

DECISION OF 3662nd COUNCIL MEETING HELD ON 20 APRIL 2015

94. **CiS01: Planning Proposal - Elevation of Heritage Controls**

Ben Boyd, Executive Strategic Planner

In response to Council's consideration of Notice of Motion 29/13, Council resolved on 16 March 2015 to prepare a Planning Proposal to amend NSLEP 2013, such that the heritage provisions prevail over all other provisions of the LEP. This is similar to clause 43 incorporated within the now repealed NSLEP 2001.

A Planning Proposal has now been prepared to amend NSLEP 2013 by incorporating a new clause within Part 6 of the LEP which would enable the heritage provisions of NSLEP 2013 prevail over all other provisions.

The Planning Proposal:

- 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' (October 2012); and
- is unlikely to result in any adverse impacts on the environment or wider community.

However, the Planning Proposal may be considered to be inconsistent with the Standard Instrument LEP, due to its ability to potentially undermine the mandated clauses of the Standard Instrument LEP. Despite the potential inconsistency with the Standard Instrument LEP, the Planning Proposal is considered to be satisfactory and can be forwarded to the Department of Planning and Environment for Gateway Determination.

Due to the local nature of the Planning Proposal, it is recommended that Council seek Authorisation to exercise the delegation of Minister for Planning to make the Plan that implements the intent of the Planning Proposal.

The Planning Proposal is however unable to achieve the full intent of the former provision under NSLEP 2001, due to the relocation of heritage provisions relating to contributory, neutral and uncharacteristic items to NSDCP 2013.

Recommending:

1. 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.

2. THAT Council requests the Minister of Planning to provide Authorisation to Council exercise the delegation of Minister for Planning to make the Plan.

The Motion was moved by Councillor Baker and seconded by Councillor Beregi.

Voting was as follows:

For/Against 8/0

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

RESOLVED:

1. 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.

2. THAT Council requests the Minister of Planning to provide Authorisation to Council exercise the delegation of Minister for Planning to make the Plan.



Report to General Manager

Attachments:

1. Planning Proposal - Elevation of Heritage Controls

SUBJECT: Planning Proposal - Elevation of Heritage Controls

AUTHOR: Ben Boyd, Executive Strategic Planner

ENDORSED BY: Joseph Hill, Director City Strategy

EXECUTIVE SUMMARY:

In response to Council's consideration of Notice of Motion 29/13, Council resolved on 16 March 2015 to prepare a Planning Proposal to amend NSLEP 2013, such that the heritage provisions prevail over all other provisions of the LEP. This is similar to clause 43 incorporated within the now repealed NSLEP 2001.

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- generally complies with the relevant Local Environment Plan making provisions under the Environmental Planning & Assessment Act 1979;
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However, the Planning Proposal may be considered to be inconsistent with the Standard Instrument LEP, due to its ability to potentially undermine the mandated clauses of the Standard Instrument LEP. Despite the potential inconsistency with the Standard Instrument LEP, the Planning Proposal is considered to be satisfactory and can be forwarded to the Department of Planning and Environment for Gateway Determination.

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FINANCIAL IMPLICATIONS:

Nil.

RECOMMENDATION:

1. **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.
2. **THAT** Council requests the Minister of Planning to provide Authorisation to Council exercise the delegation of Minister for Planning to make the Plan.

LINK TO DELIVERY PROGRAM

The relationship with the Delivery Program is 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

BACKGROUND

On 23 June 2014, Council considered a report 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, where it resolved to adopt the recommendations of the L&PC unamended. This report addresses Resolution No.1 above.

CONSULTATION REQUIREMENTS

Should Council determine that the Planning Proposal can proceed, community engagement will be undertaken in accordance with Council's Community Engagement Protocol and the requirements of any Gateway Determination issued in relation to the Planning Proposal.

SUSTAINABILITY STATEMENT

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

DETAIL

1. Proposed LEP Amendment

The primary purpose of this Planning Proposal is to elevate the status of the heritage provisions under North Sydney Local Environmental Plan 2013 (NSLEP 2013), such that they prevail over all other provisions of the LEP. In particular, it is proposed to achieve this by incorporating a new local clause within Division 2 to Part 6 of NSLEP 2013 as follows:

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.*

2. Planning Proposal Structure

The Planning Proposal (Refer to Attachment 1) is considered to be generally in accordance with the requirements under Section 55(2) of the Environmental Planning and Assessment Act 1979 and the Department of Planning and Environment's (DPE) '*A guide to preparing planning proposals*' (2012). 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 give greater weight to the heritage provisions within NSLEP 2013 in a similar way as they did under

NSLEP 1989 and NSLEP 2001, providing higher levels of protection to heritage items and areas.

4. Implications

4.1 Consistency with the Standard Instrument LEP

The Planning Proposal may be inconsistent with the Standard Instrument LEP and this position has been relayed to Council previously by the DPE. In particular, the proposed amendment has the potential to undermine the effect of mandated clauses within the Standard Instrument LEP.

The only way to remove this potential inconsistency is to require the amendment of the Standard Instrument LEP, which would result in the automatic amendment of LEPs in the State that have adopted the Standard Instrument LEP format. Pursuing such an amendment is unlikely to be supported, due to the imposition of a restrictive provision on other councils who do not value heritage as highly as North Sydney Council.

4.2 Comparing Instruments

Whilst both NSLEP 2013 and NSLEP 2001 contain provisions relating to heritage items and conservation areas, NSLEP 2001 also contained specific provisions with respect to contributory, uncharacteristic and neutral items. In particular, NSLEP 2001 sought to:

- prevent the demolition of contributory items;
- ensure neutral items are retained; and
- encourage the removal of uncharacteristic elements and items.

These former provisions have been relocated to North Sydney Development Control Plan 2013, where they have substantially less weight than in the LEP. Accordingly, the proposed amendment will not achieve the full intent and application of the equivalent clause under NSLEP 2001.

5. Conclusion

The Planning Proposal seeks to amend NSLEP 2013 such that the heritage provisions under NSLEP 2013 prevail over all other provision in the Plan. This amendment will result in the reinstatement of a provision that was constantly applied during the operation of both NSLEP 2001 and NSLEP 1989.

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'* (October 2012) have been adequately addressed in the Planning Proposal. The proposal is appropriate and is adequately justified.

In accordance with Council's resolution of 16 March 2015, it is recommended that Council forward the Planning Proposal to the Department of Planning and Environment, seeking a Gateway Determination under s56 of the EP&A Act 1979.
