

Our Ref: 0081/13lt5

14 February 2014

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

Dear Marian,

**RE: SUTHERLAND DRAFT LEP REVIEW
3-9 MADEIRA STREET, SYLVANIA**

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 matters supported by Council's professional staff following submissions made on the initial public exhibition period or were changes instigated by the Mayor. We note that in relation to this submission, the Mayoral Minute was not 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 in response to the first exhibited Draft LEP requesting that the foreshore building line on the subject site be identified as a 30m setback from the mean high watermark in accordance with Council's conventional methodology of identifying the foreshore building line. The detailed submission is attached to this letter.

Staff was not supportive of the request. Council's report summarising submissions recommended that there be no change to the plan and noted the following:

" *In reviewing this section of the foreshore building line, attention has been given to the underlying objectives of the control which are to protect natural features and processes and to minimise visual impacts of development when viewed from the waterway. While this has not followed the SSLEP2006 methodology used in other locations, it represents the intent of the foreshore building line. Amending the FBL for this property alone would result in an incongruous line and as such an amendment would need to include 1 Madeira St, which contains significant vegetation. A significant reduction has already been granted at this site and a further reduction is not warranted.*"

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

" *v. Foreshore Building Line and Foreshore Area as indicated on the Foreshore Building Line Map be amended in relation to the:
- 3-9 Madeira St Sylvania – as requested.*"

As such, the recommendation of the Mayoral Minute was different to that of staff and was supportive to the opinion of Planning Ingenuity. This is a subjective matter that was considered in detail by both Planning Ingenuity and Council staff. As detailed in the submission attached to this letter, there is little

merit in providing an exceptional approach to identifying the foreshore building line on this site, particularly in light of the fact that Council has routinely insisted on a consistent methodology. The arguments of our submission was put to the Mayor by our client and subsequently supported.

It is therefore abundantly clear that the change to the foreshore building line of the Draft LEP in relation to the subject site was based on detailed and rigorous analysis of the issue by Planning Ingenuity. The views of professional staff were clear in the report summarising the issues. The Mayoral Minute was formulated in response to a consideration of the professional opinions of staff and Planning Ingenuity and favoured the requests of our client.

We therefore request that the panel endorse the Mayoral Minute as it relates to the subject site, that is, maintain the foreshore building line as detailed 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: 0081/13lt1
Council Ref: LP/03/252376

30 April 2013

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

Attention: *Environmental Planning Unit,*

**SUBMISSION ON THE DRAFT SUTHERLAND SHIRE LEP 2013
NOS. 3-9 MADEIRA STREET, SYLVANIA**

INTRODUCTION

We refer to the *Draft Sutherland Shire LEP (DSSLEP) 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 amend the foreshore building line map relating to the subject site.

Council considered a report prepared by the Director of Environmental Services on 11 February 2013 reviewing the foreshore building line on a number of properties including the subject site. The report was part of a “fine grain review of the foreshore building line” requested by the Mayor. The focus of the report was on achieving “logic and flow” in relation to foreshore building lines across the Sutherland Shire. Council accepted the principle of reducing the foreshore building line on the subject site, being satisfied that the objectives of the foreshore controls would be met. The objectives of the control seek to protect the natural features and processes of the site and reduce the visual impacts of development when viewed from the waterway.

We concur with Council that there are compelling grounds to reducing the FBL on the site, however disagree that identification of the revised FBL requires a “hybrid approach” of following the 22m contour line rather than simply adopting Council’s usual methodology for determination of the line. We request that the revised FBL is determined by a 30m setback, and is deduced using the consistently adopted *infinite arc* methodology measured from the *deemed mean high water mark* as defined by SSLEP 2006 (mean high water mark as at 24 April 1980).

There are no site specific grounds that warrant application of a different methodology for arriving at the location of the FBL on the subject site. Whilst the requested amendment would allow for development on the subject site to move slightly forward, the change to the built form would in our view not be readily perceptible and would have no environmental or built form implications due to the existing pattern of development and the topography and natural features on the site.

The site falls towards the waterway and contains a pronounced slope forward of the 40m FBL with a natural cliff adjacent to Mean High Water Mark (MHWM). The proposed 30m foreshore building line is located at a part of the site that contains no significant trees, rock outcrops or natural features.

BACKGROUND

As part of a “fine grain review of the foreshore building line” requested by the Mayor, Council in its meeting of 11 February, 2013 considered various foreshore building line amendments. The amendments relate to several properties with contextual attributes that provide basis to reduce or remove foreshore building lines. The report recommended that the amended foreshore building lines be incorporated into the DSSLEP 2013 foreshore building line maps.

The subject site falls within a group of properties fronting the Georges River, identified as *Madeira Street, Sylvania*. The report recommended changing the FBL from 40m to 30m as:

“ *Most properties in the 40m (FBL) section are relatively new and all line up well forward of the 40m line. In fact they more closely relate to a 30m setback.*”

In reviewing the FBL for this cluster of properties attention was given to:

“ *The underlying objectives of the control which are to protect natural features and processes and to minimise visual impacts of development when viewed from the waterway.*”

The topography of the site was also a factor in the proposed FBL and the report notes that the land consists of a relatively flat ridge that falls very steeply (at the 22m contour line) to the water. The recommended location of the FBL relates to the 22m contour line rather than Council’s conventional *infinite arc* methodology of determining a 30m FBL from the *deemed mean high watermark*.

The basis for Council routinely adopting the *infinite arc* methodology is to ensure that development is consistently setback from all portions of the mean high watermark, rather than adopting a perpendicular setback that results in a stepped FBL.

Council resolved to adopt the recommendations of the report and specifically in relation to the subject site:

“ *That the foreshore building line on the western side of Madeira Street, Sylvania be amended to 30m on 7 Murrallin Lane and 127 Princes Highway and a joining line across 3-9 Madeira Street as detailed in the body of the report.*”

THE REQUEST

We accept and endorse the principle of reducing the foreshore building line from 40m to 30m in respect of the subject site. However, in the interests of an equitable approach in identifying foreshore building lines across the Sutherland Shire, we request that the DSSLEP 2013 foreshore building line maps are amended to reflect a 30m setback from the mean high water mark as determined by Council’s conventional *infinite arc* methodology.

The result of this request would be to locate the FBL between 2m and 3m closer to the foreshore for a majority of the site and up to 9.8m for a small portion of the southern part of the site as indicated in Figure 3.

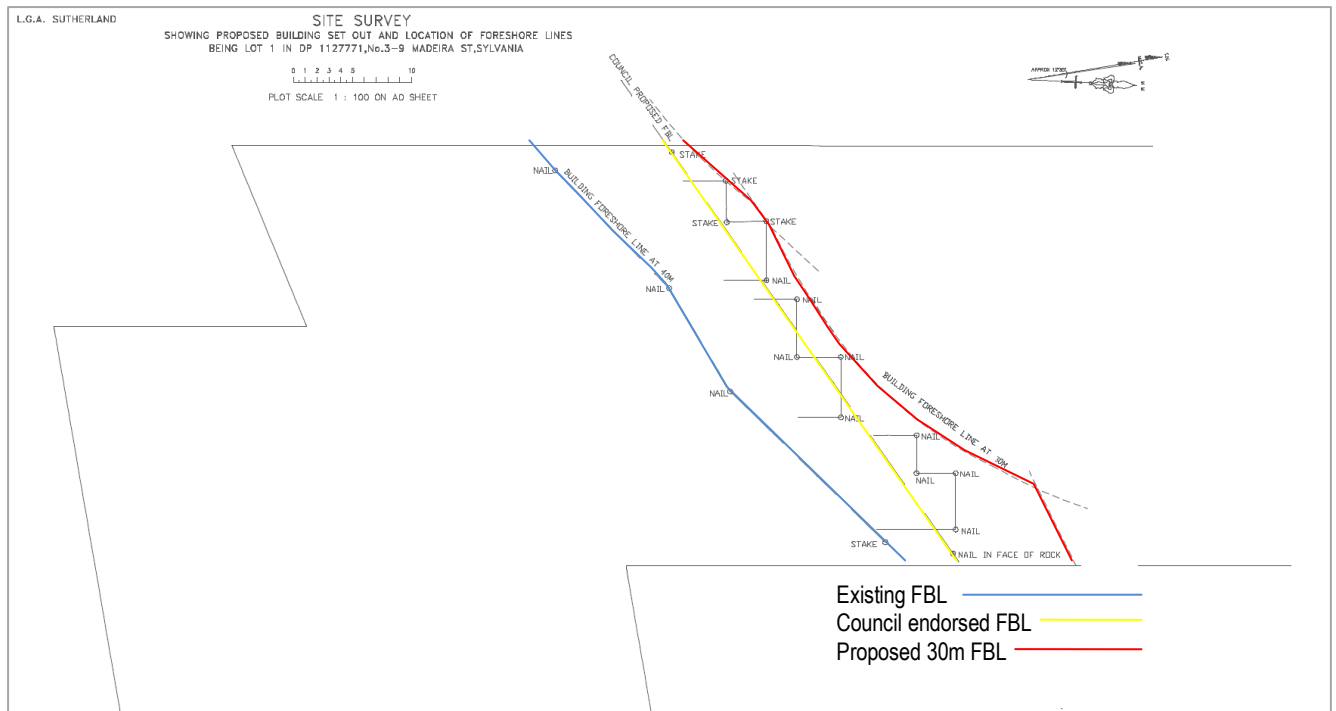


Figure 3: Existing FBL, Council endorsed FBL and proposed 30m FBL

It is widely accepted that there are suitable contextual grounds, taking into account the pattern of adjacent development and topography and natural features, to reduce the FBL on the site. There are however, no compelling or site specific reasons to apply an inconsistent or hybrid approach to the location of the FBL in this instance.

As outlined in the Council Report considered on 11 February 2013, the fine grain review of the foreshore building line was based on achieving logic and flow and attention was to be given to the underlying objectives of the *Clause 6.2 – Foreshore Building Line* which seeks to protect natural features and processes of the foreshore area and to minimise visual impacts of development when viewed from the waterway.

We contend that Council's *infinite arc* approach has been adopted consistently when identifying the location of the foreshore building line under SSLEP 2006 and the methodology is based on an accepted and applied logic which ensures 'flow' in the FBL. In fact, to apply an alternative approach with no site specific basis would be inequitable and illogical.

In addition, as indicated in Figure 4, the topography of the site at the proposed location of the FBL adopts a gentle gradient and is occupied by grass of low ecological value. This portion of the site contains no undisturbed rock features or any vegetation with significant retention value. As such, to apply Council's consistent approach in determining the location of a 30m FBL in this instance is not antipathetic to the objects of the *Clause 6.2 – Foreshore Building Line* in relation to protecting the natural features and processes of the foreshore area. The basis for choosing to adopt the 22m contour does not have a clear basis.



Figure 4: Example of difference in Draft FBL and our request

In addition, the proposal will not give rise to any significant built form impacts as the adjoining western properties have been developed, in recent times, on the basis of a 30m FBL (Figure 5). The proposed FBL will therefore enable future development of the site to have a consistent setback to the waterway with no adverse visual impacts.



Figure 5: Approximate setbacks from the mean high water mark of western properties

The foreshore area within the proposed FBL contains a gentle sloping portion that will facilitate planting to further reduce the visual impacts of future development. As such, the proposed FBL is consistent

with the objects of *Clause 6.2 – Foreshore Building Line* in relation to minimising visual impacts from the waterway.

CONCLUSION

We thank you for the opportunity to comment on Council's Draft LEP. We concur with Council that there are compelling reasons to reduce the FBL on the subject site. However, for the reasons outlined in this submission, it is our view that the foreshore building line maps of DSSLEP 2013 should be amended to reflect a 30m setback from the MHWM as there are no site specific reasons that warrant a departure from the conventional methodology of determining the location of a FBL.

The proposed FBL is based on Council's intention to achieve logic and flow in the FBL whilst having regard to the underlying objectives of *Clause 6.2 – Foreshore Building Line* which seek to protect natural features and processes of the foreshore area and to minimise visual impacts of development when viewed from the waterway.

We note that the effects of the requested FBL will have no significant built form or environmental impacts and we therefore respectfully request that the FBL be amended on the DSSLEP 2013 FBL maps. 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