

**Report to General Manager**

Attachments:
1. Planning Proposal

SUBJECT: Planning Proposal - '*Restaurants or Cafes*' in RE1 Zone

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ENDORSED BY: Joseph Hill, Director City Strategy

EXECUTIVE SUMMARY:

In December 2013, Council's Engineering and Property Services (EPS) was approached by the business owner of a café at May Gibbs Place in Neutral Bay with regards to obtaining approval to undertake '*outdoor dining*' within the public plaza located adjacent to their cafe. All land comprising May Gibbs Place is zoned *RE1 Public Recreation*. '*Outdoor dining*' is an ancillary activity to a '*restaurant or cafe*,' which is a prohibited use within the *RE1 Public Recreation* zone.

In response to this query, City Strategy (CIS) has investigated the matter and found that there are various public plazas located within road reserves that are zoned *RE1 Public Recreation*, but may quite reasonably accommodate '*outdoor dining*' to activate and enliven these urban spaces. The review highlighted the unreasonable restriction placed on '*outdoor dining*' activities in seven road reserves, which function as active plazas as opposed to passive recreational spaces. 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 review has also identified the desire to provide additional flexibility to enable Council to respond to future development scenarios concerning its parks and reserves. It is important to bear in mind that whilst the proposed amendment makes '*restaurants or cafes*' permissible on all land zoned *RE1 Public Recreation*, it will not necessarily result in the approval of such uses anywhere in the zone. Ultimately, Council would need to weigh up the merits of proposals against the provisions of NSLEP 2013 that relate to the RE1 zone and any relevant Plan of Management, and determine whether to even issue owners consent for the lodgment of a Development Application. In addition, Council's Plans of Management are very restrictive and any change to them would require public consultation and endorsement by Council. Accordingly, the proposed amendment simply provides the legal potential for such uses to occur within the zone where they are considered reasonable and will not result in the proliferation of '*restaurants or cafes*' throughout Council's parks and reserves.

Furthermore, the amendment will result in the continuation of a previously endorsed policy position of Council, which applied under NSLEP 2001.

A Planning Proposal has now been prepared to amend NSLEP 2013 by including '*restaurants or cafes*' as a permissible use within the Land Use Table to *RE1 Public Recreation* zone. This amendment would ensure the permissibility of '*outdoor dining*' on all road reserves zoned *RE1 Public Recreation* under the NSLEP 2013 and provide increased flexibility in the use of Council's parks and reserves zoned *RE1 Public Recreation*.

The Planning Proposal:

- Generally complies with the relevant Local Environmental 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

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

LINK TO DELIVERY PROGRAM

The relationship with the Delivery Program is as follows:

- Direction: 1. Our Living Environment
- Outcome: 1.2 Quality urban greenspaces
1.5 Public open space, recreation facilities and services that meet community needs
- Direction: 2. Our Built Environment
- Outcome: 2.3 Vibrant, connected and well maintained streetscapes and villages that build a sense of community

BACKGROUND

In December 2013, Council's Engineering and Property Services (EPS) was approached by the business owner of a café at May Gibbs Place in Neutral Bay with regards to obtaining approval to undertake 'outdoor dining' within the public plaza located adjacent to their cafe. All land comprising May Gibbs Place is zoned *RE1 Public Recreation*. 'Outdoor dining' is an ancillary activity to a 'restaurant or cafe,' which is a prohibited use within the *RE1 Public Recreation* zone.

In response to this query, EPS requested City Strategy (CIS) investigate the matter to ensure that all existing and new 'outdoor dining' activities can continue to occur within road reserves that are also zoned *RE1 Public Recreation*.

The review was requested on the basis that a prohibition of 'outdoor dining' in road reserves like May Gibbs Place, which function as active plazas as opposed to passive recreational spaces, is contrary to the original design intent and construction of these spaces. The original intent is to encourage activities such as 'outdoor dining' within the centre and along the edges of these spaces whilst accommodating comfortable pedestrian flow. The activation of these spaces will create vitality and enhance the overall quality of these public recreational spaces, particularly those located in densely urbanised areas and town centres.

The review identified a total of seven road reserves which are zoned *RE1 Public Recreation* and are capable of accommodating 'outdoor dining'. These sites are located directly adjacent to land zoned for business purposes and permit 'outdoor dining.'

As part of the review, it was also noted that 'outdoor dining' could be undertaken as exempt development under State Environmental Planning Policy (Exempt and Complying Development) 2008. However, Council has been unable to confirm whether the land use must be permissible in the zone for it to be exempt also. Therefore, to remove any doubt, an amendment to the LEP is proposed to make 'restaurants or cafes' (and therefore 'outdoor dining') activities permissible.

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 following table provides a summary of the key sustainability implications:

QBL Pillar	Implications
Environment	• If the Planning Proposal is implemented there is potential for increased energy and water consumption, waste generation, traffic volumes, and noise and ecological impacts subject to the approval of any '<i>restaurant or café</i>' activities on Council land. However, such impacts can be managed through appropriate conditions of consent
Social	• If the Planning Proposal is implemented there is potential for outdoor dining to adversely affect pedestrian movements and the quality of footpaths. However, such issues would be subject to the approval of any '<i>restaurant or café</i>' activities on Council land • If the Planning Proposal is implemented there is potential for outdoor dining to increase vitality and the amenity of public spaces
Economic	• If the Planning Proposal is implemented there is potential for '<i>restaurants or cafes</i>' to: ○ generate income to offset the maintenance costs associated with Council road reserves and parks; and ○ provide additional opportunities for local businesses
Governance	• If the Planning Proposal is implemented it will remove any doubt as to the permissibility of outdoor dining in Council's road reserves

DETAIL

1. Proposed LEP Amendment

The primary intent of the Planning Proposal is to ensure the permissibility of '*outdoor dining*' on all land zoned *RE1 Public Recreation* under the NSLEP 2013. The proposed amendment is primarily intended to apply to seven road reserves zoned *RE1 Public Recreation*, and 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

In addition, the proposed amendment is to enable increased flexibility in the use of Council's parks and reserves zoned *RE1 Public Recreation*. In particular, the proposed amendment

seeks to amend the Land Use Table to include 'restaurants or cafes' as a permissible land use in all areas zoned *RE1 Public Recreation*.

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 ensure the permissibility of 'outdoor dining' on all land zoned *RE1 Public Recreation*, and provide sufficient flexibility to enable Council to respond to future development scenarios concerning its parks and reserves, without encouraging development within the *RE1 Public Recreation* zone that is excessive, inappropriate or contrary to the zone's objectives or any relevant Plan of Management.

It is important to bear in mind that whilst the proposed amendment makes 'restaurants or cafes' permissible on all land within the *RE1 Public Recreation* zone, it will not necessarily result in the approval of such anywhere within the zone. Ultimately, Council would need to weigh up the merits of proposals against the provisions of NSLEP 2013 that relate to the RE1 zone and any relevant Plan of Management, and determine whether to even issue owners consent for the lodgment of a Development Application. In addition, Council's Plans of Management severely restrict where such activity may occur and therefore the proposed amendment will not result in the proliferation of 'restaurants or cafes' throughout Council's parks and reserves.

Furthermore, the proposed amendment will result in the continuation of a previously endorsed policy position of Council, which applied during the operation of NSLEP 2001.

4. Conclusion

The Planning Proposal seeks to amend NSLEP 2013 such that it includes 'restaurants or cafes' as a permissible use within the Land Use Table to *RE1 Public Recreation* zone. The proposed amendment is intended to primarily apply to seven road reserves located within *RE1 Public Recreation* zone, and 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 proposed amendment will result in the continuation of a previously endorsed policy position of Council, which was applied during the operation of NSLEP 2001. Council's Plans of Management severely restrict where such activity may occur and therefore the proposed amendment will not result in the proliferation of '*restaurants or cafes*' throughout Council's parks and reserves.

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.

It is therefore recommended that Council forward the Planning Proposal to the Department of Planning and Environment, seeking a Gateway Determination under s.56 of the EP&A Act 1979.
