

Our Ref: 0143/13lt5

14 February 2014

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

Dear Marian,

**RE: SUTHERLAND DRAFT LEP REVIEW
2 CHRISTOPHER PLACE BURRANEER**

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 amendments made to the initially exhibited LEP in relation to the waterways zones. Council provided a response to our submission stating that due to its nature, it would be considered as part of the second exhibited LEP. The submission requested that a portion of the residential property be changed from *W1 – Natural waterways* zone to *E4 – Environmental Living* under the *Draft SSLEP 2013*. The detailed submission is attached to this letter.

We anticipate that professional staff will be in support of our request, however, we do not have the benefit of the staff report that deals with the second exhibited version of the LEP. We therefore ask that the Panel endorse our request to identify the requested portion of the residential property as being within the *E4 – Environmental Living* zone for the reasons outlined in the attached submission.

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: 0143/13lt1
Council Ref: LP/03/641375

17 July 2013

General Manager
Sutherland Shire Council
Locked Bag 17
SUTHERLAND NSW 1499

Attention: Environmental Planning Unit,

**SUBMISSION ON THE AMENDED DRAFT SUTHERLAND SHIRE LEP 2013
No. 2 CHRISTOPHER PLACE, BURRANEER**

INTRODUCTION

We refer to the amendments to the *Draft Sutherland Shire LEP (DSSLEP) 2013*, file number LP/03/641375, which is on exhibition from 18 June to 17 July, 2013. We understand that the current amendments relate to changes made to the exhibited *Draft SSLEP 2013* in respect of the waterway zones. This submission relates to an allotment of land identified as *W1 – Natural Waterways*, however, the content of this submission may also be relevant to the provisions of the *Draft SSLEP 2013* that was exhibited from 19 March to 1 May, 2013. We understand that the formal exhibition period in relation to the *Draft SSLEP 2013* has expired, however, respectfully request that Council receive and consider this submission.

We act on behalf of the owners of No. 2 Christopher Place Burraneer and have been instructed to make a submission to request that the southern portion of the site, identified as Lot 1171 in DP 752064, be changed from the *W1 – Natural waterways* zone to the *E4 – Environmental Living* zone under the *Draft SSLEP 2013*. The proposed changes are sought to amend a long standing anomaly under current and previous environmental planning instruments.

In forming our opinion on the suitability of rezoning the subject site we have visited the site and locality, and considered the relevant background information. We have analysed the provisions of *SSLEP 2006* and *Draft SSLEP 2013* in the context of the local factors affecting the site and have applied the approach consistently taken by Council in the extension of residential zones on water waterfront properties.

SITE & LOCATION

The subject site comprises two separate allotments and is known as No. 2 Christopher Place, Burraneer. The site is legally defined as Lot 6 in DP 234008 (the northern lot) and Lot 1171 in DP 752064 (the waterfront lot). The site extends southwards from Christopher Place to the waterway of Burraneer Bay. The northern allotment is occupied by an existing two storey dwelling (Figure 1).



Figure 1: Aerial photograph of the site

Private open space, comprising maintained grassed areas and a swimming pool, are located southwards of the dwelling adjacent to the tidal waterfront (Figure 1). The existing swimming pool is located adjacent to at the southern-most point of the northern boundary and a sea wall demarcates the western and south-western boundaries of the southern allotment.

Due to previous reclamation works undertaken on the southern site circa 1965, the mean high water mark, which previously traversed the site (shown yellow in Figure 2), has been redefined to be the extent of the existing seawall shown green in in Figure 2.

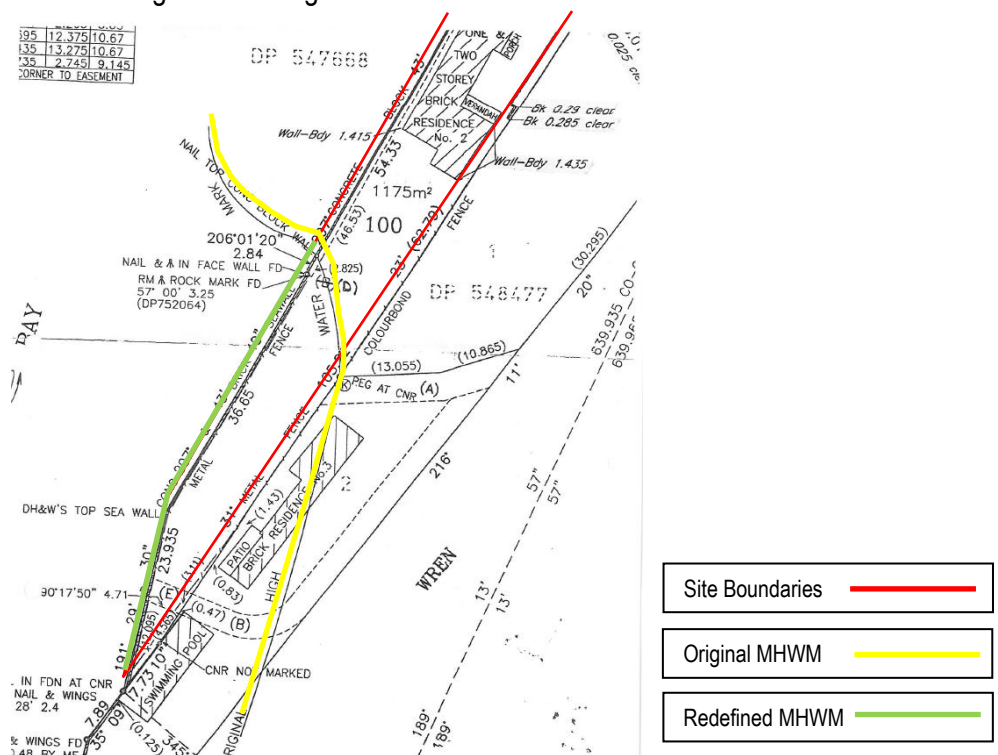


Figure 2: Site Boundaries and MHW

The southern allotment adopts a gradual slope and contains no significant trees or natural land formations and is used exclusively as private open space in association with the existing dwelling located on the northern allotment. The subject lot is privately owned and Council has collected rate payments for many years.

Development in the vicinity of the site comprises a range of detached dwellings with associated swimming pools located forward of the FBL and a number of watercraft facilities are located forward of the mean high water mark in the immediate area. The site is located within a natural cove extending off the northern portion of Burraneer Bay and the property exists within the context of a tight visual catchment. It is noted that No. 3 Christopher Place is zone residential and is reclaimed land.

BACKGROUND

Under SSLEP 2006 the northern allotment is located within *Zone 2 – Environmental Housing (Scenic Quality)* and the southern allotment is located within *Zone - 19 Environmental Protection (Waterways)*. The divide in the zone under the current LEP appears to relate to the identification of the mean high water mark prior to the site being altered in circa 1965. Currently, the fully extent of the site is located above the mean high water mark and has been since 1971, following what appears to be a reclamation, by reference to Council's *Shire Maps* (Figure 3).

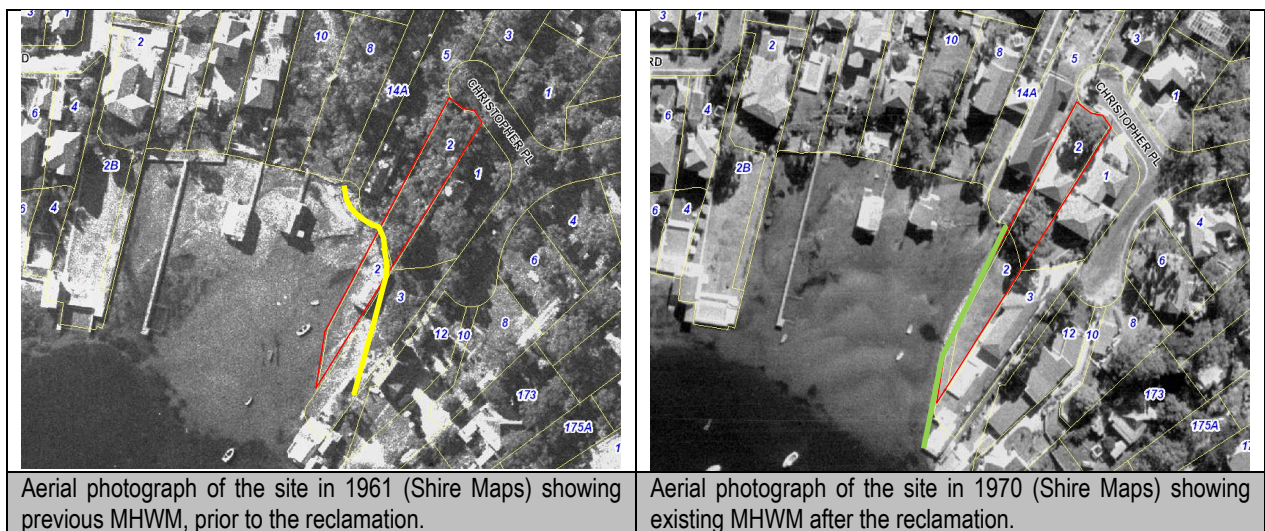


Figure 3: Historic change in foreshore giving rise to the redefined MHWM

It can therefore be relied upon that the existing mean high water mark, shown in Figure 2, reflects on the ground, what would have been the *deemed mean high water mark* as defined in SSLEP 2006. As such an anomaly exists under the existing LEP and the current divide in the land use zone on the site relates to land that was formerly located (prior to 1971) below the mean high water mark.

The lot boundaries have been redefined over the years to reflect that changes that have occurred at the site following the reclamation prior to 1971. The *Draft SSLEP 2013* duplicates this anomaly by identifying the southern portion of the subject site as being within the *W1 – Natural waterways* zone. We are aware of number of other foreshore properties that have been the subject of reclamations in the Sutherland Shire and understand that Council's consistent approach has been to identify all privately owned land above the mean high water mark within the corresponding residential zone.

THE REQUEST

It is requested that Council change the draft zone relating to the southern portion of the subject site, identified as Lot 1171 in DP 752064 from *W1 – Natural waterways* zone to *E4 – Environmental Living* under the *Draft SSLEP 2013*. This request will enable the portion of the site located above the mean high water mark to be identified as residentially zoned land to reflect its historically established and current use. We note that the request does not seek any changes in relation to the foreshore building line on the subject site. The foreshore building line will continue to exist to reflect the original mean high water mark and will significantly limit development in the foreshore area in accordance with its intention to, amongst other things, minimise development in the foreshore area and impacts on natural foreshore processes.

JUSTIFICATION

A justification to this request is provided under the relevant subject headings below.

Ownership and use

The southern allotment, although identified as a separate, is under the same ownership as the northern allotment. Both lots are used as a single residential property and are visually indistinguishable. Our client has expressed their clear intent to retain both lots for use as a single residential holding and has paid rates to Council for many years in relation to both allotments.

The western and south-western boundaries of the southern property are delineated by the existing seawall and all existing land under the ownership of our client is located above the mean high water mark. This land has been located above the mean high water mark and has been used for residential purposes since it was originally reclaimed. This portion of the site clearly does not constitute tidal or waterway land.

As such, by virtue of the subject site being under private ownership, being used for residential purposes and being located above the mean high water mark, the subject property should be zoned to reflect its actual use, being of a residential nature.

Intent of the *W1 – Natural Waterways* zone

The intent of the *W1* Zone is made clear firstly in its name, *Natural Waterway*. The site located entirely above the mean high water mark and has no use as *waterway* land. Furthermore the intent of the zone is defined by the relevant objectives, as follows:

“

Objectives of zone

- To protect the ecological and scenic values of natural waterways.
- To prevent development that would have an adverse effect on the natural values of waterways.
- To provide for sustainable fishing industries and recreational fishing.
- To protect and preserve beach environments and ensure they are free from artificial structures.
- To protect and enhance remnant natural features, aquatic habitat, public access and the navigability of waterways.
- To allow for a range of water recreation structures where the size, siting and form will not diminish the natural scenic character of the waterways and intertidal areas.
- To ensure that the natural scenic qualities of waterways are not diminished through the cumulative impact of man-made structures.”

The above objectives indicate that the clear intent of the zone is to be applied to waterways land under the ownership of the Crown. By virtue of the site being in private ownership, being used for residential

purposes over the past 40 years, and having no contributory waterway function, it is unreasonable to continue to apply the *Natural Waterway* zone to the site under the *Draft SSLEP 2013*.

Built Form Impacts

The proposal does not seek to redefine the foreshore building line and will not give rise to any likely built form implications. The request to amend the zone to identify the southern allotment in accordance with its actual use (i.e. residential) is intended to correct a long standing anomaly with the planning controls that apply to the site.

We note that the inclusion of this portion of the site for residential uses will enable additional density on the northern property behind the foreshore building line, however, any future built form will need to be designed to balance the scale and impacts of development on the character of the area and the amenity of surrounding residential properties. It is further noted that the existing dwelling is positioned in close proximity to the existing FBL and as such limited opportunities are available for extension to the existing dwelling.

Consistency in approach under the Draft SSLEP 2013.

The request to amend the land use zone from *W1* to *E4* under the *Draft SSLEP 2013*, where it relates to privately owned residential land that is located above the mean high water mark, is consistent with Council's approach in respect of a number of other water front properties. Specifically, Figure 4 demonstrates the extension of residentially owned land in relation to No. 291 Woollooware Road, Burraneer which is subject to a similar scenario.

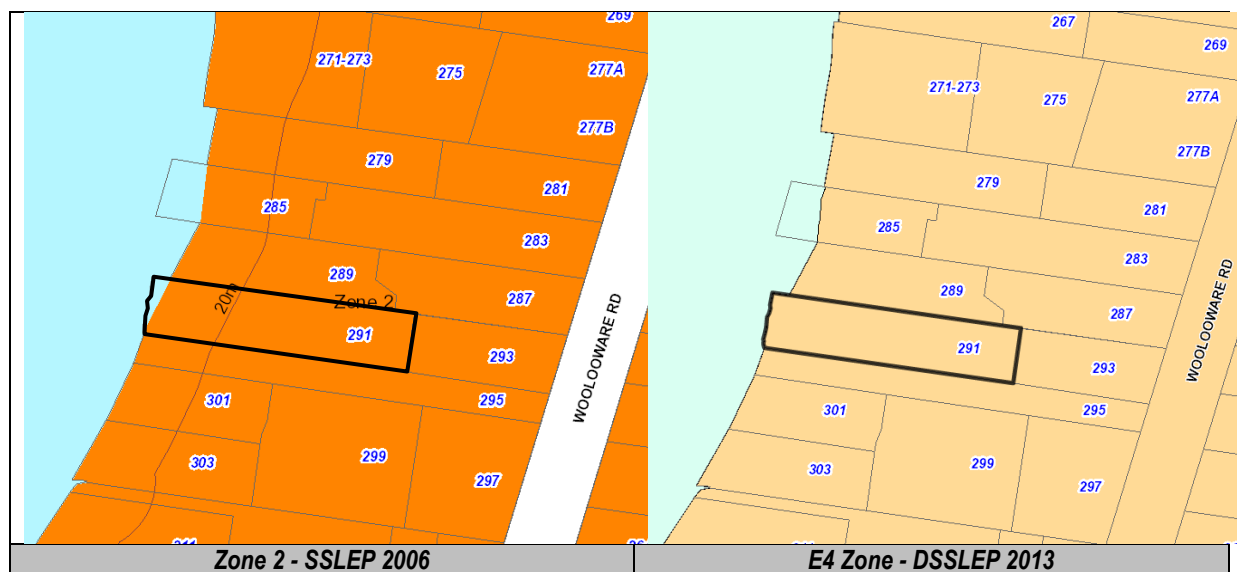


Figure 4: Extension of the residential zone under DSSLEP 2013

In addition to the above, Council has extended the residential zone in particular suitable scenarios over the past years on the adjacent property to the south-east at No. 3 Wren Place and at No. 2B Bayview Road. In these instances site conditions have been historically altered giving rise to an amendment to the mean high water mark. The location of these properties in respect of the subject site is provided at Figure 5.

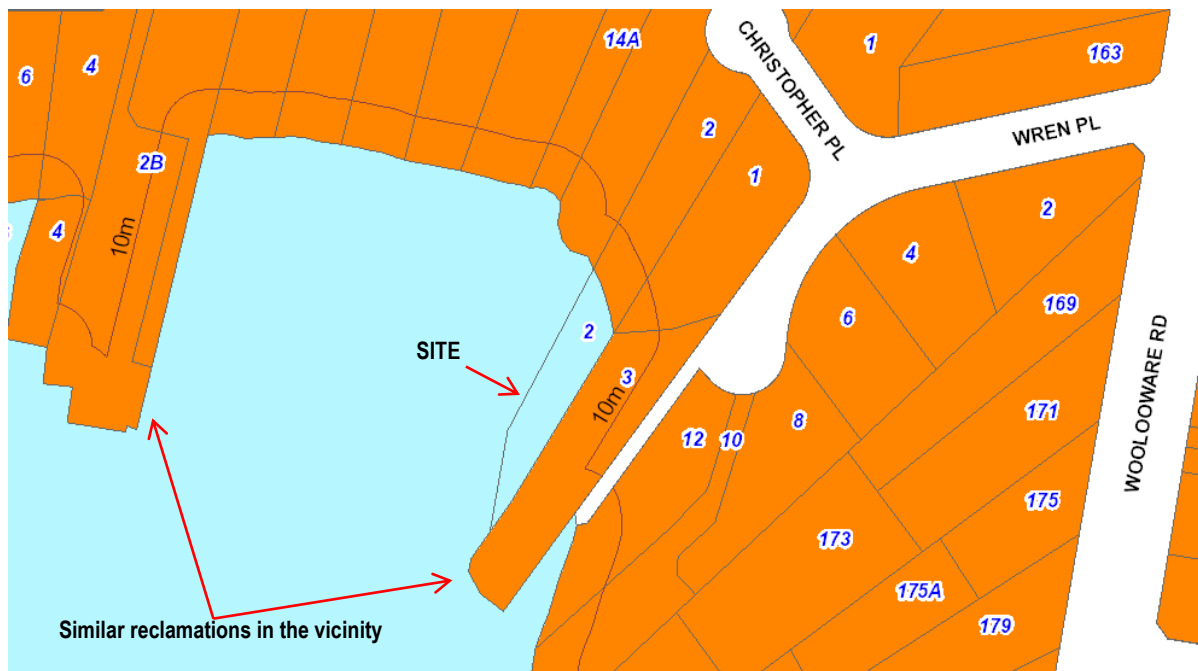


Figure 5: Consistency in the extension of privately owned land above MHWM

CONCLUSION

We thank you for the opportunity to comment on the amendments to *Draft SSLEP 2013*. For the reasons outlined in this submission, it is our view that the *E4 – Environmental Living* zone should be extended to relate to the southern portion of the site, identified as Lot 1171 in DP 752064, to amend the existing anomaly under *SSLEP 2006*.

In doing so, Council will apply an appropriate land use zone that reflects the historical and current use of the site, consistent with other amendments to water front properties undertaken under the *Draft SSLEP 2013*. Additionally, this request will avoid the application of a waterway zone that should clearly not apply to site which is privately owned, located above the mean high water mark and used as a grassed private open space area.

We note that the effects of the requested zone will not give rise to any demonstrable built form impacts on the foreshore area or amenity of adjoining residential properties. The proposal will allow the existing portion of the site located behind the FBL to benefit from additional residential floor area, however, any proposal to increase the size of the existing dwelling will be required to address visual and amenity impacts and will be subject to assessment under Section 79C of the Act.

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

Benjamin Black
ASSOCIATE DIRECTOR