the requirement for large APZs that would be required by development nor that the precautionary principle has been applied as is warranted by the environmental sensitivity and ecological value of the land and the adjoining RNP.

Has Council advised the Director General of OEH of the use of the non-standard land use “recreation camp” in the environmental conservation zone? Has council advised the Director General of OEH that the Scout land cannot meet standard acceptable solutions for

SFP development (as would be required by a recreation camp) nor the ecotourism provisions in the RFS PBP 2006 code and the RFS Ecotourism Fast Facts publication?

Has Council advised the Director General of OEH that the requirements for eco-tourism APZs cannot be met in accordance with the PBP and that SFP APZs would be required under standard acceptable solutions for either Recreation Camp or Ecotourism development? Has council advised the Director General of OEH that due to the slope and vegetation of the site the required SFP APZs would be in excess of 2Ha in size and encroach into the protected species buffer zone and into EECs themselves and would quite likely require exceptional circumstances approval to spill onto the adjoining E2 and E1 zoned lands?

Has Council advised the Director General OEH that the land adjoins the RNP and that conservation of the land meets all the objectives of SSEP 19 Bushland in Urban Areas?

Has Council received permission to proceed with the additional permissible uses from the Director General as a result of the consultations required by section 34A EP&A Act and with regard to the likely impacts on endangered ecological communities and the risks of key threatening processes that development including the associated APZs would involve?

Why hasn't the proposal required by s34A and the Director General's response been publicly exhibited with the LEP?

EP&A Act - Section 117 - Ministerial Directive 2.1 - Environmental Protection Zones.

2.1.4-6 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).

Additionally, LEP Practice Note PN 09–002 “Environmental Protection Zones” states (p5):

E2 Environmental Conservation

The mandatory zone objectives focus on protecting land with high conservation value and preventing development that could destroy, damage or otherwise have an adverse effect on that value.

... and...

It is important that councils maintain the integrity of the E zones by including only uses consistent with the zone objectives.

The inclusion of Recreation Camp, as defined by Council, in the additional permissible land uses for the Scout land uses in Schedule 1 does not comply with the Standard instrument principal LEP (as argued above) and is clearly in conflict with the objectives of environmental conservation given that very similar land uses such as hotel are prohibited in the E2 zone in the standard instrument principal LEP. Additionally, very similar land uses were also found to be inappropriate to the environmental sensitivity and value of the land in Council's consultation report (59. Scout land) in response to the public submissions of the first draft of the LEP. The report states (p3):

Zoning the land RE2 Private Recreation creates an expectation that some of the uses will be appropriate for the land. However, it is evident that many of these permissible uses are not appropriate for this land. In particular larger developments for hotel or motel accommodation are likely to have significant adverse impacts. However, there is no directly equivalent Standard Instrument zone to the current Special Use zone.

Neither Recreation Camp nor eco-tourism facility permissible uses facilitate the protection and conservation of the environmentally sensitive environmental conservation areas in Spring Gully and expose the several endangered ecological communities and threatened and vulnerable species identified to unacceptable risks from key threatening processes due to the size of the APZ clearings required by the PBP due to the specific geography and character of the site.

The large APZ clearings required for development of the Scout land under the additional permissible uses are not compatible with the objectives of E2 Environmental Conservation, the conservation and protection of environmentally sensitive bushland and riparian corridors or SEPP 19 Bushland in Urban Areas.

The Scout land is steeply sloping at a gradient of over eighteen degrees over most of the land. The flat areas are within the creek bed and the wetland and cannot be built upon. Development of the land under the additional permissible uses would require APZ clearings

on land that slopes greater than 18 degrees which would do not meet the standards for new development in the PBP and would not comply with development controls in the Sutherland Shire DCP 2006. Furthermore it is highly likely that the APZ clearings required around buildings would not even fit onto the property and would require “exceptional circumstances” approval to spill onto adjoining E2 and E1 zoned land. It should be noted that the only proposals the current owner and proponent of an eco-tourism development has put forward to the community to date involve at least partially locating the required APZ clearing on neighbouring land.

The standard instrument dictionary definition of eco-tourism and the definition provided in the LEP mandate that eco-tourism development must be ecologically sustainable. The large APZ clearings required on the land pose several key threatening processes to the EECs present that clearly are not ecologically sustainable and compatible with the zone objectives.

(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.

Has Council provided the Director General, Dept of Planning with the required proposal and justification for uses identified as additional permissible uses (including the large APZ clearings that would be required by PBP) and their potential environmental impacts on the

land, the downstream wetland, the EECs and the adjoining RNP? Has Council received permission from the Director General to proceed with the inconsistencies in the LEP?

What is the cost/benefit analysis that justifies the permissible uses of recreation camp and eco-tourism facility on the scout land given the very high environmental impacts and loss of amenity to the local residents and users of the RNP that development and the associated APZ clearings required will have? How can these cost/benefits be justified given that the proposed LEP removes dual occupancy and prohibits SFP APZ development in the adjoining E4 zone yet is adding land uses to the adjoining E2 Scout land (which can only be accessed via the E4 zone) that will require SFP APZs?

Why wasn't the proposal required by s117 Ministerial Directive 2.1.6 and the Director General's response publicly exhibited with the LEP? Council owes its constituents an obligation to provide sound evidence based information, reasoning and justification behind the planning proposal for the consideration of the community during the public exhibition period.

LEP Practice Note PN 09-006 - Providing for tourism in Standard Instrument local environment plans.

When including tourism uses in a zone, the primary focus of the zone must be maintained so any identified tourism uses should be consistent with the mandatory zone objectives and uses of that zone. Where there is scope for potential conflict between a tourism land use and the mandatory zone objectives and uses, council should first address relevant issues prior to the use being included in that zone. For example, consider:

...

- *ensuring the environment is protected including biodiversity, water catchments, coastal areas and cultural heritage.*

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 SGPG argues that the additional permissible uses of recreation camp and eco-tourism facility are not consistent with the mandatory zone objectives of E2.

We do not believe that the additional permissible use for recreation camp (which includes use for holiday making, retreats, functions and conferences) and eco-tourism gives sufficient consideration to the environmental sensitivity and value of the Scout land and the adjoining RNP given the constraints posed by the geography, vegetation and geology of the land as bushfire prone land and the large APZs that would be required under development.

We do not believe that the large APZs required by the PBP on this site are compatible with the definition of Eco-tourism as environmentally sustainable development.

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,*
- (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 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. SEPP19 s10b requires council to give priority to retaining the bushland unless a cost/benefit analysis supports the loss of bushland. Has Council conducted a cost/benefit analysis that justifies the amount of bushland that would be lost to APZs under the additional permissible uses proposed?

Our Shire Our Future 2030, Sutherland Shire Strategic Plan

The additional permissible uses identified for the Scout land are inconsistent with several directives in the Sutherland Shire Strategic plan.

Nature – Direction 1. Minimisation of the environmental, economic and social impacts of disaster.

This direction makes specific mention of bushfire in the Royal National Park as a risk. As discussed above the issue of bushfire risk on the Scout land and the ecological sustainability of the requirements of PBP by development under the additional permissible uses has not been adequately considered in the LEP.

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.

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 poses unacceptable risks of key threatening processes impacting the health of the Bundeena catchment area including Spring Creek, the freshwater wetland and Bundeena Creek and consequently negative impacts on the flood prone areas of Bundeena.

Ecotourism as a planning loophole.

Coledale Rainforest Retreat, T & K Berry v Wollongong Council in the Land and Environment Court[2008].

An eco-tourism development was approved by the Land and Environment court which resulted in a residential dwelling being allowed in an environmental conservation zone that would otherwise not allow a residential dwelling. No accommodation is provided at the facility and the benefit of the facility to the tourist economy of the area could be objectively stated as minimal.

Of concern is that the definition of eco-tourism facility both in the Standard Instrument and in the draft LEP does not make any reference to the provision of tourist accommodation. We believe this is a loop-hole in the definition as it does not mandate use of an eco-tourism facility for the provision of tourist accommodation.

Also of concern within the community is the proposal RVA Australia Pty Ltd (the current owner of the Scout land) presented to the Bundeena-Maianbar Chamber of Commerce in 2013 titled “Introducing Bundeena Bush Valley, A Royal entrance to the Coast Track” which states:

“We will run a Proof of Concept with one or two tents on our property after which we can expand to full 6 tent capacity”. (p10)

What is of concern to the community is that the proponent may obtain development consent for a private family dwelling on the land (which otherwise would not allow for the development of a residential dwelling), requiring a huge APZ to support just one dwelling in an inappropriate location, and that the roll-out of tourist accommodation under a “proof of concept” approach may be substantially or indefinitely delayed resulting in a substantial cost to the local environment and the community for little benefit to the local economy.

Recognition of Community Land – Compulsory Acquisition

The Scout land was developer dedicated in 1962 and reserved for the benefit of the local community to be used for community purposes, specifically as a recreation area.

The 2006 Bundeena-Maianbar DCP was created with extensive consultation with the community especially through the respective Progress Associations and residents groups. Very specific policies were developed for both the Scout land and the Council's former sanitation depot land that, in the case of the scout land address the specific history of the site and environmental constraints of the land. The policies identified that both parcels of land were to be used for the benefit of the local community and that any use would require that the substantial forest canopy and undergrowth remain intact.

The draft LEP removes the community purpose from the land. The Local Government Act 1993 recognises that there are circumstances where community land is held in private ownership. The current zoning and all previous zonings of the scout land recognise this historical situation. The land sale map used to market the housing estate identified that the land was a recreation area.

What is of concern to the local community is that council has been proactively working to take away this land from the local community.

The community dissatisfaction with the treatment of the Scout land in the proposed LEP is symptomatic of the broader community outcry over recent and proposed planning reforms in NSW; notably, the loss of the "special purposes" zoning for community land and the loss of the objective of use of community land meeting community needs in the standard instrument LEP zone definitions and objectives.

The Scout land is untouched bushland. It has never been developed or used beyond passive recreation by local residents. Many residents and most users of the RNP think the land is part of the RNP. Many maps show the land as being part of the RNP.

The Local Government Act 1993 (Division 2) requires council's to prepare plans of management for community land including community land in private ownership. In these cases both the community and the owner of the land are to be involved in consultations when developing the plan of management (s37). Other sections of Division 2 mandate planning requirements for community land that apply to the Scout land including:

- 36B. Community land comprising the habitat of threatened species.
- 36C. Community land comprising significant natural features.
- 36E. Core objectives for management of community land categorised as a natural area
- 36J. Core objectives for management of community land categorised as bushland

- 36M. Core objectives for management of community land categorised as a watercourse

The Bundeena-Maianbar DCP 2006 outlined the objectives and planning policy for the Scout land under Chapter 8. "Other Issues, Boy Scout Camp":

Objectives

Seek an appropriate community facility as permitted by the designated zoning that meets Environmental Sustainable Development standards generally and conserves the environmental qualities of the site in particular.

Actions

Establish a working party consisting of Council, Scouts, NPWS and community representatives to discuss the issues and make recommendations associated with the Boy's Scout Campsite.

Council did not implement the DCP policy (since repealed) and Council has not fulfilled its obligations to create a plan of management for the Scout land as required by the Local Government Act 1993.

A deep point of conflict and mistrust between Council and the local community has arisen as a result of the treatment of the Scout land in the LEP. The SGPG argues that in the absence of a Plan of Management for the land as required by the Local Government Act, the additional permissible uses that have been placed on the land in Schedule 1 of the proposed LEP in essence divest the local community from the benefit of this community land, diminishes the trust for community benefit that was created with the developer dedication of the land and instead places all the benefits of this community land in the hands of a private entity.

The SGPG calls on Council to commence the necessary consultations with the community and with the owner of the land to create a plan of management as required by the Local Government Act 1993 immediately.

Around 350 submissions to the amended draft LEP specific to the Scout land were collected by the SGPG through public meetings, street stalls and through our website asking for the additional permissible uses to be removed and asking for the land to be acquired and added to the RNP.

We believe that the LEP does not protect the nature of the land as community land. We believe the land should be marked for compulsory acquisition in the land acquisition map, that it should be acquired for addition to the RNP and that no inappropriate development should be allowed on the land in the interim unless it is supported by a plan of management which the local community supports.

Council Meeting 5 August 2013, CCL006-14

The proposed zoning and additional permissible uses for the Scout land was debated at this meeting (agenda item CCL006-14) and Council resolved the zoning and uses which were exhibited in the amended draft LEP.

Owner Initiated Compulsory Acquisition

During the meeting, Mr Mark Carlon, then Environmental Planning Manager, stated to the meeting that the non-standard land use of Recreation Camp needed to be added to Schedule 1 for the Scout land so as to avoid triggering an owner initiated compulsory acquisition under s27 of the EP&A Act. The SGPG has received a legal opinion from Ms Belinda Rayment, Solicitor, a specialist in environmental planning law, on this matter. The advice received is that an owner initiated compulsory acquisition cannot be triggered because the land is not reserved for a public purpose in the LEP; it does not appear on the land acquisition map; and the E2 zone is not included in Standard Instrument – Principal LEP – Regulation 5.1 which identifies the relevant acquisition authorities for compulsory acquisitions.

In terms of any potential hardship that may be suffered by the change of zoning of the Scout land, the SGPG note that the contract of sale, as available from the real estate agent at the time the land was on the market in 2013, included a section 149 certificate issued by Council which provided the following caveat emptor warning:

Council is in the process of preparing a draft Standard Instrument Local Environment Plan for the Sutherland Shire. The draft plan affects all land within the Sutherland Shire. The draft plan, and in particular, the Housing Strategy adopted by Council on 19 November 2012 (DAP025-13), proposes changes to zoning and land use and development standards that may change development potential of individual properties. The draft Standard Instrument Local Environment Plan will be exhibited in 2013. For further information please see Council's website www.sutherlandshire.nsw.gov.au

If the logic that an owner initiated compulsory acquisition might be triggered by the change in the permissible uses for the Scout land in the proposed LEP, by extension, the LEP poses the same threat in relation to the adjoining E4 zone where dual occupancy has removed as a permissible use in the amended draft LEP.

The SGPG believes the land should be identified for compulsory acquisition and reserved for public purpose as argued above, but notes the legal opinion received that the proposed zoning for the Scout land in the proposed LEP cannot, of itself, trigger a compulsory acquisition.

NPWS Interest in the Scout land

At the 5 August 2013 Council meeting, Mr Carlon, stated that the NPWS “did not want the [Scout] land”. Cr Williams asked Mr Carlon whether Council had received written advice from the NPWS to that effect. Mr Carlon answered that Council had.

The SGPG made an informal GIPA request to Council to view the correspondence referred to which was denied. After making a formal GIPA request to view the correspondence, the SGPG was informed that it consisted of a record of a telephone conversation between Council and NPWS written on a post-it note.

The SGPG are concerned that Council was misinformed, at the time it voted on the zoning of the Scout land, about the NPWS assessment of the land as a desirable addition to the Royal Reserves and its willingness to accept donation of the land either via Scouts themselves or the FNPW and that the land is on the NPWS acquisition database and that it has been approved internally for acquisition. The SGPG wrote to Mr Carlon and Cr Williams with these concerns soon after the 5 August meeting.

Subdivision

There do not appear to be any controls in the proposed LEP relating to subdivision in the E2 zone. The SGPG argues that torrens title subdivision and strata subdivision should both be prohibited in the E2 zone and specifically in relation to the Scout land , the Council’s former sanitary depot and the adjoining road reserves.

Given that it is highly unlikely, given the environmental constraints present, that any development is feasible or appropriate on the Scout land, it is completely unjustifiable that the land could be subject to subdivision. The entire property, and the adjoining area, is mapped as a riparian corridor and biodiverse. Fragmentation of this land would be contrary

to the objectives of the E2 zone, especially given that any building will require substantial APZs under the PBP.

The Council's sanitary depot is similarly constrained by the presence of the quaternary period Aeolian sand dune, two upland swamps, rare and significant vegetation, including the mallee woodland and a popular public walking track that links to the Marley fire trail.

Matters of Concern

There are several matters in relation to statements, actions, omissions and decisions that have been made concerning the Scout land that raise concern in the community and that have negatively impacted the faith and trust the local community has in our elected representatives, our council and other organisations. In addition to the issues raised above other matters of concern include:

1. At the 16 December 2013 council meeting A Ward Councillor Cr Provan, speaking about the Scout land and the proposals for eco-tourism put forward by Ron Van Ardenne for RVA Australia Pty Ltd to develop the Council's adjoining land instead, disclosed that Mr Van Ardenne (who she referred to as the proponent) had been involved in talks with Cr Provan about developing eco-tourism on the Scout land since the time she was Mayor two years earlier in 2011. Note that Scouts did not place the property onto the market until late February 2013 and that the local community and the FNPW attempted to gain council's support in their endeavour to retain the land for the community. Why didn't Cr Provan disclose her interest in the matter at earlier meetings where she voted on the resolutions that involved the Scout land and that potentially benefited the proponent including the Council meeting of 5 August 2013 that resolved the zoning and permissible uses for the Scout land for the amended draft LEP; in the Infrastructure, Works and Projects standing committee meeting of 8 Oct 2013 (when Cr Provan and the entire council was voted onto the standing committee for that specific meeting) which discussed RVA Australia's request to Council to purchase the paper roads. It should be noted that Cr Provan has declined meeting with the SGPG and visiting the site with the group due to work commitments. Cr Provan does not respond to representations made by SGPG.
2. At the Council meeting of 16 December 2013, A Ward Councillor Cr Kevin Schreiber, confirmed Cr Provan's remarks stating that he also had been involved in talks with the proponent dating back to 2011. Why didn't Cr Schreiber disclose his interest in

the matter at earlier meetings when he voted on the resolutions that involved the Scout land and that potentially benefited the proponent including the Council meeting of 5 August 2013 that resolved the zoning and permissible uses for the Scout land for the amended draft LEP; also at the Finance and Budget standing committee meeting of 22 July 2013 which discussed RVA Australia's request to Council to purchase the paper roads; and the Works and Projects standing committee meeting of 8 Oct 2013 (when Cr Schreiber and the entire council was voted onto the standing committee for that specific meeting)? It should be noted that Cr Schreiber does not respond to representations made by SGPG. Why did Cr Schreiber only disclose that he had visited the Scout land in September 2012 during the Council meeting of 5 August? For what reason did he visit the land and at who's request?

3. Cr Schreiber stated at the Council meeting of 16 December 2013 that NPWS and RFS had provided approval for Mr Van Ardenne's proposal for an eco-tourism development in Spring Gully. There has been no approval in principle or in any form from the RFS or NPWS approving any of Mr Van Ardenne's proposals. Mr Van Ardenne provided two proposals as concepts to the round table stakeholder consultations meeting in November and NPWS management present stated quite clearly that they were not able to support either proposal presented.
4. Why did the then Mayor Cr Kent Johns in his letter to local residents concerning the former Sanitary depot, the road reserves and the Scout land, and then Deputy Mayor Cr Kevin Schreiber in his meeting with Mark Da Silva at Mr Evans office in March, both state that council had no interest in the Scout land despite Cr Schreiber later revealing that he had visited the land in 2012 and that he had been involved in talks with Mr Van Ardenne over developing the land since 2011?
5. In all the communications and representations made by the SGPG to Council, until the Council meeting of 16 December, no Councillors or council staff had disclosed that Mr Van Ardenne had been proposing an eco-tourism development on the Scout's land since 2011, prior to his purchase of the land, nor had they disclosed any interest in the matter. Nor has there ever been any disclosure of Council's interest in the land. What proposals or representations did Mr Van Ardenne put to Council prior to his purchase? If there have been any, why haven't they been disclosed at relevant meetings of Council and Council standing committees and to the community during the public consultations that have occurred regarding the contentious lands in Spring Gully?

6. At the Infrastructure Projects and Works standing committee meeting of 8 October, where all councillors were voted onto the standing committee for the meeting, Mr Van Ardenne addressed the meeting stating that he and his wife had noticed the Scout land advertised for sale and that they had a dream that they could develop an eco-tourism business on the land. Why didn't Mr Van Ardenne disclose that he had been making representations to the then Mayor Cr Provan and Cr Schreiber since 2011 (as disclosed by Cr Provan and Schreiber at the Council meeting of 16 December 2013)? Why didn't Cr Provan and Schreiber disclose that they had both been in discussions with Mr Van Ardenne since 2011 until the December Council meeting?
7. After the council meeting of 22 July 2013, in a discussion with members of the SGPG, Cr Williams stated his opinion that "bushfire [risk] doesn't cut it" in considering the local community opposition to the permissible deemed uses identified for the Scout land.
8. At the Council meeting of 16 December 2013, A Ward Councillor Cr Scott Williams declared to the meeting "We are the ward councillors and we decide what goes on in our ward". Cr Williams has refused to meet with the SGPG on site despite several invitations due to work commitments. Cr Williams does not respond to representations from the SGPG. The SGPG is deeply disappointed that none of its ward councillors are willing to talk with the SGPG over our concerns for the appropriate planning for the Scout land in the proposed LEP or over the concerns the community has for the conservation of the other bushland in Spring Gully.
9. Which other councillors, if any, were involved in talks with the proponent prior to his purchase of the land?
10. What knowledge or involvement, if any, did Scouts Australia and NPWS have with the talks between RVA Australia and Council going back to 2011 regarding the sale of their land for private development?
11. At the round table stakeholder consultation meeting of 25 November 2013, Ron Van Ardenne of RVA Australia disclosed that council staff had informed him prior to his purchase of the Scout land that he would be able to purchase the adjoining Sussex St road reserve from Crown Lands. Who gave this advice and under what authority? What was council's interest in seeing the road reserve sold for development when

Council was aware that the NPWS had requested the land be included in the transfer of the former Sanitary Depot to NPWS?

12. Mr Van Ardenne met with the NPWS tourism consultants TRC and with Mr Mark Willis, Project Manager, NPWS to discuss integrating his proposed eco-tourism development with NPWS plans for the area prior to his purchase of the land. Mr Van Ardenne was referred to TRC and Mr Willis by Ms Christine Hopkins, Area Manager, Royal Reserves. Ms Hopkins was aware that the local community and the FNPW were attempting to negotiate a purchase of the land from Scouts for donation to NPWS at this time and the FNPW was making representations to OEH regarding the proposed purchase. Was it appropriate that these referrals were made? The subsequent report by TRC "The Royal Coast Track Strategic Framework" mentioned development of eco-tourism on the Scout land even though the land had not yet been sold. Was this appropriate given that the FNPW was bidding to purchase the land for donation to NPWS?
13. While the Scout land was on the market and while both RVA Australia and the FNPW were both bidding to purchase the land, Mr Van Ardenne contacted Susanna Bradshaw, CEO, FNPW requesting that the FNPW withdraw its offer on the land and seeking the FNPW's support in placing a conservation covenant on part on the Scout land if RVA purchased the land. At the same time, Mr Van Ardenne made a financial donation to the FNPW. Was this financial donation appropriate? To which other parties, if any, has Mr Van Ardenne or RVA Australia or associates provided financial donations? When the FNPW declined the request for a conservation covenant due to inconsistency between the request and their policy, Mr Van Ardenne sent an email to Susanna Bradshaw claiming that the FNPW was not in compliance with its constitution and Mr Van Ardenne stated that he would contact the FNPW's sponsors with these accusations.
14. In 2013 the SGPG submitted a petition to the Hon Mr Lee Evans, Member for Heathcote, Assistant Speaker of the Legislative Assembly, of over six hundred signatures calling for the state government to ensure that the Scout land was acquired by NPWS and added to the RNP. Mr Evans failed to table the petition in parliament despite his prior undertaking to do so. Mr Evans did not respond to the several enquiries made by the SGPG as to the progress of the petition in the parliament. The SGPG approached the Hon. Jamie Parker, Member for Balmain, who approached Mr Evans seeking him to hand over the petition which he had failed to table in parliament. Mr Evans handed back some of the petition signatures with 256

signatures missing from those that had been submitted. To date, despite several requests from the SGPG and media enquiries to Mr Evans office, the missing signatures have not been handed over to Mr Parker or returned to the SGPG.

15. In a meeting with Mark Da Silva, SGPG, then Deputy Mayor Cr Kevin Schreiber and local MP The Hon. Mr Lee Evans in Mr Evans office on 22 March 2013, before entering Mr Evans office, Mrs Nancy Meehan, Electorate Office Manager, stated to Mark Da Silva that Scouts Australia NSW had also been invited to attend the meeting but that they could not send anyone. During that meeting Mr Evans undertook to contact the CEO of Scouts Australia NSW on behalf of the community and request a meeting at Mr Evans office with the SGPG and the FNPW. Mr Evans later disclosed to Mark Da Silva, after Scouts had announced the sale of their land to RVA Australia, that he had not invited Scouts to attend any meetings with the SGPG.
16. RVA Australia Pty Ltd operates from Sutherland Shire Council's SSHED (Sutherland Shire Hub for Economic Development) at Loftus and its registered office is at this location. Cr Kevin Schreiber is the chairman of council's SSHED committee. It was only at the December 2013 council meeting that Cr Scheiber divulged that he had been involved in talks with Mr Van Ardenne since 2011 over his proposal to develop eco-tourism on the Scout's land. Why hasn't it been disclosed that the owner of the Scout land, RVA Australia operates from council's SSHED? Mayor Cr Steve Simpson disclosed in a meeting with the SGPG on 11 December that he had met Mr Van Ardenne socially at a SSHED event but that he had never discussed the Scout land. Why have there been no other disclosures during the several council meetings and standing committee meetings where decisions that potentially benefit RVA Australia have been made? Why has no disclosure ever been made that RVA Australia operates from Council's SSHED? What access to council staff and resources has RVA Australia been proved with, especially during the period that the local community were seeking to purchase the land for donation to NPWS during which time Cr Schreiber stated that Council had no interest in the Scout land?
17. At the time that RVA Australia and the local community, through the FNPW, were bidding to purchase the land from Scouts, the SGPG held talks with Mr Van Ardenne at the suggestion of the Deputy Mayor Cr Schreiber. The Deputy Mayor had made the suggestion at the March 22 meeting. The Deputy Mayor did not disclose at that

time that he knew Mr Van Ardenne or that he or the Council had been involved in talks with Mr Van Ardenne. Cr Schreiber gave the distinct impression that he did not know Mr Van Ardenne.

18. Mr Van Ardenne is the listed contact for Batavia XBRL, which shares the same business address as RVA Australia Pty Ltd at the SSHED, Loftus. Batavia XBRL is listed as a member of the Southern Sydney Business Enterprise Centre where Cr Schreiber acts as Patron.
19. During the period that Mr Van Ardenne was lobbying the local community and the FNPW to abandon their bid for the Scout land and support Mr Van Ardenne's proposal, Mr Van Ardenne made a statement to a member of the local community involved in the consultations that Mr Van Ardenne's business coach had informed him that he was stronger than the local community and that he could defeat us in our attempt to purchase the land through the FNPW. Was the business coach Mr Van Ardenne referring to a staff member of the SSHED or a SSC employee or consultant? To what extent, if any, have council staff been involved in thwarting the local community in its bid to retain community ownership over the Scout land and seek its purchase by the FNPW?
20. Has there been a conspiracy to divest the community of the Scout land as community land and to defeat the community in its endeavour to retain the land so that the land could be sold for private development?

Requests

Scout land.

Retention of E2 zoning as proposed in the exhibited LEP.

Removal of the additional permissible uses as they are not compatible with the zone objectives and they have not been added to Schedule 1 in compliance with the relevant sections of EP&A, including the Ministerial Directives, and they do not comply with SEPP 19 Bushland in Urban Areas.

The local community requests that the land be retained as community land for the benefit of the local community as was intended by the developer dedication of the land as a recreation area under the Pacific Waters subdivision (as mapped in the sale plan and as registered in caveat over the title prior to subdivision). We request that the land be reserved for **compulsory acquisition** for open space bushland, and environmental conservation so that it can be added into the adjoining RNP reserves and that it be marked on the land acquisition map for compulsory acquisition. Council and the Department of Planning and Infrastructure should identify the responsible entity for the acquisition in the LEP.

The National Parks and Wildlife service have approved the land for acquisition and addition to the Royal National Park. The land is on the NPWS land acquisition database. The objective of acquiring privately owned riparian land to protect and conserve the Bundeena catchment and mitigate risks is published in the current SSC Bundeena catchment management plan and has been recommended in other ecological assessments such as the Kevin Mills & Associates report 1993. The report written by the office of the Minister for Environment and Heritage into the conservation options for the Scout land (April 2013) acknowledges that a higher level of environmental protection would be achieved by public acquisition of the Scout land.

Deputy Mayor Cr Tom Croucher, at the 16 December council meeting, stated that development in the gully is not appropriate and development of the Sussex St Reserve (the ridgeline on the southern side of the gully) is not appropriate.

Mr Mark Carlon, Director Environmental Planning, is reported to have informed the current owner of the Scout land, in relation to his proposal to develop eco-tourism accommodation, that he has “bought the wrong land”; that is, that the land is not suitable for development.

The owner of the Scout land approached Council enquiring as to whether they could purchase the adjoining Sussex St road reserve to site their proposed eco-tourism development. Council wrote to the 19 adjoining land owners seeking public consultation. It received 290 submissions in response all opposing the development of the Sussex St reserve and no submissions in favour. The main issues raised (as summarised in council report WKS003-14, file number CP/02/285112) were:

- That NPWS had requested that the unmade road reserves be included in the transfer of Council’s sanitary depot to NPWS and that land earmarked for inclusion into the RNP should not be sold for private development.
- That Sussex St runs along the ridge on the southern side of the gully, at elevation, and that the proposal to clear the land and site the development on the clearing would create an eye-sore and a visual scar in the bushland that would significantly

impact the amenity of many residences in the South-Eastern corner of Bundeena and the amenity of users of the RNP (including visual impacts on the opening stretch of the Coast Track).

- That Sussex St contains a scientifically significant, rare and possibly unique dense bloodwood mallee, importantly at the base of the cliff dune on which sugar gliders extensively feed and that it would be a very environmentally negative outcome to allow any development that would require substantial removal of the bloodwood mallee, especially given that the forest is comprised of organisms with lignotubers that extend over very large areas.

It should be noted that the strong opposition to development of the Scout land within the community is not opposition to eco-tourism in general. The SGPG argues that the Scout land property, and Spring Gully in general, is not suitable for development of any kind including as eco-tourism or recreation camp. Suitable sites for ecotourism exist elsewhere in Bundeena and the RNP which have been identified and are being studied by tourism consultants TRC on behalf of NPWS and over which the SGPG has made submissions during public consultations regarding eco-tourism in the area.

It is widely known that the current owner of the Scout land is currently pursuing a proposal to develop property other than the Scout land as the preferred site for an eco-tourism development. There appears to be a widespread consensus amongst all stakeholders that the Scout land and Spring Gully is not an appropriate site for development. The proponent's preferred "alternative proposal" put forward at the November round table stakeholder consultations involved development of another property. We simply ask that the LEP reflects the stakeholder consensus that development of the Scout land is not feasible or appropriate.

The SGPG, asks that the permissible uses applied to the Scout land reflect the objectives of the zoning, are applied in compliance with the relevant planning law and policy and are based on merit and an objective and scientific evaluation of their feasibility. We believe such analysis will deem that the additional permissible uses identified in the proposed LEP are not feasible and are not appropriate.

The SGPG also calls on Council to immediately commence the necessary consultations within the community and with the owner of the land to create a plan of management as required by the Local Government Act 1993.

Council's former Sanitary Depot, Bundeena

At its meeting of on 24 June 2013, Council resolved to transfer its 8.2Ha property, known as the former Sanitary Depot, to NPWS. Then Mayor, Cr Kent Johns, wrote to Bundeena Maianbar residents informing them that council was transferring the land to NPWS. The decision to transfer the land came as the result of extensive consultations between Council and NPWS to resolve land tenure issues within the RNP and the subsequent agreement resolving outstanding land tenure issues between Council and the NPWS was approved by the Minister for Environment and Heritage in a letter to Council earlier in 2013.

The SGPG requests that these outcomes be reflected in the zoning and that the zoning of the former Night Soil depot be amended to E1 National Parks and Nature Reserves.

We note that at its 16 December 2013 meeting council subsequently resolved that the transfer to NPWS be deferred to call for expressions of interest for eco-tourism proposals on part of the land. We also note that the development of eco-tourism within the RNP is currently being advanced and that eco-tourism can occur within the E1 zone. Development of an appropriate eco-tourism facility on the site would require an access license from NPWS and would be subject to a NPWS environmental impact and an ecological sustainability feasibility study. We therefore argue that the land should be zoned E1.

Errata & Addenda

Many embarrassing typographic errors have been corrected in the attached version. Additionally we wish to draw attention to the correction of several substantial errors of fact and also provide information additional supportive information.

Page 3

Erratum

The subdivision referred to is Deposited Plan 213924 dated 21/6/1962. Lot 3 was developer dedicated as a “recreation area” under the Pacific Waters estate for community use and placed into the trust of the Boy Scouts Association of NSW.

Adendum

The land sale map showing the Scout land as “recreation area” is included as annexure A in caveat J845289 lodged 2/12/1964 over Land Title Vol 9271 Fol 159 (being the Pacific Waters estate). Mr John Gawthorne has tendered a copy of the map to the independent review.

Deposited Plan 226578 is the subdivision of DP 213924 which created the residential blocks of the Pacific Waters Estate.

Page 5

Addendum

We also draw attention to the biodiversity and riparian land mapping of the Scout land in the 2013 Draft LEP.

Page 6

Regarding the transitions and linkages of several endangered ecological communities on and in the area of the Scout land, Bundeena.

Addendum

The NSW Scientific Committee Final Determination on the endangered ecological community listing of Bangalay sand forest Sydney Basin and South East Corner bioregions, makes specific mention (paragraph 7) of the intermediate vegetation that occurs between the Kurnell Dune Forest and Sand Bangalay Forest at Bundeena, and which appears to exist in the Spring Gully area. Specifically:

“Characteristic species of Kurnell Dune Forest, such as *Angophora costata*, *Banksia ericifolia*, *Cupaniopsis anacardioides*, *Endiandra sieberi*, *Eucalyptus robusta* and

Maclura cochinchinensis, are not common components of Bangalay Sand Forest. However, the two communities may intergrade where they co-occur. This Determination and the Determination of Kurnell Dune Forest collectively encompass all intermediate stands of vegetation between the two communities.”

<http://www.environment.nsw.gov.au/determinations/bangalaysandforestsydneysplisting.htm>

Page 32

Addendum

“Many maps show the land as being part of the RNP.” An example is the sign recently installed by National Parks at the start of the coast track, adjoining the Scout land, which includes a map showing the Scout land and Council land as National Park.

Pages 36-41, Matters of Concern

Addendum, Paragraph 6

The Scout land was listed for sale with Ray White Bundeena sometime in late 2012 but was not advertised for sale until late February 2013.