

Planning Proposal

To amend Mosman Local Environmental Plan 2012 by:

- 1. Amending objectives for the R2 Low Density Residential zone, height of buildings and floor space ratio clauses; and**
- 2. Reintroducing local clauses for maximum wall height and number of storeys, and minimum landscaped area.**

April 2014

1.0 Introduction

This planning proposal has been prepared to amend Mosman Local Environmental Plan (LEP) 2012 by:

1. Amending objectives for the R2 Low Density Residential zone, height of buildings and floor space ratio clauses; and
2. Reintroducing local clauses for maximum wall height and number of storeys, and minimum landscaped area.

The planning proposal has been prepared in accordance with Section 55 of the Environmental Planning and Assessment Act 1979 (EP&A Act) and the NSW Department of Planning & Infrastructure's document "A guide to preparing planning proposals", October 2012.

2.0 Background

On 31 October 2013 a facilitated workshop was held with Councillors, the Hon. Paul Stein AM QC (Chair, Mosman Development Assessment Panel), Council's lawyers and Council staff, in response to a resolution of Council of 6 August 2013 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.

At this workshop, amendments to strengthen objectives and controls and for consistency within Mosman LEP 2012 were suggested by Council's lawyers and the Hon. Paul Stein. The amendments suggested at this workshop form the basis of this planning proposal.

A further workshop was held with Councillors on 20 February 2014, prior to reporting proposed amendments and this planning proposal to Council on 1 April 2014.

3.0 The Planning Proposal

Part 1 – Objectives or Intended Outcomes

The objectives of this planning proposal are to

- (i) strengthen, and provide consistency between, objectives for the R2 Low Density Residential zone, height of buildings and floor space ratio clauses in Mosman LEP 2012, and
- (ii) reinforce controls which have applied in Mosman for over 20 years to:
 - a. achieve a scale of development which is not excessive and is consistent with the desired future character in residential zones, that is, generally no greater than two storeys in height with a pitched roof form, and
 - b. maintain and enhance the landscape character of Mosman by requiring landscaping of sites in conjunction with development in residential zones.

Part 2 – Explanation of Provisions

To achieve these objectives, the planning proposal seeks to amend Mosman LEP 2012 in the manner outlined below.

2.1 Amendment to objectives for the R2 zone, height of buildings and floor space ratio

It is proposed that minor wording changes to objectives for the R2 Low Density Residential zone, height of buildings and floor space ratio clauses in Mosman LEP 2012 be made as shown in the following tables. Proposed amendments are shown in blue text with italics and strikethrough.

Mosman LEP 2012	Amendment
R2 Low Density Residential zone objectives, Land Use Table	• To ensure that development is of a height and scale that <i>complements achieves</i> the desired future character • To encourage residential development that <i>has regard to enhances</i> local amenity and, in particular, public and private views • <i>To minimise the adverse effects of bulk and scale of buildings</i>
Clause 4.3 Height of Buildings – objectives for residential zoned land	• To minimise the visual impact of buildings <i>particularly</i> when viewed from the harbour and surrounding foreshores • To ensure <i>now that</i> buildings are compatible with the desired future character of the area in terms of building height and roof form • To minimise the <i>adverse</i> effects of bulk and scale of <i>new</i> buildings
Clause 4.4 Floor Space Ratio – objectives for residential zoned land	• To minimise the <i>adverse</i> effects of bulk and scale of buildings • <i>To limit excavation of sites and retain natural ground levels for the purpose of landscaping and containing urban run-off</i>

As shown above, amendments to the R2 zone objectives are relatively minor and involve replacing some wording to strengthen the intent of the objectives.

A new objective is proposed for this zone. This objective is currently in Mosman LEP 2012 for the height of buildings and floor space ratio clauses, and including it here provides consistency between objectives for the R2 zone and these clauses.

Amendments to the height of buildings clause are also relatively minor. The importance of minimising the visual impact of buildings when viewed from the harbor and surrounding foreshores is

reinforced by adding the word "*particularly*" to this objective. The word "*new*" is omitted from two objectives to make it clear that all buildings (i.e. including alterations and additions to existing buildings, not just new buildings) should be designed with an appropriate bulk, scale and roof form.

The word "*adverse*" is included in the third objective shown for height of buildings to make it clear that the negative effects of bulk and scale of buildings should be minimised (i.e. overshadowing, loss of privacy, loss of views). For consistency this word is included in similar objectives for the R2 zone and floor space ratio clause.

Similar changes are also proposed to height of buildings objectives for business zoned land for consistency.

A new objective is included for the floor space ratio clause 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. This objective was included in the former Mosman LEP 1998.

Appendix A of this planning proposal contains an extract from Mosman LEP 2012 of this content.

2.2 Reinforce controls which have applied in Mosman for over 20 years

Wall height and number of storeys

It is proposed that objectives and planning controls for maximum wall height and number of storeys – currently contained in Mosman Residential DCP, Part 4.2 Siting and Scale, Objectives O1-O3 and Planning Control P1 – be included in Mosman LEP 2012 as a development standard.

Minor wording changes would be made to the objectives for consistency with objectives for the R2 zone, height of buildings and floor space ratio clauses in Mosman LEP 2012.

The planning controls would be carried across into Mosman LEP 2012 without change. A maximum wall height of 7.2 metres and two storeys would apply to all development on residential zoned land to which a maximum building height of 8.5 metres applies. Exceptions to allow an additional storey in the attic roof space of existing and new buildings, or in the foundation space of existing buildings, provided that the building height and bulk is of an appropriate form and scale, would also apply.

The definition of wall height in the DCP would also be included in the LEP, as this term is not defined in the Standard Instrument.

Appendix A of this planning proposal contains an extract from the DCP of this content.

Landscaped area

It is proposed that objectives and planning controls for minimum landscaped area – currently contained in Mosman Residential DCP, Part 4.4 Landscaping, Objectives O1-O3 and Planning Control P1 – be included in Mosman LEP 2012.

A minimum landscaped area of between 30-50% of the site area would continue to apply to all development on residential zoned land depending on factors such as the development type, zone, location and size of the site.

The formula and sliding scale graph for landscaped area contained in the DCP would likely need to be converted to a numerical standard – for example, 35% if the site area is at least 500m² but less than 650m² – however the intention is that this reflect as best as possible the existing requirement in the DCP.

The planning control would be amended to recognise small allotments (such as semi-detached dwellings) and the difficulty in achieving the minimum landscaped area required. It is proposed that the minimum landscaped area required be reduced from 30% to 25% of the site area where the site

area is less than 400m². Research of residential development applications approved in Mosman over the past two years has found that the majority of small lots are unable to achieve the minimum landscaped area required under the DCP, and on average, around 25% landscaped area is approved for lots less than 400m² in area.

A new objective would also be included, such as *"To have a general visual dominance of landscape over buildings maintained, particularly on harbour foreshores, although recognising the difficulty of achieving this on small lots where there are existing buildings such as semi-detached dwellings."*

Appendix A of this planning proposal contains an extract from the DCP of this content.

Part 3 – Justification

Section A – Need for the planning proposal

Q1. Is the planning proposal a result of any strategic study or report?

No. This planning proposal is not a result of any strategic study or report.

Q2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Yes. This planning proposal is the best way of achieving the objectives identified in Part 1 above.

In relation to objective (i), the mechanism for amending content within an LEP is a planning proposal. The amendments are relatively minor but will strengthen and provide consistency between objectives for the R2 Low Density Residential zone, height of buildings and floor space ratio clauses in Mosman LEP 2012.

In relation to objective (ii), planning controls for wall height, number of storeys and landscaped area have applied in Mosman for over 20 years to achieve housing that is compatible with the desired future character, maintains residential amenity and provides sufficient landscaping. These controls are particularly important for Mosman's visually significant slopes and foreshores, which have been recognised in the LEP as a scenic protection area, and within which development is to be designed to minimise its visual impact.

For at least 18 years these controls were contained in an LEP – first in Mosman LEP No. 1, then Mosman LEP 1998 – reflecting their importance to Mosman because, in terms of hierarchy, an LEP is a council's principal planning policy. When drafting the current LEP in 2010-11 Council had intended to retain these controls in the LEP, however 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.

As such, these controls were relegated to Mosman Residential DCP in 2012 where they remain today. This is not ideal as a DCP by its very nature has less statutory weight than an LEP. The role of a DCP in development assessment has since been further diminished by the introduction of the *Environmental Planning and Assessment Act Amendment Act 2012* in March 2013. The Amending Act did not exist in 2010-11 when drafting the current LEP, hence the future implications of moving wall height, number of storeys and landscaped area controls to the DCP were unknown at that time.

It is evident that 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. A complete list of these council LEPs and clauses is contained in Appendix B.

Reinstating controls for wall height, number of storeys and landscaped area into Mosman LEP 2012 is the best means of achieving objective (ii) identified in Part 1 above. The mechanism for including content within an LEP is a planning proposal.

Section B – Relationship to strategic planning framework

Q3. Is the planning proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

Strategies applicable to the Mosman Local Government Area are:

- *Metropolitan Plan for Sydney 2036*
- *Draft Metropolitan Strategy for Sydney to 2031* (exhibited March 2013)
- *Draft Inner North Subregional Strategy* (exhibited in 2007)

The planning proposal is not inconsistent with the objectives and actions of these adopted and draft strategies. Consideration of relevant sections of these strategies is given below.

Metropolitan Plan for Sydney 2036

Strategic Direction D: Sydney's Housing Population

Objective D4: To improve the quality of new housing development and urban renewal

Action D4.1: Strengthen the Government's role in ensuring good design outcomes

Comment: The planning proposal would contribute towards achieving good design outcomes which respect the desired future character of Mosman's residential areas, for example, by encouraging two storey dwellings with a pitched roof form and a dominance of landscaping.

Draft Metropolitan Strategy for Sydney to 2031

Healthy and Resilient Environment

Objective 20: Minimise impacts of climate change in local communities

Action 20.2: Develop guidance on resilient neighbourhood and building design

Comment: The planning proposal would contribute towards achieving better designed neighbourhoods and buildings, for example, requiring a certain percentage of landscaped area with residential development. As noted on p 62 of the draft strategy, "*Better designed neighbourhoods and buildings can improve our ability to cope with climate change impacts while also enhancing quality of life. For example, increased green cover can improve air quality, reduce the impact of heatwaves and help manage energy demand...*".

Draft Inner North Subregional Strategy

Direction C: Housing

Objective C5: Improve the quality of new development and urban renewal

Action C5.1: Improve the design quality of new development

Comment: The planning proposal would contribute towards improving the design quality of new development by setting out clear objectives and controls for development in Mosman's residential areas.

Q4. Is the planning proposal consistent with a council's local strategy or other local strategic plan?

Local strategies and strategic plans applicable to the Mosman Local Government Area are:

- *MOSPLAN Community Strategic Plan 2013-2023*
- *Mosman Residential Development Strategy* (February 1997)

The planning proposal is consistent with Mosman's local strategies and strategic plans. Consideration of relevant sections of these local strategies and strategic plans is given below.

MOSPLAN Community Strategic Plan 2013-2023

Plan: Built Environment

Direction statement: A unique urban environment that is maintained and protected through strong planning & regulatory practice, an appreciation of Mosman's heritage, and a commitment to high quality infrastructure and development

Strategy 1: Maintain the special local character of Mosman with effective planning strategies in place

Comment: The planning proposal would contribute towards achieving this strategy by setting out clear objectives and controls for development in residential areas consistent with Mosman's Residential Development Strategy.

Mosman Residential Development Strategy

Relevant objectives:

- *To ensure that new housing development is compatible with existing development and does not adversely affect its environment or the residential amenity of existing residents.*
- *To ensure that the range of housing choice in Mosman is maintained, including single dwellings.*

Comment: The planning proposal would contribute towards achieving these objectives by setting out clear objectives and controls to enhance local amenity and encourage two storey dwellings with a pitched roof form and a dominance of landscaping, consistent with the desired future character of Mosman's residential areas.

Q5. Is the planning proposal consistent with applicable State Environmental Planning Policies?

Yes. The planning proposal is consistent with applicable State Environmental Planning Policies. Refer to Appendix C of this planning proposal.

Q6. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

Yes. The planning proposal is consistent with applicable Ministerial Directions (s.117 directions). Refer to Appendix D of this planning proposal.

Section C – Environmental, social and economic impact

Q7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

No.

Q8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

Including a clause in Mosman LEP 2012 which requires all residential zoned land to contain a certain percentage of landscaped area in conjunction with development will have a positive environmental effect in Mosman, for example, by:

- achieving increased green cover which can improve air quality, reduce the impact of heatwaves and help manage energy demand (source: *Draft Metropolitan Strategy for Sydney to 2031*);
- providing habitat for native fauna (sites within the Habitat Link on Mosman's Biodiversity Corridor and Habitat Link Map would be required to incorporate Australian native species, in particular those indigenous to Mosman); and
- containing stormwater on sites and preventing stormwater run-off into local drains which feed into Sydney and Middle Harbours.

Including a new objective in the floor space ratio clause of Mosman LEP 2012 to limit excavation of sites and retain natural ground level for the purpose of landscaping and containing stormwater run-off will also have a positive environmental effect in Mosman.

Q9. Has the planning proposal adequately addressed any social and economic effects?

There are unlikely to be any social or economic effects as a result of this planning proposal. The amendments to existing objectives for the R2 zone, height of buildings and floor space ratio are relatively minor. Planning controls for wall height, number of storeys and landscaped area have been applied in Mosman for over 20 years, and this planning proposal seeks only to reinstate these controls in Mosman LEP 2012.

Section D – State and Commonwealth interests

Q10. Is there adequate public infrastructure for the planning proposal?

The planning proposal will not generate the need for additional public infrastructure.

Q11. What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?

No State or Commonwealth public authorities have been consulted due to the nature of the planning proposal.

Part 4 – Community Consultation

Community consultation for this planning proposal would be consistent with the prescribed consultation guidelines under the NSW Department of Planning and Infrastructure's document "A Guide to preparing Local Environmental Plans" (April 2013).

The planning proposal would likely be publicly exhibited for a minimum period of 28 days and in the following manner:

- Notice placed in the Mosman Daily (local newspaper)
- Notice and background information to be made available on Council's websites
- Facebook and twitter utilised to advise followers
- Notice in Mosman Urban Planning newsletter and/or Mosman News
- Exhibition at Council offices and Mosman Library

The written notice would:

- Give a brief description of the objectives or intended outcomes of the planning proposal
- Indicate the land affected by the planning proposal
- State where and when the planning proposal can be inspected
- Give the name and address of the Council for the receipt of submissions
- Indicate the last date for submissions
- Confirm whether the Minister has chosen to delegate the making of the LEP to Council.

During the exhibition period the following material would be made available for inspection by the community:

- The planning proposal, in the form approved for community consultation by the Gateway determination issued by NSW Planning and Infrastructure
- The Gateway determination
- Any information or technical information relied upon by the planning proposal

The community consultation will be deemed complete once Council has considered any submissions made on the planning proposal.

Part 5 – Project Timeline

The following timeline for the planning proposal is an estimation only.

Task	Timeframe / target date
Council endorsement of Planning Proposal and decision to send to NSW Planning and Infrastructure for gateway determination	1 April 2014
Referral to NSW Planning and Infrastructure for gateway determination	4 April 2014
Gateway determination issued by NSW Planning and Infrastructure	May-June 2014
Public exhibition period (28 days)	June-July 2014
Consideration of submissions received and proposal post exhibition	July 2014
Report to Council considering submissions received	5 August 2014
Liaise with Parliamentary Counsel (assuming delegation)	August 2014
Anticipated date Council will make plan (assuming delegation)	September 2014
Anticipated date that plan would be forwarded to NSW Planning and Infrastructure for notification	September 2014