

Planning Proposal - Elevation of Heritage Controls

Proposal Title : **Planning Proposal - Elevation of Heritage Controls**

Proposal Summary : **The planning proposal seeks to amend North Sydney Local Environmental Plan 2013 by incorporating a new clause within Part 6 of the LEP which would enable the heritage provisions of the LEP to prevail over all other provisions.**

PP Number : **PP_2015_NORTH_006_00** Dop File No : **15/07468**

Proposal Details

Date Planning Proposal Received : **27-Apr-2015** LGA covered : **North Sydney**

Region : **Metro(CBD)** RPA : **North Sydney Council**

State Electorate : **NORTH SHORE** Section of the Act : **55 - Planning Proposal**

LEP Type : **Policy**

Location Details

Street : **various**

Suburb : **various** City : **various** Postcode : **various**

Land Parcel :

DoP Planning Officer Contact Details

Contact Name : **Sandy Shewell**

Contact Number : **0285754115**

Contact Email : **sandy.shewell@planning.nsw.gov.au**

RPA Contact Details

Contact Name : **Ben Boyd**

Contact Number : **0299368100**

Contact Email : **benjamin.boyd@northsydney.nsw.gov.au**

DoP Project Manager Contact Details

Contact Name :

Contact Number :

Contact Email :

Land Release Data

Growth Centre : Release Area Name :

Regional / Sub Regional Strategy : **Metro Inner North subregion** Consistent with Strategy :

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MDP Number :

Date of Release :

Area of Release
(Ha) :

Type of Release (eg
Residential /
Employment land) :

No. of Lots : 0

No. of Dwellings : 0
(where relevant) :

Gross Floor Area : 0

No of Jobs Created : 0

The NSW Government Yes
Lobbyists Code of
Conduct has been
complied with :

If No, comment : The Department of Planning and Environment's Code of Practice in relation to communication and meetings with lobbyists has been complied with. Metropolitan (CBD) has not met any lobbyist in relation to this proposal, nor has the Director been advised of any meetings between other Department officers and lobbyists concerning this proposal.

Have there been
meetings or
communications with
registered lobbyists? : No

If Yes, comment :

Supporting notes

Internal Supporting Notes : The aim of the planning proposal is to ensure that the heritage provisions prevail over all provisions of North Sydney Local Environmental Plan 2013.

The now repealed North Sydney Local Environmental Plan 2001 contained a similar clause (clause 43).

However, the Standard Instrument heritage provisions are compulsory and must be adopted by every council in the State, without amendment or alteration. The introduction of such a clause is inconsistent with the Standard Instrument Order 2006.

External Supporting
Notes :

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? Yes

Comment : The objective of the planning proposal is to give increased weight to the protection and conservation of heritage items within the North Sydney Local Government Area.

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? Yes

Comment : It is proposed to achieve the intent of the planning proposal by inserting a new clause within Division 2 of Part 6 of North Sydney LEP 2013. This new clause will enable clause 5.10 to prevail over all other provisions of the Standard Instrument LEP.

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? No

b) S.117 directions identified by RPA :

2.1 Environment Protection Zones

2.3 Heritage Conservation

* May need the Director General's agreement

3.1 Residential Zones

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3.3 Home Occupations

6.1 Approval and Referral Requirements

6.2 Reserving Land for Public Purposes

7.1 Implementation of A Plan for Growing Sydney

Is the Director General's agreement required? **No**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **No**

d) Which SEPPs have the RPA identified?

SEPP No 19—Bushland in Urban Areas

SEPP No 50—Canal Estate Development

SEPP No 64—Advertising and Signage

SEPP No 65—Design Quality of Residential Flat Development

SEPP No 70—Affordable Housing (Revised Schemes)

SEPP (Exempt and Complying Development Codes) 2008

SEPP (Housing for Seniors or People with a Disability) 2004

SEPP (Infrastructure) 2007

SEPP (Temporary Structures and Places of Public Entertainment) 2007

SREP (Sydney Harbour Catchment) 2005

e) List any other matters that need to be considered :

S117 Direction 3.1 Residential Zones

Council has not identified this S117 Direction despite the planning proposal affecting land within residential zones. The S117 Direction requires a planning proposal to not contain provisions which will reduce the permissible residential density of land. As the proposal has the potential to restrict permissible residential density, it is considered the planning proposal is inconsistent with S117 Direction 3.1.

Have inconsistencies with items a), b) and d) being adequately justified? **N/A**

If No, explain :

Mapping Provided - s55(2)(d)

Is mapping provided? **No**

Comment :

No mapping is required to be prepared as part of this planning proposal.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment :

Council advise community consultation will be undertaken in accordance with Council's Community Engagement Protocol and the requirements of any Gateway Determination. However it is recommended that the planning proposal not proceed.

PROJECT TIMELINE

Council has provided an indicative project timeline with a completion date of October 2015.

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment :

Proposal Assessment

Principal LEP:

Due Date : **July 2013**

Comments in
relation to Principal
LEP :

North Sydney Local Environmental Plan was made on 31 July 2013.

Assessment Criteria

Need for planning
proposal :

North Sydney Council considers the planning proposal is required to elevate the status of heritage conservation over all other provisions to the extent of any direct or indirect consistency.

Consistency with
strategic planning
framework :

North Sydney Council considers the planning proposal to be consistent with A Plan for Growing Sydney and the Draft Inner North Subregional Strategy in that there are no specific directions or actions identified in the Plan or the Strategy which are relevant to the planning proposal.

The Department considers the planning proposal to be inconsistent with the strategic planning framework as it has the potential to restrict development throughout the local government area.

The proposal is consistent with the North Sydney Local Development Strategy 2009.

Environmental social
economic impacts :

Environmental Impacts

The proposal will not result in any impact on critical habitat or threatened species, populations or ecological communities or other habitats.

Social Impacts

Council considers the proposal may result in a positive social outcome by increasing the level of protection afforded to heritage items within the local government area.

Economic Impacts

Council considers the proposal is unlikely to result in any adverse economic impacts. However, given the proposal has the potential to restrict development and reduce flexibility of future uses, it is considered the proposal is likely to have a negative economic impact.

Heritage

The aim of the planning proposal is to offer additional heritage protection. It is proposed that the heritage provisions of North Sydney LEP 2013 will prevail over all other provisions to the extent of any direct or indirect consistency.

However, the planning proposal is inconsistent with the Standard Instrument (Local Environmental Plans) Order 2006 heritage provisions which are compulsory and must be adopted by every council in the State, without amendment or alteration.

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Assessment Process

Proposal type : **Inconsistent** Community Consultation Period : **Nil**

Timeframe to make LEP : **0 months** Delegation : **Nil**

Public Authority Consultation - 56(2)(d) :

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **No**

If no, provide reasons : **North Sydney LEP 2001 and North Sydney LEP 1989 contain/ed clauses similar to those which Council propose to include within its standard instrument LEP. However, Clause 5.10 of the LEP is a compulsory provision under the Standard Instrument (Local Environmental Plans) Order 2006 (SI Order). Under the SI Order and clause 33A of the Environmental Planning and Assessment Act 1979 (EP&A Act), compulsory provisions must be adopted by all standard instrument local environmental plans and cannot be amended from one local government area to another. This is the case regardless of whether the amendment occurs by altering the mandatory wording or by adopting a local clause which adds to or changes the effect of a compulsory clause. In view of this, Parliamentary Counsel will not give an Opinion to any local clause in a SI LEP that is inconsistent with a mandatory provision. This was communicated to North Sydney Council in the Department's letter dated 12 May 2014 (refer to Tag B saved in Documents).**

The clauses of the standard instrument local environmental plan are intended to be read together as a matter of statutory interpretation. The relevant development must comply with the LEP as a whole and, as such, there appears to be no reason for the heritage clause to be given greater weight or prevail over all other provisions in the LEP. In addition, in order for a clause to prevail over another clause, there must be some inconsistency between the clauses. It is not apparent which LEP provisions are inconsistent with the heritage clause.

Heritage conservation is governed by a significant amount of policy, guidelines and legislation including local environmental plans, section 117 Directions and the NSW Heritage Act 1977. The current heritage provisions are sufficient and were developed with the Heritage Branch and other stakeholders.

Any changes to the SI Order should be dealt with in a strategic manner, and in consultation with stakeholders, other councils and the community, and not in an ad-hoc case by case basis.

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

Identify any internal consultations, if required :

No internal consultation required

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Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Documents

Document File Name

DocumentType Name

Is Public

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Not Recommended**

S.117 directions:

- 2.1 Environment Protection Zones**
- 2.3 Heritage Conservation**
- 3.1 Residential Zones**
- 3.3 Home Occupations**
- 6.1 Approval and Referral Requirements**
- 6.2 Reserving Land for Public Purposes**
- 7.1 Implementation of A Plan for Growing Sydney**

Additional Information :

It is recommended that the planning proposal not proceed to Gateway.

Supporting Reasons :

The planning proposal should not proceed because:

- 1. the planning proposal is contrary to the Standard Instrument (Local Environmental Plans) Order 2006. The standard heritage provisions must be adopted by every council, without amendment or alteration;**
- 2. the need for the planning proposal is not apparent. Merit assessment procedures for development applications would ordinarily allow certain provisions in the LEP to have greater weight than another, on a case by case basis. It can't be assumed that heritage is more important than other provisions in every case;**
- 3. the resulting planning process may be more complicated and costly for applicants, and will create uncertainty for the community; and**
- 4. the planning proposal is unjustifiably inconsistent with S117 Direction 3.1 Residential Zones.**

Signature:



Printed Name:

TIM ARCHER

Date:

11th JUNE 2015