

Our Ref: 0031/13lt5

14 February 2014

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

Dear Marian,

**RE: SUTHERLAND DRAFT LEP REVIEW
PRINCE CHARLES PARADE AND WARD STREET PROPERTIES, KURNELL**

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 second exhibited version of the Draft LEP.

By way of background, Planning Ingenuity made a submission to Council as part of the initially exhibited Draft LEP requesting that the proposed zoning of the LEP be amended to enable residential development. It was contended that the most appropriate zone for the site would be the E4 – Environmental Living. The detailed submission is attached to this letter.

Staff partially supported the request to amend the Draft LEP and by identifying 3 of the requested 7 properties to be rezoned from the RE2 zone to the E4 zone. Council's report summarising submissions made the following recommendation:

" *Number 1 Ward St and Lots 306 and 308 are best suited to RE2 Zoning as a direct transfer of the land that was Zone 6(c) – Private Recreation (SEPP Kurnell), based on the constraints from the "Land Use Safety Study – Kurnell Peninsula" and the impact of aircraft noise as the land is within the 25-30 ANEF. Accordingly no change is recommended for the plan for this land.*

Numbers 4 Ward St, 6 Ward St, 300 Prince Charles Parade (PCP) and 302 PCP on the eastern side of Ward St could be rezoned as E4 Environmental Living as these lots are currently within the 20-25 ANEF contours and would rely on design to mitigate noise impacts. However, it is considered that further discussion with the Department of Planning and Infrastructure regarding the 2007 "Land Use Safety Study - Kurnell Peninsula" is required. Accordingly no change is recommended for the plan for this land.

We note that the subject site was not mentioned in the Mayoral Minute.

Planning Ingenuity prepared a further submission in relation to the second exhibited Draft LEP contenting that the remaining sites forming part of the submission should be located within the E4 – Environmental Living zone. This submission is attached to this letter and addresses aircraft noise and the "Land Use Safety Study – Kurnell Peninsula",

We anticipate that professional staff will be in support of our request in relation to the second exhibited LEP, 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 all of the subject sites within the E4 – Environmental Living zone.

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

Yours faithfully,
Planning Ingenuity Pty Ltd

A handwritten signature in black ink, appearing to read 'J. Mead'.

Jeff Mead
DIRECTOR



ANNEXURE A

COPY OF INITIAL SUBMISSION ON DRAFT SUTHERLAND LEP 2013

Our Ref: 0031/13lt1
Council Ref: LP/03/252376

24 April 2013

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

Dear Sir,

**SUBMISSION ON THE DRAFT SUTHERLAND LEP 2013
PRINCE CHARLES PARADE AND WARD STREET PROPERTIES, KURNELL**

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 7 vacant properties located on the southern side of Prince Charles Parade and on the eastern and western side of Ward Street. We have been instructed to make a submission in relation to the Draft LEP to request that Council consider an alternate zoning for the subject properties. This would facilitate the orderly and economic use of numerous lots that would otherwise be significantly restricted by the existing and proposed private recreation zoning.

In our opinion, the most appropriate planning response in this instance would be to zone the subject sites E4 – *Environmental Living* under the *Draft SSLEP 2013*, for the reasons outlined in this submission. The proposed rezoning would be consistent with the zone proposed for the adjoining subdivision estate within Magellan Way to the east which comprises approximately 17 residential lots approved by the NSW Land and Environment Court.

In forming our opinion on the suitability of rezoning the subject site to be E4 – *Environmental Living*, we have visited the site and locality and considered the *SEPP (Kurnell Peninsula) 1989* and *Draft SSLEP 2013* controls in the context of the local and state strategic planning framework. We have also carried out a land use survey of the surrounding area and liaised with local real estate agents to gain an understanding of both tourist and residential demand within the Kurnell area.

SITE & LOCATION

The subject area includes 7 vacant properties located on the southern side of Prince Charles Parade and on the eastern and western side of Ward Street. These properties are identified as Nos. 1, 4 and 6 Ward Street, Nos. 300-302 and Nos. 306-308 Prince Charles Parade, Kurnell (Figure 1). These properties immediately adjoin a residential land subdivision to the east which was approved by the NSW Land and Environment Court on the basis of the existing use right provisions of the EP&A Act 1979 and EP&A Regulation 2000.

The subject properties form part of the westernmost developable land adjacent to the Towra Point Aquatic Reserve. Figure 1 below indicates the location of the subject land, shown hatched.

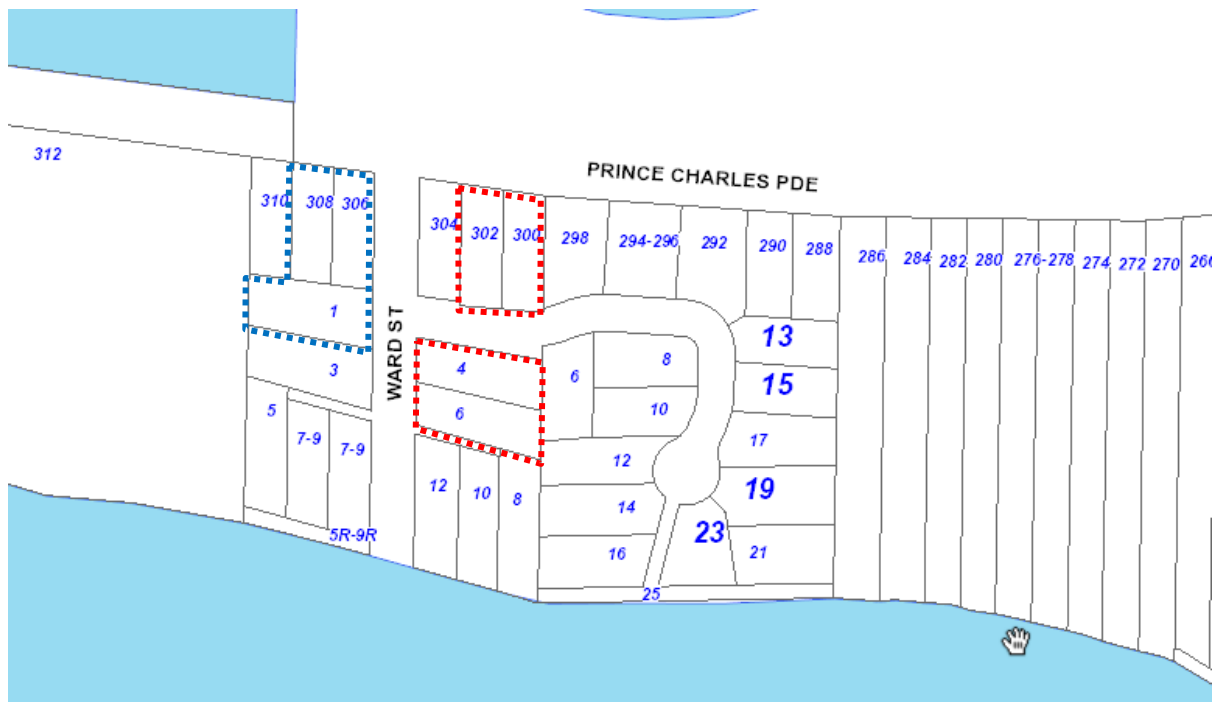


Figure 1: Location Plan

Figure 2 below provides an aerial overview of the subject land in relation to the adjoining properties and Table 1 provides details of the adjoining properties including land use, zoning and site features.



Figure 2: Aerial photograph of the site

TABLE 1: DESCRIPTION OF ADJOINING DEVELOPMENT					
ID No.	ADDRESS	LAND USE	CURRENT ZONING	PROPOSED ZONING	SITE AND BUILDING FEATURES
1	310 Prince Charles Parade, Kurnell	Community facility - Marine Rescue	6(c)	E2	Factory building and boat storage
2	304 Prince Charles Parade, Kurnell	Community facilities - Kurnell Catamaran Club	6(c)	E2	2 storey brick building
3	3 Ward Street, Kurnell	Industrial building	6(c)	RE2	SES
4	5, 7-9 Ward Street, Kurnell	Holding yard	6(c)	E2	Boat storage
5	8 Ward Street, Kurnell	Residential	6(c)	RE2	Dwelling house
6	10 Ward Street, Kurnell	Residential	6(c)	RE2	Dwelling house
7	12 Ward Street, Kurnell	Vacant	6(c)	RE2	-
8	288-298 Prince Charles Parade, 6-23 Magellan Way, Kurnell (17 lots)	Residential subdivision	6(c)	E4	Townhouse, detached dwellings, vacant land.
9	284 Prince Charles Parade, Kurnell	Tourist accommodation	6(c)	RE2	Detached cabins



Figure 3: Current zoning map - SEPP (Kurnell Peninsula) 1989

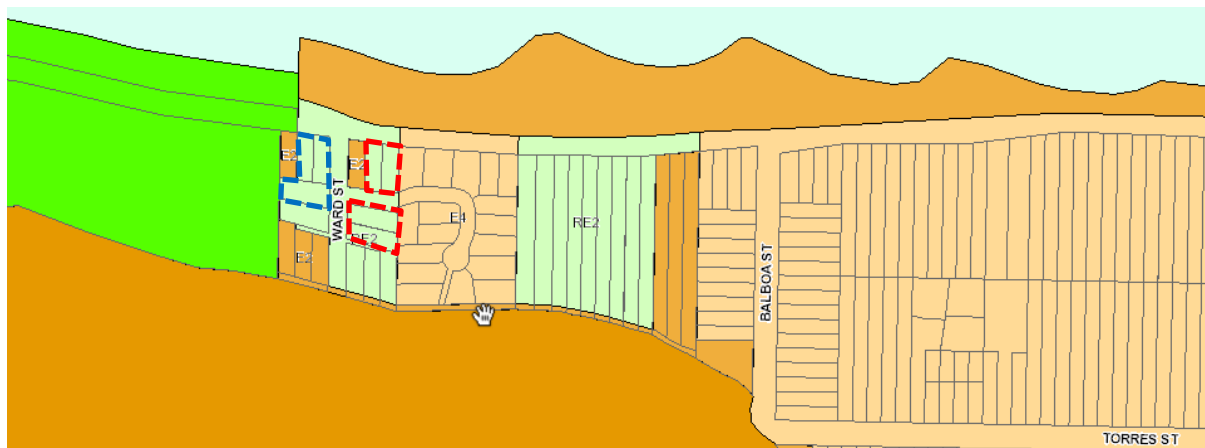


Figure 3: Proposed zoning map - Draft SSLEP 2013

BACKGROUND

The subject properties are zoned 6(c) – *Private Recreation* pursuant to SEPP (Kurnell Peninsula) 1989. The SEPP will be repealed by the Draft LEP. The subject properties are identified in the Draft LEP 2013 as *RE2 – Private Recreation*. There are currently 2 active approvals relating to these properties:

1. **DA07/1448** – approved on 24 October 2008 for construction of 12 units to be used as tourist accommodation, boundary adjustment and strata subdivision at 2 and 6 Ward Street, 300-302 Prince Charles Parade (depicted by red outline in Figure 1 above); and
2. **DA09/0306** – approved on 24 August 2009 for construction of a tourist facility consisting of 7 units, a café and 8 lot strata subdivision at 1 Ward Street and 306-308 Prince Charles Parade (depicted by blue outline in Figure 1 above).

Each of the above approvals has not yet been activated and we are instructed by our client that there is simply no demand for tourist related accommodation facilities within Kurnell, particularly at Silver Beach. Nor does Kurnell provide the facilities and services sought by typical holiday makers, including dining and recreation within close proximity. As such, acting on these existing approvals is not financially viable for our client and the properties are likely to remain vacant.

The inherent lack of demand for tourist accommodation is supported by correspondence from Silver Beach Realty (attached) which confirms that at the time of the correspondence, of the 11 tourist units available for lease, none were occupied by holidaymakers nor have they been occupied by holidaymakers for a considerable time. Whilst there is a growing demand for residential accommodation within Kurnell that cannot be met, the 6(c) zoned land cannot be used for this purpose and therefore that land has sat dormant due to the lack of demand for tourist related facilities. In most part, the subject area along with adjoining land is taken up by vacant or rundown properties with significantly limited development potential.

THE REQUEST

It is requested that the proposed zoning under Draft SSLEP 2013 be changed to enable residential use of the subject properties. The most appropriate planning response which would encourage low impact residential use of these properties and facilitate orderly and economic use of land in direct response to the market demand would be to rezone the subject properties *E4 – Environmental Living* zone. It is our view that the same zoning would be appropriate for Nos. 3, 8, 10 and 12 Ward Street, though we do not represent the owners of those properties.

STRATEGIC PLANNING

In preparing this submission, we have considered the strategic planning framework within which the Draft LEP has been prepared as well as Council's supporting Environment Strategy.

As can be seen from Table 1 there is a mismatch of existing uses across the immediate area as a result of the restrictive land zoning that has stifled redevelopment over time.

The subject site is located within the *RE2 – Private Recreation* zone pursuant to Draft Sutherland LEP 2013. This zone is consistent with the existing 6(c) – *Private Recreation* zone under SEPP (Kurnell Peninsula) 1989, which is to be repealed under the Draft LEP.

Under the RE2 zone, the objectives and permissible uses are stated as follows:

- “ **Zone RE2 Private Recreation**
1 Objectives of zone
- To enable land to be used for private open space or recreational purposes.
 - To provide a range of recreational settings and activities and compatible land uses.
 - To protect and enhance the natural environment for recreational purposes.
 - To ensure the scale, density and form of development reflects the nature of the recreational use of the land and is compatible with the surrounding urban form and natural setting.
- 2 Permitted without consent**
Environmental protection works
- 3 Permitted with consent**
Animal boarding or training establishments; Car parks; Community facilities; Entertainment facilities; Environmental facilities; Hotel or motel accommodation; Kiosks; Marinas; Passenger transport facilities; Recreation areas; Recreation facilities (indoor); Recreation facilities (outdoor); Registered clubs; Restaurants or cafes; Roads; Water recreation structures
- 4 Prohibited**
Pubs; Any other development not included in item 2 or 3.”

In our opinion tourist uses permissible under this zone such as entertainment facilities, restaurants and cafes, recreation facilities, and registered clubs are very unlikely to occur on the subject lands and would only be viable and suitable on lands closer to the commercial area of Kurnell. Accordingly, based on the lack of demand for tourist related accommodation and the inappropriateness of the subject lands for other types of tourist related uses, the proposed RE2 zoning makes little town planning sense.

Alternatively, the zone objectives and permissible uses of the *E4 – Environmental Living* zone are stated as follows:

- “ **Zone E4 Environmental Living**
1 Objectives of zone
- To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.
 - To ensure that residential development does not have an adverse effect on those values.
 - To allow for development which preserves and enhances the natural landscape setting of the locality.
 - To protect and restore trees, bushland and scenic values particularly along ridgelines and in other areas of high visual significance.
 - To ensure the character of the locality is not diminished by the cumulative impacts of development.
 - To minimise the risk to life, property and the environment by restricting the type, or level and intensity of development on land that is subject to natural or man-made hazards.
 - To allow the subdivision of land only where the size of the resulting lots makes them capable of development that retains or restores natural features while allowing a sufficient area for development.
 - To share views between new and existing development and also from public space.
- 2 Permitted without consent**
Home occupations
- 3 Permitted with consent**
Bed and breakfast accommodation; Boat sheds; Dwelling houses; Environmental protection works; Flood mitigation works; Health consulting rooms; Home businesses; Home industries; Neighbourhood shops; Recreation areas; Roads; Secondary dwellings
- 4 Prohibited**
Industries; Service stations; Warehouse or distribution centres; Any other development not specified in item 2&3.”

The E4 zone would provide for uses that respect the environmental sensitivity of the area whilst providing some flexibility in permissible land uses to enable economic use of land. In terms of the promotion of tourism, the zoning would allow bed and breakfast uses. It is our opinion that amending the proposed RE2 zoning of the subject area to E4 is appropriate for the following reasons:

Low demand for tourist accommodation

From available tourist data provided by Silver Beach Realty, it is apparent that there is very limited demand for tourist related accommodation within Kurnell. The bulk of short stay accommodation is not sought by holidaymakers but rather for short term accommodation for persons building elsewhere or employees at the nearby Caltex refinery which is due to shut down in the coming years. As such any short stay accommodation demand will reduce even further. In any case, the requested E4 zone would allow for bed and breakfast uses to meet limited tourist demand.

Shortfall in available residential accommodation

We are advised by Silver Beach Realty that there is a clear shortfall in available residential accommodation in Kurnell. At the time of providing correspondence, Silver Beach Realty confirmed that they had no listings for sale of any residential homes. As recent as the date of this submission there appears to be only 2 homes listed for sale in addition to the adjoining land release to the east.

There would appear to be a definite shift in market demand from tourist related accommodation to residential accommodation. As such it makes planning sense to allow some flexibility in permissible land uses to enhance the development potential and viability of the subject properties (and adjoining lands) by allowing low density residential use.

Land development not feasible

The subject properties and surrounding lands remain in most part vacant or run down given the lack of feasibility for development under the current and proposed private recreation zoning. Our client has chosen not to pursue existing approvals on the subject properties to increase tourist accommodation given the inherent lack of demand for such accommodation. This situation is very unlikely to change in the medium to long term.

Other than tourist accommodation, the remaining permissible uses under the private recreation zone have limited feasibility given (a) the lack of tourist related demand and (b) the distance of the subject properties from the commercial areas of Kurnell.

Poor location for amplification of tourist facilities

The location of the subject properties do not lend themselves to further amplification of tourist related facilities and accommodation for a number of reasons. These include the lack of tourist attractions within the immediate area, the location of commerce being concentrated within the eastern portion of Kurnell, and the subject properties being approximately 1km walking distance from the nearest shop and café and even further to the main commercial strip. It is considered that the eastern end of Kurnell would be better suited for the location of additional tourist facilities.

Less environmental impacts than many permitted uses & objectives maintained

We consider that the intent of both the *RE2 - Private Recreation* zone and *E4 – Environmental Living* zone seek to provide low impact development that would continue to protect and enhance the natural environment. If applied to the subject properties, the E4 zone would continue to permit 'bed and breakfast accommodation' which would provide the ability for tourist accommodation in accordance with the RE2 zone whilst also allowing flexibility in additional residential uses. In fact, permissible uses under the E4 zone such as dwelling houses, health consulting rooms, home businesses, home

industries, and secondary dwellings would have far less impact than some uses permissible under the proposed RE2 zone such as, entertainment facilities, environmental facilities, hotel or motel accommodation, registered clubs, restaurants or cafes, and water recreation structures.

Land use consistency and flexibility / amenity impacts

The suggested alternative zoning from RE2 to E4 would be consistent with the adjoining land subdivision to the east which is currently being released for sale. The Draft LEP seeks to rezone this residential subdivision to *E4 – Environmental Living* and in our opinion it would be logical to continue this zone up to the interface with the Towra Point Aquatic Reserve.

Abundance of land still available for tourist accommodation

In the event that the subject properties were rezoned to permit residential development, there would still remain an abundance of land available under the RE2 zoning to the east that could provide tourist related accommodation and facilities. In addition, the E4 zone would continue to permit 'bed and breakfast' facilities.

Improve the general area that has been stifled by the restrictive land zoning

As the gateway to Towra Point Aquatic Reserve, the subject properties and immediate area present poorly with vacant and unmaintained land, a mismatch of industrial uses and holding yards. Recent development and sale of land within the Silver Beach Estate will assist in improving the general appearance of the area. Greater flexibility in development potential of the subject properties to allow single houses would contribute to improving the presentation of the area. At present the restrictions of the current private recreational zoning provide little encouragement for development and management of land.

Complications for the Silver Beach Estate Community

Of the subject properties, Nos. 300 and 302 Prince Charles Parade and Nos. 2-4 Ward Street are included under a community title with the land subdivision to the east (Silver Beach Estate). Therefore, inclusion of two separate zones (RE2 and E4) within the estate, and use of these properties for quite different land use purposes, would present challenges in terms of management of the community.

Beyond the management challenges such as fee structures and community responsibilities, there would be potential amenity conflicts between short term tourists and permanent residents, security issues and impacts on the general sense of community. It would seem a rational approach that within the one community title the same uses should be encouraged through applying the same zoning.

Precedent set by rezoning of other tourist uses in the Silver Beach Estate

The Draft LEP includes in the proposed E4 zoning, Lots 3 and 4 within the Silver Beach Estate. These lots are currently occupied by tourist related accommodation, thereby not in residential use. As such continuation of these tourist related uses under the *E4 – Environmental Living* zone would rely on existing use rights. It would seem to make little town planning sense to protect (through zoning) approved tourist related uses that do not currently exist (such as those the subject of DA07/1448 and DA09/0306 for the subject properties) when the Draft LEP does not seek to protect existing tourist related uses through the proposed change in zoning.

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 *RE2 – Private Recreation* zone under the Draft LEP as it does not best reflect the real nature of Kurnell which has not become, and is unlikely to become, the tourist destination that once may have been envisaged.

Given the high demand for residential accommodation and shortfall in this regard it is considered inappropriate to stifle future development of the area through limiting development potential to tourist uses for which little demand exists. Instead, it is more appropriate to introduce a more flexible zone such as the *E4 – Environmental Living* zone that will continue to respect the environmental nature of the area whilst also addressing the clear demand for residential uses. It is considered more appropriate to concentrate any tourist related uses within the eastern commercial end of Kurnell.

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



**SILVER
BEACH
REALTY**

"Your Kurnell Peninsula Specialists"

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Website: www.silverbeachrealtykurnell.com.au

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t/as Silver Beach Realty
ABN 56 002 182 934

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PO Box 606
Kurnell NSW 2231

Ph: (02) 9668 9659
Fax: (02) 9668 9974

Licensee: Alan Shorten J P
Mob: 0432 315 516

11th April 2013

**Office of the Mayor
Sutherland Shire Council
Locked Bag 17
Sutherland NSW 1499**

Dear Sir

**Re : File number LP/03/252376
Draft Sutherland Shire Local Environmental Plan 2013
300 302 306 308 Prince Charles Parade, Kurnell
1,3,4,6 Ward Street Kurnell**

I am the licensee of Silver Beach Realty at Kurnell, having operated this business since 2004.

The Kurnell village comprises approximately 700 single residential homes. Currently there is a shortage of homes for sale and in fact, we do not have any current listings for the sale of any residential homes. This is a chronic situation. The demand will only increase with the closure of the Caltex refinery.

There is no demand for accommodation for holiday makers – the only demand is for cheap short term accommodation for people who are building elsewhere in the shire and workers at the refinery – this demand will soon cease.

Since 2004, I have not been able to sell any land at Kurnell zoned 6c. I have listed the following properties for sale over the years : 276,278,282 and 286 Prince Charles Parade. None of the listings ever became sales. They have also been listed by other real estate offices with no result. My view of why these properties have not sold is because banks were unwilling to finance land in this zone because the viability for tourist accommodation at Kurnell could not be substantiated. In addition, the very nature of Kurnell as a residential village does not provide facilities sought by holiday makers.

The land in the 6c zone is largely unoccupied land and poorly maintained.

In my opinion, if the land was zoned E4 Environmental Living, it would improve this section of peninsula and fill the chronic short supply of good quality residential land at Kurnell.

I disclose that I have made no political donation or gift to any councillor or council employee.

Yours sincerely

SILVER BEACH REALTY

ALAN SHORTEN
LICENSEE



**SILVER
BEACH
REALTY**

"Your Kurnell Peninsula Specialists"

Email: info@silverbeachrealty.com.au
Website: www.silverbeachrealtykurnell.com.au

11th April 2013

**Office of the Mayor
Sutherland Shire Council
Locked Bag 17
Sutherland NSW 1499**

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t/as Silver Beach Realty
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7 Captain Cook Drive
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Licensee: Alan Shorten J P
Mob: 0432 315 516

Dear Sir,

**Re: File number LP/03/252376
Draft Sutherland Shire Local Environmental Plan 2013
300 302 306 308 Prince Charles Parade Kurnell
1,3,4,6 Ward Street Kurnell**

I am the property manager of Silver Beach Realty. We are the only Real Estate Agent located at Kurnell. We currently manager 11 tourist units in addition to our residential and industrial portfolio on behalf of our landlords. We do not have any tourists staying in the properties that we manage.

We have a high demand for residential accommodation and a desperate shortage. We are unable to satisfy much of the enquiry.

In my experience there is little demand for tourist accommodation in Kurnell and could not recommend the development of this kind of accommodation in Kurnell.

I disclose that I have made no political donation or gift to any councillor or council employee.

Yours sincerely
SILVER BEACH REALTY

.....
JACQUELINE LOWE
Property Manager



ANNEXURE B

COPY OF SECOND ROUND SUBMISSION ON DRAFT SUTHERLAND LEP 2013

Our Ref: 0031/13lt2
Council Ref: LP/03/79340

10 September, 2013

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

Dear Sir/Madam,

SUBMISSION ON THE DRAFT SUTHERLAND LEP 2013 PRINCE CHARLES PARADE AND WARD STREET PROPERTIES, KURNELL

We refer to the *Draft Sutherland Shire LEP (SSLEP) 2013* which is currently being re-exhibited until 17 September, 2013. We act on behalf of the owner of 7 vacant properties located on the southern side of Prince Charles Parade and on the eastern and western side of Ward Street. We made a submission in relation to the previously exhibited Draft LEP requesting that Council consider an alternate zoning for the subject properties to facilitate the orderly and economic use of numerous lots that would otherwise be significantly restricted by the existing and proposed private recreation zoning (refer to Attachment 1 for original submission).

Figures 1 and 2 below include an extract from the current Sutherland Shire LEP 2006 zoning map, compared with the Draft SSLEP 2013 zoning map. There are currently 2 active approvals relating to these properties being DA07/1448 for construction of 12 units to be used as tourist accommodation, boundary adjustment and strata subdivision at 2 and 6 Ward Street, 300-302 Prince Charles Parade (depicted by red outline); and, DA09/0306 for construction of a tourist facility consisting of 7 units, a café and 8 lot strata subdivision at 1 Ward Street and 306-308 Prince Charles Parade (depicted by blue outline).



Figure 1: Current zoning map - SEPP (Kurnell Peninsula) 1989

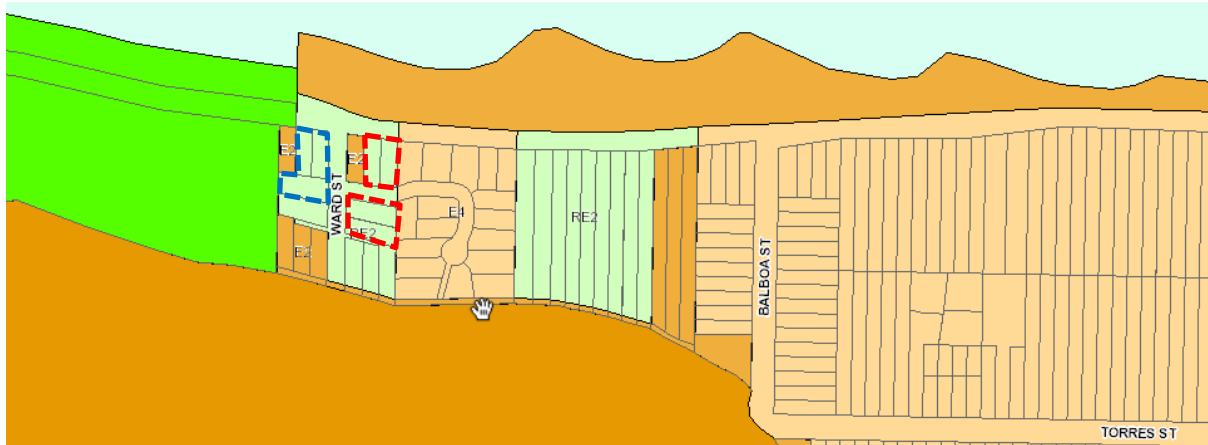


Figure 2: Proposed zoning map - Draft SSLEP 2013

Our previous submission requested that the subject sites be included in the E4 – *Environmental Living* zone under the *Draft SSLEP 2013* which would allow, inter alia, dwelling houses to be constructed with development consent. In essence, this request was based on the following:

- demonstrated lack of demand for tourist related accommodation within Kurnell;
- abundance of land zoned for this purpose and consequent lack of feasibility to develop land for this purpose;
- the clear shortfall in available residential accommodation in Kurnell;
- the unsuitable location of the subject properties for amplification of tourist related facilities and accommodation;
- the requested E4 zone would continue to permit ‘bed and breakfast accommodation’ which would provide the ability for tourist accommodation if the market dictated;
- permissible uses under the E4 zone would have far less environmental impact than some uses permissible under the proposed RE2 zone such as, entertainment facilities, environmental facilities, hotel or motel accommodation, registered clubs, restaurants or cafes;
- The requested E4 would be consistent with the adjoining land subdivision to the east which is currently being released for sale and would continue this zone up to the interface with the Towra Point Aquatic Reserve;
- Nos. 300 and 302 Prince Charles Parade and Nos. 2-4 Ward Street are included under a community title with the land subdivision to the east (Silver Beach Estate). Inclusion of two separate zones (RE2 and E4) within the estate, and use of these properties for quite different land use purposes, would present challenges in terms of management of the community;

Council staff's report includes a detailed discussion of our previous submission and reaches two conclusions:

- 1) Nos. 4 Ward Street, 6 Ward Street, 300 Prince Charles Parade and 302 Prince Charles Parade could be rezoned as E4 Environmental Living as these lots are currently within the 20-25 ANEF contours and would rely on design to mitigate noise impacts. However, further discussion with the Department of Planning regarding the 2007 “Land Use Safety Study – Kurnell Peninsula” is required;
- 2) No. 1 Ward Street and Lots 306 and 308 are best suited to the RE2 zoning based on the constraints from the 2007 “Land Use Safety Study – Kurnell Peninsula” and the impact of aircraft noise as the land is within the 25-30 ANEF.

We now address each of these each of these conclusions, in the context of land that is “east of Ward Street” and land that is “west of Ward Street”:

Land East of Ward Street

Residential use is permitted under the current Kurnell REP within the 20-25 ANEF contour and the Draft LEP similarly permits residential use within this contour subject to meeting the Australian Standard for Aircraft Noise Intrusion.

Whilst Clause 6.7 – Development in Areas Subject to Aircraft Noise will apply to these sites by virtue of them being on land affected by “20 ANEF contour or greater”, we note that the provision of sub-clause 3 to not permit certain land uses on land affected by ANEF 25 or greater would not apply to the subject land. Notwithstanding, development would be subject to subclause (5) which requires that it be demonstrated that any proposal would meet AS 2021—2000, *Acoustics- Aircraft noise intrusion-building siting and construction* with respect to interior noise levels.

Clearly, these standards could be met by new development on these properties and therefore zoning of the land need not preclude this development type on the basis of aircraft noise. Staff would appear to agree with this, stating in the report on the previous Draft LEP that *“these lots are currently within the 20-25 ANEF contours and would rely on design to mitigate noise impacts”*.

In relation to the 2007 “Land Use Safety Study – Kurnell Peninsula”, we note that this is a 6 year old study that does not take into account decommissioning of the Caltex refinery. Further, Clause 6.8 – Development on Kurnell Peninsula expressly prohibits certain types of development on land shown as Kurnell Village on the Activity Hazard Risk Map (within which the subject site and the whole of the residential part of Kurnell is situated).

Firstly, the requested E4 zone does not permit any of these uses and therefore would not result in any conflict with Clause 6.8. Secondly, the entire Kurnell Peninsula is subject to the provisions of Clause 6.8 ie. all of the residentially zoned land which allows for dwelling houses. It is therefore ludicrous to suggest that the subject properties present any difference in risk compared with other land that immediately adjoin the subject lots where dwelling houses are permitted. Finally, Nos. 300-302 Prince Charles Parade were included in land subject to DA07/1448 approved on 24 October 2008 for construction of 12 units to be used as tourist accommodation. The intended use of these allotments for single dwellings would therefore result in similar or in fact reduced number of persons on these properties that if the approved development (or new development for this purpose) proceeded.

Finally Clause 6.8 (4) provides further opportunity for Council to consider “up to date” reports by the Department relating to risk in assessment of a development application. In our view, zoning of the land should certainly not pre-empt findings of any future reports so as to preclude certain uses that would otherwise be acceptable.

Accordingly, it is our view that there is absolutely no impediment to inclusion of the land east of Ward Street in the E4 Environmental Living Zone. The proposed zoning would, in our view, have significant benefits as summarised on Page 1 of this submission (and in our earlier submission).

Land West of Ward Street

The commentary included in staff’s report on the previously exhibited Draft LEP states that residential development is “prohibited where the ANEF is greater than 25. This would appear to be a reference to

the Kurnell REP which will effectively be replaced by the Draft LEP. The Draft LEP takes a different approach to development affected by aircraft noise and does not prohibit all residential development where the ANEF is greater than 25.

It is true that Clause 6.7 does not permit dual occupancies, multi dwelling housing, secondary dwellings, seniors housing and shop top housing is not permitted where the ANEF contour is more than 25, however this does not extend to single dwellings. In fact subclause (4) of Clause 6.7 expressly states that dwelling houses, amongst other uses, may be permitted provided it is satisfied that the development will meet AS 2021—2000, Acoustics- Aircraft noise intrusion- building siting and construction with respect to interior noise levels.

Sub-clause (5) further states that before determining a development application for development to which Clause 6.7 applies, the consent authority must be satisfied that the development will not result in an increase in the number of dwellings or people affected by aircraft noise. It is our view that sub-clause (5) would inherently be satisfied by satisfying AS 2021-2000. If not, we note that DA09/0306, approved on 24 August 2009 for construction of a tourist facility consisting of 7 units, a café and 8 lot strata subdivision at 1 Ward Street and 306-308 Prince Charles Parade can clearly be deemed to expose more people to aircraft noise.

We further observe that despite the staff comments about not allowing residential dwellings in the 25-30 contour, land between Dampier Street and Balboa Avenue is zoned for residential development and is in the ANEF 25-30 contour. We would assume that new residential development would be supported here (such as on vacant lots like 10-12 Balboa Street). It is our view that like any noise or odour mapping, ANEF contour mapping is a little arbitrary to the extent of relying on "line thickness" marking what is in and what is outside of contours. This is certainly the case in this situation where one side of Ward Avenue would permit construction of a dwelling yet the other side would not.

In our opinion, a more sensible approach would be that any dwellings on these sites is designed to meet the Australian Standards as mandated by Clause 6.7 (which again we emphasise prohibits certain uses but not dwelling houses). There are only 3 properties west of Ward Street on Prince Charles Parade subject to this request, which all form part of a development site for tourist accommodation which is in fact one of the uses that is not permitted in the 25-30 ANEF contour! Accordingly, it would make sense (rather than adhering rigidly to arbitrary noise mapping) to continue the E4 zone approximately 50m further to the west rather than excluding three properties.

Finally, the ANEF mapping is currently under review as part of the Sydney Airport Master Plan. Draft documentation that has been publicly exhibited, comparing the existing ANEF 2029 with the ANEF 2033 shows that in almost all cases, the area of land around Sydney airport affected by the ANEF contours will be reduced and in some LGAs significantly reduced. This reduction in the Sydney airport footprint is occurring because of new generation quieter, cleaner and more fuel efficient aircraft that will continue to replace older noisier aircraft over the next 20 years. The comparison mapping in relation to the subject site actually shows a defined shift in the 25-30 contour line to the west. Based on the mapping available to us the cadastre is not possible to define however it may well be that the revised mapping changes the ANEF affectation for the subject lands.

In this context, we again reiterate that subject to design of future development complying with the relevant Australian Standard, economic use of the land west of Ward Street (which is subject to a development consent for tourist accommodation that would accommodate a higher population density than single dwelling houses) should not be precluded on the basis of ANEF mapping that is in the process of review and is likely to improve in favour of our client.

Accordingly, it is our view that there should also be no impediment to inclusion of the land west of Ward Street in the E4 Environmental Living Zone. Like the land to the east of Ward Street, the proposed zoning would have significant benefits as summarised on Page 1 of this submission (and in our earlier submission).

It is therefore requested that Council should reconsider the proposed *RE2 – Private Recreation* zone under the Draft LEP as it does not best reflect the real nature of Kurnell which has not become, and is unlikely to become, the tourist destination that once may have been envisaged.

Given the high demand for residential accommodation and shortfall in this regard it is considered inappropriate to stifle future development of the area through limiting development potential to tourist uses for which little demand exists. Instead, it is more appropriate to introduce a more flexible zone such as the *E4 – Environmental Living* zone that will continue to respect the environmental nature of the area whilst also addressing the clear demand for residential uses. Technical matters related to ANEF aircraft noise and evacuation risk can be dealt with at a Development Application stage.

We respectfully request that if for procedural reasons these changes cannot be made to the current Draft LEP due to the need to re-exhibit the plan, that the changes be incorporated in the first amendment to the new LEP, which is likely to be soon after gazettal.

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

**ATTACHMENT 1: SUBMISSION BY PLANNING INGENUITY IN RELATION
TO PREVIOUSLY EXHIBITED DRAFT LEP 2013**