

Director
Local Planning Policy
NSW Department of Planning and Infrastructure and Environment
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29 January 2020

Dear Sir/Madam

Local Character Overlay : Draft Local Character Clause and Overlay submission

Thank you for the opportunity to respond to the public exhibition.

Friends of Ku-ring-gai Environment (FOKE) is a volunteer community group, formed in 1994 to protect Ku-ring-gai's unique character, heritage and environment.

FOKE welcomes any effort by the NSW Government and the Department of Planning and Infrastructure to protect, enhance and restore the Local Character of Ku-ring-gai and other suburbs of Sydney. FOKE has argued for many years that Ku-ring-gai has Inter-War National heritage significance as studied extensively by the NSW National Trust in 1997 which classified 28 urban conservation areas, and needs urgent and additional legislative protection for its outstanding built heritage, natural environment and neighbourhood character. The National Trust 28 studied areas have been impacted by inappropriate development over the past two decades due of forced urban consolidation and inadequate and appropriate legislative protection. The NSW Government's initiative to provide Ku-ring-gai with exemption opportunities from intrusive and inappropriate development is something FOKE has called for many years.

Although FOKE welcomes any planning initiative to protect Ku-ring-gai's Local Character and that of other Sydney suburbs, FOKE remains concerned that the Local Character Statements and Local Character Overlays' contrary objectives to increase medium density development via the new 'Low Rise Housing Diversity Code' (LRHDC) will continue to decimate Ku-ring-gai's character, heritage and environment if allowed.

FOKE grieves for the loss of so much biodiversity rich and heritage character rich areas due to the NSW Government's high density rezoning agenda in these special character areas. Since 2006 Ku-ring-gai has already seen a 25% increase in population and the character of Ku-ring-gai's character suburbs within 400 - 600 metres of the North Shore railway line and the St Ives local centre and as a result have in parts been detrimentally impacted.

The process proposed in the Department's public Local Character Overlay documents, to FOKE's knowledge, is not accompanied with any additional resources to enable Councils to employ specialised consultants to do the necessary rigorous local character and heritage studies that are required for exemptions. Indeed, the process to apply for exemptions appears overly onerous and bureaucratic and even impossible to achieve.

FOKE would prefer the model established in 2000 when Ku-ring-gai Council undertook several baseline studies including a Heritage and Neighbourhood Character Study as the basis of its Residential Development Strategy and in planning for additional multi-dwelling housing. Ku-ring-gai Council commissioned heritage consultants (Godden, Mackay, Logan) and urban planners (Keys & Young) to complete a rigorous assessment of the heritage and neighbourhood character of each Ku-ring-gai suburb that set a noteworthy benchmark that

2016 NATIONAL TRUST HERITAGE AWARDS HIGHLY COMMENDED
2009 NATIONAL TRUST HERITAGE AWARDS HIGHLY COMMENDED
2008 NSW GOVERNMENT HERITAGE VOLUNTEERS AWARD
2000 FOKE, WINNER, NSW HERITAGE OFFICE CULTURAL HERITAGE CONSERVATION AWARD
"HERITAGE WATCH OVER OUR PLACE OF NATIONAL SIGNIFICANCE - KU-RING-GAI"
KEEP AUSTRALIA BEAUTIFUL COUNCIL (NSW) METRO PRIDE AWARDS.

remains relevant today with recommendations on the retention and maintenance of Ku-ring-gai's character and visual appeal. A 1999 street by street analysis was also conducted by MA Schell consultants who supported this Study.

FOKE understands that there will continue to be some change - but argues that this needs to be put in the context of not only established Local Character but an unprecedented biodiversity decline, climate change impacts with more extreme heat waves, storms and bushfires. The proposal does not take into account how important sustainable local neighbourhood character is to the mental and physical wellbeing of residents since the onset and lockdown of the COVID-19 pandemic. Ku-ring-gai's neighbourhood and heritage character gives residents a sense of place - more important than ever during hard times. The retention and maintenance of established special Local Character and environment is also a critical contributor to habitat and wildlife survival. The Ku-ring-gai rail corridor and St Ives local centre supports remaining stands of two critically endangered ecological communities – the Blue Gum High Forest and Sydney Turpentine Ironbark Forest and their habitat.

Whilst we agree the need for Local Character Statements and Local Character Overlays in protecting areas of special Local Character, however, there are a number of red flags which arise from examining the public exhibition documents.

In drilling down on the objectives of this planning direction it is to predominantly to further the agenda of promoting more medium density development via the 'Low Rise Housing Diversity Code' (LRHDC). A Housing Code which most councils have been objecting to due to the type of housing which will be permitted by the Code in R1 R2 R3 and RU5 zones, depending on what the Local Environmental Plan permits and ultimately what the Department will allow or dictate.

The Code where permitted by an LEP, will allow complying development in the form of dual occupancies, manor houses and terraces (up to two storeys). The 'missing middle' type of development has been roundly criticised by councils as being able to potentially destroy vast areas of established Local Character. The State Government's introduction of this Complying Code caused considerable outcry from many councils and caused the Planning Minister and NSW Government to pause the introduction for several months due to the criticisms and concerns from numerous Sydney Mayor's and Councils. The Minister has now pushed ahead with another Complying Code, which we believe will severely impact Local Character with little Council or community comment.

The Local Character Overlay documentation is, in reality, not really about preserving the Local Character but changing it to a "*desired future character*", whatever that may turn out to be depending on the level and strength of character statement and overlay prepared! It is clearly evident that developers over the past decades have been allowed to dictate the future character of local suburbs, despite local character studies being in place and resident's objections. Particularly the impacts of medium and high-rise development, which have intruded into what are predominantly 100+ year old single residential suburbs which have been rezoned to allow for development completely 'alien' to the established Local Character.

In fact, we believe it has been the State Government following pressure from the development industry, that has so weakened planning legislation to allow suburbs character to be destroyed despite studies and standards being in place to manage respectful development. The development that has been allowed is dictating the 'future character' not respecting established Local Character. Our concern is that unless the use of Local Character Overlays are given more weight in the planning process through a higher adherence requirement this degradation of suburbs will continue despite new studies and local character overlays being studied and put in place.

There are also warnings and threats in the public exhibition documents with respect to exemptions from the LRHDC. The threat that "***any consideration of an exclusion will need to demonstrate that without complying development, the housing needs can still be effectively met. If it is to be found that housing targets are not being met or a diverse range of housing is not being delivered in the area, the exempted***

areas will be reversed and the LRHDC will be reactivated in the area” (our emphasis) is very concerning. Especially as we are now seeing a massive drop in population growth in Sydney that will impact housing requirements for years to come. Now is the time to review the approach and retain Local Character rather than destroying it, as do all the great cities of the world.

FOKE has deep concerns that the proposal encourages ‘industry’ to dictate the future character of local suburbs, particularly when the property industry are key donors to political parties that subvert local democratic planning decisions. FOKE asserts that already under the pressure of the property ‘industry’ much planning legislation has been severely weakened - allowing not only the character, but heritage and environmental values to be diminished and destroyed.

It also appears there will be a lot riding on Council’s Local Character Overlay/Statement, which **if** permitted by the Department, will modify the LEP and DCP. We also envisage much will depend as to how planners and certifiers will interpret the LRHDC Code and Council’s Local Character Statement and Local Character Overlay in determining development and its compliance.

It appears a Council, even if there are considerable significant areas of Local Character within a local government area, that Councils will not be permitted to ‘maintain’ an entire local government area even if the whole LGA is considered of ‘special character’. However, there will be LGAs where several aspects of a Local Character Overlays will in fact cover much of the LGA. The documents state a LGA will not be allowed to categorise single areas that can be ‘maintained’ but to ascertain which areas should be enhanced or changed. Minimal change may be all that is required and hence across several character overlays covering an LGA this should be allowed.

The Discussion Paper- Local Character Overlays reveals that the Department of Planning is setting up LGA’s to fail to meet the criteria for a Local Character Statement (LCS). The fact that the Discussion Paper in effect implies that it is “**optional**” (“A LCS is an **optional** (our emphasis) *standalone document to provide a statement of an area’s existing and desired character*”) really means, so far as the Department is concerned, not essential, nor even important, nor even something that an LGA should trouble the Department with!!

In the document Local Character and Place Collection, the reference is made to the Committee for Sydney’s report into benchmarking Sydney’s performance in livability rankings that show that Sydney is starting to fall behind and ‘losing its livability edge’. This should be a wake-up call that the current planning regime, driven by the development lobby, will cause the destruction of more Local Character and fan even more resident dissatisfaction. More emphasis in the Planning regime needs to be given to Local Character, local Councils and communities, without all the roadblocks that this process currently provides.

The Local Character and Place Guideline document states that the Desired Future Character should reflect the extent of change that an area can accommodate, either

- Change
- Maintain, or
- Enhance.

However, this is not fully realised in the Draft Local Character Clause:

Hence the Clause needs to be amended to reflect the Desired Future Character of an area can include purely the retention and maintenance of the existing Local Character.

The Clause also needs to increase the importance of Local Character Statements in the planning consent, rather than ‘taken into account’, replace with ‘respected, met and addressed in a meaningful manner’.

FOKE remains concerned that in the current proposed form and direction, the Local Character Statement and Local Character Overlay, will allow the continuation of tokenistic community engagement - with 'business as usual' where the NSW Government continues to push ahead with its medium and high-density agenda. As such FOKE believes the Local Character Statements and Local Character Overlays are disingenuous in any commitment to protect Ku-ring-gai's character or that of other Sydney suburbs.

We look forward to receiving an acknowledgement by the Director of receipt of this submission and the proposed changes following the assessment of the public submissions.

Yours sincerely

Kathy Cowley

PRESIDENT

cc Member for Davidson The Hon. Jonathan O'Dea MP

cc Member for Ku-ring-gai Mr Alister Henskens SC MP

cc Member for Bradfield The Hon Paul Fletcher MP

cc Mayor and Councillors Ku-ring-gai Council

cc The General Manager Ku-ring-gai Council