



New South Wales

# Ku-ring-gai Local Environmental Plan No 218

under the

Environmental Planning and Assessment Act 1979

I, the Minister for Planning and Infrastructure, make the following local environmental plan under the *Environmental Planning and Assessment Act 1979*.

DANIEL KEARY

As delegate for the Minister for Planning and Infrastructure

## **2013 No 369**

Clause 1            Ku-ring-gai Local Environmental Plan No 218

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## **Ku-ring-gai Local Environmental Plan No 218**

under the

Environmental Planning and Assessment Act 1979

### **1 Name of Plan**

This Plan is *Ku-ring-gai Local Environmental Plan No 218*.

### **2 Commencement**

This Plan commences on the day on which it is published on the NSW legislation website.

### **3 Land to which Plan applies**

This Plan applies to the land to which the *Ku-ring-gai Planning Scheme Ordinance* applies.

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## Schedule 1      Amendment of Ku-ring-gai Planning Scheme Ordinance

### [1]    Clause 4 Interpretation

Insert the following in alphabetical order in clause 4 (1):

**Aboriginal object** means any deposit, object or other material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of an area of New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains.

**Aboriginal place of heritage significance** means an area of land, the general location of which is identified in an Aboriginal heritage study adopted by the Council after public exhibition and that may be shown on the Heritage Map, that is:

- (a) the site of one or more Aboriginal objects or a place that has the physical remains of pre-European occupation by, or is of contemporary significance to, the Aboriginal people. It may (but need not) include items and remnants of the occupation of the land by Aboriginal people, such as burial places, engraving sites, rock art, midden deposits, scarred and sacred trees and sharpening grooves, or
- (b) a natural Aboriginal sacred site or other sacred feature. It includes natural features such as creeks or mountains of long-standing cultural significance, as well as initiation, ceremonial or story places or areas of more contemporary cultural significance.

**Note.** The term may include (but is not limited to) places that are declared under section 84 of the *National Parks and Wildlife Act 1974* to be Aboriginal places for the purposes of that Act.

**Archaeological site** means a place that contains one or more relics.

**Curtilage**, in relation to a heritage item or conservation area, means the area of land (including land covered by water) surrounding a heritage item, a heritage conservation area, or building, work or place within a heritage conservation area, that contributes to its heritage significance.

**Demolish**, in relation to a heritage item or an Aboriginal object, or a building, work, relic or tree within a heritage conservation area, means wholly or partly destroy, dismantle or deface the heritage item, Aboriginal object or building, work, relic or tree.

**Excavation** means the removal of soil or rock, whether moved to another part of the same site or to another site, but does not

## 2013 No 369

Ku-ring-gai Local Environmental Plan No 218

Schedule 1      Amendment of Ku-ring-gai Planning Scheme Ordinance

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include garden landscaping that does not significantly alter the shape, natural form or drainage of the land.

**Heritage conservation area** means an area of land of heritage significance:

- (a) shown on the Heritage Conservation Areas Map as a heritage conservation area, and
- (b) the location and nature of which is described in Part 3 of Schedule 7,

and includes any heritage items situated on or within that area.

**Heritage Conservation Areas Map** means the map marked “Ku-ring-gai Local Environmental Plan No 218 Heritage Conservation Areas Map” deposited in the office of the Council.

**Heritage conservation management plan** means a document prepared in accordance with guidelines prepared by the Division of the Government Service responsible to the Minister administering the *Heritage Act 1977* that documents the heritage significance of an item, place or heritage conservation area and identifies conservation policies and management mechanisms that are appropriate to enable that significance to be retained.

**Heritage impact statement** means a document consisting of:

- (a) a statement demonstrating the heritage significance of a heritage item or heritage conservation area, and
- (b) an assessment of the impact that proposed development will have on that significance, and
- (c) proposals for measures to minimise that impact.

**Heritage management document** means:

- (a) a heritage conservation management plan, or
- (b) a heritage impact statement, or
- (c) any other document that provides guidelines for the ongoing management and conservation of a heritage item, Aboriginal object, Aboriginal place of heritage significance or heritage conservation area.

**Maintenance**, in relation to a heritage item, Aboriginal object or Aboriginal place of heritage significance, or a building, work, archaeological site, tree or place within a heritage conservation area, means ongoing protective care, but does not include the removal or disturbance of existing fabric, alterations (such as carrying out extensions or additions) or the introduction of new materials or technology.

**Natural Resource Biodiversity Map** means the map marked “Ku-ring-gai Local Environmental Plan No 218 Natural

Resource Biodiversity Map” deposited in the office of the Council.

**Natural Resource Riparian Lands Map** means the map marked “Ku-ring-gai Local Environmental Plan No 218 Natural Resource Riparian Lands Map” deposited in the office of the Council.

**Nominated State heritage item** means a heritage item that:

- (a) has been identified as an item of State significance in a publicly exhibited heritage study adopted by the Council, and
- (b) the Council has, by notice in writing to the Heritage Council, nominated as an item of potential State significance.

**[2] Clause 4 (1), definitions of “Heritage item”, “Heritage significance” and “Relic”**

Omit the definitions. Insert instead:

**Heritage item** means a building, work, place, relic, tree, object or archaeological site the location and nature of which is described in Schedule 7.

**Note.** An inventory of heritage items is also available at the office of the Council.

**Heritage significance** means historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value.

**Relic** has the same meaning as in the *Heritage Act 1977*.

**Note.** The term is defined as follows:

**relic** means any deposit, artefact, object or material evidence that:

- (a) relates to the settlement of the area that comprises New South Wales, not being Aboriginal settlement, and
- (b) is of State or local heritage significance.

**[3] Clause 61D**

Omit clauses 61D–61H. Insert instead:

**61D Heritage conservation**

**Note.** Heritage items (if any) are listed and described in Schedule 7. Heritage conservation areas (if any) are shown on the Heritage Conservation Areas Map as well as being described in Schedule 7.

(1) **Objectives**

The objectives of this clause are as follows:

- (a) to conserve the environmental heritage of Ku-ring-gai,

## 2013 No 369

Ku-ring-gai Local Environmental Plan No 218

Schedule 1 Amendment of Ku-ring-gai Planning Scheme Ordinance

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- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,
- (c) to conserve archaeological sites,
- (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.

### (2) Requirement for consent

Development consent is required for any of the following:

- (a) demolishing or moving any of the following or altering the exterior of any of the following (including, in the case of a building, making changes to its detail, fabric, finish or appearance):
  - (i) a heritage item,
  - (ii) an Aboriginal object,
  - (iii) a building, work, relic or tree within a heritage conservation area,
- (b) altering a heritage item that is a building by making structural changes to its interior or by making changes to anything inside the item that is specified in Schedule 7 in relation to the item,
- (c) disturbing or excavating an archaeological site while knowing, or having reasonable cause to suspect, that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed,
- (d) disturbing or excavating an Aboriginal place of heritage significance,
- (e) erecting a building on land:
  - (i) on which a heritage item is located or that is within a heritage conservation area, or
  - (ii) on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance,
- (f) subdividing land:
  - (i) on which a heritage item is located or that is within a heritage conservation area, or
  - (ii) on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance.

**(3) When consent not required**

However, development consent under this clause is not required if:

- (a) the applicant has notified the Council of the proposed development and the Council has advised the applicant in writing before any work is carried out that it is satisfied that the proposed development:
  - (i) is of a minor nature or is for the maintenance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or archaeological site or a building, work, relic, tree or place within the heritage conservation area, and
  - (ii) would not adversely affect the heritage significance of the heritage item, Aboriginal object, Aboriginal place, archaeological site or heritage conservation area, or
- (b) the development is in a cemetery or burial ground and the proposed development:
  - (i) is the creation of a new grave or monument, or excavation or disturbance of land for the purpose of conserving or repairing monuments or grave markers, and
  - (ii) would not cause disturbance to human remains, relics, Aboriginal objects in the form of grave goods, or to an Aboriginal place of heritage significance, or
- (c) the development is limited to the removal of a tree or other vegetation that the Council is satisfied is a risk to human life or property, or
- (d) the development is exempt development.

**(4) Effect of proposed development on heritage significance**

The Council must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned. This subclause applies regardless of whether a heritage management document is prepared under subclause (5) or a heritage conservation management plan is submitted under subclause (6).

**(5) Heritage assessment**

The Council may, before granting consent to any development:

- (a) on land on which a heritage item is located, or
- (b) on land that is within a heritage conservation area, or
- (c) on land that is within the vicinity of land referred to in paragraph (a) or (b),

require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.

**(6) Heritage conservation management plans**

The Council may require, after considering the heritage significance of a heritage item and the extent of change proposed to it, the submission of a heritage conservation management plan before granting consent under this clause.

**(7) Archaeological sites**

The Council must, before granting consent under this clause to the carrying out of development on an archaeological site (other than land listed on the State Heritage Register or to which an interim heritage order under the *Heritage Act 1977* applies):

- (a) notify the Heritage Council of its intention to grant consent, and
- (b) take into consideration any response received from the Heritage Council within 28 days after the notice is sent.

**(8) Aboriginal places of heritage significance**

The Council must, before granting consent under this clause to the carrying out of development in an Aboriginal place of heritage significance:

- (a) consider the effect of the proposed development on the heritage significance of the place and any Aboriginal object known or reasonably likely to be located at the place by means of an adequate investigation and assessment (which may involve consideration of a heritage impact statement), and
- (b) notify the local Aboriginal communities, in writing or in such other manner as may be appropriate, about the application and take into consideration any response received within 28 days after the notice is sent.



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(9) **Demolition of nominated State heritage items**

The Council must, before granting consent under this clause for the demolition of a nominated State heritage item:

- (a) notify the Heritage Council about the application, and
- (b) take into consideration any response received from the Heritage Council within 28 days after the notice is sent.

(10) **Conservation incentives**

The Council may grant consent to development for any purpose of a building that is a heritage item or of the land on which such a building is erected, or for any purpose on an Aboriginal place of heritage significance, even though development for that purpose would otherwise not be allowed by this Plan, if the Council is satisfied that:

- (a) the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent, and
- (b) the proposed development is in accordance with a heritage management document that has been approved by the Council, and
- (c) the consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out, and
- (d) the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance, and
- (e) the proposed development would not have any significant adverse effect on the amenity of the surrounding area.

**[4] Clause 61L**

Insert after clause 61K:

**61L Biodiversity protection**

- (1) The objective of this clause is to protect, maintain and improve the diversity and condition of native vegetation and habitat, including by:
  - (a) protecting the biological diversity of native fauna and flora, and
  - (b) protecting the ecological processes necessary for their continued existence, and

## 2013 No 369

Ku-ring-gai Local Environmental Plan No 218

Schedule 1      Amendment of Ku-ring-gai Planning Scheme Ordinance

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- (c) encouraging the recovery of threatened species, communities, populations and their habitats, and
  - (d) protecting, restoring and enhancing biodiversity corridors.
- (2) This clause applies to land identified as “Areas of Biodiversity Significance” on the Natural Resource Biodiversity Map.
- (3) Before granting development consent for development on land to which this clause applies, the Council must consider:
- (a) the impact of the proposed development on the following:
    - (i) any native vegetation community,
    - (ii) the habitat of any threatened species, population or ecological community,
    - (iii) any regionally significant species of fauna, flora or habitat,
    - (iv) any biodiversity corridor,
    - (v) any wetland,
    - (vi) the biodiversity values within any reserve,
    - (vii) the stability of the land, and
  - (b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development, and
  - (c) any opportunity to restore or enhance remnant vegetation, habitat and biodiversity corridors.
- (4) Development consent must not be granted to development on land to which this clause applies unless the Council is satisfied that:
- (a) the development is consistent with the objectives of this clause, and
  - (b) the development is designed, sited and will be managed to avoid any adverse environmental impact, or, if that impact cannot be reasonably avoided by adopting feasible alternatives:
    - (i) the development minimises disturbance and adverse impacts on remnant vegetation communities, habitat and threatened species and populations, and
    - (ii) measures have been considered to maintain native vegetation and habitat in parcels of a size, condition and configuration that will facilitate biodiversity protection and native fauna and flora movement through biodiversity corridors, and

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- (iii) the development avoids clearing steep slopes and facilitates the stability of the land, and
  - (iv) measures have been considered to achieve no net loss of significant vegetation or habitat.
- (5) In this clause, *biodiversity corridor* means an area to facilitate the connection and maintenance of native fauna and flora habitats within the urban landscape, which may be broken by roads and other urban elements, and may include remnant trees and associated native and exotic vegetation.

**61M Riparian land and waterways**

- (1) The objective of this clause is:
- (a) to protect and improve the following:
    - (i) water quality within waterways,
    - (ii) the stability of the bed and banks of waterways,
    - (iii) aquatic and riparian species, communities, populations and habitats,
    - (iv) ecological processes within waterways and riparian lands,
    - (v) scenic and cultural heritage values of waterways and riparian lands, and
  - (b) where practicable, to provide for the rehabilitation of existing piped or channelised waterways to a near natural state.
- (2) This clause applies to land identified as “Riparian Lands” on the Natural Resource Riparian Lands Map.
- (3) Before determining a development application for development on land to which this clause applies, the Council must consider:
- (a) whether or not the development is likely to have any adverse impact on the following:
    - (i) the water quality in the waterway,
    - (ii) the natural flow regime, including groundwater flows to a waterway,
    - (iii) aquatic and riparian species, populations, communities, habitats and ecosystems,
    - (iv) the stability of the bed, shore and banks of the waterway,
    - (v) the free passage of native aquatic and terrestrial organisms within or along the waterway and riparian land,

## 2013 No 369

Ku-ring-gai Local Environmental Plan No 218

Schedule 1 Amendment of Ku-ring-gai Planning Scheme Ordinance

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- (vi) public access to, and use of, any public waterway and its foreshores, and
  - (b) any opportunities for rehabilitation or re-creation of the waterway and riparian land, and
  - (c) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.
- (4) Development consent must not be granted to development on land to which this clause applies unless the Council is satisfied that:
- (a) the development integrates riparian, stormwater and flooding measures, and
  - (b) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or if that impact cannot be reasonably avoided by adopting feasible alternatives, the development is designed, sited and will be managed to minimise that impact to a satisfactory extent.

### [5] Schedule 7 Heritage items

Insert after Part 2:

## Part 3 Heritage conservation areas

<b>Name of heritage conservation area</b>	<b>Identification on Heritage Conservation Areas Map</b>	<b>Significance</b>
Archbold Farms Conservation Area	Shown by red hatching and labelled "C34"	Local
Clanville Conservation Area	Shown by red hatching and labelled "C32"	Local
Crown Blocks Conservation Area	Shown by red hatching and labelled "C22"	Local
Earl of Carnarvon Conservation Area	Shown by red hatching and labelled "C33"	Local
Fernwalk Conservation Area	Shown by red hatching and labelled "C9"	Local
Frances Street Conservation Area	Shown by red hatching and labelled "C30"	Local
Garden of Roseville Estate Conservation Area	Shown by red hatching and labelled "C37"	Local

<b>Name of heritage conservation area</b>	<b>Identification on Heritage Conservation Areas Map</b>	<b>Significance</b>
Gordon Park Estate and McIntosh and Ansell Grant Conservation Area	Shown by red hatching and labelled "C15"	Local
Gordondale Estate Conservation Area	Shown by red hatching and labelled "C12"	Local
Greengate Estate Conservation Area	Shown by red hatching and labelled "C20"	Local
Ku-ring-gai Avenue Conservation Area	Shown by red hatching and labelled "C6A"	Local
Lindfield West Conservation Area	Shown by red hatching and labelled "C30A"	Local
Love Estate, Thorne and Oatley Grant Conservation Area	Shown by red hatching and labelled "C14"	Local
Lynwood Avenue Conservation Area	Shown by red hatching and labelled "C23"	Local
Mahratta Conservation Area	Shown by red hatching and labelled "C4"	Local
Marian Street Conservation Area	Shown by red hatching and labelled "C24"	Local
Oliver Grant Conservation Area	Shown by red hatching and labelled "C26"	Local
Orinoco Conservation Area	Shown by red hatching and labelled "C10A"	Local
Pymble Avenue Conservation Area	Shown by red hatching and labelled "C11"	Local
Pymble Heights Conservation Area	Shown by red hatching and labelled "C8A"	Local
Roberts Grant Conservation Area	Shown by red hatching and labelled "C13"	Local
Shirley Road Conservation Area	Shown by red hatching and labelled "C38"	Local
Smith Grant Conservation Area	Shown by red hatching and labelled "C19"	Local
Springdale Grant Conservation Area	Shown by red hatching and labelled "C21"	Local
St Johns Avenue Conservation Area	Shown by red hatching and labelled "C16A"	Local

## 2013 No 369

Ku-ring-gai Local Environmental Plan No 218

Schedule 1 Amendment of Ku-ring-gai Planning Scheme Ordinance

---

<b>Name of heritage conservation area</b>	<b>Identification on Heritage Conservation Areas Map</b>	<b>Significance</b>
Stanhope Road Conservation Area	Shown by red hatching and labelled "C25A"	Local
Wahroonga Conservation Area	Shown by red hatching and labelled "C1"	Local
Warrawee Conservation Area	Shown by red hatching and labelled "C3"	Local

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