



**ORDINARY MEETING OF COUNCIL
TO BE HELD ON TUESDAY, 27 JULY 2010 AT 7.00PM
LEVEL 3, COUNCIL CHAMBERS**

A G E N D A
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NOTE: For Full Details, See Council's Website –
www.kmc.nsw.gov.au under the link to business papers

APOLOGIES

DECLARATIONS OF INTEREST

CONFIRMATION OF REPORTS TO BE CONSIDERED IN CLOSED MEETING

ADDRESS THE COUNCIL

NOTE: Persons who address the Council should be aware that their address will be tape recorded.

DOCUMENTS CIRCULATED TO COUNCILLORS

CONFIRMATION OF MINUTES

Minutes of Ordinary Meeting of Council

File: S02131

Meeting held 20 July 2010

Minutes to be circulated separately

MINUTES FROM THE MAYOR

PETITIONS

GENERAL BUSINESS

- i. *The Mayor to invite Councillors to nominate any item(s) on the Agenda that they wish to have a site inspection.*
- ii. *The Mayor to invite Councillors to nominate any item(s) on the Agenda that they wish to adopt in accordance with the officer's recommendation allowing for minor changes without debate.*

GB.1 **Ku-ring-gai Planning Panel Functions**

1

File: S06347

To have Council consider its position in response to the NSW Minister for Planning's intention to give the Ku-ring-gai Planning Panel the reclassification powers under section 118(3) 9(b) of the Environmental Planning and Assessment Act, 1979.

Recommendation:

That Council responds to the Minister for Planning's show cause letter in the manner outlined in the report.

EXTRA REPORTS CIRCULATED AT MEETING

MOTIONS OF WHICH DUE NOTICE HAS BEEN GIVEN

BUSINESS WITHOUT NOTICE - SUBJECT TO CLAUSE 241 OF GENERAL REGULATIONS

QUESTIONS WITHOUT NOTICE

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PETITION

LADY GAME DRIVE, KILLARA - PETITION FOR FLASHING LIGHTS IN 40KM SCHOOL ZONE - (EIGHT HUNDRED & SIXTY-ONE [861] SIGNATURES)

The following Petition was presented to Council by Councillor Elise Keays:

"We, the undersigned, petition the Roads and Traffic Authority to install flashing lights at the 40km school zone spanning the Lady Game Drive pedestrian crossing used by children from Beaumont Road Public School.

Drivers on this busy road typically fail to slow down during specified school times, putting the children and their parents at great risk of harm. Flashing lights would increase driver awareness of the need to reduce speed, and improve pedestrian safety."

RECOMMENDATION

That the Petition be received and referred to the appropriate officer of Council for attention.

KU-RING-GAI PLANNING PANEL FUNCTIONS

EXECUTIVE SUMMARY

PURPOSE OF REPORT:	To have Council consider its position in response to the NSW Minister for Planning's intention to give the Ku-ring-gai Planning Panel the reclassification powers under section 118(3) 9(b) of the Environmental Planning and Assessment Act, 1979.
BACKGROUND:	The Minister for Planning through the Department of Planning has recently conducted a review of the operation of the Ku-ring-gai Planning Panel. On 12 July 2010 Council received a letter in relation to this review that outlined the progress of both the Panel and Council in relation to the town centre planning, but also raises concerns regarding the time take for processing some minor Development Applications (DA's) and Council's decisions regarding reclassification of Council Owned Land.
COMMENTS:	Council has been given twenty one (21) days from 12 July 2010, being the date on the Ministers letter, to show cause why the Minister should not expand the panels powers to include the reclassification powers under s.118(3)(b) of the Environmental Planning and Assessment Act, 1979 (the Act).
RECOMMENDATION:	That Council responds to the Minister for Planning's show cause letter in the manner outlined in the report.

PURPOSE OF REPORT

To have Council consider its position in response to the NSW Minister for Planning's intention to give the Ku-ring-gai Planning Panel the reclassification powers under section 118(3) 9(b) of the Environmental Planning and Assessment Act, 1979.

BACKGROUND

By way of letter (**Attached**) dated 12 July 2010 the Minister for Planning, the Hon Tony Kelly MLC has advised the Mayor of the results of a review by the Department of Planning of the appointment and functions of the Ku-ring-gai Planning Panel.

As part the review of the panel's performance, wherein it was found that the panel "performed well in its key areas of responsibility", the review considered a number of areas of Council's performance including:

- development application (DA) processing;
- the Town Centres Development Control Plan (DCP); and
- the consolidating development contributions plan.

The review found that Council had progressed its work on the DCP and continues to progress its work on the consolidating development contributions plan.

The review acknowledges an "improvement in DA processing times, but the Minister expresses concern "that a number of minor DAs still took in excess of 90 days and were referred to the panel".

Most importantly, the Minister states, in respect of reclassification of community land:

"I also remain concerned that the decisions made by Council -owned land may impede the future renewal of Ku-ring-gai's centres. The reclassification of land is an important part of the revitalisation of centres, as I am advised that there are a number of 'catalyst' sites which require reclassification to enable development envisaged under the Town centres LEP to occur. The manner in which these sites are utilised, and the timing of their development, is critical to the development of Ku-ring-gai's centres."

The letter gives Council twenty one (21) days from 12 July, being the date on the Ministers letter, to show cause why the Minister should not expand the panels powers to include the reclassification powers under s.118(3)(b) of the *Environmental Planning and Assessment Act, 1979* (the Act).

The Minister is also seeking Council's views in relation to:

- returning general local environmental plan (LEP) making powers (for the town centres) to Council so it may prepare a Principal LEP, if Council commits to preparing that principal LEP within 14 month; and
- Council retaining a determination role in DAs if it commits to determining DAs within a 90 day timeframe and submitting quarterly reports to the Department on that matter.

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RECLASSIFICATION BACKGROUND

On 24 November 2009 Council considered and adopted the following sites to be included in a Planning Proposal (via the Ku-ring-gai Planning Panel) for reclassification from Community Land to Operational Land.

Roseville

1. 62 Pacific Highway, Roseville being Lot 2 DP 202148.
2. 1 Larkin Lane, Roseville being Lot 1 DP 502277, Lot 1 DP 215188, Lot 1 DP 500309, Lot 2 DP 511183, Lot 1 DP 501603, Lot 2 DP 511182, Lot 1 DP 215231, Lot 2 DP 505005, Lot 2 DP 507593, Lot 2 DP 504082, Lot 1 DP 500045, Lot 1 DP 505371, Lot 1 DP 507809.
3. 94A Pacific Highway, Roseville being Lot 22 DP 595126.
4. 80A Pacific Highway, Roseville being Lot 11 DP 861578.
5. 2 Lord Street, Roseville being Lot 4 DP 225030, Lot 1 DP 556917, Lot 3 DP 556955, Lot 5 DP 559096, Lot 7 DP 561031, Lot 9 DP 563301, Lot 11 DP 575457.

Lindfield

6. 9 Havilah Lane, Lindfield being Lot 21 DP 713207.
7. 3 Kochia Lane, Lindfield being Lot 12 DP 225925.
8. 8-10 Tryon Road, Lindfield being Lots 2 and 3 DP 219628 and Lot 5 DP 219146.
9. 1/12-18 Tryon Road, Lindfield being Lot 1 SP 37466.
10. 5 Kochia Lane, Lindfield being Lot 31 DP 804447.

Gordon

11. 2 Moree Street, Gordon being Lot 4 DP 3965.
12. 4 Moree Street, Gordon being Lot 5 DP 3965.
13. 753 Pacific Highway, Gordon being Lot 1 DP 213736.

Pymble

14. Post Office Lane, Pymble being Lot 2 DP 582963.

St Ives

15. 261 Mona Vale Road, St Ives being Lot 31 DP 719052.
16. 176 Mona Vale Road, St Ives being Lot 103 DP 627012 and Lot 105 DP 629388.

Turramurra

17. 12 William Street, Turramurra being Lot 1 DP 519532.
18. 1A and 3 Kissing Point Road, Turramurra being Lot 2 DP 500077, Lot 2 DP 502388, Lot 2 DP 500761, Lot A DP 391538 and Lot B DP 435272.
19. 3 Stonex Lane, Turramurra being Lot 2 DP 550866.

The sites that were considered by **Council but not** listed for reclassification by Council for reclassification were:

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Lindfield

1. 259 Pacific Highway, Lindfield being Lot 2 DP 212617.
2. 259 Pacific Highway, Lindfield being Lot 3 DP 212617.
3. 259 Pacific Highway, Lindfield being Lot 1 DP 212617.
4. 265-271 Pacific Highway, Lindfield being Lot 8 DP 660564 and Part Lot 8 The Clanville Estate (Old System).

Gordon

5. 818 Pacific Highway and 7 Dumaresq Street, Gordon being Lot 2 DP 786550.
6. 9 Dumaresq Street, Gordon being Lot A DP 355615.
7. 15 Dumaresq Street, Gordon being Lot D DP 386283.
8. 17 Dumaresq Street, Gordon being Lot C DP 386283.
9. 799 Pacific Highway, Gordon being Lot 1 SP 49925.

Pymble

10. 2 Alma Street, Pymble being Lot A DP 302332.
11. 1032-1052 Pacific Highway, Pymble being Part Lot 27 DP 656246, Lot A DP 362538 and Lots 1, 2 and 3 DP 615420.
12. 1186-1188 Pacific Highway, Pymble being Lot 1 DP 86583.
13. 1192 Pacific Highway, Pymble being Lot 8 DP 30236.
14. 65 Grandview Street, Pymble being Lot 23 DP 791208

Turramurra

15. 5 Ray Street, Turramurra being Lot 2 DP 221290.
16. 2-8 Turramurra Avenue, Turramurra being Lot 2 DP 840070.
17. 1-7 Gilroy Road, Turramurra being Lot 1 DP 840070.

St Ives

18. 208-210 Mona Vale Road St Ives being Lots 11 and 12 DP 29167.
19. (Part) 11-21 Cowan Road, St Ives being Lot 2 DP 822373 and Lot 1 DP 420106.
20. (Part) 11-21 Cowan Road St Ives being Lot A DP 321567, Lot 1 DP 504794, Lots A and B DP 336206 (Car Park Site).

On 9 December 2009, the Ku-ring-gai Planning Panel endorsed Council's list of sites for inclusion in a planning proposal via the Department of Planning gateway system. Following gazettal of the *Ku-ring-gai Local Environmental Plan (Town Centres) 2010* on the 25 May 2010, the Planning Proposal that seeks to reclassify 19 sites in Ku-ring-gai from Community to Operational Land was lodged with Department of Planning on 17 June 2010. The status of the Planning Proposal is listed on the Departments Website as "Lodged, Awaiting Gateway Decision".

COMMENTS

REVIEW OF THE PANEL'S PERFORMANCE

The review of the Panel's performance referred to in the Minister's letter has been carried out in accordance with section 118(5) of the Act, viz:

118 Appointment of planning administrator, planning assessment panel or regional panel

.....

- (5) *If a planning assessment panel exercises the functions of a council for a continuous period of more than 2 years, the Minister is, as soon as practicable after 2 years after the date on which the planning assessment panel was appointed, to conduct a review of the appointment and functions of the planning assessment panel.*
- (6) *A review under subsection (5) is to be conducted by the Minister in consultation with the Minister for Local Government, the Local Government and Shires Associations of New South Wales and any other industry organisation that the Minister considers to be relevant.*

At the time of writing it was not known whether the LGSA had been consulted. If they were, they certainly did not advise Council of that fact.

EXPANSION OF THE KU-RING-GAI PLANNING PANEL'S POWERS

The Minister's letter refers to expansion of the Ku-ring-gai Planning Panel's powers to include the reclassification powers under s.118(3)(b) of the *Environmental Planning and Assessment Act, 1979* (the Act), these are:

- 118(3) A planning assessment panel or regional panel may be appointed to exercise only all or any particular function or class of functions of the council:*
 - (a) as a consent authority, or*
 - (b) in relation to making of environmental planning instruments under Part 3 or under Division 1 of Part 2 of Chapter 6 of the Local Government Act 1993, or*
 - (c) in relation to the preparation, making and approval of development control plans, or*
 - (d) in relation to the preparation and approval of contributions plans.*

The powers covered by Division 1 of Part 2 of Chapter 6 of the *Local Government Act 1993* are all the reclassification powers, viz:

Local Government Act 1993 No 30

Division 1 Classification and reclassification of public land

25 All public land must be classified

All public land must be classified in accordance with this Part.

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26 What are the classifications?

There are 2 classifications for public land—“community” and “operational”.

Note. On the commencement of this Part, certain land that is vested in or under the control of a council is taken to have been classified as community land by the operation of clause 6 of Schedule 7.

27 How are the classifications made?

- (1) The classification or reclassification of public land may be made by a local environmental plan.*
- (2) The classification or reclassification of public land may also be made by a resolution of the council under section 31, 32 or 33.*

28 Forwarding of planning proposals to Minister for Planning

- (1) A council may not forward a planning proposal to the Minister for Planning under section 56 of the Environmental Planning and Assessment Act 1979 which includes a proposal to classify or reclassify public land that is not owned by the council unless the council has obtained the consent of the owner to the proposed classification or reclassification of public land.*
- (2) A local environmental plan that classifies or reclassifies public land may apply to one or more areas of public land.*

29 Public hearing into reclassification

- (1) A council must arrange a public hearing under section 57 of the Environmental Planning and Assessment Act 1979 in respect of a planning proposal under Part 3 of that Act to reclassify community land as operational land, unless a public hearing has already been held in respect of the same matter as a result of a determination under section 56 (2) (e) of that Act.*
- (2) A council must, before making any resolution under section 32, arrange a public hearing in respect of any proposal to reclassify land as operational land by such a resolution.*

30 Reclassification of community land as operational

- (1) A local environmental plan that reclassifies community land as operational land may make provision to the effect that, on commencement of the plan, the land, if it is a public reserve, ceases to be a public reserve, and that the land is by operation of the plan discharged from any trusts, estates, interests, dedications, conditions, restrictions and covenants affecting the land or any part of the land, except for:
 - (a) any reservations that except land out of a Crown grant relating to the land, and*
 - (b) reservations of minerals (within the meaning of the Crown Lands Act 1989).**
- (2) A provision referred to in subsection (1) has effect according to its tenor, but only if the Governor has, before the making of the local environmental plan, approved of the provision.*

31 Classification of land acquired after 1 July 1993

- (1) This section applies to land that is acquired by a council after the commencement of this Division, other than:*
- (a) land to which the Crown Lands Act 1989 applied before the acquisition and continues to apply after the acquisition, and*
 - (b) land that is acquired for the purpose of a road.*
- (2) Before a council acquires land, or within 3 months after it acquires land, a council may resolve (in accordance with this Part) that the land be classified as community land or operational land.*
- (2A) Any land acquired by a council that is not classified under subsection (2) is, at the end of the period of 3 months referred to in that subsection, taken to have been classified under a local environmental plan as community land.*
- (2B) While the land remains unclassified:*
- (a) the land may not be used for any purpose other than that for which it was being used immediately before it was acquired, and*
 - (b) the council may not dispose of any interest in the land.*
- (3) A council must not resolve under this section that land be classified as operational land if:*
- (a) the land is classified as community land immediately before its acquisition, or*
 - (b) the resolution would be inconsistent with any other Act, the terms of any trust applying to the land or the terms of any instrument executed by the donor or transferor of the land.*

32 Reclassification of land dedicated under sec 94 of the Environmental Planning and Assessment Act 1979

- (1) A council may resolve that land dedicated in accordance with a condition imposed under section 94 of the Environmental Planning and Assessment Act 1979 is to be reclassified as operational land.*
- (2) A council may make such a resolution only if it is satisfied that the land has been found to be unsuitable for the provision, extension or augmentation of public amenities and public services because of any one or more of the following:*
- the size of the land*
 - the shape of the land*
 - the topography of the land*
 - the location of the land*
 - the difficulty of providing public access to the land.*
- (3) The council must specify in the resolution the grounds on which it is satisfied the land is unsuitable.*
- (4) Before making the resolution, the council must give public notice of the resolution. The public notice must specify a period of not less than 28 days during which submissions may be made to the council.*
- (5) The net proceeds of sale by a council of any land dedicated in accordance with a condition imposed under section 94 of the Environmental Planning and Assessment Act 1979 must be dealt with under that section as if those net proceeds were a monetary contribution paid instead of the dedication.*

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33 Reclassification of operational land as community land

(1) A council may resolve that public land classified as operational land is to be reclassified as community land.

(2) (Repealed)

34 Public notice to be given of classification or reclassification by council resolution

(1) A council must give public notice of a proposed resolution to classify or reclassify public land.

(2) The public notice must include the terms of the proposed resolution and a description of the public land concerned.

(3) The public notice must specify a period of not less than 28 days during which submissions may be made to the council.

(4) (Repealed)

PREPARATION OF A COMPREHENSIVE LEP WITHIN 14 MONTHS

On 12 May 2010 Council's Planning Committee was presented with a timetable and a revised work program for the Principal LEP and DCP has been developed which takes into consideration the need to integrate the LEP with the finalisation of the Town Centres LEP and the requirement to submit the final LEP to the Department with sufficient time to be finalised in 2011.

This timeline proposed a target date of July 2011 for the submission of the final planning proposal to the Department of Planning.

On 25 May, 2010 Council resolved

"That a Planning Proposal based on the report to the Ku-ring-gai Planning Committee 12 May 2010 for Ku-ring-gai's Principal Local Environmental Plan be prepared for consideration by Council and submission to the Department of Planning".

The planning proposal is currently being finalised and should be reported back to Council in August 2010. The Department's proposal for a 14 month principal/comprehensive LEP is therefore considered consistent with Council's timing.

PERFORMANCE IN RELATION TO DEVELOPMENT APPLICATIONS

The Department's recommendation to return the DA determination role to Council is welcomed.

In regard to the concern over a number of minor applications exceeding 90 days and being referred to the Ku-ring-gai Planning Panel, it should be noted that this amounted to only seven (7) Development Applications during the term of the KPP i.e. from February 2008 to date. In many instances, the delays were as a result of applicants not providing additional information to Council in a timely manner.

A total of seven (7) applications in this category represents only 0.2% of the total of 3,280 applications assessed and determined by Council during the term of the Ku-ring-gai Planning Panel.

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This should also be considered in the context of the Department's own 2008/09 Local Development Performance Monitoring Report which demonstrates not only that Council's DA processing times have improved but that Ku-ring-gai Council, with a median DA turn-around time of 37 days, is the third fastest among the 43 councils in the Greater Sydney Region.

SHOW CAUSE LETTER

The Minister requires Council, within 21 days of the date of his letter, to show cause why the Ku-ring-gai Planning Panel's powers should not be expanded to include the reclassification powers under the Act. At the time of writing a draft response has not been able to be prepared. While an extension of the twenty one days was sought to allow this matter to be discussed at Council's Ordinary meeting of 10 August 2010, at the time of writing no response had been received from the Minister or the Department.

The issues which could be addressed in a show cause letter would include:

- the right of local government to determine how it will utilise its own land holdings, irrespective of classification, particularly when dwelling yields from no Council sites were relied on in the Town Centres Planning process in order to meet the 10,000 dwelling target;
- the failure of the Department to deal with the current planning proposal in relation to sites already adopted for reclassification by Council in December 2009;
- the unreasonable delays to the existing reclassification sites because the Department of Planning did not ensure continuity of membership of the Ku-ring-gai Planning Panel beyond its two year anniversary;
- the inherent conflict of interest which arises when verbal and written submissions to the Ku-ring-gai Planning Panel made on behalf of a land owner in relation to the draft Town Centres LEP, and specifically in relation to reclassification of Council Land at St Ives, are made by a firm now related to a member of the new Planning Panel. Under the broad terms of the Minister's letter, the sole terms of the panel going forward appear to be limited to reclassification;
- the adverse impacts on Town Centre Planning caused by the unilateral decision of the Minister to effectively revoke Council's exemption from the section 94 contributions cap. This decision added significant expense to Council but removed the funding source for infrastructure solely required as a consequence of gazettal of the Town Centres LEP only days before the removal of the exemption;
- Council has already commenced discussions with major landowners in the town centres as to possible future use of "catalyst" sites that are identified by the Minister; and
- the apparent inference in the last paragraph of the appendix to the Minister's letter that the Ku-ring-gai Planning Panel be given powers of reclassification across the entire local government area (LGA), not only the Town Centres.

CONSULTATION

Notice of Council's meeting to discuss this report was given in the Corporate advertisement placed in the North Shore Times on July 23, 2010. In addition, the Minister's letter was placed on Council's website the day it was received, consistent with past practice in relation to Ministerial correspondence in relation to planning matters.

FINANCIAL CONSIDERATIONS

The financial consequences of the Minister's action are as yet unquantified. Expansion of the Ku-ring-gai Planning Panel's powers would again put Council in the position where the resources of the Urban Planning Team are deployed towards tasks, and within timeframes, set by an external party for purposes other than adopted in Council's *Delivery Program and Operational Plan 2010-2014*. This will inherently impact on the completion of adopted projects within budget.

CONSULTATION WITH OTHER COUNCIL DEPARTMENTS

Other directorates have only been consulted through the General Manager and Directors group. The Development and Regulation directorate was consulted and provided advice in relation to the matter of DA processing.

SUMMARY

The Minister for Planning through the Department of Planning has recently conducted a review of the operation of the Ku-ring-gai Planning Panel. On 12 July Council received a letter in relation to this review that outlined the progress of both the Panel and Council in relation to the Town Centre Planning, but also raises concerns regarding the time take for processing some minor DAs and Council's decisions regarding reclassification of Council owned land.

This report sets out the key matters that could form the basis of a submission back to the Minister within the required 21 day time frame.

RECOMMENDATION

- A. That Council makes a submission to the Minister for Planning in relation to his letter of 12 July 2010 asking Council to show cause why the Ku-ring-gai Planning Panel's powers should not be expanded to include the reclassification powers under the Local Government Act, 1993 based on the matters outlined in this report under the heading "Show Cause Letter".
- B. That Council notes the Department of Planning's recommendation to return the DA determination role to Council. In regard to the concern over a number of minor applications exceeding 90 days referred to the Ku-ring-gai Planning Panel, it is noted that this amounted to only seven (7) Development Applications during the term of the Ku-ring-gai Planning Panel i.e. from February 2008 to date. In many instances, the delays were as a result of applicants not providing additional information to Council in a timely manner. Seven (7) applications in this category represents only 0.2% of the total of 3,280 applications assessed and determined by Council during the term of the Ku-ring-gai Planning Panel. In the context of the Department's own 2008/09 Local Development Performance Monitoring Report which demonstrates not only that

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Council's DA processing times have improved but that Ku-ring-gai Council, with a median DA turn-around time of 37 days, is the third fastest among the 43 councils in the Greater Sydney Region.

Antony Fabbro
Manager Urban & Heritage Planning

Andrew Watson
Director Strategy & Environment

Attachments: **Correspondence from Minister for Planning - 2010/132213 and 2010/132480**



Hon Tony Kelly MLC
Minister for Planning
Minister for Infrastructure
Minister for Lands
Deputy Leader of the Government in the Legislative Council
Leader of the House in the Legislative Council



Councillor Ian Cross
Mayor
Ku-ring-gai Council
Locked Bag 1056
PYMBLE NSW 2073

10/11842

12 JUL 2010

Dear Councillor

I am writing to you regarding the review of the appointment and functions of the Ku-ring-gai Planning Panel.

As you are aware, I recently requested the Department of Planning to review the operation of the Ku-ring-gai Planning Panel. The review has now been completed following consideration with the Local Government and Shires Association and the Minister for Local Government (see attached).

The review considered the Panel's performance in terms of its key responsibilities. The review found that the Panel had performed well in its key areas of responsibility, most notably the completion of its work on the Town Centres Local Environmental Plan 2010.

Importantly, the review also considered, in light of the Panel's role, Council's performance in a number of key areas, including DA processing timeframes, and progress in relation to the Town Centres Development Control Plan (DCP), the consolidated Section 94 Plan and reclassification of Council owned land.

I am pleased to advise that the review found that Council has to date progressed its work on the Town Centres DCP and is continuing to review its consolidated section 94 plan. Whilst Council achieved an improvement in DA processing timeframes, I remain concerned that a number of minor DAs still took in excess of 90 days and were referred to the Panel.

I also remain concerned that the decisions made by Council regarding reclassification of Council-owned land may impede the future renewal of Ku-ring-gai's centres. The reclassification of land is an important part of the revitalisation of the centres, as I am advised there are a number of 'catalyst' sites which require reclassification to enable development envisaged under the Town Centres LEP to occur. The manner in which these sites are utilised, and the timing of their development, is critical to the future development of Ku-ring-gai's centres.

As a result of these concerns, I am currently giving consideration to amending the Order to enable the Panel to undertake Council's functions in relation to the making of environmental planning instruments under Division 1 of Part 2 of Chapter 6 of the *Local Government Act 1993* (i.e. reclassification).

In relation to development applications and certain aspects of strategic planning, the Department's review has recommended that:

- General LEP making functions might better reside with Council so that the Principal LEP (PLEP) can be prepared and implemented directly by Council, subject to Council committing to implementation and completion of the PLEP within a 14 month timeframe.
- Council retaining a determination role for DAs subject to Council committing to determining DAs within a 90 day timeframe and providing quarterly reports to the Department regarding its DA processing times.

The Ku-ring-gai Planning Panel was originally appointed under s.118(1)(b) of the *Environmental Planning and Assessment Act 1979* where the performance of Council in dealing with planning and development matters was, in the former Minister's opinion, unsatisfactory.

Before appointing a panel on this basis, the former Minister had regard to the heads of consideration contained in the *Environmental Planning and Assessment (Unsatisfactory Council Performance) Order 2007* which was made on 19 July 2007.

Before making a final decision in this instance, and for reasons of procedural fairness, I am writing to request Council to show cause as to why the Panel should not be given reclassification powers under s.118(3)(b).

Attached at **Appendix 1** is a document outlining the areas where, I am advised, Council's performance against the heads of consideration has been unsatisfactory. I invite Council to provide a written submission within **21 days** of the date of this letter responding to the areas of concern identified in Appendix 1 and the issues raised in the letter.

I will consider the Council's written submission before making a final determination on whether the Panel should be given reclassification powers in this instance.

I would appreciate your urgent attention to these matters.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Tony Kelly', with a stylized flourish at the end.

Tony Kelly MLC
Minister for Planning

Appendix 1

Section 118(1)(b) – Appointment of Planning Administrator or Panel

“The Minister may appoint a planning administrator or a panel (or both) to exercise the functions of a council if the Minister is of the opinion that the performance of the council in dealing with planning and development matters (or any particular class of such matters) is unsatisfactory because of the manner in which the council has dealt with those matters, the time taken or in any other respect..”

Section 118(9) of the *Environmental Planning and Assessment Act 1979* (the Act)

The Minister may appoint a planning administrator or a panel for a reason set out in subsection (1)(b) only if the Minister has, by order published in the Gazette, provided heads of consideration for the exercise of power under subsection (1)(b) and has taken those heads of consideration into account.

The *Environmental Planning and Assessment (Unsatisfactory Council Performance Order)* 2007 was gazetted on 20 July 2007. This order sets out the Heads of Consideration for the purposes of s. 118(9) of the Act.

Heads of Consideration

This review represents an assessment of the performance of Ku-ring-gai Council against the heads of consideration established in the *Environmental Planning and Assessment (Unsatisfactory Council Performance Order)* 2007.

- | | |
|-------|----------------------------------------------------------------------------------------------------------|
| (a) | The nature of any findings or recommendations as a result of a review, investigation or inquiry made by: |
| (i) | the New South Wales Ombudsman, |
| (ii) | the Department of Local Government, |
| (iii) | the Independent Commission Against Corruption, or |
| (iv) | a person or persons appointed by the Minister for Planning, or |
| (v) | the Minister for Local Government. |

The Department of Planning (Department) is not currently aware of any report of the NSW Ombudsman or the Independent Commission Against Corruption in the relation to the activities or functions of the Council. The Minister has not appointed a person to conduct a review, inquiry or investigation into the Council. While the Department of Planning understands the Division of Local Government recently finalised a report into Ku-ring-gai Council practices (as part of its 'Promoting Better Practice' Program), it is understood that there are no major adverse implications of relevance in this instance.

- (b) For LEPs and DCPs:
- (i) the number of local environmental plans a council determines to prepare under section 54 of the Act, publicly exhibits under section 66 of the Act or submits to the Director-General under section 68 of the Act which comprise minor amendments of a principal LEP or a spot rezoning,
 - (ii) the time a council takes in exercising its functions in making LEPs or DCPs,
 - (iii) the nature and extent of the classes of development identified as exempt and complying development in LEPs and DCPs,
 - (iv) How a council considers and responds to public submissions on draft LEPs and DCPs.

The Department is not currently aware of any areas where the Council's performance in this regard is unsatisfactory.

- (c) For development applications and modification applications
- (i) the time a council takes to assess and determine those applications;
 - (ii) the number and percentage of those applications determined under delegation;
 - (iii) the nature and extent of determinations of development applications that do not comply with relevant development standards;
 - (iv) how a council complies with the relevant advertising and notification requirements for those applications;
 - (v) how a council considers and responds to public submissions on those applications;
 - (vi) the nature and extent of determinations that are contrary to recommendations made by council staff or an advisory or independent panel;
 - (vii) the number of outcomes of reviews of development applications under s.82A of the Act.

(c) (i) the time a council takes to assess and determine those applications

The Department has been advised Council may be using the current 90 day mechanism (where a DA which is undetermined is referred to the Panel for determination) to avoid determining minor DAs (such as tennis court lighting).

- (d) the number, cost or nature of legal proceedings or orders issued under section 121B of the Act concerning planning and development matters and how a council exercises its functions to ensure conditions of development consent are complied with.

The Department is not currently aware of any areas where the Council's performance in this regard is unsatisfactory.

- (e) the nature and extent of the systems, policies, procedures or resources which support Ku-ring-gai's administration of planning and development matters.

The Department is not currently aware of any areas where the Council's performance in this regard is unsatisfactory.

- (f) whether Ku-ring-gai Council has complied with:
- (i) State Environmental Planning Policies and Regional Environmental Plans;

- (ii) other strategies and policies endorsed by the New South Wales Government, the Minister for Planning or the Department of Planning concerning planning and development matters, and
- (iii) directions issued by the Minister for Planning under section 117 of the Act.

The Department is not currently aware of any areas where the Council's performance in this regard is unsatisfactory.

- (g) whether Ku-ring-gai Council has complied with requirements in the Act concerning the levying, collection and management of development contributions.

The Department is not currently aware of any areas where the Council's performance in this regard is unsatisfactory.

- (h) the manner in which Ku-ring-gai Council or its councillors manage conflicts of interests concerning planning and development matters.

The Department is not currently aware of any areas where the Council's performance in this regard is unsatisfactory.

- (i) the time and manner in which Ku-ring-gai Council provides information to the Department in accordance with any program for development performance monitoring.

The Department is not currently aware of any areas where the Council's performance in this regard is unsatisfactory.

- (j) the public interest.

Reclassification

It is incumbent on all Sydney metropolitan Council's to achieve the targets set by the Metropolitan Strategy. Ku-ring-gai is identified as a major area of significance in the North subregion. By agreement with Hornsby Council, Ku-ring-gai Council will accommodate 10,000 more dwellings by 2031. The Town Centres LEP is a major step and tool for the Council to achieve this goal.

The reclassification of land in the town centres is an important part of the revitalisation of the centres, as there are a number of 'catalyst' sites which require reclassification to enable development envisaged under the Town Centres LEP to occur. The manner in which these sites are utilised, and the timing of their development, is critical to the future development of the town centres.

In many instances, these sites provide a significant opportunity for renewal and the provision of new, updated or enhanced community facilities and improved public domain. Development of Council-owned sites can, in some instances, provide the catalyst for redevelopment of older retail and commercial sites. As these sites play such a critical role in the future re-development of the town centres, the full implementation of the Town Centres LEP may be compromised should these sites not be reclassified.

Furthermore, the reclassification of such sites in the centres provides Ku-ring-gai Council with the flexibility to divest land considered surplus, and therefore provides Council with opportunities to leverage development outcomes and negotiate community facilities and

public domain improvements within new development sites – thereby contributing to enhanced quality of future development in Ku-ring-gai's centres. Additionally, funds arising from divestment can be better allocated towards provision of public amenities and facilities strategically aligned to the needs of Ku-ring-gai's changing community – in accordance with Council's financial modelling, asset management strategy and the associated development contributions plan.

There are around thirty sites in key areas throughout the town centres which are considered critical to delivering the outcomes sought by the Town Centres LEP that require reclassification. Outside these key areas, there are also a number of sites that warrant special consideration for reclassification.

Recent progress regarding reclassification

On 24 November 2009 Ku-ring-gai Council considered a report (prepared by Council staff) to prepare a planning proposal to reclassify 40 Council-owned sites. At this meeting, Council resolved to reclassify only 19 of the 40 sites, and requested the Panel prepare a planning proposal to amend the draft Town Centres LEP to reclassify the 19 sites. Therefore less than half of the sites recommended for reclassification were approved by Council.

The Panel met on 9 December 2009 to consider the request by Council to prepare a planning proposal to reclassify the 19 sites. The Panel resolved to prepare a draft planning proposal to reclassify the sites as per Council's resolution. The Panel also resolved to send related correspondence from SJB Planning to the Minister for consideration.

The Panel subsequently wrote to the Minister regarding reclassification and attached the letter from SJB Planning. The letter to the Minister raised concerns about Council's progress in reclassification, noting that the process began in 2005 and has not progressed since. The Panel also supported the SJB submission (which was on behalf of owners of the St Ives shopping village) which argued that Council's refusal to include a number of key sites for reclassification was tantamount to Council undermining the draft Town Centres LEP.

The Panel provided the following table which illustrates that as a result of Council's decisions on reclassification, just 20% of the total land recommended for reclassification will be reclassified:

Centre	Proposed sqm	Adopted by Council (sqm)	Percentage (%)
Gordon	18,393	1,570	8.5
Turramurra	14,184	4,808	33
St Ives	18,606	1,969	10.5
Pymble	16,284	70	0.4
Lindfield	12,027	3,715	30
Roseville	4,832	4,832	100
Total	84,326	16,964	20

The Council is hampering the progress of achieving the renewal of the town centres through a poorly managed reclassification process. For these reasons, the Council's actions to date in relation to reclassification have not been in the public interest. The Council's failure to exercise its reclassification functions under the Act in an appropriate and efficient manner is contrary to the expectant level of diligence of a local government authority.

Given the importance of reclassification in the context of the Town Centres LEP, it is recommended that the Order be amended to enable the Panel to undertake all reclassification in Ku-ring-gai.