



DELEGATED REPORT

REPORT TO THE GENERAL MANAGER

Attachment:

1. Planning Proposal - Exceptions to Development Standards in St Leonards

SUBJECT: Planning Proposal for Exceptions to Development Standards in St Leonards

AUTHOR: Ben Boyd, Executive Strategic Planner

EXECUTIVE SUMMARY:

On 21 June 2013, Amendment No. 53 to North Sydney Local Environmental Plan 2001 (NSLEP 2001) was published on the NSW legislation website. The amendment is contained within clause 73A to NSLEP 2001. The clause seeks to limit the use of State Environmental Planning Policy No.1 – Development Standards (SEPP 1) within the St Leonards/Crows Nest Planning Study area in cases where a proposed development breaches the height control. This was intended to limit the ability for developments to be approved beyond the scale and capacity envisaged in the planning controls contained in NSLEP 2001 until such time as the findings of the St Leonards/Crows Nest Planning Study have been appropriately considered.

On 2 August 2013, North Sydney Local Environmental Plan 2013 (NSLEP 2013) was made through its publication on the NSW legislation website. The LEP comes into force on the 13 September 2013 and will replace NSLEP 2001. At Council's request, the Department of Planning and Infrastructure (DoPI) incorporated all amendments made to NSLEP 2001 that did not form part of the draft exhibited versions of NSLEP 2013, into NSLEP 2013 (including Amendment No.53). However, the original intent of clause 73A to NSLEP 2001 has not been accurately translated to NSLEP 2013.

This Planning Proposal has been prepared to amend NSLEP 2013 to ensure that the intent of clause 73A to NSLEP 2001 is accurately translated in NSLEP 2013.

The Planning Proposal is supported as it:

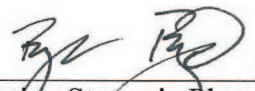
- generally complies with the relevant Local Environment Plan making provisions under the Environmental Planning & Assessment Act 1979;
- generally complies with the Department of Planning's "*A guide to preparing planning proposals*";
- is unlikely to result in any adverse impacts on the environment or wider community; and
- is compatible with surrounding land uses.

As such, the Planning Proposal is considered to be satisfactory and should be forwarded to the Department of Planning and Infrastructure for Gateway Determination.

**RECOMMENDATION:**

1. THAT the General Manager resolves to forward the attached Planning Proposal to the Minister for Planning in order to receive a Gateway Determination in accordance with Section 56 of the Environmental Planning and Assessment Act, 1979.

Signed:

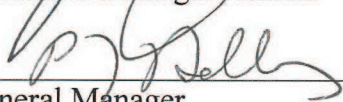


Executive Strategic Planner

Date

20/09/13

Endorsed by:



General Manager

Date

20/9/13

LINK TO DELIVERY PROGRAM

The relationship with the Delivery Program is as follows:

Direction: **2. Our Built Environment**

Outcome: 2.2 Improved mix of land use and quality development through design excellence.

Direction: **5: Our Civic Leadership**

Outcome: 5.1 Council leads the strategic direction of North Sydney

SUSTAINABILITY STATEMENT

The sustainability implications are of a minor nature and did not warrant a detailed assessment.

BACKGROUND

On 21 June 2013, Amendment No. 53 to North Sydney Local Environmental Plan 2001 (NSLEP 2001) was published on the NSW legislation website. The amendment is contained within clause 73A to NSLEP 2001. The clause seeks to limit the use of State Environmental Planning Policy No.1 – Development Standards (SEPP 1) within the St Leonards/Crows Nest Planning Study area in cases where a proposed development breaches the height control. This was intended to limit the ability for developments to be approved beyond the scale and capacity envisaged in the planning controls contained in NSLEP 2001 until such time as the findings of the St Leonards/Crows Nest Planning Study have been appropriately considered.

On 2 August 2013, North Sydney Local Environmental Plan 2013 (NSLEP 2013) was made through its publication on the NSW legislation website. The LEP comes into force on the 13 September 2013 and will replace NSLEP 2001. At Council's request, the Department of Planning and Infrastructure (DoPI) incorporated all amendments made to NSLEP 2001 that did not form part of the draft exhibited versions of NSLEP 2013, into NSLEP 2013 (including Amendment No.53). However, the original intent of clause 73A to NSLEP 2001 has not been accurately translated to NSLEP 2013.

This issue was brought to Council's attention, when it considered a report on the making of NSLEP 2013 on 12 August 2013 at its Legal and Planning Committee where it recommended in part:

2. *THAT Council prepare a Planning Proposal to amend NSLEP 2013 to ensure that it accurately reflects Amendment [sic - clause] 73A to NSLEP 2001.*
3. *THAT Council grant delegation to the General Manager to endorse the Planning Proposal as required by Recommendation No. 2 above and forward the Planning Proposal to the Minister for Planning and Infrastructure to make the plan pursuant to s.56(1) of the Environmental Planning and Assessment Act 1979.*

On 19 August 2013, Council subsequently resolved to adopt the recommendation of the Legal and Planning Committee. This report addresses items 2 and 3 to this resolution.

DETAIL

1. Proposed LEP Amendment

The proposed amendment seeks to correct an error made by Parliamentary Counsel when it sought to incorporate the provisions of clause 73A to NSLEP 2001 into NSLEP 2013 when it was first made. In particular, the proposed amendment seeks to reinstate the original restriction to limit the instances when a development can exceed the maximum building height requirements under clause 4.3 of NSLEP 2013 and to require the merit considerations under clause 4.6 of NSLEP 2013 to be satisfied in any such instances. The full extent of the amendments are detailed in the attached Planning Proposal

2. Planning Appraisal

The Planning Proposal (attached) is considered to be in accordance with the requirements under Section 55(2) of the Environmental Planning and Assessment Act 1979 and the Department of Planning and Infrastructure's (2012) *'A guide to preparing planning proposals'*.

In particular, the Planning Proposal adequately sets out the following:

- A statement of the objectives or intended outcomes of the proposed local environmental plan;
- An explanation of the provisions that are to be included in the proposed local environmental plan;
- Justification for those objectives, outcomes and provisions and the process for their implementation; and
- Details of the community consultation that is to be undertaken on the Planning Proposal.

3. Justification of the Planning Proposal

The proposed LEP amendment as detailed in the attached Planning Proposal will enable the intent of clause 73A to NSLEP 2001 to be accurately translated under NSLEP 2013 and limit the ability for developments to be approved beyond the scale and capacity envisaged in the planning controls contained in NSLEP 2013 until such time as the findings of the St Leonards/Crows Nest Planning Study have been appropriately considered.

CONCLUSION

The Planning Proposal seeks to correct a drafting error made by Parliamentary Counsel when it sought to incorporate the provisions of clause 73A to NSLEP 2001 into NSLEP 2013 when it was first made.

It is considered that the relevant requirements under s.55 of the EP&A Act and the matters identified in the Department of Planning's "*A guide to preparing planning proposals*" have been adequately addressed in the Planning Proposal. It is considered that the proposal is appropriate and is adequately justified.

It is therefore recommended that Council support the forwarding of the Planning Proposal to the Department of Planning and Infrastructure, seeking a Gateway Determination under s56 of the EP&A Act 1979.