

Planning proposal to permit 'restaurants or cafes' with development consent in Zone RE1 Public Recreation.

Proposal Title :	Planning proposal to permit 'restaurants or cafes' with development consent in Zone RE1 Public Recreation.		
Proposal Summary :	The planning proposal seeks to amend North Sydney Local Environmental Plan 2013 (NSLEP 2013) to permit 'restaurants or cafes' with development consent in Zone RE1 Public Recreation. The aim is to provide greater flexibility for Council to respond to future development scenarios concerning the use of all its parks and reserves zoned RE1 Public Recreation and remove any doubt that 'outdoor dining' can be undertaken as exempt development.		
PP Number :	PP_2015_NORTH_007_00	Dop File No :	15/13845

Proposal Details

Date Planning Proposal Received :	07-Sep-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 :			
Suburb :		City :	Postcode :
Land Parcel :	All land zoned RE1 Public Recreation on Land Zoning Maps in NSLEP2013 (LZN_001 - LZN_004)		

DoP Planning Officer Contact Details

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Land Release Data

Growth Centre :

Release Area Name :

Regional / Sub
Regional Strategy :

Consistent with Strategy :

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 Lobbyists Code of
Conduct has been
complied with : **Yes**

If No, comment :

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

If Yes, comment : **The Department of Planning and Environment's Code of Practice in relation to communication and meetings with lobbyists has been complied with' Metropolitan Region (East) 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.**

Supporting notes

Internal Supporting
Notes :

Land uses previously permitted in the equivalent Public Open Space Zone, under NSLEP 2001, included "refreshment rooms" which means "a restaurant, café, tea room, eating house or the like.."

Land uses currently permitted with consent in Zone RE1 Public Recreation, under NSLEP 2013, include "kiosks" which means "premises that are used for the purposes of selling food, light refreshments and other small convenience items.."

As a result, the current proposal would restore a similar use of public open space permitted under the previous LEP. Further, the inclusion of 'restaurants or cafes' as a permitted use in Zone RE1 Public Recreation has been supported in a number of other Standard Instrument LEPs (ie. Manly, Woollahra).

North Sydney Council is seeking delegation to carry out the Minister's plan-making functions under section 59 of the Environmental Planning and Assessment Act 1979 (the EP&A Act). Delegation is considered appropriate as the matter is of local significance.

External Supporting
Notes :

Adequacy Assessment

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

Is a statement of the objectives provided? **Yes**

Comment : **The planning proposal seeks to amend North Sydney Local Environmental Plan 2013**

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(NSLEP 2013) to permit 'restaurants or cafes' in Zone RE1 Public Recreation. The aim is to provide greater flexibility for Council to respond to future development scenarios concerning the use of all its parks and reserves zoned RE1 Public Recreation.

A further objective of this proposal is to remove any doubt for Council that 'outdoor dining' can be undertaken as exempt development in Zone RE1 Public Recreation under Subdivision 20A Footpaths - outdoor dining, of State Environmental Planning Policy (Exempt and Complying Development) 2008 (Codes SEPP).

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

Is an explanation of provisions provided? **Yes**

Comment : The intent of the proposal will be achieved by amending the Land Use Table for Zone RE1 Public Recreation to permit 'restaurants and cafes' with development consent.

'Outdoor dining' is not a defined land use in the NSLEP 2013, however, it is considered an ancillary activity to a 'food and drink premises' which includes the following:

- a restaurant or café;
- take away food and drink premises;
- a pub
- a small bar

The amendment is restricted to 'restaurants and cafes' to prevent unintended land uses within the RE1 Zone. In NSLEP 2013 a 'restaurant or cafe' means a building or place the principal purpose of which is the preparation and serving on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, take away meals and drinks or entertainment are also provided.

At present, a 'restaurant or café' is listed as an additional permitted use, under Schedule 1 of NSLEP 2013, at 4 and 41 Alfred Street South, Milsons Point, which are both zoned RE1 Public Recreation. The proposed amendment overcomes this need. It is therefore proposed to also delete Item 22(2)(b) of Schedule 1 and Item 23(2)(b) of Schedule 1, allowing a 'restaurant or cafe' as an additional permitted use at these locations.

Justification - s55 (2)(c)

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

b) S.117 directions identified by RPA :

4.4 Planning for Bushfire Protection

* May need the Director General's agreement

6.3 Site Specific Provisions

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 : **Yes**

d) Which SEPPs have the RPA identified?

SEPP No 55—Remediation of Land

SEPP No 60—Exempt and Complying Development

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

The planning proposal is not inconsistent with any relevant SEPPs or Section 117 Directions.

In relation to SEPP No 60 - Exempt and Complying Development, Council notes that the SEPP is silent on whether a land use must first be permissible in a zone for it to qualify as exempt development.

In this instance, Council notes that it is unclear whether the Codes SEPP requires 'restaurants and cafes' to be a permissible land use in Zone RE1 Public Recreation in order for 'outdoor dining' (considered ancillary to 'restaurants and cafes') to qualify as exempt development.

As noted above, a key aim of this proposal is to clarify this situation.

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

If No, explain :

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment : **The planning proposal does not require the amendment of any maps to NSLEP 2013.**

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : **Consultation will be undertaken in accordance with the requirements of the Gateway determination.**

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 : **August 2013**

Comments in relation to Principal LEP : **The North Sydney LEP 2013 was gazetted in August 2013.**

Assessment Criteria

Need for planning proposal : **The planning proposal is the result of a Council initiative to review its Zone RE1 Public Recreation provisions relating to outdoor dining. This review was prompted by an application from a Neutral Bay business owner to undertake outdoor dining, adjacent to their café, in the centre of May Gibbs Place. May Gibbs Place is a road reserve, zoned RE1 Public Recreation, between May Lane and Military Road, Neutral Bay.**

The review highlighted the unreasonable restriction placed on activities such as 'outdoor dining' in seven road reserves, zoned RE1 Public Recreation, which function as active plazas. They include;

- Brett Whitely Place, North Sydney;**
- Cremorne Garden Plaza, Cremorne;**
- Ernest Place, Crows Nest;**
- May Gibbs Place, Neutral Bay;**
- Mitchell Street Plaza, St Leonards;**
- Langley Place, Cremorne; and**
- St Peters Park, North Sydney.**

The scope of the current planning proposal extends beyond these seven areas to include all parks and reserves in North Sydney LGA zoned RE1 Public Recreation.

Council identified four possible options to address the objectives of the planning proposal. Option One, to permit 'restaurants and cafes' in all RE1 Public Recreation zones

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with consent, is supported by Council as the only solution that fully addresses its objectives. The focus of options two, three and four (below) is restricted to the desire for more activity in the seven plaza locations.

Option Two: Additional Permitted Uses

Insert an Additional Permitted Use provision in Schedule 1 of NSLEP 2013, stating that development for the purpose of 'restaurants and cafes' is permitted with development consent with respect to the seven road reserves listed above.

Option Three: Local Provision

Insert a local provision in Part 6 of NSLEP 2013, stating that development for the purposes of 'outdoor dining' used in relation to a 'restaurant or cafe' is permitted with consent in all land zoned RE1 Public Recreation, provided the development is within a road reserve and located directly adjacent to land zoned B1 Neighbourhood Centre, B3 Commercial Core or B4 Mixed Use.

Option Four: Amend SEPP (Exempt and Complying Development) 2008

Amend the SEPP to clarify whether a land use must first be permissible in a zone for it to qualify as exempt development. This would clarify whether 'restaurants and cafes' must be permissible in Zone RE1 Public Recreation for outdoor dining to be considered exempt development in this instance.

Consistency with strategic planning framework :

The planning proposal is not inconsistent with the objectives of A Plan for Growing Sydney and supports key directions in the draft Inner North Subregional Strategy, such as provision of a diverse mix of parks and public open spaces by improving the quality of open space and providing for urban civic space in planning for centres.

The planning proposal is consistent with relevant Directions of the North Sydney Local Development Strategy (2009) and the North Sydney Council Delivery Program 2010/11 - 2013/14. These include: Public open space, recreation facilities and services that meet community needs.

Environmental social economic impacts :

Environmental:

In part, the proposal relates to road reserves in urbanised areas. Adverse impacts on critical habitat or threatened species, populations or ecological communities, or their habitats, are unlikely in these instances.

For the most part, the proposal relates to public parks which may potentially contain critical habitat or threatened species, populations or ecological communities, or their habitats. It is noted that the likelihood of any adverse impact on a public park classified as 'community land' is very low given that the use of these spaces is controlled by a Plan of Management prepared under the Local Government Act 1993.

Where a Plan of Management is not in place (ie. for parcels zoned RE1 currently in private ownership), it is noted that any development proposal will be subject to a merit assessment taking into consideration all matters in Clause 6.7 Development in Zone RE1 or Zone RE2, of NSLEP 2013. Again, this would reduce the likelihood of any adverse environmental or social impacts.

For privately owned land identified for acquisition for public purposes, Clause 5.1A of NSLEP 2013 restricts the use of this land to 'environmental facilities' and 'recreation areas' only, meaning 'restaurants or cafes' would still be prohibited.

Social and Economic:

Where the proposal relates to the use of road reserves, there may be adverse impacts on pedestrian flows and additional noise impacts. These impacts are best considered on a case by case basis. However, for the seven road reserves identified by the Council review, noise impacts are likely to be minimal given these spaces adjoin land zoned for business purposes and most are already used for outdoor dining.

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Assessment Process

Proposal type : **Routine** Community Consultation Period : **14 Days**

Timeframe to make LEP : **9 months** Delegation : **RPA**

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

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

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons :

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

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

If Yes, reasons : **The planning proposal does not seek to increase development on any site. As such, it does not increase the demand for public infrastructure.**

Documents

Document File Name	DocumentType Name	Is Public
cover letter.pdf	Proposal Covering Letter	Yes
council report.pdf	Study	Yes
planning proposal.pdf	Proposal	Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions: **4.4 Planning for Bushfire Protection
6.3 Site Specific Provisions
7.1 Implementation of A Plan for Growing Sydney**

Additional Information : **It is recommended that the planning proposal proceed, subject to the following conditions:**

- 1. The planning proposal be publicly exhibited for a period of not less than 14 days.**
- 2. A public hearing is not required.**
- 3. North Sydney Council be granted delegation to carry out the Minister's functions under**

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section 59 of the EP&A Act 1979 to progress this planning proposal.

4. The planning proposal is to be finalised within 9 months from the date of the gateway determination.

Supporting Reasons :

The planning proposal is supported as:

- it will provide greater flexibility for Council to respond to future development scenarios concerning the use of all its parks and reserves zoned RE1 Public Recreation and remove any doubt that 'outdoor dining' can be undertaken as exempt development.

Signature:



Printed Name:

TIM ARCHER

Date:

29.9.15

