

DECISION OF 3651st COUNCIL MEETING HELD ON 21 JULY 2014

276. PDS05: Planning Proposal - Exceptions to Development Standards in St Leonards

Report of Ben Boyd, Executive Strategic Planner

North Sydney Council (Council) has prepared a Planning Proposal to amend North Sydney Local Environmental Plan 2013 (NSLEP 2013). The proposed amendment seeks to reactivate the restriction formerly imposed by clause 4.6(8)(ca) to NSLEP 2013 which limits the use of the clause to vary the maximum building height for land in St Leonards by more than 3 metres. This clause ceased to apply on 11 March 2014. In particular, the reinstatement of the restriction will enable Council to continue to control the extent to which developments can be approved beyond the scale and capacity envisaged in the current planning controls contained in NSLEP 2013 until such time as the findings of the St Leonards / Crows Nest Planning Study have been considered. It is anticipated that the Planning Study for Precinct 2 will be completed by the end of 2014 and Precinct 3 in 2015. The Department of Planning and Environment (DPE) has only recently granted Council \$100,000 on 24 February 2014 to assist in their completion.

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

Recommending:

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

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

Voting was as follows:

For/Against 8/0

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

RESOLVED:

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

ADOPTED



Report to General Manager

Attachments:

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

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

AUTHOR: Ben Boyd, Executive Strategic Planner

ENDORSED BY: Marise Van Der Walt, Acting Director Planning and Development Services

EXECUTIVE SUMMARY:

North Sydney Council (Council) has prepared a Planning Proposal to amend North Sydney Local Environmental Plan 2013 (NSLEP 2013). The proposed amendment seeks to reactivate the restriction formerly imposed by clause 4.6(8)(ca) to NSLEP 2013 which limits the use of the clause to vary the maximum building height for land in St Leonards by more than 3 metres. This clause ceased to apply on 11 March 2014.

In particular, the reinstatement of the restriction will enable Council to continue to control the extent to which developments can be approved beyond the scale and capacity envisaged in the current planning controls contained in NSLEP 2013 until such time as the findings of the St Leonards / Crows Nest Planning Study have been considered. It is anticipated that the Planning Study for Precinct 2 will be completed by the end of 2014 and Precinct 3 in 2015. The Department of Planning and Environment (DPE) has only recently granted Council \$100,000 on 24 February 2014 to assist in their completion.

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

FINANCIAL IMPLICATIONS:

Nil

RECOMMENDATION:

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

LINK TO DELIVERY PROGRAM

The relationship with the Delivery Program is as follows:

Direction: 2. Our Built Environment

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

Direction: 5. Our Civic Leadership

Outcome: 5.1 Council leads the strategic direction of North Sydney

BACKGROUND

On 25 June 2012, Council resolved to proceed with a Planning Proposal relating to all land within the St Leonards/Crows Nest Planning Study area. In particular, the Planning Proposal sought to amend North Sydney Local Environmental Plan 2001 (NSLEP 2001) so as to limit the use of State Environmental Planning Policy No.1 - Development Standards (SEPP 1) within the St Leonards/Crows Nest Planning Study area in cases where a proposed development breaches the height control. This was intended to limit the ability for developments to be approved beyond the scale and capacity envisaged in the planning controls contained in NSLEP 2001 until such time as the findings of the St Leonards/Crows Nest Planning Study have been appropriately considered.

A Gateway Determination issued by the Department of Planning and Environment (DPE) enabling the Planning Proposal to be publically exhibited was issued on 11 September 2012. It stated that prior to publicly exhibiting the Planning Proposal, that it be amended such that:

- it only applies to Precincts 2 and 3 of the St Leonards/Crows Nest Planning Study (land bound by Albany Street, Chandos Street, Hume Lane, the Pacific Highway and Sergeants Lane, St Leonards); and
- that the application of the Planning Proposal cease to take effect 18 months after the issue of the Gateway Determination.

The intent behind the second condition was that it was anticipated that the Planning Study for St Leonards/Crows Nest would have been completed and thereby providing strategic direction for the area.

The Planning Proposal was subsequently amended and placed on public exhibition. Council considered a post exhibition report to the Planning Proposal on the 10 December 2012, where in it resolved to forward the Planning Proposal to the DPE unamended with a request that the Minister for Planning make the Plan.

On 21 June 2013, Amendment No. 53 to NSLEP 2001 was published on the NSW Legislation website which gave effect to the Planning Proposal. The amendment was contained within clause 73A to NSLEP 2001.

On 2 August 2013, NSLEP 2013 was made through its publication on the NSW Legislation website and came into force on the 13 September 2013. At Council's request, the DPE incorporated all amendments made to NSLEP 2001 that did not form part of the draft exhibited versions of NSLEP 2013, into NSLEP 2013 (including Amendment No. 53). However, the original intent of clause 73A to NSLEP 2001 was not accurately translated to NSLEP 2013.

On 1 August 2013, the DPE formally acknowledged that there had been a drafting error in translating the intent of Amendment No. 53 to NSLEP 2001 into NSLEP 2013, one day before it was made. Essentially, the error automatically granted an additional 3m in building height without the requirement to justify its variation from the heights stipulated on the Height of Buildings Map to the LEP from 11 March 2014. The DPE also advised on this day that Council should prepare a Planning Proposal to rectify the issue.

Council subsequently considered a report at its Legal and Planning Committee on 12 August 2013, to rectify the drafting error and it was resolved to recommend in part:

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

On 18 August 2013, Council resolved to adopt the recommendations of the Legal and Planning Committee and accordingly, forwarded the Planning Proposal to the DPE on 13 September 2013 requesting a Gateway Determination.

On 31 October 2013 a Gateway Determination was issued by the DPE allowing the Planning Proposal to proceed unamended subject to the following conditions:

1. *No community consultation is required under sections 56(2)(c) and 57 of the EP&A Act.*
2. *No consultation is required with public authorities under section 56(2)(d) of the EP&A Act.*
3. *A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).*
4. *The timeframe for completing the LEP is to be 6 months from the week following the date of the gateway determination.*

On 18 November 2013, Amendment No 2 to NSLEP 2013 was published on the NSW Legislation website which gave effect to the Planning Proposal.

Amendment No.2 to NSLEP 2013 ceased to take effect on 11 March 2014. This occurred before Council had completed the Planning Studies for Precincts 2 and 3. Accordingly, Council is currently in a period where no restrictions are being placed on the use of clause of 4.6, meaning developers will potentially be able to push the current built form envelope without the benefit of the comprehensive studies being completed.

In response to discussions with the DPE in relation to this matter at its February 2014 quarterly meeting, a letter from Council dated 12 March 2014 was sent to DPE requesting support for the reactivation of the restriction until such time as the studies have been completed. Council received a response from the DPE on 8 May 2014 agreeing to the pursuing of a Planning Proposal to implement the policy position. The letter also stated that the DPE would assist in implementing the planning proposal in a timely manner.

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. Proposed LEP Amendment

The primary purpose of this Planning Proposal is to amend NSLEP 2013 to ensure that the restrictions of subclause 4.6(8)(ca) that applied prior to 11 March 2014 are reinstated until Council has completed the St Leonards/Crows Nest Planning Study for Precincts 2 and 3.

The intent of the Planning Proposal is proposed to be met by deleting subclause 4.6(8A) to NSLEP 2013 in its entirety. This clause currently states:

(8A) Subclause (8)(ca) ceases to apply on 11 March 2014

Upon completion of each Planning Study for Precincts 2 and 3, Council will then seek to lodge a subsequent Planning Proposal to amend the Exceptions to Development Standards Map to NSLEP 2013 to exclude those areas for which comprehensive strategic plans have been completed.

2. Planning Proposal Structure

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

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

- A statement of the objectives or intended outcomes of the proposed local environmental plan;
- An explanation of the provisions that are to be included in the proposed local environmental plan;

- Justification for those objectives, outcomes and provisions and the process for their implementation; and
- Details of the community consultation that is to be undertaken on the Planning Proposal.

3. Justification of the Planning Proposal

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

A time limit was placed on the previous restrictions based on the assumption that the Studies could be completed within an 18month timeframe from the issuance of the Gateway Determination to the original Planning Proposal. However, the completion of these studies has been hampered by the increasing scope of works needed to be undertaken and continual pressure to address individual requests for the redevelopment of a large number of sites within the study area.

The DPE granted Council \$100,000 on 24 February 2014, to assist Council in completing these studies. This grant was issued only two weeks prior to the restrictions ceasing to apply. Accordingly, the Planning Proposal will enable the continuation of a restriction on building height in St Leonards, until such time as the studies have been completed as originally intended by Council.

4. Conclusion

The Planning Proposal seeks to reactivate the restriction formerly imposed by clause 4.6(8)(ca) to NSLEP 2013 which limits the use of the clause to vary the maximum building height for land in St Leonards by more than 3 metres. This clause ceased to apply on 11 March 2014.

Council has yet to complete the Planning Studies for Precincts 2 and 3. The DPE recently granted Council \$100,000 on 24 February 2014 to assist in the completion of these studies. It is anticipated that the Planning Studies will be completed by the end of 2014 meaning that Council is currently in a precarious condition under which there are no restrictions on the use of clause 4.6 in the Study Area.

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

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