PLANNING
INGENUITY

Our Ref: 9999/13lt 17 February 2014

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

Dear Marian,

RE: SUTHERLAND DRAFT LEP REVIEW
PLANNING INGENUITY GENERAL SUBMISSION

By way of background, Planning Ingenuity made a general submission to Council as part of the initially exhibited Draft LEP raising a number of administrative issues with regards to Council's approach to development in Foreshore Areas, Landscaped Area controls and Shop Top Housing provision. The detailed submission is attached to this letter.

As a professional town planning consultancy, Planning Ingenuity have prepared 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 number of matters affected by Mayoral Minute No. 6/13-14 dated 29 July 2013.

We request that the panel take into consideration these pertinent issues when considering feedback to Council on this Draft LEP, in order to facilitate a more simple and transparent local planning process. Should you wish to discuss any of the above, please feel free to contact the undersigned.

Yours faithfully,
Planning Ingenuity Pty Ltd

J. Mead

Jeff Mead
DIRECTOR

ANNEXURE A

COPY OF INITIAL SUBMISSION ON DRAFT SUTHERLAND LEP 2013

PLANNING INGENUITY

Our Ref: 0081/13lt1 30 April 2013

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

Dear Sir,

SUBMISSION ON THE DRAFT SUTHERLAND LEP 2013
PLANNING INGENUITY PTY LTD

1. INTRODUCTION

We refer to the *Draft Sutherland Shire LEP (DSSLEP) 2013* which is on exhibition from 19 March to 1 May, 2013. As you are aware, our firm works extensively in the Sutherland Shire representing an extensive base of landowners and stakeholders with property interests. Planning Ingenuity has been involved in wide range of development applications and planning proposals. As a result we are aware of the local environment, particular sensitivities, and are well versed in the application of the planning controls to a wide range of development types. Provided in this submission are comments on some matters that, as practitioners, we believe require further consideration in Draft SSLEP 2013.

2. CLAUSE 6.2 - DEVELOPMENT IN FORESHORE AREAS

We understand that it is Council's intent to simplify the controls relating to foreshore areas under DSSLEP 2013 by providing a foreshore building line a line marked on a map. However, as stated in the *Foreshore Building Line Fact Sheet,* the location of the FBL under DSSLEP 2013 is identified as if it was determined by survey utilising the definition of the FBL under SSLEP 2006. As such, the location of the FBL under DSSLEP 2013 relies on a setback from the *deemed mean high water mark* under SSLEP 2006 (mean high water mark as at 24 April 1980). The mapping exercise, in identifying the foreshore building lines on a map, is extensive and vulnerable to errors and discrepancies. We have prepared some submissions on behalf of clients in relation to the DSSLEP 2013 which have dealt with specific discrepancies and we highlight the need for flexibility in the application of the foreshore building line controls.

In addition, Clause 6.2(2) of DSSLEP 2013 relates to foreshore building lines and provides limitations on development in a foreshore area in the form of prohibitions. It is our opinion that the provisions relating to the *extension or alteration of a dwelling house wholly or partially in the foreshore area*, Clause 6.2(2)(a) carries forward, and increases, the ambiguous and overly legalistic nature of Clauses 17(8) and 17(9) of SSLEP 2006.

These clauses were included in SSLEP 2006 to provide flexibility to respond to site specific scenarios of an existing dwelling (or dwelling house) encroachment, however, were routinely given a narrow and legalistic interpretation by Council. Council's interpretation of the flexibility inherent in these Clauses has been tested in several Land & Environment Court proceedings which have led to, in our view, even further ambiguity in relation to application of foreshore building line clauses. In *Geelan v Sutherland*

Shire Council [2011] NSWLEC 1375, the Acting Senior Commissioner commented that the narrow approach to the interpretation of a dwelling in Clause 17(9)(b)(i) would:

> "*preclude the practical and sensible use of the flexibility available in cll 17(8) and 17(9).*"

We have concerns that the draft clause (below) requires the same level of interpretation and subjectivity in the use of the wording "***footprint*** of an extension or alteration will not extend any ***further forward*** of the…". We are concerned that the term *footprint* is not defined DLEP 2013 and the interpretation of ***further forward***, as opposed to "further sideways" is subject to potentially narrow and legalistic interpretation.

> " *(2) Development consent must not be granted for development on land in the foreshore area except for the following purposes:*
>
> *(a) the extension or alteration of an existing dwelling house wholly or partly in the foreshore area if the footprint of the extension or alteration will not extend any further forward of the foreshore building line than the footprint of the existing dwelling house on the land,"*

We contend that due to the complexity of Clause 6.2(2), the wide variations in interpretation and the fact that mapping will now be "locked in" for the foreshore building line, that the provisions of Clause 4.6 *Exceptions to Development Standards* should be extended to Clause 6.2 relating to foreshore building lines. In doing so, Council will provide flexibility in the application of the Clause to ensure that merit decisions inform appropriate development of the foreshore area in response to context so far as development complies with the Clause objectives. The foreshore controls do not, in our opinion, warrant prohibitive and inflexible controls.

Furthermore, Clause 6.2(2)(c) permits various permissible development in the foreshore area in a similar manner as *excluded building works* were permissible under SSLEP 2006. The subclause is provided as follows:

> " *(2) Development consent must not be granted for development on land in the foreshore area except for the following purposes:*
>
> *(c) development for the purposes of boat sheds, drainage, sea retaining walls, wharves, slipways, jetties, waterway access stairs, inclinators, in-ground swimming pools (that are no higher than 300 millimetres above ground level at any point), cycleways, walking trails or picnic facilities,"*

The subclause fails to include *utility installations, landscaping, works to enable pedestrian access* (generally)*, or barbecues*. These works are currently excluded works under SSLEP 2006 and the proposed prohibitions in the foreshore area are considered to be unreasonable and an unusual shift in the consistently applied controls relating to the foreshore area. The result of this draft clause is that any existing excluded building work not listed in the above subclause would have to rely on existing use rights for additions, expansions or intensifications. Of particular interest is the prohibition of *landscaping* in the foreshore area, this has clear implications as it is repugnant to the Clause objectives and the objectives of the foreshore zoned land.

We reiterate our concerns in relation to the interpretive nature of the 6.2(2)(a) as follows:

> *(d) the erection of a building in the foreshore area, if the levels, depth or other exceptional features of the site make it appropriate to do so."*

This Clause would seem to be an inbuilt flexibility provision, however, provides very limited direction as to what is "appropriate" and would seem to allow the erection of any "building", within the foreshore area pursuant to the definition of a "building" under the act as follows:

> *" **Building** includes part of a building, and also includes any structure or part of a structure (including any temporary structure or part of a temporary structure), but does not include a manufactured home, moveable dwelling or associated structure or part of a manufactured home, moveable dwelling or associated structure."*

In summary, the newly drafted foreshore provisions add even more complexity and ambiguity than the existing provisions. Our experience has been that significant confusion in this regard for Council staff and applicants alike has led to expensive and adverse processing of what, in our view, could be readily simplified.

3. CLAUSE 6.12 - LANDSCAPED AREA

Our firm has undertaken many child care projects under the provisions of SSLEP 2006. The application of the same landscaped area provisions to child care uses as residential development, in our view, is unworkable when taking into account the operational requirements for a centre and the objectives for outdoor space promoted by DECs.

We are of the opinion that in the case of a child care centre, landscaped area should include artificial turf and soft fall areas. Provided that landscape design takes into account streetscape appearance and that drainage matters are dealt with in accordance with Council requirements, the inflexibility applied to design of outdoor space for this specialised use is counterproductive. Outdoor play areas of many centres, including Council operated centres, have over time been modified to remove natural landscaping in order to provide more functional spaces. For example, natural turf areas are wet and can be muddy through winter months and often fail over time with continual use.

Whilst the reduction in landscape requirement to 30% for residential zones is of assistance, it is our view and the view of many of our child care operator clients, that a use specific provision should be applied to child care centres.

In addition, we have concerns with the ambiguous and interpretive nature of Clause 6.12(4) as follows:

> *" (4) Despite subclause (2), the minimum landscaped area on any land may be reduced by 5% of the required percentage as shown on the Landscape Area Map, if a contributory tree within the typical development zone (building platform) is accommodated on site."*

We are concerned that the terms *contributory tree* and *typical development zone (building platform)* are not defined in the Draft LEP and the success of the clause is in question due to the difficulty in qualifying for the landscaped area concession.

4. SHOP TOP HOUSING

The definition of "shop top housing" which is taken from the Standard Instrument LEP presents confusion and in our view potential issues with permissibility to achieve the objectives intended for mixed use development. The definition states that "***shop top housing*** means one or more dwellings located above ground floor retail premises or business premises". This definition would appear to preclude situations where a larger development site may have a horizontal rather than vertical mix of

uses ie. ground level commercial with residential above sleeving a street with a second residential building behind.

Obviously in some of these situations, commercial uses would not be appropriate at the rear of a site and we are sure that the intent of the definition is not to promote this. A less extreme example may be where upper level residential uses cantilever beyond ground level commercial uses. It is our view that the definition needs to be modified or that zoning tables which include shop top housing should be amended to refer to permissible uses in a different manner such as mixed use development.

CONCLUSION

We thank you for the opportunity to comment on Council's Draft LEP and would welcome any further discussions on the above matters.

Yours faithfully,
Planning Ingenuity Pty Ltd

J. Mead

Jeff Mead
DIRECTOR