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8 February 2024

Mr Antony Fabbro
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Re: Independent Heritage Advice – Proposed changes to NSW Planning System – Implications for Ku-ring-gai’s heritage

1. Background

Ku-ring-gai Council (Council) has engaged me to provide independent heritage advice about the impacts of the proposed changes to the NSW planning system on heritage items and heritage conservation areas in Ku-ring-gai. This independent advice has been prepared to assist Council to understand the implications of the proposed changes to the heritage of the Ku-ring-gai local government area (Ku-ring-gai).

I am a heritage consultant with over 30 years’ experience in heritage conservation, including 15 years as a heritage adviser in local government. I have qualifications in architecture and specialise in providing design advice and statutory guidance to local and state government agencies in order to facilitate outcomes based on heritage best practice. I have extensive knowledge of conservation practice and heritage legislation at both local and state level. I also have over 20 years’ experience as an independent expert witness on heritage issues in the Land and Environment Court of NSW (LEC). I am a member of several Local Planning Panels and the State Heritage Register Committee of the NSW Heritage Council.

In preparing this advice, I have reviewed the publicly available information in relation to the proposed changes, and the heritage context of the areas of the Ku-ring-gai that would be impacted by the changes.

The NSW Government is currently proposing widespread changes to the existing planning system in an effort to increase housing to address a shortage of housing across the Sydney area. The changes are contained into two separate proposals:

- Changes to create low and mid-rise housing; and
- Transport Oriented Development (TOD)



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2. Proposed changes to create low and mid-rise housing

The Department of Planning and Environment (DPE) document 'Explanation of intended effect: Changes to create low and mid-rise housing' (December 2023) provides the background and details of the proposed changes to the current planning system to increase low and mid-rise housing. The proposed changes aim to create more diverse, well-designed low and mid-rise housing near established town centres and in areas where there is good public transport. The proposed changes aim to provide more housing choice and '*promote vibrant, sustainable and liveable communities.*'

The proposed changes are summarised as:

- Allow dual occupancies (two dwellings on the same lot) in all R2 low density residential zones across NSW.
- Allow terraces, townhouses and 2 storey apartment blocks near transport hubs and town centres in R2 low density residential zones
- Allow mid-rise apartment blocks near transport hubs and town centres in R3 medium density zones across the six cities region.

The proposed changes will apply within heritage conservation areas and to heritage listed sites.

2.1 Mid-rise housing

The proposed planning changes include changes to allow mid-rise housing (residential flat buildings and shop-top housing) in station and town centre precincts. The proposal includes non-refusal standards for mid-rise housing which will overrule LEP or DCP provisions where the current standard is less permissive than the proposed standards. The proposed non-refusal standards for mid-rise housing residential flat buildings and shop-top housing in station and town centre precincts relate to maximum building heights and floor space ratio for sites within 400 and 800m of railway stations and town centres.

The proposal will apply to heritage items and conservation areas within the identified areas. Current LEP and DCP heritage and environmental considerations will continue to apply '*to the extent that they are not inconsistent with these provisions.*' In addition, the proposal involves '*turning off*' local LEP controls for minimum site area and widths.

2.2 Low-rise housing

The proposed planning changes include changes to make multi-dwelling housing (terraces) and manor houses (two storey residential flat buildings) permissible in low density residential zones within 800m of train stations and town centre precincts. The number of dwellings in a manor house will not be limited. The proposed changes also propose to expand the



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permissibility of dual occupancies to all low density residential zones in NSW, including heritage conservation areas.

As with mid-rise housing, non-refusal standards will apply to building height and FSR. Additional non-refusal standards would apply to minimum site area, minimum lot width and minimum car parking, over-riding current LEP and DCP controls. Current LEP and DCP heritage and environmental considerations will continue to apply *'to the extent that they are not inconsistent with these provisions.'*

3. Transit Oriented Development Program (TOD SEPP)

The DPE is also currently progressing the Transport Oriented Development Program (TOD), which aims to fast track rezoning in 8 key precincts and introduce new planning standards in 31 identified station precincts. The TOD includes new permissibility settings, built form controls, social and affordable housing provisions and heritage arrangements. The TOD changes will be included within a new State Environmental Planning Policy (TOD SEPP). The TOD SEPP would work in tandem with the changes to low and mid-rise housing described above. However, the TOD SEPP will prevail over the low and mid-rise controls where the controls overlap.

The TOD program focusses on identified areas located within 400m of railway stations. In Kuring-gai, four such locations have been identified for these changes: Roseville, Lindfield, Killara and Gordon. The TOD SEPP will switch on new planning controls including making residential flat buildings (RFBs) permissible in R1, R2, R3 and R4 residential zones and RFBs and shop top housing in E1 and E2 zones. The proposed development standards are:

- Max building height: 21m (six storeys)
- FSR 3:1
- No minimum lot size or width
- Minimum active street frontage controls in E1 and E2 zones
- Maximum parking rates

The TOD SEPP may also include design standards for building separation and setbacks, landscaping, privacy etc. Until these standards are provided, the ADG remains the guiding document for RFBs. The TOD SEPP will eventually be supported by a 'pattern book' of endorsed housing designs.

The TOD SEPP will apply in Heritage Conservation Areas (HCAs) and the supporting document states *'that the proposed changes will result in significant change in these locations as additional housing is delivered'*. A merit based assessment will apply to developments in



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HCA's and, as with the low and mid-rise planning reforms, local heritage controls will apply 'to the extent that they are not inconsistent with the new standards'

4. The Heritage of Ku-ring-gai

In NSW, heritage items and heritage conservation areas are protected through statutory listing because they have been assessed as having significance to communities. Heritage listings are the subject of thorough assessment to determine their level of significance and supported by detailed strategic planning and community consultation. The heritage of each local government area in NSW is special and unique, representing the historic development of the local area and defining local character. Heritage places are significant to and highly valued by local communities.

Strategic planning since the start of the current planning system has acknowledged the special value and significance of heritage places and provided a planning framework that ensures these places and areas are retained for current and future generations along with our understanding of the history and development of our cities and suburbs.

According to Ku-ring-gai's Local Strategic Planning Statement, '*Ku-ring-gai has a strong legacy of heritage fabric including items and places of strong historical, social and architectural value. Both European and Aboriginal heritage is respected and provides a sense of living history and a physical link to the work and way of life of earlier generations.*' In Ku-ring-gai there are over 950 heritage items, 24 of these are recognised on the NSW State Heritage Register, and there are 46 heritage conservation areas, covering some 627 hectares or 7% of Ku-ring-gai. The heritage of Ku-ring-gai comprises a rare blend of fine domestic architecture within a landscape of indigenous forests and established gardens.

Ku-ring-gai's heritage is distinguished by the uncommon consistency, quality and integrity of its primarily twentieth-century residential development. Ku-ring-gai's conservation areas and heritage items are characterised by largely intact single and two-storey houses from the Federation and inter-war periods, mature garden settings and original subdivision patterns. Many listed buildings are designed by architects and display quality of craftsmanship and detail. These historic buildings, sites and areas represent the historical development of Ku-ring-gai and its suburbs, development that followed the construction of the train line with residential proclamations restricting other uses and land covenants commonly requiring high quality construction, well ahead of contemporary town planning or zoning.



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All statutory heritage listings, including heritage items and HCAs, are underpinned by their significance. Ku-ring-gai DCP Section N Part 19 provides the following **Statement of Heritage Significance for Ku-ring-gai**.

The heritage significance of Ku-ring-gai lies in:

- i) The evidence provided by its rich history and all its sequential layers - from Aboriginal occupation, very early timbergetting, the long period of relative isolation from built suburbia, orcharding and farming followed by the rapid growth of suburban development in response to elevated topography, “clean air” and the establishment of the railway.
- ii) The outstanding quantity, quality, depth and range of its twentieth-century architecture. It contains houses designed by many of Australia’s prominent twentieth-century architects and these have in turn influenced the mainstream of Australian domestic architecture.
- iii) The evidence it provides of twentieth-century planning and conservation philosophies: the segregation of residential areas from other urban uses, subdivision patterns which reflect a range of suburban aspirations, the use of residential district proclamations to create and retain domestic environmental amenity, street tree planting and post-war neighbourhood planning.
- iv) The evidence offered by its built landscape and garden design incorporating a variety of horticultural styles and in harmony with the natural landscape, such as those in the large estate private gardens, the gardens at railway stations and well designed gardens of cultivated botanical species such as at Eryldene.
- v) The evidence of the area’s natural heritage retained in its surrounding national parks, along its creek lines and in its public and private gardens, remnants of the original Turpentine, Blackbutt and Blue Gum forests and associated woodlands, under-storeys and dependent fauna.

5. What is a Heritage Conservation Area?

HCAs are streetscapes, suburbs, areas and precincts that are recognised by a community for their distinctive historical character. HCAs most often provide evidence of the historical development of an area through their high proportion of original historic buildings. HCAs are protected through statutory listings because they demonstrate a distinctive identity, a particular sense of place and character that is valued by the community. The significance of an HCA is usually demonstrated in its subdivision layout and street pattern, and buildings that share common periods of development, with historical associations, and consistent typology,



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form, scale, materials and details. They often include trees and landscaping, and public domain elements.

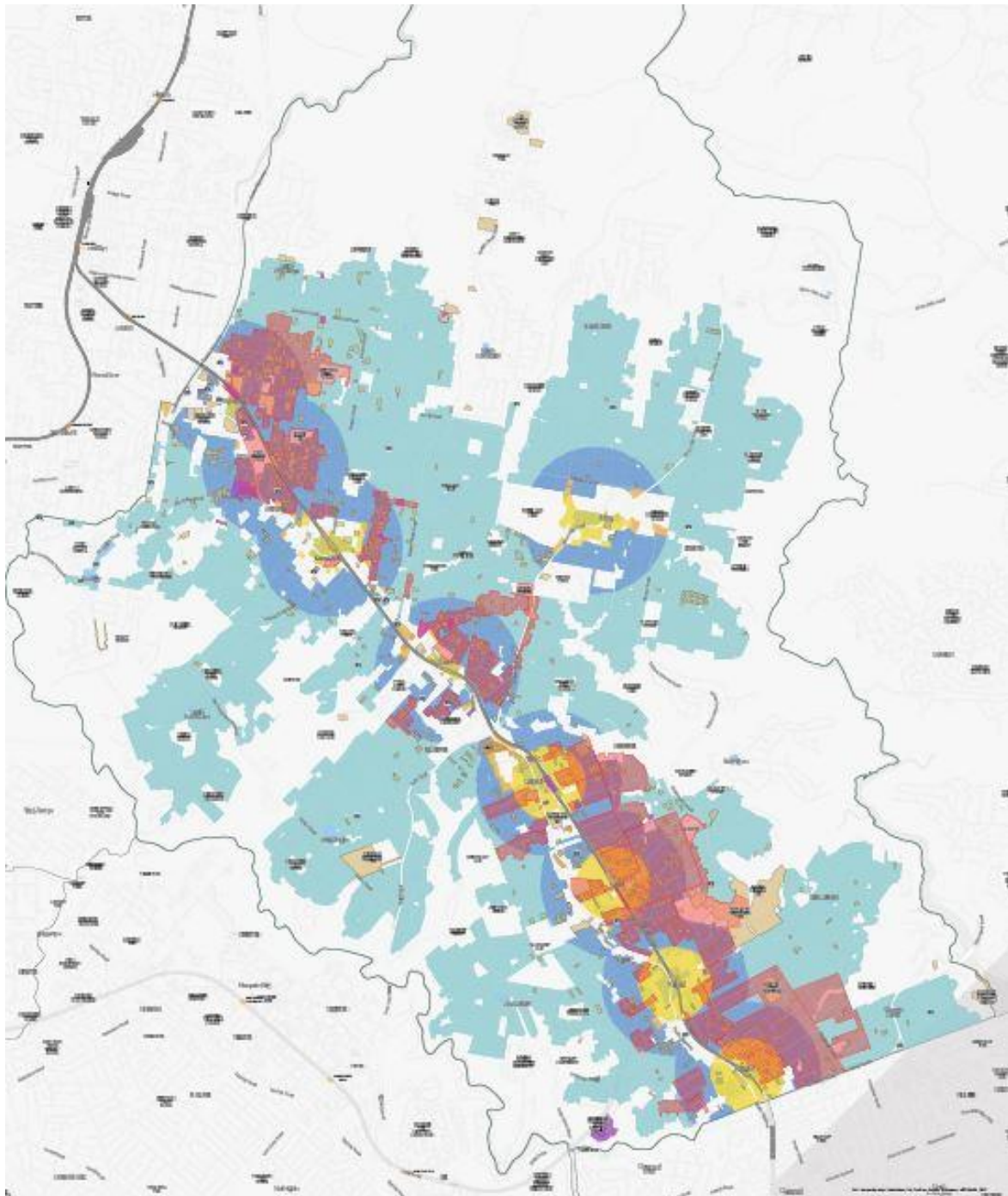
Heritage Conservation Areas are listed within Schedule 5 of Local Environmental Plans. This statutory listing is underpinned by detailed heritage assessments against the NSW standard criteria for heritage assessment and supported by thorough strategic planning and extensive community consultation. They are highly regarded by communities and visitors and provide NSW with historic layers that are evident for current and future generations. Without heritage conservation areas, NSW would lose its layers of history and the understanding of how our city and suburbs have developed over time. New layers of development are important, but not at the cost of the historic layers of development that are identified and assessed as being significant, for which they are afforded statutory protection.




The maps on the following pages indicate the extent of the proposed planning reforms on heritage conservation areas in Ku-ring-gai:







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-  HCA - Heritage Conservation Areas
-  State Heritage Register Item (NSW SEED)
-  Item - General

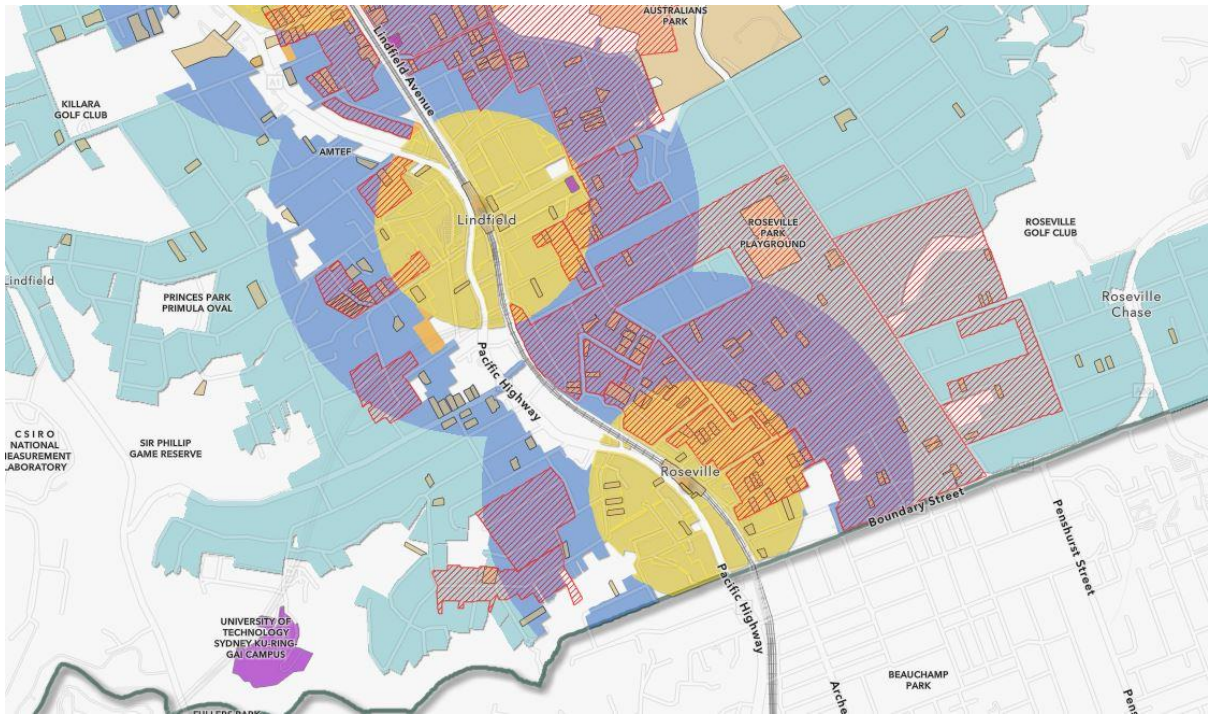
Selection layer [circle] - Development Type

-  Residential apartments and shop top housing up to 21m high (approx 6 to 7 storeys) and floor space ratio 3:1
-  Residential apartments and shop top housing up to 16m high (approx 4 to 5 storeys) and floor space ratio 2:1
-  Multi dwelling housing (terraces and townhouses) up to 9.5m high at floor space ratio 0.7:1, plus manor houses up to 9.5m high and floor space ratio 0.8:1
-  Dual Occupancy up to 9.5m high and floor space ratio 0.65:1 (minimum site area 450 sqm)

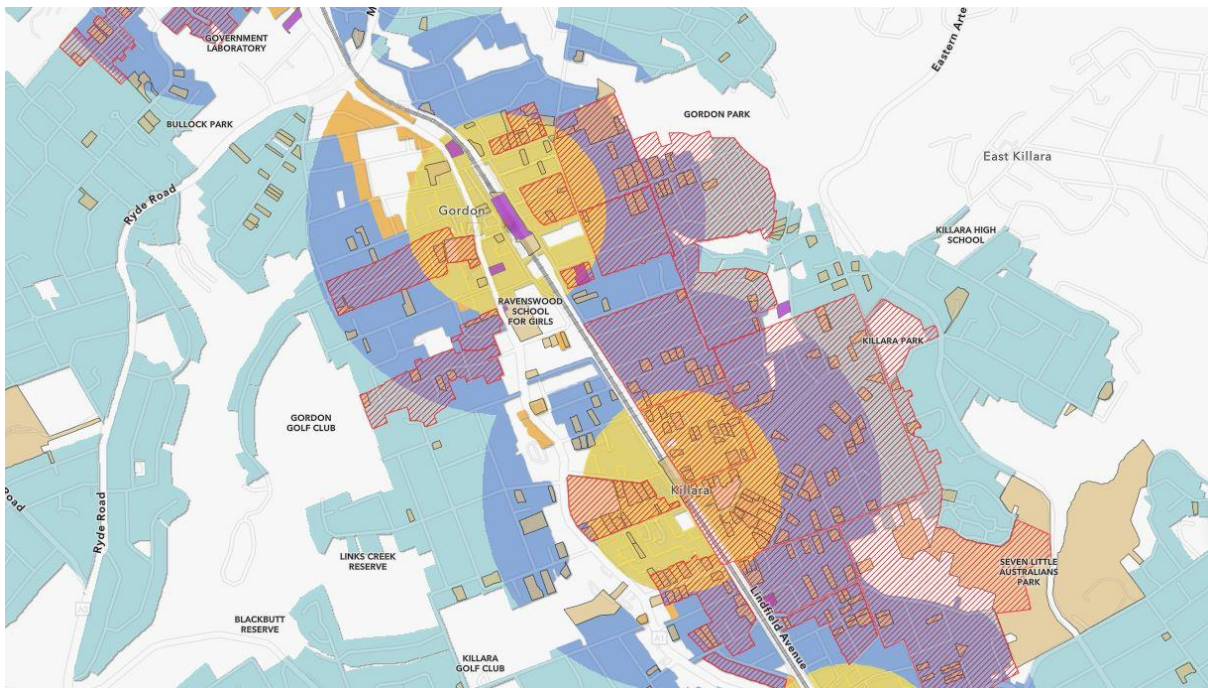


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Above: Roseville and Lindfield stations and some surrounding affected R2 land

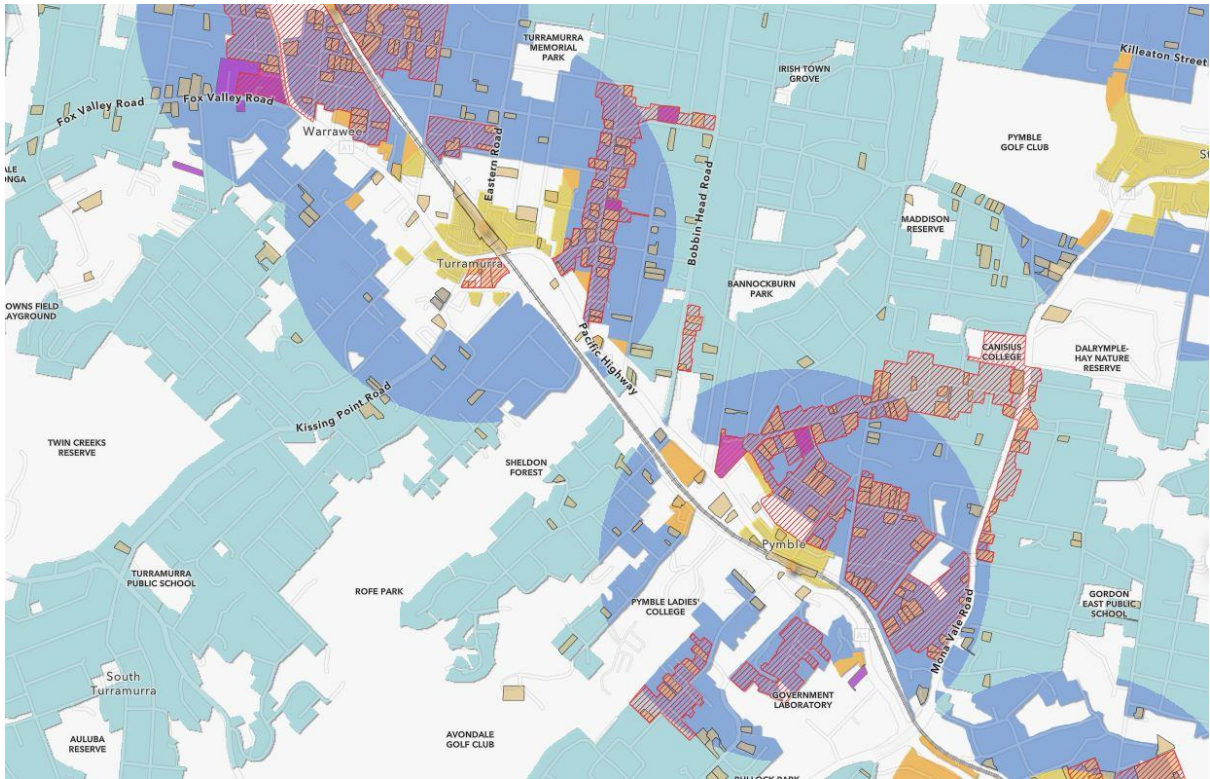


Above: Killara and Gordon stations and some surrounding affected R2 land

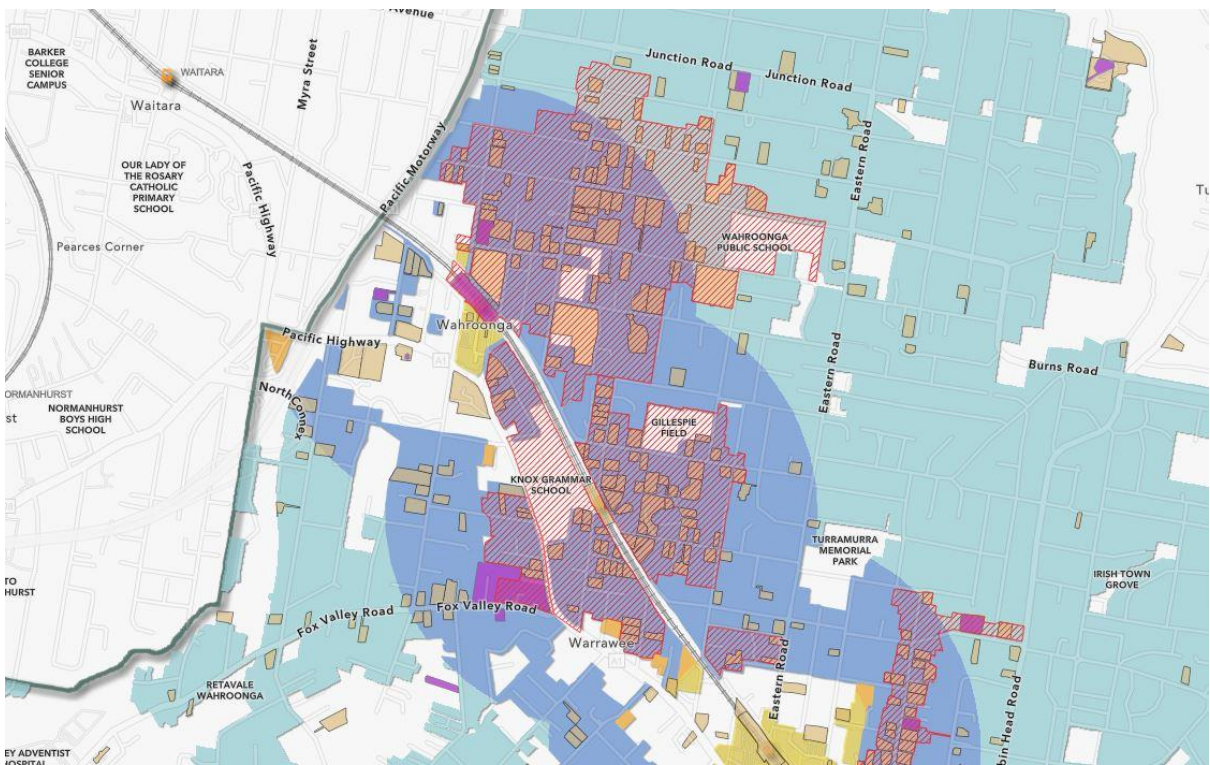


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Above: Pymble and Turramurra stations and some surrounding affected R2 land



Above: Warravee and Wahroonga stations and some surrounding affected R2 land



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Above: St Ives and some surrounding affected R2 land

6. Impacts of the proposed changes on the heritage of Ku-ring-gai

As noted previously, the proposed TOD SEPP and changes to low and mid-rise housing apply to all heritage items and heritage conservation areas across Ku-ring-gai that are located within an 800m radius of a train station or local centre. The proposal directly affects all of Ku-ring-gai's 46 HCAs.

Council estimates that 40% (over 4,000 properties) of the properties impacted by the proposed planning changes are currently protected by an individual heritage listing or listing within an HCA. More than 530 listed properties are within the proposed highest density areas designated for uplift under the TOD SEPP, including more than 100 individual heritage items. This increases to more than 2,000 individual heritage items within 800 metres of the same stations which would be impacted by the low and mid-rise housing proposal. In Killara, 83% of properties within 400m radius of the station, and subject to the TOD SEPP, are heritage listed.

Although the proposed changes indicate that local heritage controls and Clause 5.10 of the LEP would apply, that would only be *'to the extent that they are not inconsistent with the new standards.'* As the new standards seek height and density that is entirely inconsistent with the



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significance of each of the HCAs, it is very unclear how Clause 5.10 could be applied to protect the heritage values of Ku-ring-gai's HCAs.

As with other local government heritage controls, the local heritage controls in Ku-ring-gai seek to conserve and retain heritage fabric, setting and views, as required by Clause 5.10 of the standard instrument LEP. For heritage items, this includes individual buildings and their curtilage, which is usually their lot boundary, and setting. For HCAs, it includes contributory buildings, subdivision patterns, scale, setting, form and character.

As the new standards seek specifically to increase density, they will lead to substantial changes to scale, subdivision patterns, landscaping, streetscapes, building typology and character within HCAs. As such, the proposed planning changes are entirely inconsistent with Ku-ring-gai's LEP and DCP heritage controls.

Given the non-refusal policies of the new controls, it seems likely that local heritage controls will be unable to be enforced, with irreversible loss of heritage. The proposals, if implemented without further consideration, will have a devastating and irreversible impact on the character and significance of large numbers of individual heritage items and HCAs across Ku-ring-gai.

Furthermore, the proposal is silent on how the new controls will interact with the Heritage Act and National Parks and Wildlife Act. As such, the potential impacts on heritage items of State significance and Aboriginal places are unknown and could be similar to the impacts on local heritage items. It is also uncertain and unclear how development for increased density in the vicinity of State heritage items will be assessed and how the settings and views of these items will be protected.

Owners and residents of heritage items and properties in HCAs have a reasonable expectation that the heritage significance of their property will be maintained through well considered urban planning, as provided for in existing LEP controls for heritage items, conservation areas, development in the vicinity of heritage items and conservation areas, zoning and development standards.

The current proposals give no consideration or evaluation of the impact of the increased density on the heritage significance of those areas and sites to which they apply. This is inconsistent with the NSW government's local planning direction for heritage conservation and the heritage objectives of standard planning instruments across NSW. The blanket approach to density does not allow for the consideration of local context and heritage significance or consider alternative locations for increased density with lesser environmental impacts. If implemented without proper consideration, large areas of heritage significance across NSW will be irreversibly changed and historic layers of development will be permanently lost.

In planning for increased housing in NSW, proper consideration should be given to retaining significant heritage properties and heritage conservation areas. Alternative approaches and



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locations should be sought for increased development in areas of lesser environmental impact. A more nuanced and well-planned approach is needed for HCAs, where significant places and contributory elements are retained, and non-contributory elements may be allowed to be sensitively redeveloped. Detailed, strategic investigations should be undertaken to inform how housing density can be increased in these areas without loss of heritage values.

7. Conclusion and Recommendations

The planning changes as proposed in the TOD SEPP and for low and mid-rise housing will have a devastating and irreversible impact on the character and significance on all 46 of Ku-ring-gai's heritage conservation areas and up to 900 individually listed heritage items, and a major adverse impact on the heritage significance of Ku-ring-gai as a whole. The proposed changes would see widespread loss of significant buildings and their settings, loss of historic subdivision patterns, changes to scale, form, character, landscaping and significant streetscapes.

The proposed changes are entirely incompatible with the local heritage controls and Local Strategic Planning Statement, which have been informed by robust strategic planning and community consultation. The proposed planning changes, if implemented, could see historically significant buildings and areas that are highly regarded by the community removed and replaced with new buildings of unknown value or appeal.

The proposed reforms have not been supported by an evaluation or assessment of their heritage and environmental impact. An understanding of local context is essential to good urban planning and the creation of sustainable cities. Detailed strategic investigations, with input from Council and an understanding of local context should be undertaken to inform how housing density can be increased in Ku-ring-gai and NSW without extensive, widespread and irreversible loss of heritage values and connection to the past.

Yours sincerely

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