



New South Wales

# **Kogarah Local Environmental Plan 2012 (Amendment No 2)**

under the

**Environmental Planning and Assessment Act 1979**

The Greater Sydney Commission makes the following local environmental plan under the *Environmental Planning and Assessment Act 1979*.

MARCUS RAY

As delegate for the Greater Sydney Commission

## **Kogarah Local Environmental Plan 2012 (Amendment No 2)**

under the

Environmental Planning and Assessment Act 1979

### **1 Name of Plan**

This Plan is *Kogarah Local Environmental Plan 2012 (Amendment No 2)*.

### **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 *Kogarah Local Environmental Plan 2012* applies.

### **4 Maps**

The maps adopted by *Kogarah Local Environmental Plan 2012* are amended or replaced, as the case requires, by the maps approved by the Greater Sydney Commission on the making of this Plan.

## **Schedule 1      Amendment of Kogarah Local Environmental Plan 2012**

### **[1]    Clause 1.8A Savings provisions relating to development applications**

Insert at the end of the clause:

- (2) A development application made, but not finally determined, before the commencement of *Kogarah Local Environmental Plan 2012 (Amendment No 2)* is to be determined and have effect as if that Plan had not been made, but only if an amendment made by that Plan prevents a consent authority from granting consent to the application.

### **[2]    Clause 2.1 Land use zones**

Omit “Zone RE2 Private Recreation” and “Zone E4 Environmental Living”.

Insert in appropriate order:

- R4 High Density Residential
- B6 Enterprise Corridor
- E2 Environmental Conservation

### **[3]    Land Use Table**

Omit “Dual occupancies (attached);” from item 3 of the matter relating to Zone R2 Low Density Residential.

Insert “Dual occupancies;”, “Health consulting rooms;” and “; Seniors housing” in alphabetical order.

### **[4]    Land Use Table, Zone R3 Medium Density Residential, item 3**

Omit “Dual occupancies (attached);”. Insert instead “Dual occupancies;”.

### **[5]    Land Use Table**

Omit the matter relating to Zone RE2 Private Recreation and Zone E4 Environmental Living.

Insert in appropriate order:

#### **Zone R4 High Density Residential**

##### **1            Objectives of zone**

- To provide for the housing needs of the community within a high density residential environment.
- To provide a variety of housing types within a high density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

##### **2            Permitted without consent**

Home occupations; Roads

##### **3            Permitted with consent**

Attached dwellings; Boarding houses; Car parks; Child care centres; Community facilities; Exhibition homes; Flood mitigation works; Group homes; Home-based child care; Home businesses; Multi

dwelling housing; Neighbourhood shops; Places of public worship; Public administration buildings; Recreation areas; Residential flat buildings; Respite day care centres; Shop top housing; Tourist and visitor accommodation

**4 Prohibited**

Any development not specified in item 2 or 3

**Zone B6 Enterprise Corridor**

**1 Objectives of zone**

- To promote businesses along main roads and to encourage a mix of compatible uses.
- To provide a range of employment uses (including business, office, retail and light industrial uses).
- To maintain the economic strength of centres by limiting retailing activity.
- To provide for residential uses, but only as part of a mixed use development.

**2 Permitted without consent**

Home occupations

**3 Permitted with consent**

Amusement centres; Animal boarding or training establishments; Bulky goods premises; Business premises; Child care centres; Community facilities; Entertainment facilities; Function centres; Garden centres; Hardware and building supplies; Hotel or motel accommodation; Kiosks; Landscaping material supplies; Light industries; Markets; Neighbourhood shops; Office premises; Passenger transport facilities; Plant nurseries; Registered clubs; Respite day care centres; Restaurants or cafes; Roads; Service stations; Shop top housing; Tourist and visitor accommodation; Vehicle sales or hire premises; Veterinary hospitals; Warehouse or distribution centres; Wholesale supplies; Any other development not specified in item 2 or 4

**4 Prohibited**

Agriculture; Air transport facilities; Airstrips; Biosolids treatment facilities; Boat building and repair facilities; Boat launching ramps; Boat sheds; Camping grounds; Caravan parks; Cellar door premises; Cemeteries; Charter and tourism boating facilities; Correctional centres; Crematoria; Depots; Eco-tourist facilities; Electricity generating works; Environmental facilities; Exhibition homes; Exhibition villages; Extractive industries; Farm buildings; Food and drink premises; Forestry; Freight transport facilities; Heavy industrial storage establishments; Helipads; Highway service centres; Home occupations (sex services); Industrial retail outlets; Industries; Jetties; Marinas; Mooring pens; Moorings; Open cut mining; Recreation facilities (major); Recreation facilities (outdoor); Residential accommodation; Resource recovery facilities; Restricted premises; Retail premises; Rural industries; Sewage treatment plants; Sex services premises; Signage; Transport depots; Truck depots; Vehicle body repair workshops; Waste disposal facilities; Water recreation

structures; Water recycling facilities; Water supply systems; Wharf or boating facilities

### **Zone E2 Environmental Conservation**

**1 Objectives of zone**

- To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.
- To prevent development that could destroy, damage or otherwise have an adverse effect on those values.

**2 Permitted without consent**

Environmental protection works

**3 Permitted with consent**

Environmental facilities; Flood mitigation works; Information and education facilities; Jetties; Roads

**4 Prohibited**

Business premises; Hotel or motel accommodation; Industries; Multi dwelling housing; Recreation facilities (major); Residential flat buildings; Restricted premises; Retail premises; Seniors housing; Service stations; Warehouse or distribution centres; Any other development not specified in item 2 or 3

**[6] Land Use Table, Zone IN2, item 4**

Omit “Child care centres;” and “Respite day care centres;”.

**[7] Land Use Table, Zone SP2, item 3**

Insert “Commercial premises;” and “Public administration buildings;” in alphabetical order.

**[8] Land Use Table, Zone RE1, item 3**

Insert “Flood mitigation works;” and “Registered clubs;” in alphabetical order.

**[9] Clause 4.1 Minimum subdivision lot size**

Omit clause 4.1 (3A) and (3B).

**[10] Clause 4.1 (4A)**

Insert after clause 4.1 (4):

- (4A) If a lot is a battle-axe lot or other lot with an access handle, the area of the access handle is not to be included when calculating the size of the lot for the purposes of this clause.

**[11] Clause 4.1A Minimum lot sizes for multi dwelling housing, residential flat buildings and seniors housing**

Omit the matter relating to Dual occupancy (attached) from the Table to the clause.

**[12] Clause 4.1A, Table**

Insert in appropriate order in the matter relating to seniors housing:

Zone R2 Low Density Residential	1,000 square metres
---------------------------------	---------------------

**[13] Clauses 4.1B and 4.1C**

Insert after clause 4.1A:

**4.1B Minimum lot size for dual occupancies**

- (1) The objective of this clause is to provide for housing diversity and affordability in residential zones.
- (2) Despite clause 4.1, development consent must not be granted for the erection of a dual occupancy on a lot unless:
  - (a) the lot is at least the minimum lot size shown on the Lot Size for Dual Occupancies Development Map in relation to that land, and
  - (b) in relation to a dual occupancy (detached)—the lot has at least 2 road frontages and each dwelling has a frontage to a road.

**4.1C Minimum subdivision lot size for dual occupancies**

- (1) The objective of this clause is to ensure that dwellings on lots created by the subdivision of a lot on which a dual occupancy has been erected do not exceed the maximum permissible floor space ratio for the site.
- (2) Despite clauses 4.1 and 4.1B, development consent may be granted for the subdivision of land in Zone R2 Low Density Residential or Zone R3 Medium Density Residential, but only if:
  - (a) there is a dual occupancy on the land that was lawfully erected, and
  - (b) the lot size for each resulting lot will be at least 300 square metres.

**[14] Clauses 4.3–4.5**

Omit the clauses. Insert instead:

**4.3 Height of buildings**

- (1) The objectives of this clause are as follows:
  - (a) to establish the maximum height for buildings,
  - (b) to minimise the impact of overshadowing, visual impact and loss of privacy on adjoining properties and open space areas,
  - (c) to provide appropriate scale and intensity of development through height controls.
- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

**4.4 Floor space ratio**

- (1) The objectives of this clause are as follows:
  - (a) to ensure the intensity of development is compatible with the desired future character and zone objectives for the land,
  - (b) to limit the bulk and scale of development.

- (2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

**4.4A Exceptions to floor space ratio for residential accommodation in Zone R2**

- (1) The objectives of this clause are as follows:
- (a) to ensure that the bulk and scale of development are compatible with the size of the lot, and
  - (b) to promote good residential amenity.
- (2) Despite clause 4.4 (2), the floor space ratio for residential accommodation on land in Zone R2 Low Density Residential is not to exceed the maximum floor space ratio specified in the table to this subclause.

Site area	Maximum floor space ratio
less than 650 square metres	0.55:1
less than 800 square metres but not less than 650 square metres	$[(\text{lot area} - 650) \times 0.3 + 357.5] \div \text{lot area}:1$
less than 1,000 square metres but not less than 800 square metres	$[(\text{lot area} - 800) \times 0.2 + 402.5] \div \text{lot area}:1$
less than 1,500 square metres but not less than 1,000 square metres	$[(\text{lot area} - 1,000) \times 0.15 + 442.5] \div \text{lot area}:1$
not less than 1,500 square metres	$[(\text{lot area} - 1,500) \times 0.1 + 517.5] \div \text{lot area}:1$

- (3) Despite subclause (2), the maximum floor space ratio for residential accommodation on land identified as “Area 1” on the Floor Space Ratio Map is not to exceed 0.6:1.

**4.5 Calculation of floor space ratio and site area**

(1) **Objectives**

The objectives of this clause are as follows:

- (a) to define *floor space ratio*,
- (b) to set out rules for the calculation of the site area of development for the purpose of applying permitted floor space ratios, including rules to:
  - (i) prevent the inclusion in the site area of an area that has no significant development being carried out on it, and
  - (ii) prevent the inclusion in the site area of an area that has already been included as part of a site area to maximise floor space area in another building, and
  - (iii) require community land and public places to be dealt with separately.

(2) **Definition of “floor space ratio”**

The *floor space ratio* of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area.

(3) **Site area**

In determining the site area of proposed development for the purpose of applying a floor space ratio, the *site area* is taken to be:

- (a) if the proposed development is to be carried out on only one lot, the area of that lot, or

- (b) if the proposed development is to be carried out on 2 or more lots, the area of any lot on which the development is proposed to be carried out that has at least one common boundary with another lot on which the development is being carried out.

In addition, subclauses (4)–(7) apply to the calculation of site area for the purposes of applying a floor space ratio to proposed development.

(4) **Exclusions from site area**

The following land must be excluded from the site area:

- (a) land on which the proposed development is prohibited, whether under this Plan or any other law,
- (b) community land or a public place (except as provided by subclause (7)).

(5) **Strata subdivisions**

The area of a lot that is wholly or partly on top of another or others in a strata subdivision is to be included in the calculation of the site area only to the extent that it does not overlap with another lot already included in the site area calculation.

(6) **Only significant development to be included**

The site area for proposed development must not include a lot additional to a lot or lots on which the development is being carried out unless the proposed development includes significant development on that additional lot.

(7) **Certain public land to be separately considered**

For the purpose of applying a floor space ratio to any proposed development on, above or below community land or a public place, the site area must only include an area that is on, above or below that community land or public place, and is occupied or physically affected by the proposed development, and may not include any other area on which the proposed development is to be carried out.

(8) **Existing buildings**

The gross floor area of any existing or proposed buildings within the vertical projection (above or below ground) of the boundaries of a site is to be included in the calculation of the total floor space for the purposes of applying a floor space ratio, whether or not the proposed development relates to all of the buildings.

(9) **Covenants to prevent “double dipping”**

When development consent is granted to development on a site comprised of 2 or more lots, a condition of the consent may require a covenant to be registered that prevents the creation of floor area on a lot (the restricted lot) if the consent authority is satisfied that an equivalent quantity of floor area will be created on another lot only because the site included the restricted lot.

(10) **Covenants affect consolidated sites**

If:

- (a) a covenant of the kind referred to in subclause (9) applies to any land (*affected land*), and
- (b) proposed development relates to the affected land and other land that together comprise the site of the proposed development,



the maximum amount of floor area allowed on the other land by the floor space ratio fixed for the site by this Plan is reduced by the quantity of floor space area the covenant prevents being created on the affected land.

(11) **Definition**

In this clause, *public place* has the same meaning as it has in the *Local Government Act 1993*.

**[15] Clause 5.3 Development near zone boundaries**

Omit clause 5.3 (3) (a1). Insert instead:

- (a1) land in Zone R2 Low Density Residential, Zone R3 Medium Density Residential, Zone R4 High Density Residential, Zone B1 Neighbourhood Centre, Zone B2 Local Centre, Zone B4 Mixed Use, Zone B6 Enterprise Corridor, Zone IN2 Light Industrial or Zone W2 Recreational Waterways, or

**[16] Clause 5.6**

Omit the clause. Insert instead:

**5.6 Architectural roof features**

- (1) The objectives of this clause are as follows:
- (a) to create variety in the Kogarah skyline and urban environment,
  - (b) to encourage quality roof designs that contribute to the aesthetic and environmental design and performance of the building,
  - (c) to encourage integration of the design of the roof into the overall facade, building composition and desired contextual response,
  - (d) to promote architectural design excellence.
- (2) Development that includes an architectural roof feature that exceeds, or causes a building to exceed, the height limits set by clause 4.3 may be carried out, but only with development consent.
- (3) Development consent must not be granted to any such development unless the consent authority is satisfied that:
- (a) the architectural roof feature:
    - (i) comprises a decorative element on the uppermost portion of a building, and
    - (ii) is not an advertising structure, and
    - (iii) does not include floor space area and is not reasonably capable of modification to include floor space area, and
    - (iv) will cause minimal overshadowing, and
  - (b) any building identification signage or equipment for servicing the building (such as plant, lift motor rooms, fire stairs and the like) contained in or supported by the roof feature is fully integrated into the design of the roof feature.

**[17] Clause 6.5**

Omit the clause. Insert instead:

**6.5 Airspace operations**

- (1) The objective of this clause is to protect airspace around airports.

- (2) The consent authority must not grant development consent to development that is a controlled activity within the meaning of Division 4 of Part 12 of the *Airports Act 1996* of the Commonwealth unless the applicant has obtained approval for the controlled activity under regulations made for the purposes of that Division.

**Note. Controlled activities** include the construction or alteration of buildings or other structures that causes an intrusion into prescribed airspace (being generally airspace around airports). Controlled activities cannot be carried out without an approval granted under regulations made for the purposes of Division 4 of Part 12 of the *Airports Act 1996* of the Commonwealth.

**[18] Clause 6.7 Location of sex services premises**

Omit clause 6.7 (2) (a) (i)–(iii). Insert instead:

- (i) Zone R2 Low Density Residential,
- (ii) Zone R3 Medium Density Residential,
- (iii) Zone R4 High Density Residential, or

**[19] Clause 6.7 (2) (b) (i)–(iii)**

Omit the paragraphs. Insert instead:

- (i) Zone R2 Low Density Residential,
- (ii) Zone R3 Medium Density Residential,
- (iii) Zone R4 High Density Residential, or

**[20] Clause 6.7 (2) (e)**

Insert “or Zone E2 Environmental Conservation” after “Recreation”.

**[21] Clauses 6.8 and 6.9**

Insert after clause 6.7:

**6.8 Seniors housing—self-contained dwellings in Zone R2**

- (1) The objective of this clause is to encourage seniors housing in the form of self-contained dwellings so as to increase the supply and diversity of housing that meets the needs of seniors in Zone R2 Low Density Residential.
- (2) Development consent must not be granted to development for the purposes of seniors housing (comprising of a group of self-contained dwellings) on land in Zone R2 Low Density Residential unless:
  - (a) the total site area is not less than 1,000 square metres, and
  - (b) the street frontage of the site is not less than 20 metres (measured at the building line), and
  - (c) the building height does not exceed 8 metres, and
  - (d) the floor space ratio of buildings on the site does not exceed 0.5:1, and
  - (e) the proposed development provides for not less than one car parking space in respect of each dwelling, and
  - (f) the proposed development complies with the standards set out in Schedule 3 to *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*, and
  - (g) a condition is imposed by the consent authority to the effect that only seniors may occupy any accommodation to which the application relates, and

- (h) the consent authority is satisfied that a restriction as to user will be registered against the title of the property on which development is to be carried out, in accordance with section 88E of the *Conveyancing Act 1919*, limiting the use of any accommodation to which the application relates to seniors.
- (3) Despite clause 4.1, development consent may be granted to the subdivision of land on which development has been carried out under this clause.
- (4) In this clause, *seniors* means any of the following:
  - (a) people aged 55 years or more,
  - (b) people who are resident at a facility at which residential care (within the meaning of the *Aged Care Act 1997* of the Commonwealth) is provided,
  - (c) people who have been assessed as being eligible to occupy housing for aged persons provided by a social housing provider.

#### **6.9 Development in Zone B6**

- (1) The objectives of this clause are as follows:
  - (a) to provide for the viability of development in Zone B6 Enterprise Corridor,
  - (b) to maintain opportunities for business and retail development that is suited to high exposure locations while ensuring that the town centres remain the focus for business and retail activity.
- (2) This clause applies to land in Zone B6 Enterprise Corridor.
- (3) Development consent must not be granted for the purposes of a building on land to which this clause applies unless the consent authority is satisfied that no more than 65% of the gross floor area of the building will be used for the following purposes:
  - (a) shop top housing,
  - (b) tourist and visitor accommodation.
- (4) Development consent must not be granted for a land use, other than shop top housing or tourist and visitor accommodation, with a gross floor area of less than 500 square metres.

#### **[22] Schedule 1 Additional permitted uses**

Omit clauses 1, 3–15 and 20.

#### **[23] Schedule 1**

Omit clause 16 (1) (a) and (d)–(g).

#### **[24] Schedule 1**

Insert after clause 16 (1) (j):

- (ja) 129 Laycock Road, Hurstville Grove, being Lot 1, DP 178839,

#### **[25] Schedule 1**

Insert after clause 16 (1) (l):

- (la) 29–31 Rocky Point Road, Kogarah, being Lot 61, DP 6615,

**[26] Schedule 1**

Omit clause 17 (1). Insert instead:

- (1) This clause applies to 243 West Street, Blakehurst, being Lot 7, DP 25945.

**[27] Schedule 1**

Omit clause 18 (1) (a)–(p), (t), (x), (aa)–(ag), (al)–(ao), (aq)–(as), (av), (bc), (bd), (bf)–(bh), (bj)–(bl), (bz), (ca), (cc) and (cd).

**[28] Schedule 1**

Omit clause 19 (1) (c)–(f), (i), (k)–(n), (r) and (y).

**[29] Schedule 2 Exempt Development**

Omit the matter after the notes. Insert instead:

**Advertising structures and signs—Zone RE1 Public Recreation**

- (1) Must be associated with kiosks, refreshment rooms or any other approved commercial activity.
- (2) Must be designed to be viewed primarily from within the recreation area.
- (3) May include general commercial advertising not related to the use of the site.

**Advertising structures and signs—inflatable promotional signs**

- (1) Must be displayed only on the property where the promotion is to be held.
- (2) Must not be displayed for more than 7 consecutive days, more than 4 times a year or for a total of more than 28 days in any year, or later than 48 hours after the relevant promotion is finalised.
- (3) A contact telephone number for the owner of the sign must be displayed in a prominent location on or adjoining the sign.
- (4) The structure must not overhang any road.

**Advertising structures and signs—newsagent placards**

- (1) Must not exceed 0.6m in width.
- (2) Must have height of between 0.75m and 1m.
- (3) Must be contained in frames securely fixed to the facade of the premises.
- (4) Must not project more than 75mm from the building facade.
- (5) Must not project over windows.

**Footpaths—display of goods**

- (1) Must be associated with a lawfully established business.
- (2) Must comply with the *Roads Act 1993* and the *Local Government Act 1993*.
- (3) Must not abut a classified road.
- (4) Must be located so that the widths of travel to the public road from the exits of any premises remain clear of all obstructions.

**Private markets, fairs or fetes**

- (1) The Council must be notified of the private market, fair or fete 7 days prior to the event being undertaken.

- (2) Can only occur for a maximum period of 2 days (whether or not consecutive days) in any period of 12 months.

**[30] Schedule 4 Classification and reclassification of public land**

Insert in appropriate order in Part 1:

21A Queens Road, Connells Point

Lot E, DP 373733

**[31] Schedule 5 Environmental heritage**

Omit the matter relating to Item no I117 from Part 1.

**[32] Dictionary**

Omit “[Not adopted. See clause 4.4.]” from the definition of *Floor Space Ratio Map*.

**[33] Dictionary, definition of “Height of Buildings Map”**

Omit “[Not adopted. See clause 4.3.]”.

**[34] Dictionary**

Insert in alphabetical order:

*Lot Size for Dual Occupancies Development Map* means the Kogarah Local Environmental Plan 2012 Lot Size for Dual Occupancies Development Map.