

18. EP/10 - MOSMAN LOCAL ENVIRONMENTAL PLAN 2012 AMENDMENTS

Cr Bendall took the Chair between 10.09pm and 10.10pm while the Mayor addressed the meeting on this item.

OFFICER'S RECOMMENDATION

The Manager Urban Planning recommends that:

1. Council endorse the planning proposal attached to this report to amend objectives for the R2 Low Density Residential zone, height of buildings and floor space ratio clauses in Mosman Local Environmental Plan (LEP) 2012, and include new local clauses for wall height, number of storeys and landscaped area in the LEP
2. The planning proposal be referred to NSW Planning and Infrastructure for gateway determination under section 56 of the *Environmental Planning and Assessment Act 1979*

COUNCIL RESOLUTION

Motion Abelson/Menzies

That the Officer's Recommendation be adopted.

CARRIED UNANIMOUSLY

TITLE: Mosman Local Environmental Plan 2012 Amendments (EP)

MOSPLAN REF: BE.01

REPORT BY: Senior Strategic Planner

SUMMARY

Report on a planning proposal to amend objectives for the R2 Low Density Residential zone, height of buildings and floor space ratio clauses in Mosman Local Environmental Plan (LEP) 2012, and include new local clauses for wall height, number of storeys and landscaped area in the LEP.

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 2. The planning proposal be referred to NSW Planning and Infrastructure for gateway determination under section 56 of the *Environmental Planning and Assessment Act 1979*.
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REPORT

Background

In early 2013 a review of the Mosman Development Assessment Panel (MDAP) was undertaken to evaluate its operation and the development application assessment process.

The results of the MDAP review were presented to Council Meetings on 18 June 2013 and 6 August 2013, and on this latter date Council resolved that:

C. Council review the objectives in Mosman LEP 2012 for height of buildings, floor space ratio and for the Residential R2 zone to ensure that the intent of these development standards and the character of the zone are maintained. In addition Council review the objectives in the Residential DCP for commonly varied guidelines, such as building height and landscaping. To this end a facilitated workshop with Messrs Stein and McDonald from MDAP, Councillors, Council planning staff and Council's lawyer shall be held.

On 31 October 2013 a workshop was held with Councillors, the Hon. Paul Stein AM QC (MDAP Chair), Council's lawyers (Ms Julie Walsh and Ms Ros McCulloch of Pikes & Verekers Lawyers) and Council staff. The workshop was facilitated by Mr Colin McFadzean (Senior Solicitor with Shaw Reynolds Lawyers, and formerly Manager Development Services with Mosman Council). Mr Brian McDonald (MDAP) was an apology.

Considerable discussion occurred at the workshop about the objectives for the R2 Low Density Residential zone, height of buildings and floor space ratio clauses in Mosman Local Environmental Plan (LEP) 2012, and height and landscaped area clauses in Mosman Residential Development Control Plan (DCP) 2012. Amendments to strengthen objectives

and controls and for consistency within the planning documents were suggested by Council's lawyers and the Hon. Paul Stein. These amendments were supported by Councillors in attendance at the workshop and it was agreed that an additional workshop be held once further research and consideration of the suggested changes had been undertaken by Council staff.

On 20 February 2014 a workshop was held with Councillors and Council staff in which proposed amendments to Mosman LEP 2012 were presented and the planning process to amend an LEP was outlined. Councillors were generally supportive of the proposed amendments.

Proposed Amendments

1. Amendment to objectives

Amendments are proposed to be made to existing objectives in Mosman LEP 2012 for:

- R2 Low Density Residential zone in the Land Use Table
- Clause 4.3 Height of buildings
- Clause 4.4 Floor space ratio

At the workshop held on 31 October 2013 Council's lawyers and the Hon. Paul Stein suggested that these amendments be made to strengthen objectives and for consistency within the LEP between these clauses.

These amendments are outlined in detail in the planning proposal attached to this report. A new objective relating to the bulk and scale of buildings is also proposed for the R2 zone.

In response to the standardised definition of 'gross floor area' in the State Government's Standard Instrument which may result in greater excavation of sites, a new objective relating to limiting excavation is also proposed to be included for floor space ratio.

2. Reinstating clauses in LEP

The following planning controls are proposed to be reinstated in Mosman LEP 2012:

- Maximum wall height
- Maximum number of storeys
- Minimum landscaped area

Planning controls establishing a maximum wall height, maximum number of storeys and minimum landscaped area for development in Mosman's residential zones were first introduced over 20 years ago into Mosman LEP No. 1, and retained in the subsequent Mosman LEP 1998. These controls result in housing that is typically two storeys in height with a pitched roof and substantial landscaping.

Council had sought to include these controls in its current LEP, however during 2010-11 when this LEP was being drafted, the then NSW Department of Planning and Infrastructure (now known as NSW Planning and Infrastructure) directed that these controls could not be included in the LEP due to inconsistency with the Standard Instrument. The Standard Instrument was introduced in 2006 as the State Government's template for all new LEPs across NSW, setting a standardised format, clauses and definitions.

As such these controls were relegated to Mosman Residential DCP 2012 – an outcome which was not ideal given that in the hierarchy of planning policies a DCP has less statutory weight than an LEP. The strength of these controls in development assessment has since been further diminished by the introduction of the *Environmental Planning and Assessment*

Act Amendment Act 2012 in March 2013 which further restricts the content and application of a DCP.

Reinstating controls for maximum wall height, maximum number of storeys and minimum landscaped area into Mosman LEP 2012 was suggested by Council's lawyers at the workshop held on 31 October 2013 in order to strengthen these controls in development assessment. Whilst achieving this requires approval from NSW Planning and Infrastructure, the State may now be more responsive to the inclusion of such content in LEPs as some recently gazetted LEPs for other councils include objectives and clauses relating to wall height, number of storeys and landscaped area.

These controls are outlined in detail in the planning proposal attached to this report.

Process to amend LEP, and timeline

The *Environmental Planning and Assessment Act 1979*, Division 4, clauses 53 to 60, set out the process to amend an LEP. A summary of this process and an anticipated timeline is illustrated in the following table.

Task	Timeframe / target date
1. Preparation of a planning proposal. This is a document which explains the intended effect of, and justification for, the proposed LEP amendments.	A planning proposal has been prepared and is attached to this report for Council's endorsement.
2. Gateway determination. The planning proposal is submitted to NSW Planning and Infrastructure for review and consideration as to whether the matter should proceed.	April – June 2014
3. Community consultation. Assuming NSW Planning and Infrastructure grants approval for the matter to proceed, the planning proposal is publicly exhibited, typically for 28 days. Submissions are then considered and reported to Council.	June – August 2014
4. Finalisation. Parliamentary Counsel drafts the wording of the LEP amendment and the Minister gazettes the LEP amendment.	August – September 2014

Recommendation endorsed by Acting Director Environment and Planning

ATTACHMENTS

Minute Book Attachments

- Planning Proposal to Amend Mosman LEP 2012, April 2014
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Minute Book Attachments

Planning Proposal to Amend Mosman LEP 2012, April 2014