

Our Ref: 0094/13lt5

14 February 2014

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

Dear Marian,

**RE: SUTHERLAND DRAFT LEP REVIEW
16-24 NICHOLSON PARADE, CRONULLA**

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 the appropriateness of the provisions contained in the second exhibited LEP.

By way of background, Planning Ingenuity made a submission to Council in response to the first exhibited Draft LEP requesting that amendments to the LEP be made to enable the longstanding ground floor retail use at the site permissible as of right. The submission suggests a number of ways that Council could achieve this. The detailed submission is attached to this letter.

Staff did not agree with the request and resolved that the LEP remain unchanged. We maintain our initial views that there is legitimate planning merit in allowing the long standing retail use to remain permissible at the subject site and ask that the Panel endorse our request by the inclusion of an additional permitted use clause.

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: 8888/13lt1
Council Ref: LP/03/252376

1 May 2013

Environmental Planning Unit
Sutherland Shire Council
Locked Bag 17
SUTHERLAND NSW 1499

Dear Sir,

**SUBMISSION ON THE DRAFT SUTHERLAND LEP 2013
NOS. 16-24 NICHOLSON PARADE, CRONULLA**

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 subject site and have been instructed to make a submission in relation to the Draft LEP to request that Council consider an alternative approach to land use permissibility for Lot 57 of the subject property. An alternative approach is required to enable economic use of the existing premises that under the proposed R4 zoning will be severely restricted to use only as a neighbourhood shop which has proven to not be economically viable on the site.

In our opinion, there are a number of mechanisms available to Council for achieving this request. Commercial uses (as broadly defined by the LEP) in existence in residential zones at the time of gazettal of the LEP could continue, or be changed to other uses, and be covered by Part 6 (Local Provisions) of the Draft LEP; the R4 zone could include commercial uses (as broadly defined by the LEP) as a permissible use but with restricted floor area; an exhaustive list of permissible uses could be included under the R4 land use table; or Schedule 1 – Additional Permitted Uses could be amended to permit commercial uses specifically on the subject site.

In forming our opinion on the suitability of the above options 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 planning framework.

SITE & LOCATION

The subject site is located on the eastern side of Nicholson Parade with a secondary frontage to Lewis Street (refer to Figure 1). The site is known as Nos. 16-24 Nicholson Parade, Cronulla and has a legal description of SP 301. Existing on the site is a four storey residential flat building with garaging at street level accessed from Nicholson Parade.

A corner shop with a floor area of less than 80m² is located within the south-western corner of the building and is the subject of this submission. The corner shop is known as Lot 57 in SP 301 and has occupied the site for several decades.



Figure 1: Location Plan

BACKGROUND

The subject site is located within *Zone 6 – Multiple Dwelling B* pursuant to SSLEP 2006 and is identified in the Draft LEP 2013 as *R4 – High Density*. Currently the following uses are permissible in Zone 6:

backpackers' accommodation, boarding houses, childcare centres, community facilities, dwelling houses, places of public worship, recreation areas, residential flat buildings, residential medical practices, roads, seniors housing, tennis courts (private), townhouses, utility installations (except for gas holders or generating works), villa houses.

The existing corner shop within Lot 57 has a long standing history of operation for several decades. However, the expanding retail services within Cronulla Centre such as the recent Woolworths and IGA supermarkets have rendered this type of neighbourhood service financially unviable as clientele continues to decline. The current long term tenant has tried to continue in light of this however has recently given notice to vacate. It is almost certain that any similar use, that fits the neighbourhood shop category of development, would similarly be unviable and that the premises will not be able to be leased up for this purpose.

The proposed R4 zoning under the Draft LEP will permit the following uses:

Attached dwellings; Backpackers' accommodation; Bed and breakfast accommodation; Boarding houses; Child care centres; Community facilities; Dual occupancies; Dwelling houses; Environmental protection works; Flood mitigation works; Home businesses; Home industries; Hostels; Multi dwelling housing; Neighbourhood shops; Places of public worship; Recreation areas; Residential flat buildings; Respite day care centres; Roads; Secondary dwellings; Seniors housing; Shop top housing.

As such, the existing corner shop will change to a conforming use being a “neighbourhood shop” which is defined as:

neighbourhood shop means premises used for the purposes of selling general merchandise such as foodstuffs, personal care products, newspapers and the like to provide for the day-to-day needs of people who live or work in

the local area, and may include ancillary services such as a post office, bank or dry cleaning, but does not include restricted premises.

In addition, Clause 5.4(7) of Draft SSLEP 2013 restricts the floor area of a neighbourhood shop to 80m². Accordingly, the Draft LEP leaves our client with the choice of leasing the premises as a “neighbourhood shop” which has proven to be unviable or to convert to a residential unit which in our view is inappropriate given the design and location of the premises.

In order for our client to realise economic use of the premises and for the objectives of the zone to be achieved, a wider range of permissible uses is required as is the subject of this request.

THE REQUEST

It is requested that Council reconsider the proposed restrictions on commercial uses in the R3 and R4 zones, where they currently exist, in light of the changing nature and expansion of retail services in commercial centres such as that occurring in Cronulla and impacting on our client’s property.

This request may be enabled in one of four ways:

1. Existing, long standing commercial premises (as broadly defined) in residential zones could be included in Part 6 (Local Provisions) of the Draft LEP and be permitted to change to an alternate commercial use with restrictions. This would enable any such building, or part of a building, to be used for commercial purposes and additional standards or criteria could be applied if Council considered it necessary;
2. The R3 and R4 zone could include commercial premises (as broadly defined) as a permissible use with floor area restricted to 80m², as per the limitation for a “neighbourhood shop”. This would mean restricting the size of the premises to the extent envisaged by the DSSLEP 2013 but not the use;
3. An exhaustive list of permissible uses could be included in the schedule under the R4 land use table specifying the nature of commercial uses appropriate to the zone; or
4. Schedule 1 – Additional Permitted Uses could be amended, specific to the subject site, to permit commercial uses at the subject site. This can be achieved with the following wording under the heading “Cronulla”:

“ **Use of certain land at Nicholson Parade, Cronulla**

- (1) This clause applies to the land at Nos. 16-24 Nicholson Parade, Cronulla, being Lot 57 in SP 301.
- (2) Development for the purpose of commercial premises is permitted with consent.”

In our opinion, the issue addressed in this submission extends wider than our client’s property however our priority is in protecting our client’s commercial interest. As such we would be happy with any of the above options which we believe provides Council with the opportunity to address the issue across the entire LGA or isolate the issue to just our client’s site.

STRATEGIC PLANNING

In preparing this submission, we have considered the strategic planning framework within which the Draft LEP has been prepared. It is our opinion that the subject request is not contrary to this framework at state or local level.

We acknowledge that the subject issue arises from the Standard Template, however to simply adopt the R3 and R4 zoning tables and definition of “neighbourhood shop” will significantly impact on our client’s property and other similar existing corner shops or neighbourhood uses within Cronulla and indeed the Sutherland LGA. As such, further consideration of the application of the proposed residential zoning on existing, long standing commercial uses is necessary to avoid the demise of local commercial uses within buildings constructed for commercial purposes.

We acknowledge that the range of commercial uses permitted in the R4 residential zone may need to be limited to avoid amenity impacts on surrounding residential neighbours. However, we consider there to be a range of suitable uses that would have minimal impact such as a *florist, hair dressing salon, beautician, coffee shop, medical practice, professional office, and specialty shop*. In fact, there are permissible uses listed in the proposed R4 zone that would have far greater impact on adjoining residential uses such as *child care centres; places of public worship; recreation areas; respite day care centres; and seniors housing*.

The Standard Instrument and Council have made a conscious choice to promote a small mix of uses within the residential zones however the approach is overly limiting and in our view will not meet this intent.

Amongst other residential related objectives, the R4 zone seeks to “*enable other land uses that provide facilities or services to meet the day to day needs of residents*”. In order to realise this particular objective a broader land use application within the zone is required so as not to sterilise existing commercial uses and discourage non-residential uses in new development that contribute to providing local services.

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 Council should reconsider the proposed permissibility of existing commercial uses in the R3 and R4 zones and the impact the Draft LEP will have on encouraging viable use of properties that are currently used for non-residential purposes.

As discussed there are a number of options available to Council to achieving the proposed request and the variety of options provide Council with the ability to address the issue across the Sutherland LGA or specific to the subject site.

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



Jeff Mead
DIRECTOR