

Our Ref: 0089/13lt5

14 February 2014

Marian Pate
NSW Department of Planning and Infrastructure
PO Box 39
SYDNEY 2001

Dear Marian,

**RE: SUTHERLAND DRAFT LEP REVIEW
43 OLIVER STREET, HEATHCOTE**

We advise that we act on behalf of the owner of the above property and have been instructed to make a submission to be included as part of the independent review of the Draft Sutherland Shire LEP 2013. In accordance with the terms of reference set out by the Minister for Planning and Infrastructure, this submission relates to a site that was included in Mayoral Minute No. 6/13-14 dated 29 July 2013.

As conveyed to the Panel during recent Public Hearing sessions, it is critical that a distinction is made between matters referred to in the Mayoral Minute of 29 July 2013 as to whether they were amendments supported by Council's professional staff following submissions made on the initial public exhibition period, or were amendments instigated by the Mayor. We note that in relation to this submission, the Mayoral Minute was consistent with the recommendations of staff contained in their report relating to the first round of exhibition.

By way of background, Planning Ingenuity made a submission to Council as part of the initially exhibited Draft LEP disputing the appropriateness of the application of the *E4 Environmental Living* zone to the subject site and requesting that it is changed to the *R2 – Low Density Residential*. The submission maintained that there were no significant environmental qualities of the site that warranted the zoning and identified that the application of the E4 Zone would prohibit Places of Public Worship. As the property owner is the Heathcote Gospel Trust the implications of applying the E4 Zone was significant. The detailed submission is attached to this letter.

Staff were supportive of the request and in fact applied the R2 Zone to a number of other properties as it was logical to do so. Council's report summarising submissions made the following recommendation:

" It is considered that the issues raised in the submissions have merit and are applicable to more properties in this vicinity than just the two that are the subject of the submissions.

In consultation with the RFS, it is considered that the area bounded by Parkes Street, Oliver Street, Rosebery Street, Whitton Street, (part of) King Street, and Willandra Street (as mapped above), be rezoned from E4 Environmental Living to R2 Low Density Residential.

It is considered that the greater density of development and additional permitted uses under this zoning is consistent with areas sharing similar characteristics within Sutherland Shire and does not impede evacuation routes from areas closer to the bushfire hazard.

It is therefore recommended that council consider rezoning this area from E4 to R2 as mapped."

As discussed, the subject site was mentioned in the Mayoral Minute as follows:

“ With respect to Chapter 11: Zoning and Bushfire Risk

- i. The following areas be rezoned from E4 Environmental Living to R2 Low Density Residential:
 - The area bounded by (and including) No. 1 Rosebery Street (Lot 981 DP 47101), No. 1 King Street (Lot E DP30572), No. 15 King Street (Lot 71 DP619052) and No. 1 Rosebery Street (Lot 72 DP 619052), Heathcote.”

The changes to the Draft LEP, as exhibited in the second round, were therefore made as a result of thorough analysis and the request by Planning Ingenuity in their submission on behalf of the land owner. The request was considered by professional Council staff based on further analysis and consultation with the Rural Fire Service. Professional staff recommended that the LEP was changed to identify the subject site, and others, as being within the R2 Zone. The site was included in the Mayoral Minute to reinforce the views of staff.

It is therefore abundantly clear that the changes to the LEP in relation to the subject site are both appropriate and are agreed as acceptable by Planning Ingenuity, professional staff and the Mayoral Minute.

We therefore request that the panel endorse the Mayoral Minute as it relates to the subject site, that is, include the site in the R2 Zone.

Should you wish to discuss any of the above, please feel free to contact the undersigned.

Yours faithfully,
Planning Ingenuity Pty Ltd



Jeff Mead
DIRECTOR



ANNEXURE A

COPY OF INITIAL SUBMISSION ON DRAFT SUTHERLAND LEP 2013

Our Ref: 0089/13lt1
Council Ref: LP/03/252376

30 April 2013

The General Manager
Sutherland Shire Council
Locked Bag 17
SUTHERLAND NSW 1499

Attn: Environmental Planning Unit

Dear Sir,

**SUBMISSION ON THE DRAFT SUTHERLAND SHIRE LEP 2013
NO. 43 OLIVER STREET, HEATHCOTE**

INTRODUCTION

We refer to the *Draft Sutherland Shire LEP (SSLEP) 2013* which is on exhibition from 19 March to 1 May, 2013. We act on behalf of the owner of the above mentioned land and have been instructed to make a submission in relation to the Draft LEP.

The subject site is currently identified within *Zone 3 – Environmental Housing (Bushland)* which identifies places of public worship as permissible with development consent. IDA99/1221 was approved by Council on 17/12/98, changing the use of an existing dwelling to a place of public worship. The site is currently occupied and used by the Heathcote Gospel Trust as meeting rooms.

Under the Draft LEP, the site is proposed to be zoned *E4- Environmental Living* and within that zone a *place of public worship* will become a prohibited land uses. We lodge objection to the prohibition of places of public worship in the *E4 – Environmental Living* zone and specifically in relation to the subject site for the reasons outlined in this submission.

In forming our opinion we have researched the development history of the site, have visited the site and locality and considered the *SSLEP 2006* and *Draft SSLEP 2013* controls in the context of the local and state strategic planning framework.

SITE & LOCATION

The subject site is identified as 43 Oliver Street, Heathcote and is legally described as Lot 6 in DP 25852. The site is located on the north-eastern side of Oliver Street, is regular in shape and comprises an area of approximately 460m² (Figure 1).

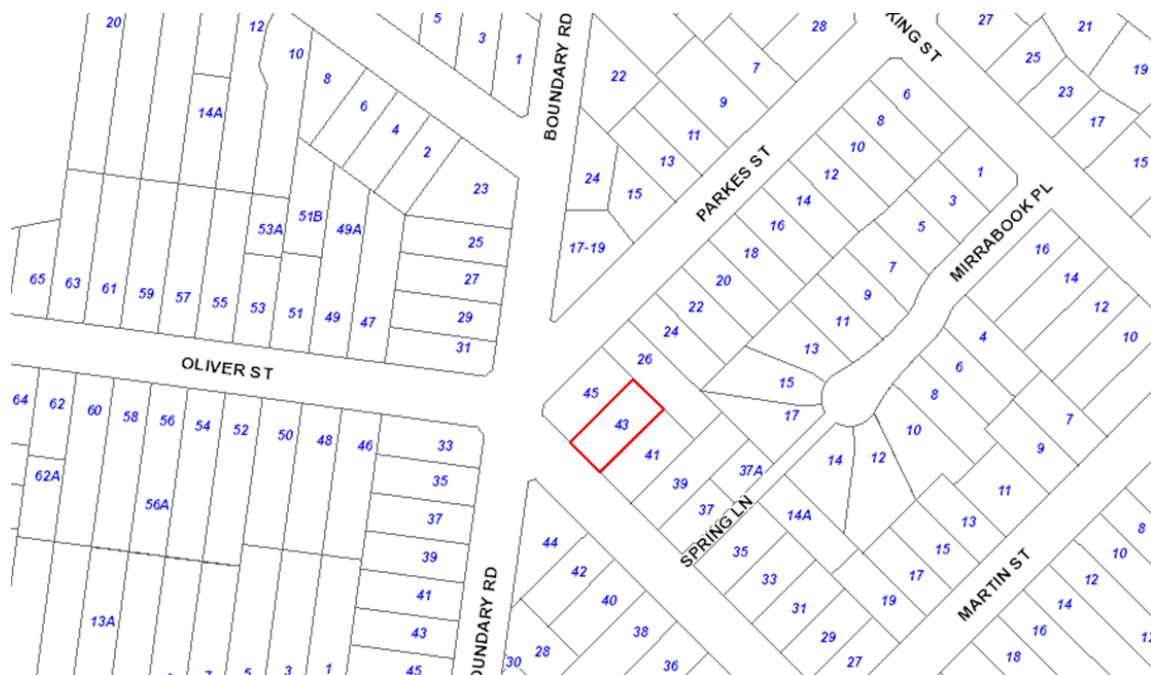


Figure 1: Aerial photograph of the site

The site is currently occupied by a building which appears as a single storey detached dwelling. The building is currently used in conjunction with the Heathcote Gospel Trust as a place of public worship.

Development adjoining and in the immediate vicinity of the site comprises a mixture of 1 and 2 storey detached dwelling houses in a distinctly suburban residential setting.

BACKGROUND

The subject site is located within *Zone 3 – Environmental Housing (Bushland)* pursuant to SSLEP 2006. The site is owned by the Heathcote Gospel Trust, applicant of IDA99/1221 which was approved on 17 December 1998 changing the use of the existing dwelling house to a place of public worship. A place of public worship is permissible with development consent in *Zone 3 – Environmental Housing (Bushland)* and the site has since been occupied and used as a place of public worship.

The draft SSLEP 2013 includes the subject site within an *E4 – Environmental Living* zone. The objectives of the zone have a clear focus on bushfire protection and management of bushland environmental features of the area. However, the *E4 – Environmental Living* zone under the Draft SSLEP 2013 proposes to prohibit *places of public worship*.

The current zone of the property (*Zone 3 – Environmental Housing*) and indeed all residential zones within SSLEP 2006 (Zones 1 to 6) identify *places of public worship* as permissible with development consent.

THE REQUEST

It is requested that *places of public worship* remain permissible with consent on the subject site. This request may be achieved in one of two ways:

- 1) That the land use table of the *E4 – Environmental Living* zone under the Draft SSLEP 2013 be amended to include *places of public worship* as development permissible with consent. This is our preferred option; or

- 2) Alternatively, Schedule 1 – *Additional permitted uses* be amended to specifically allow for “places of public worship” on the subject site. This can be achieved with the following wording under the heading “Heathcote”:

“ **Use of certain land at 43 Oliver Street, Heathcote**

(1) This clause applies to the land at 43 Oliver Street, Heathcote, being Lot 6 in DP 25852.

(2) Development for the purpose of places of public worship is permitted with consent.”

JUSTIFICATION

As the E4 zone is very extensive and includes a substantial number of typical suburban residential properties, we assume that the rationale for an Environmental Zone rather than a Residential Zone relates to the fact that properties within the proposed zone are within the vicinity of bushland and consequently are potentially affected of bushfire. In almost every instance, and particularly in relation to the subject site, developed properties within this zone in Heathcote exhibit little or none of the bushland character that typified the area prior to its development as a residential suburb. In essence, apart from the potential threat of bushfires, there is nothing of special ecological, scientific, cultural or aesthetic value that differentiates this land from other suburban residential land in Heathcote and elsewhere in the Shire.

In our opinion, the possible threat of bushfires is not sufficient reason to justify inclusion of the land within an Environmental zone rather than a Residential zone. In our opinion a more suitable zoning for the subject site would be zone R2 Residential Low Density.

Planning for bushfire protection in NSW is controlled by a separate planning regime from the zoning provisions of an LEP. The controls are pursuant to S.79BA of the Environmental Planning and Assessment Act, 1979 itself, which requires that:

“ (1) *Development consent cannot be granted for the carrying out of development for any purpose (other than a subdivision of land that could lawfully be used for residential or rural residential purposes or development for a special fire protection purpose) on bush fire prone land unless the consent authority:*

*(a) is satisfied that the development conforms to the specifications and requirements of the document entitled *Planning for Bush Fire Protection*, ISBN 0 9751033 2 6, prepared by the NSW Rural Fire Service in co-operation with the Department of Planning (or, if another document is prescribed by the regulations for the purposes of this paragraph, that document) that are relevant to the development (**the relevant specifications and requirements**), or”*

As such, any future development on bushfire prone land must comply with the requirements of *Planning for Bushfire Protection* regardless of whether the use comprises residential development or is considered *Special Fire Protection Purposes* (SFPP).

We note that the Draft LEP proposes that *places of public worship* become prohibited in the E4 Zone. *Places of public worship*, amongst other uses, are development for SFPP and are subject to design and management conditions of *Planning for Bushfire Protection*. It is therefore unreasonable, unnecessary and inconsistent with the provisions of the Act to prohibit *places of public worship* in the E4 Zone for reasons relating to bushfire protection.

We contend that this change to permissibility will give rise to several church buildings, including the subject site, having to rely on existing use rights in relation to future development. Furthermore, the proposed E4 zoning and the land use prohibition would preclude the application of *SEPP (Exempt and Complying Development Codes) 2008*, resulting in unnecessary complications in relation to future development on the site.

Furthermore, the general prohibition of places of public worship in the E4 Zone will restrict the potential of the Heathcote Gospel Trust and indeed other local churches to acquire and occupy similar properties in the area. Church uses often rely on a local catchment of parishioners and conduct community programs in their immediate locality. To insist on a general prohibition in the E4 zone would deny further social infrastructure with significant and unreasonable impacts on the Heathcote Gospel Trust and the local community.

Should Council insist on prohibiting *places of public worship* in the Draft E4 zone, given the development consent (IDA99/1221) which changed the use of the dwelling house on the site to a place of public worship, we request that at the very least, an additional permitted use clause is included in Schedule 1 of the Draft LEP to permit *places of public worship* on the subject site. This would avoid difficulties associated with relying on existing use rights for future applications and would also enable development of low environmental impact to be undertaken as exempt or complying development under *SEPP (Exempt and Complying Codes) 2008*.

CONCLUSION

We thank you for the opportunity to comment on Council's Draft LEP. For the reasons outlined in this submission, it is our view that the *places of public worship* should remain permissible with consent on the subject site. Including *places of public worship* as permissible development within the E4 zone is our preferred way of addressing this request. However, at the very least Council should include an additional permissible use clause in Schedule 1 of the Draft LEP relating to this specific site in recognition of the recent consent to develop this land for that purpose.

We trust that this submission is self explanatory, however, should you require any further clarification, please do not hesitate to contact our office.

Yours faithfully,
Planning Ingenuity Pty Ltd



Lindsay Fletcher
MANAGING DIRECTOR