



PLANNING PROPOSAL

Elevation of Heritage Controls

24 March 2015

1 INTRODUCTION

North Sydney Council (Council) has prepared a Planning Proposal to amend North Sydney Local Environmental Plan 2013 (NSLEP 2013).

The primary intent of the Planning Proposal is to give greater weight to the heritage provisions of NSLEP 2013, similar to that imposed via clause 43 under Council's former LEP (NSLEP 2001). It is proposed to achieve this by incorporating a new local clause that states that the heritage provisions contained within clause 5.10 of NSLEP 2013 prevail over all other provisions within the LEP.

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

2 BACKGROUND

On 23 June 2014, Council considered a report (refer to Attachment 1) which addressed a number of resolutions in response to its consideration of a Notice of Motion on 2 September 2013. In particular, the Motion sought to determine if NSLEP 2013 could be amended such that it incorporates a provision, similar to that contained with NSLEP 2001, that elevates the status of the heritage provisions such that they prevail over any other provisions of the LEP despite any direct or indirect consistency. Council resolved:

THAT the General Manager write to the Minister for Environment and Heritage, and the Minister Assisting the Minister for Planning, requesting a meeting to put the case for a special provision in the NSLEP 2013, as detailed in the report.

On 2 March 2015, Council's Legal and Planning Committee (L&PC) considered a report which addressed the above resolution. The report indicated that it was unlikely that such an amendment would be supported by either the Department of Planning and Environment or NSW Office of Environment and Heritage and that Council should note the information. However, the Committee recommended:

- 1. THAT Council prepare a Planning Proposal to amend NSLEP 2013, such that the heritage provisions prevail over all other provisions of the LEP, similar to that incorporated within NSLEP 2001.*
- 2. THAT Council provide a copy of this report and correspondence to LGNSW and request they take it up as policy and lobbying on behalf of Council.*
- 3. THAT Council provide copies of this report and its resolutions from the 2 March 2015 Legal and Planning Committee to other metropolitan Councils who have significant heritage issues, and call on those Councils to write in similar terms to the State Government on their behalf.*

On 16 March 2015, Council considered the recommendations of the L&PC (refer to Attachment 2), where it resolved to adopt the recommendations of the L&PC unamended.

3 SITE & LOCALITY

The Planning Proposal applies all land included within the Land Application Map to NSLEP 2013 (refer to Figure 1).

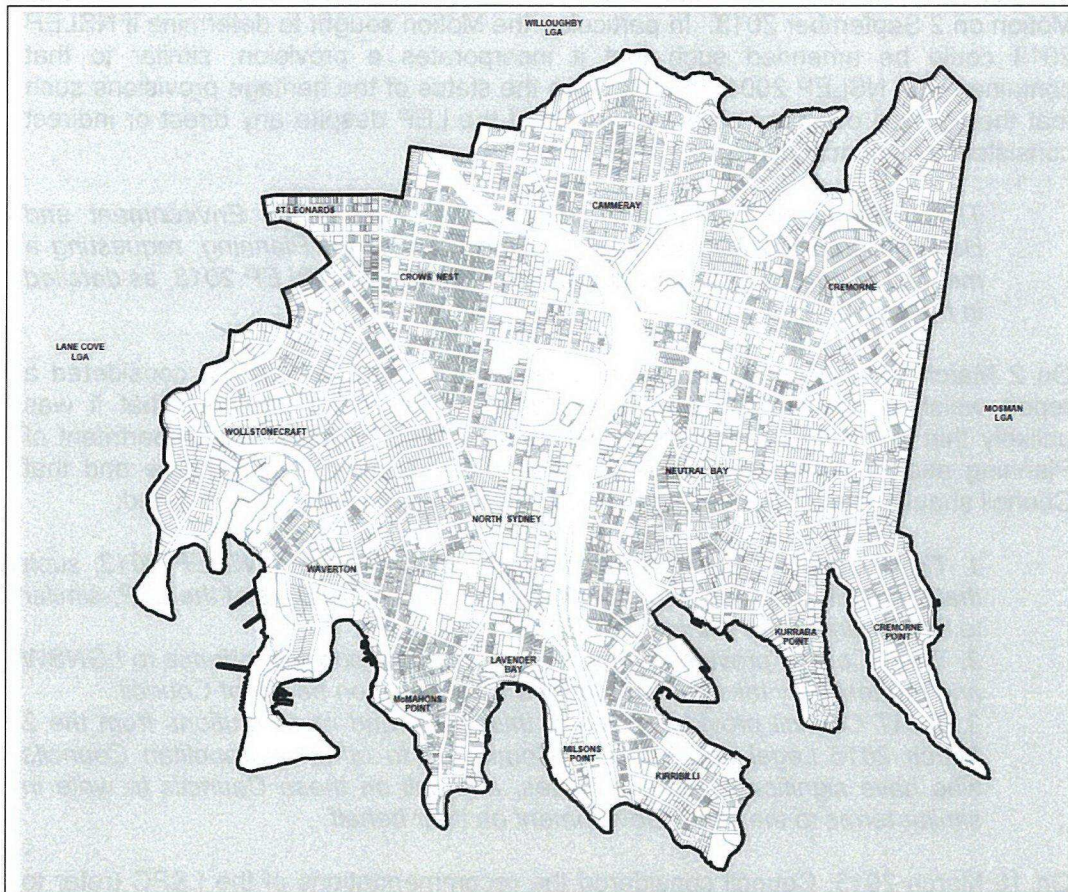


Figure 1 – NSLEP 2013 - Land Application Map (LAP_001)

4 STATUTORY CONTEXT

NSLEP 2013 is the principal planning instrument that applies to the land subject to the Planning Proposal. The relevant sections of NSLEP 2013 are discussed in the following subsections.

4.1 Aims of Plan

Clause 1.2 of NSLEP 2013 outlines the aims of the LEP. In particular, it states:

- (1) *This Plan aims to make local environmental planning provisions for land in North Sydney in accordance with the relevant standard environmental planning instrument under section 33A of the Act.*
- (2) *The particular aims of this Plan are as follows:*
 - (a)
 - (f) *to identify and protect the natural, archaeological and built heritage of North Sydney and ensure that development does not adversely affect its significance, ...*

4.2 Heritage conservation

Clause 5.10 of NSLEP contains specific provisions relating to heritage conservation and states:

- (1) *Objectives*
The objectives of this clause are as follows:
 - (a) *to conserve the environmental heritage of North Sydney,*
 - (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 5 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 consent authority of the proposed development and the consent authority 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 consent authority 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 consent authority 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 consent authority 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 consent authority 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 consent authority 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.*

(9) Demolition of nominated State heritage items

The consent authority 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 consent authority 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 consent authority 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 consent authority, 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.*

A note is also attached to this clause which states:

Note. Heritage items (if any) are listed and described in Schedule 5. Heritage conservation areas (if any) are shown on the Heritage Map as well as being described in Schedule 5.

4.3 Schedule 5 – Environmental Heritage

All heritage items are identified within Schedule 5 to NSLEP 2013. The listing comprises, if any:

- Locality (suburb)
- Item name
- Address (street address)
- Property description (legal description)
- Significance
- Item No.

The Planning Proposal relates to all heritage items within Schedule 5 to NSLEP 2013.

4.4 Heritage Map

Heritage items are identified on the Heritage Map to NSLEP 2013 (refer to Appendix 3) and comprise the following sheets:

- HER_001 5950_COM_HER_001_010_20130607
- HER_002 5950_COM_HER_002_010_20130607
- HER_002A 5950_COM_HER_002A_005_20130607
- HER_003 5950_COM_HER_003_010_20130607
- HER_004 5950_COM_HER_004_010_20130607

5 THE PLANNING PROPOSAL

5.1 PART 1: STATEMENT OF OBJECTIVES

The primary purpose of this Planning Proposal is to give increased weight to the protection and conservation of heritage items in the North Sydney Local Government Area.

5.2 PART 2: EXPLANATIONS OF PROVISIONS

The intent of the Planning Proposal is proposed to be achieved by inserting a new local clause within Division 2 to Part 6 of NSLEP 2013 that enable the provisions within clause 5.10 to prevail over all other provisions in the Plan. The suggested wording of the proposed new clause is as follows (~~red strike through~~ represents a deletion and blue underline represents an insertion):

6.# Heritage provisions

- (1) The objective of this clause is to provide greater weight to the conservation of heritage items.
- (2) This clause applies to all land to which clause 5.10 applies.
- (3) The provisions of clause 5.10 prevail over any other provision of this Plan to the extent of any direct or indirect inconsistency.

5.3 PART 3: JUSTIFICATION

5.3.1 Section A – Need for the planning proposal

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

No. The need to amend NSLEP 2013 has arisen from a resolution of the Council (refer to Appendix 2) to reinstate the intent of clause 43 under NSLEP 2001, whereby the heritage provisions of the LEP prevailed over all other provisions to the extent of any direct or indirect consistency. In particular, NSLEP 2001 stated:

Part 4 Heritage Provisions

43 This Part to prevail

The provisions of this Part prevail over all other provisions of this plan to the extent of any direct or indirect inconsistency.

The intent of clause 43 to NSLEP 2001 was carried over from clause 36(2) of NSLEP 1989 which stated:

In the event of any inconsistency between the provisions of this Part [i.e. Part 4 – Heritage Provisions] and other provisions of this plan (including the provision of Part 2 [i.e. Part 2 – General restrictions on development, which incorporates the Land Use Table]) then to the extent of any inconsistency the provisions of this Part shall prevail.

This indicates that Council had consistently applied the intent of the Planning Proposal for approximately 23 years prior to the commencement of NSLEP 2013.

The intent of these clauses were not carried over to NSLEP 2013 during its preparation, as it was understood that it would require an amendment to a

mandated clause of the Standard Instrument LEP, which was not permitted as outlined by the DPE's Planning Circular PS 06-008 and LEP Practice Note PN 11-001 and no feasible alternatives arose at the time.

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

Yes. There are three potential options available to achieve the intent of the Planning Proposal.

Option 1: Amendment of clause 5.10

This option involves amending Clause 5.10 of NSLEP 2013 by including a new subclause after subclause (10) as follows:

(11) This clause prevails over any other provision of this Plan to the extent of any direct or indirect inconsistency.

This option provides the greatest level of clarity, by including the provision within the clause to which it relates. However, the clause is inconsistent with the DPE's Planning Circular PS 06-008 and LEP Practice Note PN 11-001.

Clause 5.10 is identified as a mandated compulsory clause, the wording of which cannot be amended (other than incorporating local content in specified circumstances). The only part of clause 5.10 that may be amended is the incorporation of the words *North Sydney* to subclause (1)(a).

If Clause 5.10 is to be amended, it would require an amendment to the Standard Instrument LEP which would affect all LEPs prepared in the Standard Instrument LEP format within NSW. This may not be practical for other councils in NSW, who do not value heritage as highly as North Sydney.

Option 2: Incorporating a new clause within Part 5 – Miscellaneous provisions

This option involves incorporating a new clause immediately after Clause 5.10 of NSLEP 2013 as follows:

5.10A Heritage provisions

(1) The objective of this clause is to provide greater weight to the conservation of heritage items.

(2) This clause applies to all land to which clause 5.10 applies.

(3) The provisions of clause 5.10 prevail over any other provision of this Plan to the extent of any direct or indirect inconsistency.

This option provides some level of clarity, by including the provision directly after the clause to which it relates. However, the clause is inconsistent with the DPE's Planning Circular PS 06-008 and LEP Practice Note PN 11-001.

Clauses instigated by councils and containing localised content, as per the Planning Proposal, must be located within Part 6 of the LEP and not Part 5. However relocation to Part 6 would significantly reduce clarity and transparency.

Option 3 – Incorporation of a new local clause within Part 6 – Additional Local provisions (Proposed option)

This option involves incorporating a new clause immediately after the last clause within Division 2 to Part 6 – Additional Local Provisions of the LEP as described in Section 5.2 to this report.

The Planning Circular and LEP Practice Note state that local clauses must not be inconsistent with and not undermine the effect of:

- the mandated clauses in the Standard Instrument LEP;
- The permissibility or otherwise of a land use as detailed in the Land Use Table; or
- any other relevant State and regional policies, strategies, directions etc.

Whilst providing the least level of clarity and transparency in comparison to the first two options, it is the most consistent with the requirements under the DPE's Planning Circular PS 06-008 and LEP Practice Note PN 11-001.

Alternatives – Implementation outside of NSLEP 2013

The only way that the heritage provisions could take precedence over all other parts of the LEP outside of the Plan, is if there is a provision contained within a State Environmental Planning Policy (SEPP). There are no SEPPs that specifically deal with heritage matters which could be amended. Nor is it likely that a new SEPP will be created to address what is essentially a local issue.

5.3.2 Section B – Relationship to strategic planning framework

3. *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)?*

A Plan for Growing Sydney (2014)

Released in December 2014, *A Plan for Growing Sydney* (Metropolitan Plan) sets the planning framework for the growth of the Sydney metropolitan area over the next 25 years. The Metropolitan Plan sets targets of an additional 664,000 homes and 689,000 jobs by 2031.

There are no specific Directions and Actions identified in the Metropolitan Plan which are relevant to the Planning Proposal. Despite the absence of any relevant Directions or Actions, it is unlikely that the Planning Proposal will prevent the attainment of the goals aims of the Metropolitan Plan.

Draft Inner North Subregional Strategy

In July 2007, the NSW Government released the draft Inner North Subregional Strategy (draft INSS). The North Sydney LGA is located within the Inner North subregion with the other LGAs of Lane Cove, Ryde, Willoughby, Hunters Hill and Mosman. The Draft INSS sets targets of an additional 5,500 homes and 15,000 jobs by 2031 for the North Sydney LGA.

There are no specific Directions and Actions identified in the draft INSS which are relevant to the Planning Proposal. Despite the absence of any relevant Directions or Actions, it is unlikely that the Planning Proposal will prevent the attainment of the aims of the draft INSS.

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

North Sydney Council Delivery Program 2010/11-2013/14

The North Sydney Council Delivery Program 2010/11-2013/14 (Delivery Program) was prepared in accordance with NSW State Government's Integrated Planning and Reporting Framework requirements. The Delivery Program outlines Council's priorities and service delivery programs over four years, set out under five key Directions.

The directions and goals of the Delivery Program which are relevant to the Planning Proposal are as follows:

Direction: 2 Our Built Environment

Outcome: 2.4 North Sydney's heritage is preserved and valued

Direction: 4 Our Social Vitality

Outcome: 4.4 North Sydney's history is preserved and recognised

The Planning Proposal will allow these directions and outcomes to be pursued.

5. Is the planning proposal consistent with applicable state environmental planning policies?

The Planning Proposal is consistent with those State Environmental Planning Policies (SEPPs) which are relevant to the North Sydney Local Government Area, as demonstrated in TABLE 1.

TABLE 1: Consistency with SEPPs		
Direction	Consistency	Comment
SEPP No. 1 – Development Standards	N/A	This SEPP does not apply pursuant to Clause 1.9 of NSLEP 2013.
SEPP No. 19 - Bushland in urban areas	YES	The Planning Proposal does not seek to reduce any bushland protection standards applying to land or adjacent land containing bushland.
SEPP No. 32 - Urban consolidation (redevelopment of urban land)	N/A	This SEPP does not apply, as the Planning Proposal does not seek to alter the land use permissibility of any land to which the Planning Proposal relates.
SEPP No. 33 - Hazardous and offensive development	N/A	This SEPP does not apply as, the Planning Proposal does not relate to land upon which hazardous and offensive development is permitted.
SEPP No. 50 - Canal estate development	YES	The Planning Proposal is consistent with the SEPP as it does not seek to permit canal estate development anywhere within the LGA.
SEPP No. 55 - Remediation of land	N/A	This SEPP does not apply as the Planning Proposal does not seek to alter the land use permissibility of any land to which the Planning Proposal relates.

Planning Proposal – Elevation of Heritage Controls

TABLE 1: Consistency with SEPPs		
Direction	Consistency	Comment
SEPP No. 64 - Advertising and signage	YES	The Planning Proposal is consistent with the SEPP as it does not affect the attainment of the SEPP's aims and objectives.
SEPP No. 65 - Design Quality of Residential Flat Development	YES	The Planning Proposal is consistent with the SEPP as it does not affect the attainment of the SEPP's aims and objectives.
SEPP (Affordable Rental Housing) 2009	YES	The Planning Proposal is consistent with the SEPP as it does not affect the attainment of the SEPP's aims and objectives.
SEPP (Building Sustainability Index: BASIX) 2004	N/A	This SEPP does not apply, as the Planning Proposal does not relate to building sustainability.
SEPP (Exempt and Complying Development Codes) 2008	YES	The Planning Proposal is consistent with the SEPP as it does not affect the attainment of the SEPP's aims and objectives.
SEPP (Housing for Seniors or People with a Disability) 2004 - <i>formerly SEPP (Seniors Living) 2004</i>	YES	The Planning Proposal is consistent with the SEPP as it does not affect the attainment of the SEPP's aims and objectives.
SEPP (Infrastructure) 2007	YES	The Planning Proposal is consistent with the SEPP as it does not affect the attainment of the SEPP's aims and objectives.
SEPP (Major Development) 2005 - <i>formerly SEPP Major Projects & SEPP State Significant Development</i>	N/A	This SEPP does not apply, as the Planning Proposal does not relate to any state significant sites identified under this SEPP.
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	YES	The Planning Proposal is consistent with the SEPP as it does not affect the attainment of the SEPP's aims and objectives.
SEPP (Miscellaneous Consent Provisions) 2007 - <i>formerly SEPP (Temporary Structures) 2007</i>	YES	The Planning Proposal is consistent with the SEPP as it does not affect the attainment of the SEPP's aims and objectives.
SEPP (State and Regional Development) 2011	N/A	This SEPP does not apply as the Planning Proposal does not relate to state or regional development nor the operation of joint regional planning panels.
Sydney REP (Sydney Harbour Catchment) 2005	YES	The Planning Proposal is consistent with the SEPP as it will not impede the attainment of the aims and objectives of this SEPP.

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

It is considered that the Planning Proposal is consistent with the relevant Directions issued under Section 117(2) of the EP&A Act by the Minister to Councils, as demonstrated in TABLE 2.

TABLE 2: Consistency with s.117 Directions		
Direction	Consistency	Comment
1. Employment and Resources		
1.1 Business & Industrial Zones	N/A	The Planning Proposal does not seek to reduce any commercial or industrial zoning under NSLEP 2013, nor does it seek to reduce the level of permissible non-residential floor space achievable on the affected lands.
1.2 Rural Zones	N/A	This Direction does not apply as there are no existing rural zones under NSLEP 2013 or proposed under the Planning Proposal.
1.3 Mining, Petroleum Production & Extractive Industries	YES	The Planning Proposal does not seek to alter the permissibility of these types of land uses.
1.4 Oyster Aquaculture	N/A	This Direction does not apply as the Planning Proposal does not propose any changes in land use.
1.5 Rural Lands	N/A	This Direction does not apply as the Planning Proposal does not propose any changes that will affect development in a rural or environmental protection zone.
2 Environmental Heritage		
2.1 Environmental Protection Zones	YES	The Planning Proposal does not seek to reduce any environmental protection standards applying to land zoned <i>E2 Environmental Conservation</i> or <i>E4 Environmental Living</i> under NSLEP 2013.
2.2 Coastal Protection	N/A	This Direction does not apply as the Planning Proposal does not affect land within a coastal zone.
2.3 Heritage Conservation	YES	The Planning Proposal seeks to reinforce the conservation of items, areas, objects, and places of environmental heritage significance consistent with the objectives of the Direction.
2.4 Recreation Vehicle Areas	N/A	The Planning Proposal does not enable land to be developed for the purposes of a recreational vehicle area.
3 Housing, Infrastructure & Urban Development		
3.1 Residential Zones	YES	The Planning Proposal does not seek to reduce any residential zoning under NSLEP 2013, nor does it seek to reduce the residential development potential on any site.

Planning Proposal – Elevation of Heritage Controls

TABLE 2: Consistency with s.117 Directions		
Direction	Consistency	Comment
3.2 Caravan Parks & Manufactured Home Estates	N/A	This Direction does not apply as the Planning Proposal does not seek to permit caravan parks or manufactured home estates under NSLEP 2013.
3.3 Home Occupations	YES	The Planning Proposal does not alter the existing provisions within NSLEP 2013 that relate to home occupations, which already satisfy the requirements of the Direction.
3.4 Integrating Land Use & Transport	N/A	The Planning Proposal does not alter the zoning or the permissible land uses of any parcel of land to which NSLEP 2013 applies.
3.5 Development Near Licensed Aerodromes	N/A	This Direction does not apply as the Planning Proposal does not relate to land in the vicinity of a licensed aerodrome nor does it propose to amend a height limit that exceeds the Obstacle Limitation Surface level that applies to the North Sydney LGA.
3.6 Shooting Ranges	N/A	This Direction does not apply as the Planning Proposal does not relate to land in the vicinity of a shooting range.
4 Hazard and Risk		
4.1 Acid Sulfate Soils	N/A	This Direction does not apply as the Planning Proposal does not relate to land affected by Acid Sulfate Soils.
4.2 Mine Subsidence & Unstable Land	N/A	This Direction does not apply as the Planning Proposal does not relate to land affected by mine subsidence nor has it been identified as being unstable land.
4.3 Flood Prone Land	N/A	This Direction does not apply as the Planning Proposal does not relate to land identified as being flood prone land.
4.4 Planning for Bushfire Protection	N/A	This Direction does not apply as the Planning Proposal does not relate to land identified as being bushfire prone land.
5 Regional Planning		
5.1 Implementation of Regional Strategies	N/A	This Direction does not apply as the Planning Proposal does not relate to land affected by one of the identified strategies.
5.2 Sydney Drinking Water Catchment	N/A	This Direction does not apply as the Planning Proposal does not relate to any of the identified LGAs.
5.3 Farmland of State and Regional Significance on the NSW Far North Coast.	N/A	This Direction does not apply as the Planning Proposal does not relate to any of the identified LGAs.
5.4 Commercial and Retail Development along the Pacific Highway, North Coast.	N/A	This Direction does not apply as the Planning Proposal does not relate to any of the identified LGAs.

TABLE 2: Consistency with s.117 Directions		
Direction	Consistency	Comment
5.8 Second Sydney Airport: Badgerys Creek	N/A	This Direction does not apply as the Planning Proposal does not relate to any of the identified LGAs.
6 Local Plan Making		
6.1. Approval & Referral Requirements	YES	The Planning Proposal does not alter any concurrence, consultation or referral requirements under NSLEP 2013, nor does it identify any development as designated development.
6.2 Reserving Land for Public Purposes	YES	The Planning Proposal does not create, alter or reduce existing zonings or reservations of land for public purposes.
6.3 Site Specific Provisions	N/A	This Direction does not apply, as it does not allow a particular type of development to be carried out.
7 Metropolitan Planning		
7.1 Implementation of A Plan for Growing Sydney	YES	Refer to question 4 to Section 5.3.2 of this report.

5.3.3 Section C – Environmental, social and economic impact.

7. 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. The Planning Proposal merely seeks to elevate the status of heritage conservation and will not result in an adverse impact on any critical habitat or threatened species, populations or ecological communities, or their habitats.

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

No. The Planning Proposal merely seeks to elevate the status of heritage conservation and is unlikely to result in any adverse environmental impacts.

9. How has the planning proposal adequately addressed any social and economic effects?

The Planning Proposal will result in positive social outcomes by ensuring that an adequate level of protection is afforded to heritage items and areas located in the Local Government Area.

The Planning Proposal is unlikely to result in any adverse economic impacts on the wider community.

5.3.4 Section D – State and Commonwealth interests

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

The Planning Proposal merely seeks to elevate the status of heritage conservation and will not impact upon the demand for public infrastructure.

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

Despite a Gateway Determination not yet having been issued, Council has consulted with the DPE and NSW Office of Environment with respect to the intent of the Planning Proposal.

The DPE did not originally support the progression of the Planning Proposal due to it being inconsistent with the Standard Instrument LEP.

The OEH, whilst sympathetic to Council's concerns, indicated that the intent of the Planning Proposal could only be implemented through an amendment to NSLEP 2013, which it noted that the DPE could not support.

Views of the State can be re-sought through the Gateway Determination process if or as required.

5.4 PART 4: MAPPING

No mapping is required to be prepared as part of this Planning Proposal.

5.5 PART 5: COMMUNITY CONSULTATION

Consultation will be undertaken in accordance with the requirements made by the Gateway Determination and Council's guidelines.

5.6 PART 6: PROJECT TIMELINE

TABLE 3 provides a project timeline having regard to identified milestones and estimating approximately 9 months from submitting the proposal to the DPE to the amending LEP being made.

TABLE 3 – Project Timeline							
Milestone	Apr 2015	May 2015	Jun 2015	Jul 2015	Aug 2015	Sept 2015	Oct 2015
1. Request for Gateway Determination sent to DPE							
2. DPE considers Request							
3. Gateway Determination Issued to Council							
4. Public Exhibition Undertaken							
5. Council considers post exhibition report							
6. Submission to DPE requesting making of LEP							
7. Drafting of LEP and making							

APPENDIX 1

Council report – 23 June 2014

**DECISION OF 3650th COUNCIL MEETING
HELD ON 23 JUNE 2014**

226. PDS04: Proposed amendments to NSLEP 2013 - Heritage Provisions

Report of Ben Boyd, Executive Strategic Planner

On 14 October 2013, Council considered a report addressing the outcomes from a Notice of Motion to investigate the amendment of North Sydney Local Environmental Plan 2013 (NSLEP 2013) to incorporate provisions similar to those contained with NSLEP 2001 which would ensure that the heritage provisions prevail over any other provisions of the LEP. Council resolved:

1. *THAT Council raise the issue with the Department of Planning and Infrastructure at its next quarterly meeting.*
2. *THAT following completion of Recommendation No.1 above, Council staff write to the Department of Planning and Infrastructure seeking a formal response to the issue.*
3. *THAT upon receiving formal advice from the Department of Planning and Infrastructure, the matter be reported back to Council.*
4. *THAT this issue also be discussed at the regional level through NSROC, with a view to making a joint representation to the Minister.*

Resolutions No. 1 and 2 have now been completed and this report has been prepared to satisfy Resolution No. 3 by reporting the findings from Resolutions No. 1 and 2. The report also provides an update on the actioning of Resolution No.4.

The Department of Planning and Environment (DPE) does not support the suggested amendment to NSLEP 2013 as it is inconsistent with the mandatory provisions of the Standard Instrument LEP. It was suggested however that Council may like to approach the Office of Environment and Heritage to seek alternative means of achieving Council's desired outcomes. Alternatively, it also suggested that if Council did approach NSROC seeking support for an amendment to the SI LEP, then it would have to demonstrate an identified and justified need for the suggested amendment.

It is considered that pursuing either a meeting with the OEH or further discussions with NSROC (refer to report detail) will not result in reaching an implementable action that achieves Council's desired outcomes. Accordingly, no further action is proposed in this regard.

Recommending:

1. **THAT** the report be received.

A Motion was moved by Councillor Baker and seconded by Councillor Morris

1. **THAT** the General Manager write to the Minister for Environment and Heritage, and the Minister Assisting the Minister for Planning, requesting a meeting to put the case for a special provision in the NSLEP 2013, as detailed in the report.

Voting was as follows:

For/Against 10/0

Councillor	Yes	No	Councillor	Yes	No
Gibson	Y		Barbour	Y	
Reymond	Y		Morris	Y	
Clare	Y		Burke	Absent	
Baker	Y		Marchandean	Y	
Carr	Y		Bevan	Y	
Beregi	Y				

RESOLVED:

1. **THAT** the General Manager write to the Minister for Environment and Heritage, and the Minister Assisting the Minister for Planning, requesting a meeting to put the case for a special provision in the NSLEP 2013, as detailed in the report.

ADOPTED

ITEM **PDS04** REPORTS **23/06/14**

N O R T H S Y D N E Y C O U N C I L R E P O R T S

**Report to General Manager**Attachments:
Nil**SUBJECT:** Proposed amendments to NSLEP 2013 - Heritage Provisions**AUTHOR:** Ben Boyd, Executive Strategic Planner**ENDORSED BY:** Joseph Hill, Acting Director Planning and Development Services**EXECUTIVE SUMMARY:**

On 14 October 2013, Council considered a report addressing the outcomes from a Notice of Motion to investigate the amendment of North Sydney Local Environmental Plan 2013 (NSLEP 2013) to incorporate provisions similar to those contained with NSLEP 2001 which would ensure that the heritage provisions prevail over any other provisions of the LEP. Council resolved:

1. *THAT Council raise the issue with the Department of Planning and Infrastructure at its next quarterly meeting.*
2. *THAT following completion of Recommendation No.1 above, Council staff write to the Department of Planning and Infrastructure seeking a formal response to the issue.*
3. *THAT upon receiving formal advice from the Department of Planning and Infrastructure, the matter be reported back to Council.*
4. *THAT this issue also be discussed at the regional level through NSROC, with a view to making a joint representation to the Minister.*

Resolutions No. 1 and 2 have now been completed and this report has been prepared to satisfy Resolution No. 3 by reporting the findings from Resolutions No. 1 and 2. The report also provides an update on the actioning of Resolution No.4.

The Department of Planning and Environment (DPE) does not support the suggested amendment to NSLEP 2013 as it is inconsistent with the mandatory provisions of the Standard Instrument LEP. It was suggested however that Council may like to approach the Office of Environment and Heritage to seek alternative means of achieving Council's desired outcomes. Alternatively, it also suggested that if Council did approach NSROC seeking support for an amendment to the SI LEP, then it would have to demonstrate an identified and justified need for the suggested amendment.

It is considered that pursuing either a meeting with the OEH or further discussions with NSROC (refer to report detail) will not result in reaching an implementable action that achieves Council's desired outcomes. Accordingly, no further action is proposed in this regard.

FINANCIAL IMPLICATIONS:Nil

Report of Ben Boyd, Executive Strategic Planner
Re: Proposed amendments to NSLEP 2013 - Heritage Provisions

(2)

RECOMMENDATION:

1. **THAT** the report be received.

Report of Ben Boyd, Executive Strategic Planner
Re: Proposed amendments to NSLEP 2013 - Heritage Provisions

(3)

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
2.3 Vibrant, connected and well maintained streetscapes and villages that build a sense of community
2.4 North Sydney's heritage is preserved and valued

Direction: 4. Our Social Vitality

Outcome: 4.4 North Sydney's history is preserved and recognised

Direction: 5. Our Civic Leadership

Outcome: 5.1 Council leads the strategic direction of North Sydney

BACKGROUND

On 2 September 2013, Council considered Notice of Motion 29/13 which sought an amendment to North Sydney Local Environmental Plan 2013 (NSLEP 2013). In particular, the Motion sought to elevate the status of the heritage controls under NSLEP 2013 such that they take precedence over all other controls under the LEP, similar to that which existed under NSLEP 2001. Council resolved:

1. THAT Council call for an urgent report to be presented to the next Legal and Planning Committee on a draft planning proposal to amend Council's 2013 LEP to insert heritage provisions similar to those appearing in LEP 2001.

In accordance with this resolution Council considered a report addressing this resolution on 14 October 2013. The report outlined that NSLEP 2013 is based on the State Government's Standard Instrument Local Environmental Plan (SI LEP) and that NSLEP 2013 adopts the mandated heritage provisions (i.e. Clause 5.10) of the SI LEP and that the mandated clauses of the SI LEP cannot be altered. Council resolved:

- 1. THAT Council raise the issue with the Department of Planning and Infrastructure at its next quarterly meeting.*
- 2. THAT following completion of Recommendation No.1 above, Council staff write to the Department of Planning and Infrastructure seeking a formal response to the issue.*
- 3. THAT upon receiving formal advice from the Department of Planning and Infrastructure, the matter be reported back to Council.*
- 4. THAT this issue also be discussed at the regional level through NSROC, with a view to making a joint representation to the Minister.*

This report addresses the resolutions to the report of 14 October 2014.

Report of Ben Boyd, Executive Strategic Planner
Re: Proposed amendments to NSLEP 2013 - Heritage Provisions

(4)

CONSULTATION REQUIREMENTS

Community engagement is not required.

SUSTAINABILITY STATEMENT

The sustainability implications were considered and reported on during the initiation phase of this project.

DETAIL

1. Addressing of Resolutions

The following sections outline the actions taken to date in response to each resolution to the report considered by Council on 14 October 2013.

1.1. Resolution 1 - Quarterly Meeting Discussions

In accordance with Resolution No.1, the matter was raised at Council's quarterly meeting with the Department of Planning and Environment (DPE) on 10 March 2014. The DPE advised verbally at this meeting that it was highly unlikely that such an amendment could be implemented. This was due to the relevant heritage controls (clause 5.10) being mandated for inclusion in NSLEP 2013 and that mandated provisions under the SI LEP cannot be altered or amended. The DPE did not raise any objection to providing written advice if requested.

1.2. Resolution 2 - Formal response from the DPE

Following the outcomes of the quarterly meeting with the DPE and in accordance with Resolution No.2, Council forwarded a letter to the DPE on the 18 March 2014 seeking formal advice as to whether or not NSLEP 2013 could be amended to elevate the status of its heritage controls above all other controls within the LEP.

On 14 May 2014, Council received a letter dated from the DPE in response to Council's letter of 18 March 2014. The Department advised (emphasis added):

The Standard Instrument heritage provisions are compulsory and must be adopted by every council in the State, without amendment or alteration. Therefore, the Department of Planning and Environment does not support individual amendments to the compulsory Standard Instrument heritage clauses, as proposed by Council.

Despite this initial lack of support, the DPE's letter suggested that Council may consider meeting with the Office of Environment and Heritage (OEH) to discuss mechanisms to achieve Council's desired outcomes.

The DPE's letter also acknowledged that Council was seeking to raise the matter with the Northern Sydney Regional Organisation of Councils (NSROC) with the view to making a joint representation to the Minister for Planning. The DPE advised that pursuing this alternative course of action may warrant further consideration if it could be adequately

Report of Ben Boyd, Executive Strategic Planner
Re: Proposed amendments to NSLEP 2013 - Heritage Provisions

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demonstrated that there is an identified and justified need to amend the SI LEP.

Raising the matter with NSROC is discussed further in Section 1.4 of this report. This course of action has not yet been completed.

1.3. Resolution 3 - Reporting back to Council

This report satisfies the requirements of this resolution.

1.4. Resolution 4 - Raising the matter with NSROC

The General Manager enquired with NSROC on 15 November 2013 about raising the matter at one of their meetings. The NSROC secretariat suggested the most appropriate way forward would be to obtain a report from Council detailing the relevant heritage provisions under NSLEP 2001 and recommending why they should be preferred over the SI LEP provisions and to take that report to one or more of three NSROC groups.

The NSROC Board: It was suggested that the Board could consider whether member councils wanted to move to these provisions and return the matter via delegates for councils' consideration. This was the preferred course of action given that Resolution No.4 ultimately seeks a joint representation to the Minister for Planning and that recommendations from the Board would hold more weight.

General Managers Advisory Group (GMAC): It was suggested that GMAC could consider the matter at one of its regular meetings to see if there is likely to be support from other Councils and/or from GMs.

Northern Sydney Planners Group: This group essentially comprises senior planning staff from all 11 Councils located north of Sydney Harbour and the Parramatta River. It was suggested that members of North Sydney Council or NSROC raise the issue at one of their monthly meetings.

Council staff agreed at the time to delay reporting the matter to NSROC until such time as Council had received a response back from the DPE. Now that Council has received a response from the DPE, it is now the appropriate time to take the matter to NSROC should Council believe it is still appropriate to do so.

2. Proposed Options

The following subsections outline the suggested actions arising out of the discussions with the DPE.

2.1. Meeting with the Office of Environment and Heritage

As indicated, the DPE suggested that Council meet with the OEHL to determine if there are any mechanisms to achieve Council's desired outcomes.

It is questioned what benefits of holding such a meeting would achieve. Any alternative mechanisms considered will be required to be made outside of the LEP framework and therefore is unlikely to achieve Council's desired outcomes (i.e. give precedence to the

Report of Ben Boyd, Executive Strategic Planner
Re: Proposed amendments to NSLEP 2013 - Heritage Provisions

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heritage controls).

Consideration could be given to strengthening the provisions within North Sydney Development Control Plan 2013 (NSDCP 2013). However, recent amendments to the Environmental Planning and Assessment Act 1979 and associated Regulations have essentially relegated the status of DCPs to a guideline only and therefore would have little weight in comparison to the provisions under the LEP.

2.2. Discussion with NSROC

Council has held off raising the matter for discussion with NSROC until such time as Council had received a response from the DPE.

As indicated, the DPE has alluded to the fact that the SI LEP could be amended, but is subject to an identified and justified need to amend it.

Clause 43 of NSLEP 2001, which gave precedence to the heritage provisions of the LEP over all others, was unique to North Sydney. No other council in NSW has adopted a similar provision within their current or former LEPs. As the SI LEP applies to the entire State, amending the SI LEP may place such a restriction on other local government areas where the community may not place as much weight on heritage values.

3. Conclusion

In accordance with the relevant resolutions, Council has consulted with the DPE regarding the potential for elevating the status of the heritage controls under NSLEP 2013. The DPE has advised that it cannot support the proposed amendment due to the restrictive nature of the SI LEP. Despite this, the DPE has offered two potential ways forward. The suggested courses of action are unlikely to result in Council being able to achieve the desired outcomes of the proposed amendment. It is therefore considered that no further action be pursued in this respect.

APPENDIX 2

Council report – 16 March 2015

**DECISION OF 3661st COUNCIL MEETING
HELD ON 16 MARCH 2015**

63. CoS02: Legal and Planning Committee - Minutes 2 March 2015

RESOLVED:

- 1. THAT** the report (LP01: Current Appeals and Results - February 2015) be received.
- 2. THAT** Council adopts the attached draft amendment to North Sydney Development Control Plan 2013 for public exhibition.
- 3. THAT** the public exhibition occurs concurrently with the exhibition of the Planning Proposal which seeks to make residential flat buildings permissible with consent in the B4 Mixed Use zone.
- 4. THAT** Council prepare a Planning Proposal to amend NSLEP 2013, such that the heritage provisions prevail over all other provisions of the LEP, similar to that incorporated within NSLEP 2001.
- 5. THAT** Council provide a copy of this report and correspondence to LGNSW and request they take it up as policy and lobbying on behalf of Council.
- 6. THAT** Council provide copies of this report and its resolutions from the 2 March 2015 Legal and Planning Committee to other metropolitan Councils who have significant heritage issues, and call on those Councils to write in similar terms to the State Government on their behalf.
- 7. THAT** Council note the coming into force of Amendment No.7 to NSLEP 2013.
- 8. THAT** Council resolves to adopt the attached Planning Proposal and forward it 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.
- 9. THAT** if North Sydney Local Environmental Plan 2013 is amended as a result of carrying out Recommendation No.1, that the North Sydney Heritage Inventory sheet in relation to Heritage Item I0407 be updated.
- 10. THAT** Council resolves to prepare and submit a nomination to the NSW Heritage Council to have bus shelter BS004: The Oval included on the State Heritage Register.
- 11. THAT** upon completing of the required nomination form and any associated documents to include bus shelter BS004: The Oval on the State Heritage Register, that delegated authority be granted to the General Manager to forward the nomination to the NSW Heritage Council.
- 12. THAT** the Committee notes that items 22 and 60 in the consultant's report have been erroneously mapped and that this be rectified in finalising the submission to the Department of Planning.
- 13. THAT** the independent consultant be congratulated on the report.
- 14. THAT** in relation to Item 4 Norman Turkington and Associates be appointed to conduct the conflict resolution process between the Mayor and all Councillors.
- 15. THAT** Council seek a second opinion on the advice in relation to Items 5 and 6 of the Performance Improvement Order.
- 16. THAT** Council write to the Minister for Local Government outlining its concerns, and seeking indemnification from any subsequent costs arising from the Minister's directive to Council on Item 6 of the Performance Improvement Order.
- 17. THAT** the legal advice sought on Items 5 and 6 of the Performance Improvement Order be obtained from an eminent Senior Counsel.
- 18. THAT** a report be submitted to the next Legal and Planning Committee regarding the naming of the unnamed bus shelters.

5. LP04: Proposed amendments to NSLEP 2013 - Heritage Provisions

Report of Ben Boyd, Executive Strategic Planner

On 23 June 2014, Council considered a report (refer to Attachment 1) which addressed a number of resolutions in response to its consideration of a Notice of Motion on 2 September 2013. In particular, the Motion sought an investigation to

amend North Sydney Local Environmental Plan 2013 (NSLEP 2013) such that it incorporated provisions similar to those contained with NSLEP 2001 which would ensure that the heritage provisions prevail over any other provisions of the LEP. Council resolved (Minute No. 226):

THAT the General Manager write to the Minister for Environment and Heritage, and the Minister Assisting the Minister for Planning, requesting a meeting to put the case for a special provision in the NSLEP 2013, as detailed in the report.

Council wrote to the Minister for Environment and Heritage, and the Minister Assisting the Minister for Planning on 15 July 2014. Council received a response from Director of the Heritage Division of the Office of Environment and Heritage (OEH) on behalf of the Minister on 29 August 2014.

Despite the OEH's offer of help, they are unable to assist implementing the intention of Council's proposal. In particular, the intent of the proposal can only be implemented through a change to the LEP, which is the responsibility of the Department of Planning and Environment (DPE). The DPE have previously advised that they do not support the suggested amendment to NSLEP 2013 as it is inconsistent with the mandatory provisions of the Standard Instrument LEP.

Accordingly, no further action is proposed in this regard.

Recommending:

1. **THAT** Council receive the report.

It was moved by Councillor Gibson and seconded by Councillor Bevan

1. **THAT** Council receive the report.

It was moved as an amendment by Councillor Baker and seconded by Councillor Morris

1. **THAT** Council prepare a Planning Proposal to reinstate the similar heritage provision into Council's LEP.

2. **THAT** Council provide a copy of this report and correspondence to LGNSW and request they take it up as policy and lobbying on behalf of Council.

3. **THAT** Council provide copies of this report and its resolutions from the 2 March 2015 Legal and Planning Committee to other metro Councils who have significant heritage issues, and call on those Councils to write in similar terms to the State Government on their behalf.

The amendment was put and **carried**.

Voting on the amendment was as follows: For/Against 8/2

Councillor	Yes	No	Councillor	Yes	No
Gibson		N	Barbour	Y	
Reymond	Y		Morris	Y	
Clare	Y		Burke	Absent	
Baker	Y		Marchandean	Y	
Carr	Y		Bevan		N
Beregi	Y				

The amendment thereupon became the motion, was put and **carried**.

Voting was as follows: For/Against 8/2

Councillor	Yes	No	Councillor	Yes	No
Gibson		N	Barbour	Y	
Reymond	Y		Morris	Y	
Clare	Y		Burke	Absent	
Baker	Y		Marchandean	Y	
Carr	Y		Bevan		N
Beregi	Y				

Resolved to recommend:

- 1. THAT** Council prepare a Planning Proposal to amend NSLEP 2013, such that the heritage provisions prevail over all other provisions of the LEP, similar to that incorporated within NSLEP 2001.
- 2. THAT** Council provide a copy of this report and correspondence to LGNSW and request they take it up as policy and lobbying on behalf of Council.
- 3. THAT** Council provide copies of this report and its resolutions from the 2 March 2015 Legal and Planning Committee to other metropolitan Councils who have significant heritage issues, and call on those Councils to write in similar terms to the State Government on their behalf.

ITEM **LP04**Legal and Planning Committee **02/03/15**

N O R T H S Y D N E Y C O U N C I L R E P O R T S

**Report to General Manager**

Attachments:

1. Council Report - 23 June 2014

SUBJECT: Proposed amendments to NSLEP 2013 - Heritage Provisions**AUTHOR:** Ben Boyd, Executive Strategic Planner**ENDORSED BY:** Joseph Hill, Director City Strategy**EXECUTIVE SUMMARY:**

On 23 June 2014, Council considered a report (refer to Attachment 1) which addressed a number of resolutions in response to its consideration of a Notice of Motion on 2 September 2013. In particular, the Motion sought an investigation to amend North Sydney Local Environmental Plan 2013 (NSLEP 2013) such that it incorporated provisions similar to those contained with NSLEP 2001 which would ensure that the heritage provisions prevail over any other provisions of the LEP. Council resolved (Minute No. 226):

THAT the General Manager write to the Minister for Environment and Heritage, and the Minister Assisting the Minister for Planning, requesting a meeting to put the case for a special provision in the NSLEP 2013, as detailed in the report.

Council wrote to the Minister for Environment and Heritage, and the Minister Assisting the Minister for Planning on 15 July 2014. Council received a response from Director of the Heritage Division of the Office of Environment and Heritage (OEH) on behalf of the Minister on 29 August 2014.

Despite the OEH's offer of help, they are unable to assist implementing the intention of Council's proposal. In particular, the intent of the proposal can only be implemented through a change to the LEP, which is the responsibility of the Department of Planning and Environment (DPE). The DPE have previously advised that they do not support the suggested amendment to NSLEP 2013 as it is inconsistent with the mandatory provisions of the Standard Instrument LEP.

Accordingly, no further action is proposed in this regard.

FINANCIAL IMPLICATIONS:

Nil

RECOMMENDATION:**1. THAT** Council receive the report.

Report of Ben Boyd, Executive Strategic Planner
 Re: Proposed amendments to NSLEP 2013 - Heritage Provisions

(2)

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 |
| | 2.3 Vibrant, connected and well maintained streetscapes and villages that build a sense of community |
| | 2.4 North Sydney's heritage is preserved and valued |
| Direction: | 4. Our Social Vitality |
| Outcome: | 4.4 North Sydney's history is preserved and recognised |
| Direction: | 5. Our Civic Leadership |
| Outcome: | 5.1 Council leads the strategic direction of North Sydney |

BACKGROUND

On 2 September 2013, Council considered Notice of Motion 29/13 (Minute No. 586) which sought an amendment to North Sydney Local Environmental Plan 2013 (NSLEP 2013). In particular, the Motion sought to elevate the status of the heritage controls under NSLEP 2013 such that they take precedence over all other controls under the LEP, similar to that which existed under NSLEP 2001. Council resolved:

1. THAT Council call for an urgent report to be presented to the next Legal and Planning Committee on a draft planning proposal to amend Council's 2013 LEP to insert heritage provisions similar to those appearing in LEP 2001.

In accordance with this resolution Council considered a report addressing this resolution on 14 October 2013. The report outlined that NSLEP 2013 is based on the State Government's Standard Instrument Local Environmental Plan (SI LEP) and that NSLEP 2013 adopts the mandated heritage provisions (i.e. Clause 5.10) of the SI LEP and that the mandated clauses of the SI LEP cannot be altered. Council resolved (Minute No. 632):

- 1. THAT Council raise the issue with the Department of Planning and Infrastructure at its next quarterly meeting.*
- 2. THAT following completion of Recommendation No.1 above, Council staff write to the Department of Planning and Infrastructure seeking a formal response to the issue.*
- 3. THAT upon receiving formal advice from the Department of Planning and Infrastructure, the matter be reported back to Council.*
- 4. THAT this issue also be discussed at the regional level through NSROC, with a view to making a joint representation to the Minister.*

On 23 June 2014, Council considered a report (refer to Attachment 1) addressing the above resolutions. The report stated that the Department of Planning and Environment (DPE) does

Report of Ben Boyd, Executive Strategic Planner
Re: Proposed amendments to NSLEP 2013 - Heritage Provisions

(3)

not support the suggested amendment to NSLEP 2013 as it is inconsistent with the mandatory provisions of the SI LEP. The DPE suggested however that Council may like to approach the Office of Environment and Heritage (OEH) to seek alternative means of achieving Council's desired outcomes. Alternatively, it also suggested that if Council did approach NSROC seeking support for an amendment to the SI LEP, then it would have to demonstrate an identified and justified need for the suggested amendment.

The report recommended not pursuing a meeting with the OEH or discussion with NSROC, as it will not result in reaching an implementable action that achieves Council's desired outcomes. Council resolved (Minute No. 226):

THAT the General Manager write to the Minister for Environment and Heritage, and the Minister Assisting the Minister for Planning, requesting a meeting to put the case for a special provision in the NSLEP 2013, as detailed in the report.

This report addresses this resolution.

CONSULTATION REQUIREMENTS

Community engagement is not required.

SUSTAINABILITY STATEMENT

The sustainability implications were considered and reported on during the initiation phase of this project.

DETAIL

1. Addressing the Resolution

Council wrote to the Minister for Environment and Heritage, and the Minister Assisting the Minister for Planning on 15 July 2014 seeking a meeting to discuss the ability to amend the heritage controls under NSLEP 2013.

2. Response to Council's letter

On 29 August 2014, Council received a letter dated 26 August 2014 from Director of the Heritage Division of the OEH on behalf of the Minister.

The letter acknowledged that Council has already received advice from the DPE regarding the amendments but had not elaborated on this advice, which stated that the DPE were unable to implement the intent of the proposed amendments due to inconsistency with the mandated provisions of the SI LEP.

The OEH stated that they were *'able to assist in providing specialised heritage advice and suggested that they may be able to assist in resolving the issue without amending the LEP'*. Council was invited to contact the OEH in this respect.

Report of Ben Boyd, Executive Strategic Planner
Re: Proposed amendments to NSLEP 2013 - Heritage Provisions

(4)

3. Discussions with the OEH

Council staff initially tried to make contact with the relevant OEH officer by telephone on 25 November and 16 December 2014, and left messages for the officer to contact Council. Council staff finally spoke to the relevant OEH officer by telephone on 14 January 2015. It was enquired if a meeting could be set up to discuss the issues at hand. The OEH officer stated that they have reviewed the relevant documentation and advised that a meeting was not necessary and that the issue could be addressed over the phone.

The OEH officer suggested that its letter may have been a little bit misleading, with the Director of the Heritage Division seeking to be helpful, even if this was not possible. In particular, Council was advised that the OEH is willing to help with any heritage matters on a case by case basis (i.e. heritage item by heritage item), but is in less of a position to address wholesale heritage issues such as that raised by Council.

Despite this, the OEH officer advised that they could see no way that the intent of Council's request could be achieved without amending the SI LEP, which is the responsibility of the DPE. Furthermore, they advised that it was extremely unlikely that the issue could be resolved outside of the LEP.

The OEH officer offered to take the matter up with their supervisor to see if they could provide any additional advice. On 16 February 2015, Council received a phone call from the OEH officer advising that no additional advice could be provided to address Council's issue.

4. Conclusion

In accordance with the resolution of 23 June 2014, Council has consulted with the OEH regarding the potential for elevating the status of the heritage controls under NSLEP 2013, who have advised that it is not in position to assist Council in elevating the status of the heritage controls in this particular instance.

As previously advised (refer to Attachment 1) the DPE have stated that it cannot support the proposed amendment due to the restrictive nature of the SI LEP. It is therefore considered that no further action be pursued in this respect.

**DECISION OF 3650th COUNCIL MEETING
HELD ON 23 JUNE 2014**

226. PDS04: Proposed amendments to NSLEP 2013 - Heritage Provisions

Report of Ben Boyd, Executive Strategic Planner

On 14 October 2013, Council considered a report addressing the outcomes from a Notice of Motion to investigate the amendment of North Sydney Local Environmental Plan 2013 (NSLEP 2013) to incorporate provisions similar to those contained with NSLEP 2001 which would ensure that the heritage provisions prevail over any other provisions of the LEP. Council resolved:

1. *THAT Council raise the issue with the Department of Planning and Infrastructure at its next quarterly meeting.*
2. *THAT following completion of Recommendation No.1 above, Council staff write to the Department of Planning and Infrastructure seeking a formal response to the issue.*
3. *THAT upon receiving formal advice from the Department of Planning and Infrastructure, the matter be reported back to Council.*
4. *THAT this issue also be discussed at the regional level through NSROC, with a view to making a joint representation to the Minister.*

Resolutions No. 1 and 2 have now been completed and this report has been prepared to satisfy Resolution No. 3 by reporting the findings from Resolutions No. 1 and 2. The report also provides an update on the actioning of Resolution No.4.

The Department of Planning and Environment (DPE) does not support the suggested amendment to NSLEP 2013 as it is inconsistent with the mandatory provisions of the Standard Instrument LEP. It was suggested however that Council may like to approach the Office of Environment and Heritage to seek alternative means of achieving Council's desired outcomes. Alternatively, it also suggested that if Council did approach NSROC seeking support for an amendment to the SI LEP, then it would have to demonstrate an identified and justified need for the suggested amendment.

It is considered that pursuing either a meeting with the OEH or further discussions with NSROC (refer to report detail) will not result in reaching an implementable action that achieves Council's desired outcomes. Accordingly, no further action is proposed in this regard.

Recommending:

1. **THAT** the report be received.

A Motion was moved by Councillor Baker and seconded by Councillor Morris

1. **THAT** the General Manager write to the Minister for Environment and Heritage, and the Minister Assisting the Minister for Planning, requesting a meeting to put the case for a special provision in the NSLEP 2013, as detailed in the report.

Voting was as follows:

For/Against 10/0

Councillor	Yes	No	Councillor	Yes	No
Gibson	Y		Barbour	Y	
Reymond	Y		Morris	Y	
Clare	Y		Burke	Absent	
Baker	Y		Marchandean	Y	
Carr	Y		Bevan	Y	
Beregi	Y				

RESOLVED:

1. **THAT** the General Manager write to the Minister for Environment and Heritage, and the Minister Assisting the Minister for Planning, requesting a meeting to put the case for a special provision in the NSLEP 2013, as detailed in the report.

ADOPTED

ITEM **PDS04** REPORTS **23/06/14**

N O R T H S Y D N E Y C O U N C I L R E P O R T S

**Report to General Manager**Attachments:
Nil**SUBJECT:** Proposed amendments to NSLEP 2013 - Heritage Provisions**AUTHOR:** Ben Boyd, Executive Strategic Planner**ENDORSED BY:** Joseph Hill, Acting Director Planning and Development Services**EXECUTIVE SUMMARY:**

On 14 October 2013, Council considered a report addressing the outcomes from a Notice of Motion to investigate the amendment of North Sydney Local Environmental Plan 2013 (NSLEP 2013) to incorporate provisions similar to those contained with NSLEP 2001 which would ensure that the heritage provisions prevail over any other provisions of the LEP. Council resolved:

1. *THAT Council raise the issue with the Department of Planning and Infrastructure at its next quarterly meeting.*
2. *THAT following completion of Recommendation No.1 above, Council staff write to the Department of Planning and Infrastructure seeking a formal response to the issue.*
3. *THAT upon receiving formal advice from the Department of Planning and Infrastructure, the matter be reported back to Council.*
4. *THAT this issue also be discussed at the regional level through NSROC, with a view to making a joint representation to the Minister.*

Resolutions No. 1 and 2 have now been completed and this report has been prepared to satisfy Resolution No. 3 by reporting the findings from Resolutions No. 1 and 2. The report also provides an update on the actioning of Resolution No.4.

The Department of Planning and Environment (DPE) does not support the suggested amendment to NSLEP 2013 as it is inconsistent with the mandatory provisions of the Standard Instrument LEP. It was suggested however that Council may like to approach the Office of Environment and Heritage to seek alternative means of achieving Council's desired outcomes. Alternatively, it also suggested that if Council did approach NSROC seeking support for an amendment to the SI LEP, then it would have to demonstrate an identified and justified need for the suggested amendment.

It is considered that pursuing either a meeting with the OEHL or further discussions with NSROC (refer to report detail) will not result in reaching an implementable action that achieves Council's desired outcomes. Accordingly, no further action is proposed in this regard.

FINANCIAL IMPLICATIONS:Nil

Report of Ben Boyd, Executive Strategic Planner
Re: Proposed amendments to NSLEP 2013 - Heritage Provisions

(2)

RECOMMENDATION:

1. **THAT** the report be received.

Report of Ben Boyd, Executive Strategic Planner
 Re: Proposed amendments to NSLEP 2013 - Heritage Provisions

(3)

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
 2.3 Vibrant, connected and well maintained streetscapes and villages that build a sense of community
 2.4 North Sydney's heritage is preserved and valued

Direction: 4. Our Social Vitality

Outcome: 4.4 North Sydney's history is preserved and recognised

Direction: 5. Our Civic Leadership

Outcome: 5.1 Council leads the strategic direction of North Sydney

BACKGROUND

On 2 September 2013, Council considered Notice of Motion 29/13 which sought an amendment to North Sydney Local Environmental Plan 2013 (NSLEP 2013). In particular, the Motion sought to elevate the status of the heritage controls under NSLEP 2013 such that they take precedence over all other controls under the LEP, similar to that which existed under NSLEP 2001. Council resolved:

1. THAT Council call for an urgent report to be presented to the next Legal and Planning Committee on a draft planning proposal to amend Council's 2013 LEP to insert heritage provisions similar to those appearing in LEP 2001.

In accordance with this resolution Council considered a report addressing this resolution on 14 October 2013. The report outlined that NSLEP 2013 is based on the State Government's Standard Instrument Local Environmental Plan (SI LEP) and that NSLEP 2013 adopts the mandated heritage provisions (i.e. Clause 5.10) of the SI LEP and that the mandated clauses of the SI LEP cannot be altered. Council resolved:

- 1. THAT Council raise the issue with the Department of Planning and Infrastructure at its next quarterly meeting.*
- 2. THAT following completion of Recommendation No.1 above, Council staff write to the Department of Planning and Infrastructure seeking a formal response to the issue.*
- 3. THAT upon receiving formal advice from the Department of Planning and Infrastructure, the matter be reported back to Council.*
- 4. THAT this issue also be discussed at the regional level through NSROC, with a view to making a joint representation to the Minister.*

This report addresses the resolutions to the report of 14 October 2014.

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CONSULTATION REQUIREMENTS

Community engagement is not required.

SUSTAINABILITY STATEMENT

The sustainability implications were considered and reported on during the initiation phase of this project.

DETAIL

1. Addressing of Resolutions

The following sections outline the actions taken to date in response to each resolution to the report considered by Council on 14 October 2013.

1.1. Resolution 1 - Quarterly Meeting Discussions

In accordance with Resolution No.1, the matter was raised at Council's quarterly meeting with the Department of Planning and Environment (DPE) on 10 March 2014. The DPE advised verbally at this meeting that it was highly unlikely that such an amendment could be implemented. This was due to the relevant heritage controls (clause 5.10) being mandated for inclusion in NSLEP 2013 and that mandated provisions under the SI LEP cannot be altered or amended. The DPE did not raise any objection to providing written advice if requested.

1.2. Resolution 2 - Formal response from the DPE

Following the outcomes of the quarterly meeting with the DPE and in accordance with Resolution No.2, Council forwarded a letter to the DPE on the 18 March 2014 seeking formal advice as to whether or not NSLEP 2013 could be amended to elevate the status of its heritage controls above all other controls within the LEP.

On 14 May 2014, Council received a letter dated from the DPE in response to Council's letter of 18 March 2014. The Department advised (emphasis added):

The Standard Instrument heritage provisions are compulsory and must be adopted by every council in the State, without amendment or alteration. Therefore, the Department of Planning and Environment does not support individual amendments to the compulsory Standard Instrument heritage clauses, as proposed by Council.

Despite this initial lack of support, the DPE's letter suggested that Council may consider meeting with the Office of Environment and Heritage (OEH) to discuss mechanisms to achieve Council's desired outcomes.

The DPE's letter also acknowledged that Council was seeking to raise the matter with the Northern Sydney Regional Organisation of Councils (NSROC) with the view to making a joint representation to the Minister for Planning. The DPE advised that pursuing this alternative course of action may warrant further consideration if it could be adequately

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demonstrated that there is an identified and justified need to amend the SI LEP.

Raising the matter with NSROC is discussed further in Section 1.4 of this report. This course of action has not yet been completed.

1.3. Resolution 3 - Reporting back to Council

This report satisfies the requirements of this resolution.

1.4. Resolution 4 - Raising the matter with NSROC

The General Manager enquired with NSROC on 15 November 2013 about raising the matter at one of their meetings. The NSROC secretariat suggested the most appropriate way forward would be to obtain a report from Council detailing the relevant heritage provisions under NSLEP 2001 and recommending why they should be preferred over the SI LEP provisions and to take that report to one or more of three NSROC groups.

The NSROC Board: It was suggested that the Board could consider whether member councils wanted to move to these provisions and return the matter via delegates for councils' consideration. This was the preferred course of action given that Resolution No.4 ultimately seeks a joint representation to the Minister for Planning and that recommendations from the Board would hold more weight.

General Managers Advisory Group (GMAC): It was suggested that GMAC could consider the matter at one of its regular meetings to see if there is likely to be support from other Councils and/or from GMs.

Northern Sydney Planners Group: This group essentially comprises senior planning staff from all 11 Councils located north of Sydney Harbour and the Parramatta River. It was suggested that members of North Sydney Council or NSROC raise the issue at one of their monthly meetings.

Council staff agreed at the time to delay reporting the matter to NSROC until such time as Council had received a response back from the DPE. Now that Council has received a response from the DPE, it is now the appropriate time to take the matter to NSROC should Council believe it is still appropriate to do so.

2. Proposed Options

The following subsections outline the suggested actions arising out of the discussions with the DPE.

2.1. Meeting with the Office of Environment and Heritage

As indicated, the DPE suggested that Council meet with the OEHL to determine if there are any mechanisms to achieve Council's desired outcomes.

It is questioned what benefits of holding such a meeting would achieve. Any alternative mechanisms considered will be required to be made outside of the LEP framework and therefore is unlikely to achieve Council's desired outcomes (i.e. give precedence to the

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heritage controls).

Consideration could be given to strengthening the provisions within North Sydney Development Control Plan 2013 (NSDCP 2013). However, recent amendments to the Environmental Planning and Assessment Act 1979 and associated Regulations have essentially relegated the status of DCPs to a guideline only and therefore would have little weight in comparison to the provisions under the LEP.

2.2. Discussion with NSROC

Council has held off raising the matter for discussion with NSROC until such time as Council had received a response from the DPE.

As indicated, the DPE has alluded to the fact that the SI LEP could be amended, but is subject to an identified and justified need to amend it.

Clause 43 of NSLEP 2001, which gave precedence to the heritage provisions of the LEP over all others, was unique to North Sydney. No other council in NSW has adopted a similar provision within their current or former LEPs. As the SI LEP applies to the entire State, amending the SI LEP may place such a restriction on other local government areas where the community may not place as much weight on heritage values.

3. Conclusion

In accordance with the relevant resolutions, Council has consulted with the DPE regarding the potential for elevating the status of the heritage controls under NSLEP 2013. The DPE has advised that it cannot support the proposed amendment due to the restrictive nature of the SI LEP. Despite this, the DPE has offered two potential ways forward. The suggested courses of action are unlikely to result in Council being able to achieve the desired outcomes of the proposed amendment. It is therefore considered that no further action be pursued in this respect.