

Miscellaneous Report No. M26/11



Subject: Draft Randwick Comprehensive Local Environmental Plan 2012 - Referral to Department of Planning and Infrastructure for public exhibition

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Executive Summary

Randwick City Council is preparing a draft comprehensive Local Environmental Plan (LEP) and draft comprehensive Development Control Plan (DCP).

The draft LEP has been prepared based on the preparation and exhibition of 6 discussion papers (a non-statutory consultation process) addressing all planning issues across the city. Separate Council reports of 8 and 22 November 2011 on these discussion papers details the consultation and responses.

This report outlines and addresses the statutory requirements for preparing the draft Comprehensive LEP, under the *Environmental Planning and Assessment Act, 1979*, the consistency with relevant state strategies, policies and guidelines, the required consultations with government agencies, community consultations to date, key issues including rezoning requests made as part of the discussion paper process, and proposed content of the draft Comprehensive LEP, including zones, definitions, clauses and planning controls such as heights and floor space ratio.

A copy of the proposed draft written LEP instrument is at **Attachment A** and a copy of the proposed draft LEP maps is at **Attachment B**, with LEP explanatory notes at **Attachment C**.

This report recommends that Council resolve to submit the draft LEP seeking authorisation from the Department of Planning and Infrastructure (the Department) for public exhibition.

Background

The preparation of the Comprehensive LEP and DCP is a legislative requirement under the Standard Instrument (Local Environmental Plans) Order 2006.

The comprehensive LEP is to be an entirely new stand alone plan which will repeal all existing and draft Randwick LEPs. The comprehensive DCP will consolidate and stream line existing DCPs into a single plan. These plans are guided by the key directives of the Metropolitan Plan for Sydney 2036 (incorporating the draft East Subregional Strategy) and Council's own strategic 20 year City Plan and key strategic studies.

Randwick LEP 1998 (Consolidation)

Council at its meeting of 12 September 2006, resolved under the *Environmental Planning & Assessment Act 1979* (EP&A Act) to prepare an Administrative LEP (Crs. Nash/Belleli). The Administrative LEP, now known as Randwick LEP 1998 (Consolidation) (or RLEP), was prepared as an interim step towards the preparation of the Comprehensive LEP and to assist in simplifying that comprehensive review process.

The RLEP made minor clarifications, corrections, updated definitions, clauses, and mapping into one consolidated LEP.

A progress report was endorsed by Council in December 2007 (Crs Matson/Hughes) on the preparation of the comprehensive LEP and DCP, and specifically on the proposed preparation of the land use discussion papers.

The draft Administrative LEP was prepared and exhibited over 2007; it was adopted by Council on 25 March 2008 (Crs Andrews/Kenny) and subsequently gazetted on 15 January 2010.

Draft Randwick Comprehensive LEP & DCP 2012

At its meeting of 24 June 2008, the Council formally resolved under s54(4) of the EP&A Act 1979 to prepare a comprehensive LEP based on the State Government's Standard Instrument (SI) (Crs Hughes/Nash).

Land Use Discussion Papers

Preparation of the draft comprehensive LEP was informed by a series of 6 land use discussion papers for Industrial lands, Special Uses, Open Space and Environment, Education and Health Specialised Centre Precinct, Business Centres and Residential Uses. These were exhibited for community comment throughout 2010 and 2011.

The discussion papers provided an additional, non-statutory consultative process prior to the statutory exhibition process of the draft comprehensive LEP. Feedback from the consultations on these papers was reported to the Council on 8 and 22 November 2011, in reports (for the Specialised Centre discussion paper (Crs Matson, Smith) and for the remaining 5 papers (Crs Andrews/Matthews). The draft LEP addresses these resolutions, with full copies of each resolution in **Attachment E2**.

The draft LEP therefore incorporates relevant land use and planning controls from each of the land use discussion papers, as amended following consultations, and as reported to Council.

The draft DCP is currently being prepared and will incorporate advice, research and feedback from community consultations on the discussion papers and it is anticipated to be reported to Council for public exhibition in 2012.

LEP preparation process

In preparing the comprehensive LEP, the following sections of the EP&A Act must be addressed:

S54 – resolution to commence preparation of the LEP

S55-61 & s63 – (not applicable)

S62 – consultation with relevant government agencies

S64 – submission to the Department of draft LEP with statement on consultation with government agencies (WE ARE HERE)

S65 – issue by the Director-General of a certificate to enable public exhibition of the draft LEP for a minimum of 28 days

S66 – public exhibition

S67 – making of submissions

S68 – consideration of submissions in a report to Council, seeking to finalise and forward the draft LEP to the Department

S69 – Director-General report

S70 – making of the LEP

Pecuniary Interest exemptions

In the preparation of this report, Councillors were advised that if section 458 applications are required under the *Local Government Act 1993*, then Council should follow the (then) Department of Local Government Circular to Councils 06-62 'Applying for pecuniary interest exemptions' under section 458. This will also need to be considered by Councillors in the reporting of the final draft LEP.

1.0 Consultations

1.1 Section 54 consultation

On 24 June 2008, Council resolved under s54 of the EP&A Act 1979 to prepare a comprehensive LEP based on the State Government's Standard Instrument (SI). In response the Department confirmed on 19 August 2008 that Council can continue with the preparation of the draft comprehensive LEP and that a study was not required. Council was also requested to provide a statement indicating how the section 117 directions are addressed, a summary and justification of proposed changes to existing provisions and advise on how the draft LEP responds to the Metropolitan and Subregional strategies. This report provides this information.

With regard to planning for employment precincts, the Department sought the preparation of a precinct plan for the Randwick Education and Health Specialised Centre in line with requirements identified in the Metropolitan Plan and draft East Subregional Strategy and that a suitable planning framework be put in place which would also provide input to the draft comprehensive LEP. This has been undertaken, as reported to Council on 8 & 22 November 2011.

A copy of the Council's S54 resolution and the Department's correspondence is in **Attachment E1**.

1.2 Council resolutions

A copy of Council's resolutions relevant to the draft comprehensive LEP are in **Attachment E2**.

1.3 Consideration of s62 submissions

Formal consultation under s62 of the Act was required with relevant government departments and other bodies in the preparation of the draft LEP. This was undertaken in 2008 and supplemented in 2010/11 through the land use discussion papers. **Attachment D** sets out the matters raised and Council's response.

The draft LEP addresses the public agency requests with the following exceptions primarily where different State agencies have provided different positions on the preferred zone, uses or clause being applied to specific parcels of State land.

These are, in summary:

- The Crown Lands Division (CLD), as the land owner, has requested that cemeteries be permitted on the Phillip Bay Chinese Market Gardens site given that the adjacent Botany Cemetery Trust is investigating the suitability of expanding the cemetery into the market gardens site. The Office of Environment and Heritage (OEH) has supported the Council's proposed rural zone, to protect the State listed heritage item. Given these differing State agency positions and following liaison with the Department on the approach forward, it is recommended that given the site's State

heritage significance, cemeteries not be permitted on the site, that the proposed rural zoning be included in the draft LEP and that the Trust's investigations (when completed) should be referred to the OEH for advice on any implications for the heritage values of the site and suitable zone/uses. It is noted that, Council, in considering the land use discussion papers on 22 November 2011, resolved to seek a meeting and site inspection with the CLD and the Trust on this matter and this is being organised.

- The State Transit Authority (STA) has requested greater heights and floor space ratio (FSR) for its land at 1-11 Rainbow Street, Kingsford. The height and FSR proposed under the draft LEP are consistent with the adjoining Local Centre (B2) zone for Kingsford town centre (Height of 24m and FSR 3:1). This was recommended by an independent expert study as the land also includes the adjacent Council Rainbow Street site.
- The STA has suggested that a narrow strip of its own, undeveloped land along Bunnerong Road, be partially developed for residential and partially retained as open space (consistent with the current zones) in collaboration with adjoining government land owners (RTA & CLD). This narrow corridor contains extensive areas of the endangered community Eastern Suburbs Banksia Scrub and the endangered population *Acacia Terminalis subsp. terminalis*. Both these habitats have NSW Recovery Plans which aim to ensure the long-term survival of the subspecies by promoting in situ conservation. The discussion paper had proposed a Public Recreation zone. The OEH noted the specific environmental significance of this location and has recommended an Environment Protection (E2) zone for the area, which is proposed in the draft LEP.
- The STA has requested a medium density residential or mixed use/commercial zone for its land at 31R Prince Street, Randwick. The site is a corner triangle of approximately 700 square metres and adjoins several residential flat buildings and a State listed heritage substation. The discussion paper had suggested either a residential or (preferred) Public Recreation zone. Residential/commercial development is not supported given the location and configuration of the land, the benefits of retaining open space in a relatively dense area of Randwick, the support received from the NSW Heritage Branch for a Public Recreation (RE 1) zone, the presence of the State heritage significant substation adjoining and concerns raised by Ausgrid to a residential zone adjoining the substation. The land also extends the former tramway/pedestrian link. The draft LEP proposes a Public Recreation (RE1) zone for the land.
- Sydney Port has requested a referral clause relevant to the Port Botany Radar System. This is inconsistent with the Department's advice on reducing concurrence clauses and has not been included in the draft LEP.

Officers of Council will continue discussions with Government agencies and the Department to resolve any outstanding matters. It is noted also that in all instances, where the proposed approach differs from that of the government land owners, the Department has been advised and will work with Council and relevant government agencies on resolution of the issues.

It is noted that **Attachment D** also includes a late submission received from the NSW Department of Housing on 22 November 2011. This requested a number of amendments to the zones for their specific properties to match the current size and scale of development. A table for each property and recommendations are made in **Attachment D**.

1.4 Concurrence with other agencies

The *Environmental Planning and Assessment Regulation 2000* states that a draft LEP cannot require a public authority to acquire land unless the authority has notified Council of its concurrence to the inclusion of such a requirement in the plan.

The draft LEP Land Reservation Acquisition Map, and the associated clause 5.1 of the written LEP instrument, places land acquisition obligations upon the Roads and Traffic Authority (RTA) and Council. In the case of Council the land is for local open space identified as Public Recreation (RE1) but privately owned and for the RTA, where privately owned land is identified as Classified Road (SP2).

Council will further consult with the RTA during exhibition of the draft LEP on the proposed zones for all its holdings.

1.5 Supporting studies, discussion papers and preliminary community consultation

As background to the preparation of the draft LEP, 6 discussion papers were prepared and exhibited for community feedback. These comprise Industrial; Business Centres; Special Uses; Open Space and Environment; Residential; and the Randwick Specialised Centre (University/ Hospital Precinct) papers.

Each discussion paper reviewed the current zones and planning controls, future needs and trends, the directions from the State Government's Metropolitan and draft Subregional Strategy and relevant local strategic plans and studies, such as the Randwick City Plan, Economic Activity Study, Recreation Needs Study, Affordable Housing Strategy, Cultural Plan, City wide Transport Study and Heritage Studies 2002/03 and 2010/11. Issues such as heritage and sustainability, were incorporated into each paper.

The discussion papers have provided an additional non-statutory consultation measure prior to exhibiting the draft LEP. Public exhibition of each paper ran for two months with the exception of the Specialised Centre paper which was exhibited for six months. Each discussion paper was also submitted to the Department for review.

The feedback from these papers has informed the content and direction of the draft comprehensive LEP, as detailed in the Council Report on the land use discussion papers and feedback from public consultations, considered at the Council meeting of 22 November 2011, and on the Specialised Centre discussion paper and feedback on its consultations, reported separately to the Council meetings of 8 and 22 November 2011. This paper differs from the other land use discussion papers as it covers a specific location rather than a land use type.

A total of 413 written submissions were received in response to the exhibition of the papers and more than 143 comments were received via the on-line forum. The following table outlines the breakdown of submissions per discussion paper.

Type of submissions	Industrial	Special uses	Specialised centre	Open space	Business centres	Residential
Individual	2	1	75	82	86	35
Form letter from residents	0	0	22	16	3	0
Interest groups and organisations (e.g. precincts, trusts, consultants for owner groups etc)	1	0	18	25	9	8
Government agencies	0	7	6	9	4	4
Total	3	8	121	132	102	47

1.6 Community Consultation Program for the draft comprehensive LEP

The authority to exhibit the draft LEP lies with the Department, who will review the draft LEP to ensure it complies with statutory requirements prior to being placed on public exhibition.

The exhibition of the draft LEP provides an important statutory step in considering the proposed land uses, their permissibility and controls and will provide the community another opportunity to comment on land use planning and development within the Council area.

A consultation strategy has been developed for the exhibition of the draft LEP and will include:

- Exhibition period for a statutory minimum of 28 days (40 days proposed)
- Display of the draft LEP, maps and supporting information on Council's website and in hardcopy form at the Administration building and libraries
- Dedicated email address for submissions
- Newspaper advertisements and Mayoral Columns
- Direct written notification to existing databases of interested persons & those directly affected by changes, such as rezoning requests
- Councillor briefings by way of update reports, briefing meetings, etc
- Resident precinct group and Chamber of Commerce information packages
- Presentations to combined resident precinct and chamber meetings
- Community open days
- Static and roving information displays and statutory public exhibitions
- Public hearings, as required (following exhibition).

Staff will also be available to talk to residents and interested persons about the draft LEP.

1.7 Consultation concerning threatened species

Section 34A of the EP&A Act requires Councils preparing a draft LEP to consult with the Director-General of the Office of Environment and Heritage(OEH) if, in the opinion of the relevant authority, critical habitat or threatened species, populations or ecological communities, or their habitats, will or may be adversely affected by the proposed instrument. For the purposes of the consultation, the Council is to provide such information about the proposed draft LEP as would assist in understanding its effect (including information of the kind prescribed by the regulations).

Council has provided detailed advice to OEK through the land use discussion paper consultation process and has carefully considered their advice. Refer to **Attachment D** for detailed responses to agency submissions.

2.0 General Summary of the proposed LEP provisions

The draft comprehensive LEP is a template Standard Instrument (SI) LEP with:

- compulsory and optional clauses, objectives, land uses and terms (as set out in the dictionary),
- 'model local clauses' drafted by the Department and available to all Councils in NSW (while not compulsory), and
- specific local clauses prepared in consultation with Department for the Randwick Council area.

The draft LEP therefore incorporates existing clauses from the current Randwick LEP (Consolidation) 1998 and new clauses (both compulsory and optional). A comparative list of the new SI LEP clauses with Randwick LEP (Consolidation) 1998 is at **Attachment C**.

Proposed LEP changes

An explanation of the content of the draft LEP and how it relates to the current Randwick LEP 1998 (Consolidation) is at **Attachment C**. These explanatory notes provide a clause by clause summary of the draft comprehensive LEP drawn on the explanation provided in the Department's PN 11-001 *Preparing LEPs using the Standard Instrument: standard clauses*.

In summary, the draft LEP provides for the following:

- Zoning and permissible uses transferred to the equivalent zones/uses in the Standard Instrument.
- One new rural zone (RU4 Primary Production Small Lots) for the Phillip Bay Chinese market gardens site.
- Rezoning of specific sites, generally to reflect zoning mismatches or rezoning requests, where suitable.
- Mapping of height and floor space ratio (FSR) controls where they exist for land in the Council area. Continued reliance on building envelopes controls in the DCP for certain town centres.
- New design excellence clause for development over 15m, on sites over 10,000 square metres or where a site specific Development Control Plan (DCP) is required.
- Foreshore building line in the draft LEP instead of the DCP.

- New Terrestrial biodiversity clause and the mapping of the endangered Eastern Suburbs Banksia Scrub and *Acacia terminalis subsp. terminalis* (Sunshine Wattle).
- New clause for the location of sex services premises to ensure a reasonable level of separation between these premises, specified land uses and places regularly frequented by children.
- Revision of existing clauses relating to the preparation of a DCP (master planned sites), use of existing purpose built shops in residential areas, and existing residential buildings in business zones.
- Revised land use and built form controls for part of the Maroubra Beach town centre (following a detailed study and consultation).
- Increase in the area of land zoned for Public Recreation, National Park and Environment Conservation.
- New additions, deletions from and modifications to Heritage Item listings.
- Minor boundary adjustments to 7 of the existing 16 conservation areas (deletions and inclusions); and a new area at Caerleon Crescent.
- Identification of new landscape heritage items in the public domain (e.g. sandstone walls).
- New clauses to address essential services, acid sulphate soils, flooding, stormwater management and airspace operations.
- Exempt and complying development clause (now listed in the LEP rather than DCP, and only if no overlap with the Exempt/Complying Codes SEPP).

Zones

The draft LEP introduces the following zones for their equivalent existing zone:

Randwick LEP 1998 (Consolidation)	Draft Randwick LEP 2012
RESIDENTIAL	
Residential 2A	R2 Low Density*
Residential 2B	R3 Medium Density*
Residential 2C	R3 Medium Density*
Residential 2D	R1 General Residential*
BUSINESS	
General Business 3A	B2 Local Centre*
Local Business 3B	B1 Neighbourhood Centre*
INDUSTRIAL	
Industrial 4A	IN2 Light Industrial
Industrial 4B Port Botany	Major Development SEPP (No LEP zone)
SPECIAL USES	
Special Uses 5	SP1 Special Activities SP2 Infrastructure Adjoining zones (B1, B2, E2, IN2, R1, R2, R3 & RE1)

OPEN SPACE	
Open Space 6A	RE1 Public Recreation
Private Open Space 6B	RE2 Private Recreation
ENVIRONMENT PROTECTION	
Environmental Protection – natural heritage area 7	E2 Environmental Conservation
National Parks 8	E1 National Parks and Nature Reserves
NEW ZONE/S	
	RU4 Primary Production Small Lots

* Height, FSR and minimum lot size maps may also apply to these zones.

Clauses

The following new clauses (no equivalent clause in RLEP) are proposed within the draft comprehensive LEP:

- Design excellence
- Foreshore building line (from DCP)
- Acid sulphate soils
- Airspace operations
- Flood planning
- Stormwater management
- Location of sex services premises
- Certain residential accommodation in business zones
- Calculation of floor space ratio
- Development near zone boundaries
- Architectural roof features

These new clauses will enhance design considerations for development to ensure that the built environment is well designed, sustainable, and protects the natural environment and the amenity of an area.

And incorporates the following replacement clauses (equivalent to existing RLEP clauses):

- Temporary use of land
- Minimum subdivision lot size
- Height of buildings
- Floor space ratio
- Terrestrial biodiversity
- Development in areas subject to aircraft noise
- Essential services
- Business premises in residential zones
- Site specific development control plans
- Foreshore scenic protection areas

Maps

Under the Standard Instrument template if a Council is to have height or floor space ratio controls, these must be mapped as part of the LEP.

The draft LEP comprises the following 12 maps (see **Attachment B**):

- Land application
- Land zoning
- Height of buildings
- Floor space ratio
- Lot size
- Heritage
- Land acquisition
- Foreshore scenic protection and foreshore building line
- Acid sulphate soils
- Biodiversity
- Flooding
- Key Sites

3.0 Consistency of the draft comprehensive LEP with statutory plan making requirements

3.1 Consistency with Metropolitan Plan and Draft East Subregional Strategy

The draft comprehensive LEP is consistent with the Metropolitan Plan for Sydney 2036, and the draft East Subregional Strategy key directions in that it:

- a) Assists achievement of the housing target of 8,400 additional new dwellings by 2031 (as required by the draft East Subregional Strategy), focused in and around existing town centres and accessible locations.
- b) Promotes housing choice to accommodate a diverse population, including affordable and accessible housing.
- c) Assists achievement of the employment target of 5,900 additional new jobs by 2031 (as required by the draft East Subregional Strategy), focused in and around Port Botany, the University and Randwick Hospitals complex, and town centres.
- d) Supports the Randwick specialised centre with continued growth of the education, health and medical research cluster.
- e) Strengthens the role and hierarchy of our local centres and neighbourhood centres.
- f) Improves sustainable transport opportunities (walking, cycling and public transport services) through location of areas of growth (e.g. centres) on or near strategic bus corridors.

- g) Protects and promotes the City's special coastal environment, open space and cultural assets.
- h) Promotes sustainable development and incorporate actions for climate change and natural hazards.
- i) Reviews and updates heritage controls to assist in preserving the local heritage character of some suburbs.
- j) Facilitates good urban design.

The draft East Subregional Strategy 2007 (which applies to Randwick, Botany Bay, Woollahra and Waverley Councils) translates the broad objectives of the Metropolitan Plan to the sub-regional and local level, including housing and employment targets. The achievement of these targets was noted in the discussion papers reports and will be provided to the Department to show consistency with these State directives.

3.2 Randwick City Plan

The Randwick City Plan, adopted by Council in June 2006 and updated in 2010, sets the strategic direction for Randwick City over the next 20 years. The overarching vision for the Plan is 'to create an environmentally healthy, vibrant and sustainable city where people respect one another and nature, to the benefit of all'. The Plan consists of five broad interrelated themes: A Sense of Community; Places for People; A Prospering City; Moving Around; and Looking After Our Environment.

Preparation of a comprehensive LEP is recognised in the Randwick City Plan as a key tool for its implementation by determining how the City is developed. While not a statutory requirement, the draft comprehensive LEP is consistent with the directions of the City Plan, as was detailed in each discussion paper.

3.3 Consistency with s117 directions

Under section 117 of the EP&A Act, the Minister may direct the form and content of a draft LEP. The Directions were adopted on 19 July 2007 and where relevant to the draft comprehensive LEP, it must be consistent with the Directions or any inconsistencies must be suitably justified.

Each direction sets out how minor inconsistencies with these requirements may be justified and where the Director-General's approval is required. **Attachment E3** provides an assessment of consistency with the section 117 (2) directions considered in the development of the draft LEP.

The draft comprehensive LEP is consistent with the Directions with the exception of the requirement for addressing flood prone land. As detailed in **Attachment E3** Council has a program of flood studies underway which will progressively provide for LEP flood controls.

3.4 Consistency with State Environmental Planning Policies

Draft LEPs are required to be consistent with the range of State Environmental Planning Policies (SEPPs). As detailed in **Attachment E4**, the draft comprehensive LEP is consistent with these Policies.

An exception may arise in relation to State Environmental Planning Policy No. 55 – Remediation of Land if existing churches, schools, and other community facilities

currently zoned special uses are rezoned to an adjoining business or residential zone as stipulated by the Department's Practice Note (see PN 10-001). Only in certain circumstances, such as large strategic sites, or where a special location or operational factors exist, such as University of NSW, the Randwick hospitals campus, Long Bay correctional centre or Malabar sewage treatment plant, can sites retain an equivalent special purpose zone.

Council has sought advice from the Department on retaining these school/Church etc uses under an equivalent Special Purpose zone and the Department has advised that this will require significant justification. There are several important reasons to retain these lands in a Special Purpose zone:

- Under *State Environmental Planning Policy No. 55 Remediation of Land* (SEPP 55) Council, in rezoning land, must be satisfied that the land can be made suitable for the intended purpose, relevant when zoning to a sensitive land use (such as child care centres, seniors housing). Council has written to all land owners in preparation of the land use discussion paper and outlined in the Special Uses paper that rezonings are contingent on the land owner undertaking a preliminary contamination analysis in accordance with SEPP 55. However apart from Government agencies there have been no requests to rezone land nor have any land owners provided a report of a preliminary investigation into these lands. In addition, Council has not undertaken an assessment of these sites for the owners given there are more than 130 sites zoned special uses across the city.
- In relation to public school sites currently zoned special uses, it is considered that these lands should retain a special purpose zone, as the land provides important social infrastructure that facilitates learning and connectivity within communities.
- Changing demographics influence the need for public schools. Randwick has seen the closure and loss of 3 public schools in the last decade. The Department of Education & Communities is now seeking to keep abreast of possible future population growth in school age children to ensure they have the right facilities to serve the population. Retaining a special purpose zone rather than applying an adjoining zone will ensure full and considered debate should any further schools be considered surplus to local needs.
- Additionally, many of the private school and church sites are iconic sites with heritage significance and visual amenity, and are envisaged to continue to be important to the local community. Any future re-use should be considered via the rezoning process and detailed investigations for each site. This includes, for example, sites such as Our Lady of the Sacred Heart School and Monastery, Kensington, Brigidine College, Randwick, and St Judes church and cemetery, Randwick.
- A full investigation into the possible best land use options for these school/church sites has not occurred and it is premature to determine today what may be needed in 10, 20 or 30 years when (or if) the sites may not be required.
- These lands should continue to be zoned special purpose to provide for public purposes; their retention serves the local community, reduces transport costs and can be retrofitted as community facilities when (or if) their educational use is less crucial.

These justifications were detailed in the Special Uses Discussion Paper, which will be reiterated to the Department with the referral of the draft LEP.

3.5 Consistency with relevant LEP Practice Notes

The draft LEP has been prepared generally in accordance with the Department's relevant Practice Notes. These are detailed in **Attachment E5**. Those important for Council owned land are outlined below.

LEPs and Council Land

This best practice guideline has in part been replaced by *PN 09-003 Classification and reclassification of public land through a local environmental plan*. The guideline's implementation ensures transparency in how the draft LEP has dealt with Council owned and managed properties.

This is particularly important given that the draft LEP proposes to rezone and reclassify Council owned land at 13-21 Rainbow Street, Kingsford to a business zone to recognize current uses (primarily car park and markets) and future potential for the site. It should be noted that a public hearing will be held for this rezoning proposal, in accordance with statutory requirements.

In keeping with the aim of the guideline to ensure the planning process is transparent, relevant information will be made available during the exhibition of the draft LEP, including a list of Council owned and managed properties from the current land register with existing and proposed zones.

Classification and Reclassification of public land

The Department advises all councils that the preparation of the comprehensive LEP provides an opportunity to strategically review Council owned land and, if necessary, make changes to the classifications required by the Local Government Act i.e. 'community' (i.e. halls, open space) or 'operational' (works depots etc).

It is proposed under the draft LEP to reclassify the Council car park at 13-21 Rainbow Street, Kingsford to operational, to enable the proposed redevelopment of land in this area for uses such as new public transport facilities, administration centre, commercial and residential development in association with the adjacent State Transit Authority land.

3.6 Consistency with EP&A Act

The draft Comprehensive LEP is being prepared under Part 3 of the EP&A Act, as applying before 1 July 2009 amendments (given the Council resolution to commence the LEP in June 2008 under the EP&A Act). It has been prepared in consultation with the Department and having regard to submissions received from public authorities under section 62 of the EP&A Act.

The draft LEP is being prepared to comply with section 33A of the EP&A Act which establishes the standard form and content of a LEP. In complying with the Standard Instrument, the draft LEP incorporates State-wide mandatory and optional clauses as well as local clauses that are specific to the Randwick Council area. The maps have been prepared in accordance with the Department's requirements for LEP maps and GIS data.

Some controls in Randwick LEP 1998 (Consolidation) will be carried over into the new comprehensive DCP rather than the LEP. This is to comply with the Standard Instrument approach of setting out broad controls in an LEP and more detailed controls in a DCP.

Council has completed pre-section 64 consultation with the Department and will report formally under s64 once Council has considered this report.

4.0 Key Planning/Policy Issues

The Council reports of 8 and 22 November 2011 considered the Land Use discussion papers and range of issues and proposals for the draft comprehensive LEP. Matters arising from these Council resolutions and other matters arising in the drafting of the comprehensive LEP, including zoning mismatches and rezoning requests raised in the discussion paper consultations, are summarised below.

4.1 Residential Zoning mismatches

Eleven (11) residential zoned blocks/street frontages were identified in the Residential Discussion Paper to be rezoned to address discrepancies between the predominant type of development (being residential flat buildings) and the actual residential zoning. In most circumstances, these 'zoning mismatches' are where the built form of development is of a higher density and scale than the zoning allows (e.g. residential flat buildings in the low density zone).

The draft LEP proposes to amend the zoning of all these sites to reflect the predominant existing land use, built form and character of the sites. This will ensure greater clarity about the applicable zoning clauses and the development standards under the Comprehensive LEP. The locations of the zoning mismatches are provided in **Attachment F** to this report.

The Residential Discussion Paper noted a small number of other sites requiring zoning corrections in the draft LEP. These sites have an open space, special uses or business/residential zone but where the existing development or development is actually residential in nature. These are detailed in the Residential Discussion Paper and also listed in **Attachment F**.

4.2 Residential Rezoning Requests

Twenty two (22) rezoning requests for residential sites have been received from land owners, other community members and/or their representatives for consideration in the draft Comprehensive LEP. Fourteen (14) were flagged in the Residential discussion paper and a further 8 were received during the paper's exhibition. An assessment has been undertaken including consistency with state and local planning strategies, existing land use patterns, character and scale of surrounding area as well as proximity to public transport and centres/services. Each of the rezoning requests is assessed and recommendations are made in **Attachment F**. The exhibition of the draft LEP will provide an opportunity for the community to provide feedback on these proposed changes.

4.3 Business Centres zoning mismatches

Nine (9) centres were proposed in the Business Centres discussion paper as a Neighbourhood Centre B1 zoning given that they are well established small centres (although zoned residential). Rezoning these sites would recognize and reinforce the current and future roles of these centres. It is proposed to include 8 of the 9 centres in the draft Comprehensive LEP, with the exclusion of the proposed Barker Street/Botany Street Centre as per the 22 November Council resolution on the Specialised Centre, and with a reduced area for the Flower St, Maroubra centre, as per the Business Centre paper recommendations to Council on 22 November 2011.

The rezoning of these 8 existing locations to a business zone in the draft LEP acknowledges and reinforces the role of these centres in meeting the convenience needs of the surrounding population, while ensuring land is zoned appropriately and new development accurately reflects the intent of the zone. It is important to note that the majority of land within these centres already have a commercial

function and the new B1 zoning would better reflect these well-established businesses (as opposed to the current residential zonings).

Therefore these centres recommended for zoning to B1 Neighbourhood Centre are listed as follows:

1. Clovelly Road (and Earl Street), North Randwick
2. Arden Street (and Clovelly Road), Clovelly
3. Carrington Road (and Clovelly Road), Coogee
4. Alison Road (and Carrington Road), Coogee
5. Bream Street (and Carrington Road), Coogee
6. Byron Street (and Coogee Bay Road), Coogee
7. Havelock Avenue (and Dudley Street), Coogee
8. Flower Street (and Maroubra Road), Maroubra (as amended)

4.4 Business Land Rezoning Requests

Eleven (11) rezoning requests have been received from landowners seeking a change in zoning or an increase in development standards in areas that are zoned business, or areas that immediately adjoin business centres. The bulk of rezoning requests sought a change from residential to business zoning. In most instances the existing use is of a business/retail nature or the building type was originally built for commercial purposes. 10 of these requests were reported in the Business Centres discussion paper with preliminary assessments, with an additional rezoning request (for 62 Carr St, Coogee) received during the public exhibition period. Each rezoning request is assessed and recommendations are detailed in **Attachment F**. The exhibition of the draft LEP will provide an opportunity for the community to provide feedback on these proposed changes.

4.5 Coogee Business Centre – Zoning for B2 (Local Centre) or B1 (Neighbourhood Centre) and backpacker accommodation

Council, in its consideration of the land use discussion papers report of 22 November 2011, made a specific resolution regarding the report's proposed zoning of the Coogee business centre to its Standard Instrument equivalent of B2 Local Centre (with the height and FSR controls remaining the same). Submissions and a petition had stated that the 3A zoning has brought unacceptable levels of violence to the area, traffic and parking problems, and businesses that impact on residents. Backpacker accommodation is currently (and proposed to be) permitted, subject to DA consent. Accordingly, the Council resolved:

"that Council make representations and seek urgent advice from the Department of Planning as to why they will not accept a B1 zone for the draft LEP for the Coogee business centre and why they won't accept that backpacker accommodation can't be prohibited in Coogee."

This resolution was forwarded to the Department and it has advised on 25 November 2011, in relation to both matters, as follows:

"Business Zoning

- *Coogee is currently zoned 3A General Business under the Randwick LEP 1998 (Consolidation).*

- *This reflects it having both local and wider attractors, being a beach and tourist destination providing a diverse range of shops, restaurants and services.*
- *Whilst it is designated a village centre in the draft East Sub-regional Strategy, it plays a wider role because of its beachside location and exhibits facilities and attractions more in keeping with a (smaller) town centre.*
- *I am not aware of any changes in Coogee that would warrant its downgrading to a lesser (B1) business zoning. In fact, its wider service role has grown in recent years.*
- *Council's proposal to translate the current zoning to its equivalent standard Instrument zoning (B2), as proposed in its Business Centres Discussion Paper, is supported. This zone is intended for centres that provide a diverse range of retail, business, entertainment and community uses that serve local residents but also a wider catchment than a typical neighbourhood (B1) centre. Coogee's widely acknowledged role and range of uses is best reflected by this proposed B2 zoning.*
- *It is noted that local resident concerns about the B2 zoning focus on matters such as traffic, parking and levels of anti social activity. These are management rather than planning issues. In this respect, it is noted that no uplift in development scale is proposed for the centre that would in itself trigger significant increases in impact.*

Backpackers' accommodation

- *Backpackers' accommodation is a mandatory use in the Standard Instrument B2 zone (as part of the definition 'tourist and visitor accommodation').*
- *Coogee is an established beachside centre and has become an international destination for backpackers with two approved backpacker establishments and many supporting uses.*
- *Therefore, there is a reasonable expectation that backpackers' accommodation continue to be a permissible use there.*
- *Concerns about backpackers' accommodation are often behavioural in nature and, therefore, management issues.*
- *It is noted that Coogee is the only beachside centre in Randwick currently to permit backpackers' accommodation, this use having been prohibited at Maroubra Beach by an amending LEP in 2001. As Randwick is a major coastal destination, this focuses demand and supply on Coogee which is well positioned and set up for this use."*

Based on the Department's above advice, the draft LEP has included Coogee centre in the proposed B2 Local Centre zoning. It is noted that the draft comprehensive DCP will include further guidance which will assist in addressing resident concerns, including a review and update of the current backpacker accommodation DCP.

4.6 Environmental Protection measures

The Office of Environment and Heritage recommended that an Environmental Conservation E2 zone be applied to all sites containing the endangered Eastern Suburbs Banksia Scrub (ESBS) and endangered *Acacia terminalis subsp terminalis*

as identified in the relevant NSW Recovery Plans. An Environment Conservation E2 zone or a split zoning with ESBS patches covered by an E2 zone was suggested.

As advised by the Department, where sites have predominant and contiguous ESBS or other biodiversity coverage, an E2 zoning is considered a suitable approach; however, small and isolated ESBS patches are generally not suitable to be specifically zoned E2, yet other protective measures may be considered. In this regard, an E2 zoning is proposed for the following sites:

Existing sites zoned Environmental Protection 7 (equivalent to E2) under the existing RLEP:

- Randwick Environment Park, 19R Munda St & 6R Argyle Crescent, Randwick
- Numerous land parcels within the Prince Henry site (25R Gubbuteh Road, 46R Gubbuteh Road, 2-4R Harvey Street, 1-33R Harvey Street, 9-9A Jennifer Street, 1 Pavilion Drive, Little Bay)

Additional sites proposed to be zoned E2 Environmental Conservation in the draft Comprehensive LEP:

- Bunnerong Road Sites, Chifley (under multiple government ownerships, including CLD, STA, RTA and Randwick Council, bounded by Bunnerong Road, Bunnerong Equestrian Park, Macquarie Street and existing residential area in Chifley)
- The central and eastern sections of the former UNSW site at Little Bay (i.e. the Ochre/Miocene site at 1408 Anzac Parade and the north-western corner of The Coast Golf Course at 1412R Anzac Parade Little Bay)
- Telstra land at the end of Jennifer Street, Little Bay (portions containing ESBS proposed to be zoned E2)

Furthermore, sites identified on the Terrestrial Biodiversity Map, along with those with an E2 zoning, are proposed to be listed under Clause 3.3 of the draft LEP (Environmentally sensitive areas excluded) to exclude exempt or complying development from being carried out on these areas.

4.7 Education and Health Precinct (Specialised Centre)

Following public exhibition of the Discussion Paper, the Precinct Plan (broad strategy) was endorsed by the Council on 22 November 2011 along with the revised planning controls as per the resolution at **Attachment E2**.

4.8 Inglis Newmarket site

The 5 ha Inglis Newmarket Site with frontage to Barker Street, Randwick is subject to a separate rezoning process which commenced in July 2010. The rezoning application submitted by Elton Consulting on behalf of the owner of the site seeks a rezoning of the land currently used for horse sales, stabling and associated uses from 2A Residential to 2D Residential under Council's existing LEP 1998 (Consolidation). In the meantime, this draft LEP proposes to translate the existing Residential 2A zone to the equivalent Low Density R2 zone.

4.9 Heritage

The draft LEP, proposes to include 12 additions to the LEP Schedule of Heritage Items, 10 deletions from the Schedule of Heritage Items, one new Known or

Potential Archaeological Site (4 properties), changes to boundaries of 7 of the existing 19 heritage conservation areas, and one new conservation area. All proposed amendments are supported by expert investigations which clarify heritage significance. All heritage items, conservation areas and archaeological sites are listed in the Schedules in the draft LEP and shown on the draft LEP heritage maps (**Attachments A and B**).

Heritage Items

Submissions received to the exhibition of the discussion papers have not raised significant issues in relation to the 9 proposed additions, with a further 3 clarified following the exhibition for a total of 12 additions and for the 10 deletions to the Schedule of Heritage Items originally proposed. A summary of the changes and reasons are listed in **Attachment E6**.

Landscape Elements

In April 2011, Council resolved to include 16 landscape elements in the Schedule of Heritage Items following a separate community consultation process on their proposed heritage listing. These are included in Schedule 5 of the draft LEP and shown on the draft LEP heritage map.

Heritage Conservation Areas

Boundary adjustments to the following conservation areas were considered through the Residential Discussion Paper, as detailed and mapped at **Attachment E6**. The conservation areas are listed in Schedule 5 of the draft LEP and shown on the draft LEP Heritage map:

- North Randwick – additions to the north east and south
- St Mark's – 4 extensions and one reduction
- Gordon Square - addition of 9 properties to the east
- St Jude's - deletions to the south
- Dudley Street - additions to the south

Submissions received to the Residential Discussion Paper did not raised issues with the proposed boundaries changes for these existing heritage conservation areas.

A petition was received signed by 7 residents of Caerleon Crescent and Frenchmans Road, requesting that the area (identified in 2000 and 2003 heritage investigations and consultations) be added to the Comprehensive LEP as a heritage conservation area (which includes 27 properties). It is recommended that the area be included in the draft LEP for public exhibition.

In the process of preparing heritage mapping 2 further conservation boundary corrections have been identified which are proposed to be included in the draft LEP, which are:

- Sacred Heart – boundary of the heritage conservation area amended to coincide with site boundary
- Botany Bay – several roads to be included in the heritage conservation area as land either side is included

4.10 Maroubra Beach Centre review

The Maroubra Beach commercial centre urban design report prepared by Allen Jack & Cotter on behalf of Council and in consultation with landowners and the community proposes a new neighbourhood business zone, new heights and floor

area under the draft LEP in conjunction with land consolidation to achieve key outcomes for this area.

The achievement of the preferred outcome requires amalgamation and staging of development to achieve improved public domain, new open space, through site pedestrian links and provide for economically viable and equitable outcomes for all stakeholders.

Building envelope controls, setbacks, wall heights, public domain controls and design guidelines will be incorporated into the new DCP to guide development.

A separate report on the consultation and recommendations for the draft LEP is being considered at the 6 December 2011 meeting.

4.11 Special Purpose lands

An inventory of all lands currently zoned special uses in Randwick LEP 1998 (Consolidation) and the proposed zone in the draft comprehensive LEP, including the Council officer's comments, is attached at **Attachment E7**.

Zoning recommendations for Randwick's existing special uses lands have been reviewed in accordance with the Department's Practice Note *Zoning for infrastructure in LEPs* (PN 10-001) that requires schools, churches, and other such community uses that are already permissible in adjacent zones, to be rezoned to that adjacent zone (e.g. residential). This applies to more than 130 special uses zoned sites, exhibited as part of the Special Uses land use discussion paper in 2010. It was noted then, that any such rezoning is contingent on the land owners undertaking a preliminary analysis on the likelihood of contamination as required by SEPP 55.

A preliminary analysis was undertaken (in accordance with SEPP 55) for all Council owned land (zoned Special Uses) and these lands have been zoned accordingly.

For the other special uses lands, this need for contamination investigations prior to any rezoning has been raised with the Department, with formal advice awaited.

In the meantime, the draft LEP therefore proposes to retain an equivalent (Special Purpose) zone for those existing special uses lands, if the requirements for consistency with SEPP 55 have not been met. While this approach is inconsistent with the Department's PN 10-001, it is consistent with SEPP 55 (see also Section 3.4 of this report for further background).

It is noted that the Department, in considering certifying the draft LEP to enable public exhibition, may set as a condition of exhibition, changes to this preferred approach.

A number of existing special uses zoned lands have been identified as surplus to the original use and have current development consent for residential uses. These sites have satisfied the requirements of SEPP 55 and are proposed to be rezoned accordingly.

4.12 Sex services premises

Councils are unable to enforce a blanket prohibition on sex service premises as the NSW Government requires each council to make provisions for them within their respective local government area.

The community consultations on the Business Centre Paper raised concerns about the introduction of sex service premises in the City's business centres of Kensington and Matraville, and of their current permissibility in Coogee centre. The main areas of concern were that these land uses would encourage anti-social behaviour, increase noise, affect residential amenity and character, and create further parking and traffic problems in these centres.

It is proposed that sex service premises be removed from Zone B2 as a permitted land use, and continue to be permissible only in limited centres where they are currently permitted, via Schedule 1 of the LEP ('Additional permitted uses'), namely for Randwick Junction, Maroubra Junction and Kingsford, (and prohibiting these from Coogee Centre).

Additionally, it is proposed that the NSW Government's model clause for sex service premises will be included in the Comprehensive LEP. The clause will require a DA for sex services premises to address site suitability criteria, in relation to their proximity to sensitive uses such as schools, churches, playgrounds and the like. Any DA for a sex service premises would need to address the merits of its use for its specific proposed location.

5.0 Relationship to City Plan

The relationship with the City Plan is as follows:

Outcome 4:	Excellence in Urban Design and Development
Direction 4a:	Improved design and sustainability across all development
Direction 4b:	New and existing development is managed by a robust framework
Outcome 5:	Excellence in recreation and lifestyle opportunities.
Direction 5a:	Maximise opportunities for residents and visitors to enjoy both active and passive open space uses.
Direction 5b:	A range of sporting and leisure activities.
Direction 5c:	New open space is created as opportunities arise.
Outcome 6:	A Livable City
Direction 6b:	Our town centres, beaches, public places and streets are safe, inviting, and clean and support a recognizable image of our City.
Direction 6d:	A strategic land use framework provides for our lifestyle changes and for a continuing, yet low rate of growth across our City
Direction 6e:	Housing diversity, accessibility and adaptability to support our diverse community is enhanced
Outcome 7:	Heritage that is Protected and Celebrated
Direction 7a:	Our heritage is recognized, protected and celebrated
Outcome 9:	Integrated and accessible transport.
Direction 9a:	A network of safe and convenient walking paths and cycle ways linking major land uses and recreation opportunities.

6.0 Financial impact statement

The draft comprehensive Randwick LEP 2012 is largely being prepared in-house, using staff resources supplemented by funding from the Strategic Planning budget (\$60,000 over 2010/11 and 2011/12) and Department's Accelerated LEP Fund grant of \$125,000 for an additional staff position. This covers all funds for the preparation, public exhibition of the draft LEP, consultations, expert heritage advice, printing and finalising the plan and maps.

7.0 Next Steps

Following consideration of this report by Council, the draft comprehensive LEP and supporting documentation will be forwarded to the Department with a request to issue a s65 certificate to enable the draft LEP to be placed on public exhibition.

The timing of public exhibition will depend on when the Department issues the s65 certificate and is anticipated by early 2012 (February).

Council's DCP - *Public Notification of Development Proposals and Council Plans* excludes commencement of exhibitions from mid-December to mid-January.

Following exhibition of the draft LEP, Council officers will consider submissions and report back to Council with any revisions to the draft LEP.

It is proposed that during the exhibition of the draft LEP and its further consideration by the Department (at s68), the new comprehensive DCP will be prepared to support the new LEP as required by the State government. The DCP will need to be exhibited and adopted within 6 months of the Randwick LEP 2012.

8.0 Conclusion

The draft comprehensive LEP has been prepared in accordance with the Department's Standard Instrument LEP and is ready for submission to the Department, seeking its required agreement to public exhibition. In certifying the draft LEP for exhibition, the Department may include "conditions" for exhibition, which will need to be met.

Recommendation

That Council:

- a) Resolve to submit the draft Randwick Comprehensive LEP 2012 to the Director-General of the NSW Department of Planning and Infrastructure and request that the Director-General issue a certificate under section 65 of the *Environmental Planning and Assessment Act 1979* to exhibit the draft comprehensive LEP.
- b) In seeking a certificate under section 65, forward the necessary documentation indicating the actions taken to fulfil responsibilities to consult government agencies under s62 of the *Environmental Planning and Assessment Act 1979*.
- c) In seeking a certificate under section 65, forward this report and supporting documentation detailing how the draft comprehensive LEP responds to relevant Planning Circulars, the draft East Subregional Strategy, Metropolitan Plan 2036, Ministerial Directions and State Environmental Planning Policies.

- d) Note that the draft comprehensive LEP, incorporating any amendments required by the Director-General, will be exhibited for a minimum of 40 days;
- e) Agree that the Director, City Planning may rectify any minor numerical, typographical, interpretation and formatting errors if required, in preparation for public exhibition of the draft LEP consistent with Council's resolutions outlined above; and
- f) Resolve to commence preparation of a comprehensive draft DCP to support the draft comprehensive LEP.

Attachment/s:

- | | |
|---|-------------------------------|
| 1. A - Copy of draft Randwick LEP 2012 | Included under separate cover |
| 2. B - Copy of draft Randwick LEP 2010 Maps | Included under separate cover |
| 3. C - Understanding the draft LEP | Included under separate cover |
| 4. D - Summary of section 62 consultation, agency issues and Council's response | Included under separate cover |
| 5. E - Relevant State and local planning advice, policies and procedures | Included under separate cover |
| 6. F - Site/area specific rezonings - Residential and Business | Included under separate cover |