

Planning Proposal

Manly Local Environmental Plan 2013 Amendment No. 1 - 34, 36 & 38 Stuart Street, Manly

Introduction

This Planning Proposal details the intended effect of an amendment to either Manly Local Environmental Plan (LEP) 2013, or to Manly Local Environmental Plan 1988 if Manly LEP 2013 is not gazetted before consideration of this planning proposal. This planning proposal sets out an explanation and justification for making the plan. Details of community consultation are also considered.

This Planning Proposal is prepared in accordance with “*A guide to preparing local environmental plans*” (Department of Planning, 2012) in conjunction with “*A guide to preparing local environmental plans*” and *Circular PS 09–015 “Commencement of Certain Provisions of the EP&A Amendment Act 2008 and EP&A Amendment (Plan Making) Regulation 2009”*.

Manly Council advise that it wishes to seek Authorisation to exercise Delegation in relation to this planning proposal and such functions are delegated to the General Manager, Mr Henry Wong with the approval of the Council.

Land to which this planning proposal relates includes:

- 34 Stuart Street Manly being Lot 8 DP 1108368;
- 36 Stuart Street Manly being Lot 1 DP 252420 and
- 38 Stuart Street Manly being Lot 2 DP 252420.

Part 1 – Objectives

The objectives of this planning proposal are to ensure the zoning of certain lands in Stuart Street reflect Manly Councils’ local strategic and operational outcomes.

Part 2 – Explanation of provisions

This Part explains the provisions initially in relation to a proposed amendment to Manly LEP 2013 which is expected to be published in time for this planning proposal. Should this LEP not be made in time, then this Planning Proposal otherwise seeks to amend the existing Manly LEP 1988 as explained subsequently in this Part. The remainder of Part 2, concerning Intended Outcomes and an Explanation and Justification for LEP Amendments, applies in respect of an amendment to either Manly LEP 2013 or to Manly LEP 1988.

The provisions set out in this planning proposal include amendment to maps under Manly LEP 2013 including:

- Zoning Map to rezone land at 34, 36 and 38 Stuart Street from Zone RE1 Public Recreation to Zone E4 Environmental Protection;
- Land Reservation Acquisition Map to remove land labeled ‘local open space’ on that map at 38 Stuart Street from this map;

- Floor Space Ratio Map to add land at 34, 36 and 38 Stuart Street to Area 'F' of that map providing for a floor space ratio of 0.6:1 over the land;
- Height of Buildings Map to add land at 34, 36 and 38 Stuart Street to Area 'I' of that map providing for a maximum building height of 8.5m over the land;
- Minimum Lot Size Map to add land at 34, 36 and 38 Stuart Street to Area 'C' of that map providing for a minimum lot size of 250 sqm over the land.

In relation to proposed amendment to the Manly LEP 2013 Zoning Map, both the existing and proposed zone objectives and land use tables are as follows:

Existing * Zone RE1 Public Recreation zone objectives and land use table

* Note: as mapped in draft Manly LEP 2013 at the time of drafting this report and expected to be published in time for this planning proposal.

Objectives of zone

- *To enable land to be used for public open space or recreational purposes.*
- *To provide a range of recreational settings and activities and compatible land uses.*
- *To protect and enhance the natural environment for recreational purposes.*
- *To protect, manage and restore areas visually exposed to the waters of Middle Harbour, North Harbour, Burnt Bridge Creek and the Pacific Ocean.*
- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

Permitted without consent

Nil

Permitted with consent

Boat launching ramps; Boat sheds; Building identification signs; Business identification signs; Car parks; Charter and tourism boating facilities; Child care centres; Community facilities; Depots; Emergency services facilities; Environmental facilities; Environmental protection works; Flood mitigation works; Information and education centres; Jetties; Kiosks; Marinas; Recreation areas; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Research stations; Restaurants or cafes; Roads; Take away food or drink premises; Water recreation structures; Water recycling facilities; Water reticulation systems; Water storage facilities

Prohibited

Any development not specified in item 2 or 3

Proposed Zone E4 Environmental Living zone objectives and land use table

Objectives of zone

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To protect tree canopies and ensure that new development does not dominate the natural scenic qualities of the foreshore.*
- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*
- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate and minimise the impact of hard surfaces and associated pollutants in storm water run-off on the ecological characteristics of the locality, including water quality.*
- *To ensure that the height of bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

Permitted without consent

Home-based child care; Home occupations

Permitted with consent

Attached dwellings; Bed and breakfast accommodation; Dual occupancies (attached); Dwelling houses; Environmental protection works; Flood mitigation works; Health consulting rooms; Home businesses; Multi dwelling housing; Residential flat buildings; Roads; Secondary dwellings; Semi detached dwellings; Water supply systems

Prohibited

Industries; Service stations; Warehouse or distribution centres; Any other development not specified in item 2 or 3

In relation to the proposed amendment to the Manly LEP 2013 Land Reservation Acquisition Map, land identified as 38 Stuart Street is privately owned and marked for acquisition as 'local open space'. However, the proposed zoning amendment no longer reflects this planned future use of the land for local open space and is no longer to be zoned RE1 Public Recreation under this planning proposal. Accordingly 38 Stuart Street would remain in private ownership and the land omitted from Manly LEP 2013 Land Reservation Acquisition Map.

In relation to proposed amendments to the Manly LEP 2013 Maps for Floor Space, Height of Building and Lot Size, the adoption of Zone E4 Environmental Living warrants the provision of appropriate development standards over the subject lands. All land zoned Zone E4 Environmental Living in the LEP is typically subject to development standards as detailed in the following table.

Figure: Development Standards in Manly LEP 2013 Zone E4 Environmental Living

	Range of Development Standards in Zone E4	Existing Development Standards in the vicinity of Zone E4	Recommended Development Standards for 34, 36 & 38 Stuart Street
Floor Space Ratio	0.5:1 & 0.6:1	0.6:1	0.6:1
Height of Building	8.5m only	8.5m	8.5m
Lot Size	250sqm & 300sqm	250sqm /dwelling	250sqm/dwelling

Alternative Explanation of Provisions as an amendment to existing Manly LEP 1988

The provisions set out in this planning proposal that are applicable if Manly LEP 2013 is not made in time would include the following amendment under Manly LEP 1988:

- Zoning Map to rezone land at 34, 36 and 38 Stuart Street to Zone 2 - Residential Zone. The existing Manly LEP 1988 maps the subject land as Zone No. 6(b)(i) - Open Space Zone to be acquired by Council;
- As the proposed zone will permit residential development certain amendments are also proposed which will apply residential planning controls in relation to Floor Space Ratio, Height and Density. While such amendments are not directly part of this planning proposal, Council undertakes to amend its DCP to ensure appropriate standards are applied in the final making of Manly LEP 2013.

Note: While the adoption of Manly LEP 1988 Zone No 2 - Residential Zone would not provide for a range of new provisions to be contained in Manly LEP 2013 it is anticipated that this zoning would be shortly changed to Zone E4 once Manly LEP 2013 is published. In this regard a range of new provisions would be activated for the site, including in particular the natural resource local provisions in Part 6 of Manly LEP 2013.

Alternative Proposed Manly LEP 1988 Zone No 2 – Residential Zone Objectives and Land Use Table

Objectives of zone

- (a) to set aside land to be used for the purposes of housing and associated facilities,*
- (b) to delineate, by means of development control in the supporting material, the nature and intended future of the residential areas within the Municipality,*
- (c) to allow a variety of housing types while maintaining the existing character of residential areas throughout the Municipality,*
- (d) to ensure that building form, including alterations and additions, does not degrade the amenity of surrounding residents or the existing quality of the environment,*
- (e) to improve the quality of the residential areas by encouraging landscaping and permitting greater flexibility of design in both new development and renovations,*
- (f) to allow development for purposes other than housing within the zone only if it is compatible with the character and amenity of the locality,*
- (g) to ensure full and efficient use of existing social and physical infrastructure and the future provisions of services and facilities to meet any increased demand,*
- (h) to encourage the revitalisation of residential areas by rehabilitation and suitable redevelopment, and*

(i) to encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination, and particularly in relation to the land to which Manly Local Environmental Plan 1988 (Amendment No 57) applies.

Without development consent

Bed and breakfast accommodation; home occupations.

Only with development consent

Any purpose other than a purpose included in item 2 or 4.

Prohibited

Advertising structures; amusement centres; bulk stores; car repair stations; backpacker accommodation, clubs, hotels, motels, refreshment rooms, service stations and tourist facilities (other than backpacker accommodation, clubs, hotels, motels, refreshment rooms, service stations and tourist facilities in the Tourist Area); commercial premises; gas holders; generating works; heliports; industries other than home industries; institutions; junk yards; liquid fuel depots; mines; motor show rooms; public buildings; restricted premises; retail plant nurseries; roadside stalls; sawmills; service stations; shops other than small shops; transport terminals; warehouses.

Intended Outcomes

The intended outcomes for the planning proposal are reflected in the Council's resolution and accompanying Mayoral report in relation to this matter as follows:

At its Ordinary meeting on 10 December 2012 resolved as follows:

203/12 RESOLVED: (Hay AM)

THAT:

- 1. properties 34, 36 and 38 Stuart Street Manly be zoned for Environmental Living E4 under the Draft Manly Comprehensive LEP;*
- 2. Council proceed to create a three metre wide right of way at the rear of 34 and 36 Stuart Street to enable public access to the beach from the Craig Avenue Carpark; and the Dingy Storage facility located at the rear of 34 be retained as an on-going concern with existing use rights attached and requiring the purchaser of 34 to maintain the facility. And the General Manager to consult with the Heritage Committee regarding the Farrell Family memorial and anchor;*
- 3. Council approach the owners of 38 Stuart Street to seek agreement for a right of way at the rear of their property to link up with that proposed for 34 and 36;*
- 4. following the creation of the right of way at the rear of 34 and 36 Stuart Street, these properties be sold and proceeds go to repay the loan on 40 Stuart Street, and the General Manager to determine the timing for these divestments;*
- 5. the General Manager be authorised to do all things necessary to implement the above points one to four, including the execution of any documents and the affixing of the Council Seal upon them; and*
- 6. 40 Stuart Street remain zoned for open space.*

Explanation and Justification for LEP Amendments

The Mayoral Minute Report No. 12 in support of the above was reported at the time as follows:

In my view, the decision made by the last Council to zone 34 to 40 Stuart Street for Open Space had completely ignored the fact that the original 1960s decision for these properties was made at a time when Little Manly had limited amount of open space and the imminent closure of the gasworks located at the Point for high-rise redevelopment.

Since then, the provision of open space at Little Manly has vastly improved when in 1988, the then Local Member lobbied the Government to retain the former gasworks site for rehabilitation and gifting of the entire former gasworks site to the Council for public open space, which resulted in Little Manly among the best in the Manly LGA in terms of open space.

Compounding on the zoning decision was the Council's subsequent decision to acquire 40 Stuart Street, seemingly at any cost, which has forced the Council into considerable debt for a revenue deficit asset. This inevitably has caused, and will continue to cause, significant pressure on Council's cash flow and programs.

The purpose of this LEP amendment is to ensure the zoning of land at 34, 36 and 38 Stuart Street reflect Manly Councils' strategic resourcing plans and its future intentions for these properties to permit residential accommodation on this land subject to certain requirements to retain public access to the beach and the Dingy Storage facility.

In relation to the intended disposal of 34 and 36 Stuart Street, this land is classified as Operational land under the provisions of the Local Government Act and reclassification of this land is not considered to be required in this planning proposal to enable disposal of the land.

Site History and Background

Title searches reveal the land was part of an original 100 acre grant to Richard Cheers in 1810 which extended to mean high water mark and underwent various subdivisions in the 1920's with construction of dwelling houses after 1923 under the approval of Manly Council (under the Local Government Act 1919).

Aerial photography from the 1930's illustrates the land on which the properties are located is sandy beach. The natural value of the sandy beach has since been altered and retained by a sea wall and further landscaped with vegetation on the public reserve and private gardens.



The background to the subject sites in relation to planning zones, reservations, acquisitions and environmental and management issues are the subject of numerous reports and resolutions of Council. In summary the zoning history of the land is as follows:

1940's: The Little Manly Beach public reserve was created after the resumption of this land in 1946

1960's: Under Manly Planning Scheme, dated 20 December 1968, the land was identified as Open Space Public Recreation Area Foreshore Reservation.

1977's Council resumed ownership of lots on the beach currently known as Lots 4, 5 and 6 of DP 252420 from the mean high water mark to current position of the sea wall in 1977.

1980's: Manly LEP 1988 zoned the properties the subject of this planning proposal as No. 6. Open Space in accordance with Manly LEP, 1988. Open Space (local) land not in public ownership is mapped under Manly LEP 1988 as Zone No 6(b)(i) as to be acquired by Council. The land is also within the Manly LEP 1988 Foreshore Scenic Protection Area and is identified as an environmentally sensitive area. 34 Stuart Street is listed as an item of environmental heritage.

2000's: Council reviewed zoning in relation to the subject properties on 13 November 2006 with consideration of a discussion paper regarding a request to rezone remaining site, not acquired by Council at the time (38 & 40 Stuart Street) to residential. Council's resolution on 13 March 2006 stated:

'That council defer consideration of the request to rezone properties at Nos. 38 and 40 Stuart Street, Little Manly from Zone No. 6 Open Space to Zone No.2 Residential including the resolution by Council in response to the above discussion paper for community consultation covering matters such as:

- *The history of rezoning to open space in the 1960's;*
- *Local expectations regarding rezoning;*
- *Financial arguments;*

- *Benefits/requirements for additional open space;*
- *Possible future uses if returned to open space, including benefits versus risks; and*
- *Preliminary negotiations with Mr Chapman and the Executors of No.38 Stuart Street as to the feasible width of an access corridor to the rear of their properties.'*

The paper recommended that:

1. Council make urgent representation to the State Government, via the Local State Member, for funding to acquire the subject properties; and
2. Council approach all the major political parties seeking a commitment to fund the acquisition of the remaining properties on the basis that Council has already acquired 50 percent of the designated land for acquisition. The discussion paper was considered at a Council meeting and a decision was made to issue the paper for public discussion.

Manly Council considered the proposed zoning for the land at Stuart Street and the associated acquisition status in numerous reports and discussion papers to Council during drafting of the Manly LEP 2013 Maps. The State Government has advised Council in statutory consultations affecting the draft LEP that they no longer wish to acquire land for open space.

Individual Site Details

The location of 34, 36 and 38 Stuart Street, Manly is shown in the aerial map below.



34 Stuart Street (Lot 8, DP 1108368) formed part of the East Brighton Estate subdivision in 1885, and was acquired by Council in 1977, and is described as a large lot of approximately

947sqm. It contains a residential dwelling that is presently leased and the land on the foreshore side of the building is used by Council as a Boat Storage facility.

The house at 34 Stuart Street is listed as local item of the Environmental Heritage under Schedule 4 of the Manly LEP 1988. It is significant because its style and finish are unusual within the local environment, and is regarded as a fine example of a Federation Queen Anne style weatherboard house in Manly. The significance of 34 Stuart Street was reviewed in 1999 and updated in 2003. A recent site visit revealed that the house is still substantially intact.

Photos of the houses are shown below.



36 Stuart Street (Lot 1, DP 252420) is 468sqm and has been owned by Council since 1998 and contains a leased dwelling house.

38 Stuart Street (Lot 2, DP 252420) is 569 square metres. The lot is in private ownership and the realization of open space in the near future for Little Manly Cove is not considered feasible given the recent court approval and the construction of the new dwelling house at No 38 Stuart Street. The current owners of 38 Stuart Street acquired this property at auction in 2007 and approved under existing use rights for a residential dwelling in October 2009 at the NSW Land and Environment Court (NSWLEC/1329 DA261/08) with further amendments approved by the Manly Independent Assessment Panel in June 2010.



Figure 38 Stuart Street after demolition in 2010.

Note: While 40 Stuart Street (Lot 3, DP 252420) is not directly subject of this Planning Proposal, that property comprises part of the group of properties known as 34 to 40 Stuart Street with similar planning history including residential occupation and acquisition plans. The land was acquired by Manly Council in 2012 and is also classified as operational public land under the Local Government Act 1993. While the future purpose for this land are not finalised by Council, it is intended that the zoning of the land remain as Zone RE1 Public Recreation in Manly LEP 2013. However it is anticipated in this regard that the Council may resolve to classify the land as Community Land and incorporate the use and management of the land in the Little Manly Beach Plan of Management. In this regard the Council Resolution dated 10 December 2012 in relation to this planning proposal also resolved (Item 6) that '40 Stuart Street remain zoned for open space'.

Part 3 – Justification

A. Need for the planning proposal.

A1. Is the planning proposal a result of any strategic study or report?

The planning proposal follows numerous reports in relation to the future planning of land the subject of this planning proposal. These reports have been in the context of Councils' decisions to acquire land reserve for local open space as well as in the drafting of new zoning maps for the recently adopted Manly LEP 2013. A number of these reports are referred to within this planning proposal.

A2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Amending Manly LEP 2013 is Council's preferred means of achieving the intended outcomes of this planning proposal. Should Manly LEP 2013 remain unpublished at the time of considering this planning proposal, then this planning proposal seeks a similar amendment to the existing Manly LEP 1988 as detailed elsewhere in this report.

B. Relationship to strategic planning framework.

B1. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy, Metropolitan Plan for Sydney 2036 and exhibited draft strategies)?

The draft Local Environmental Plan is considered against the objectives and actions contained within the Sydney Metropolitan Strategy and draft North East Subregional Strategy. In particular it is noted that Part C1.3 of the Subregional Strategy relates to housing and planning for increased housing capacity targets in existing areas (60% to 70% across the Greater Metropolitan Area). LEPs must demonstrate sufficient zoned capacity. Also highlighted from the Subregional Strategy is Part E5.3 requiring identification of natural hazards and risk management measures in Principal LEPs. These aspects are considered in more detail at Part 3C of this report.

B2. Is the planning proposal consistent with council's local strategy, or other local strategic plan?

Manly Community Strategic Plan Beyond 2021

Manly Community Strategic Plan Beyond 2021 was adopted in June 2012. Part 1 of this Plan describes vision, community goals and strategies and Part 2 is Council's Resourcing Strategy dealing with asset management. This planning proposal supports Council's strategic delivery planning and is consistent with Council's strategic plans.

Management Plan for the Little Manly precinct

In 2004, the Little Manly Reserve Landscape Masterplan was adopted by Council in association with the Little Manly Coastline Management Plan. The Little Manly Beach and Reserve surrounding land the subject of this planning proposal has been improved over recent years with disabled access pathways, improvements to the kiosk deck facilities, decks, lighting, improvements to dinghy storage facilities, and additional access points to the beach and native plantings. Of particular relevance to this planning proposal are the improvements implemented under the Landscape Master plan at the rear of 34 and 36 Stuart Street including:

- Timber diver and corralling platform – behind memorial on 34 Stuart Street;
- Refurbishment of existing seats; and
- New dune plantings below sea wall.

In conjunction with this planning proposal, Council has resolved to proceed to create a three metre wide right of way at the rear of 34 and 36 Stuart Street to enable public access to the beach from the Craig Avenue Car Park. This resolution aligns in terms of general intent to provide public access space in the Landscape Masterplan (2004) including the following actions:

- Change lease arrangement at 36 Stuart Street to gain additional open space; however, this can be pursued by minor landscaping & demolition works to the rear of the house at 36 Stuart Street, and removal of fence;
- A possible future park connection as a result of acquisition of land from properties at 38 and 40 Stuart Street.

B3. Is the planning proposal consistent with the applicable State Environmental Planning Policies?

The draft Local Environmental Plan is consistent with the applicable State Environmental Planning Policies.

Sydney Regional Environmental Policy (Sydney Harbour Catchment) 2005 (Deemed SEPP)

The land is within the Foreshores and Waterways Area identified in Sydney Harbour Regional Environmental Policy 2005 (now deemed State Environmental Planning Policy). Part 2 of this policy outlines planning principles to be considered and where possible, achieved in the preparation of LEP's and DCPs. Clause 14 states that the Planning Principles for the Foreshores and Waterways Area, including public access should be increased, maintained and improved along the foreshore, to and from the waterways for public recreation and also provision of public boating facilities should be encouraged. Further, the adjoining beach and cove at Little Manly is zoned W2 Environment Protection, principally to:

- protect the natural and cultural values of waters in this zone,
- prevent damage in the zone and adjoining foreshores,
- give preference to rehabilitating the natural and cultural values of the zone and adjoining foreshores, and
- provide for long term management of natural and cultural values of the waters and adjoining foreshores.

In relation to the Planning Principles for the Foreshores and Waterways Area as well as the existing local provisions of Manly LEP 2013 at clause 6.10 Limited Development of Foreshore Land, it is intended that existing public facilities on the land be retained and public access be improved. In this regard Council's resolution in this matter indicated Council's intention to;

- *create a three metre wide right of way at the rear of 34 and 36 Stuart Street to enable public access to the beach from the Craig Avenue Car Park*
- *the Dingy Storage facility located at the rear of 34 be retained as an on-going concern with existing use rights attached and requiring the purchaser of 34 to maintain the facility. 3. Council approach the owners of 38 Stuart Street to seek agreement for a right of way at the rear of their property to link up with that proposed for 34 and 36;*

Also of note in this regard are Council's intentions following:

following the creation of the right of way at the rear of 34 and 36 Stuart Street, these properties be sold and proceeds go to repay the loan on 40 Stuart Street, and the General Manager to determine the timing for these divestments;

the General Manager be authorised to do all things necessary to implement the above points one to four, including the execution of any documents and the affixing of the Council Seal upon them;

B4. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

Directions issued by the Minister for Planning to relevant planning authorities under section 117(2) of the *Environmental Planning and Assessment Act 1979* and apply to this planning proposal as detailed following:

Direction 2.1 Environment Protection Zones

This Direction applies to the preparation of all planning proposals in Manly requiring that the proposal include provisions that facilitate the protection and conservation of environmentally sensitive areas. The subject land is mapped under Manly LEPs 1988 and 2013 as Foreshore Scenic Protection Area and is land under the Biodiversity Map in Manly LEP 2013. However, this Planning Proposal does not apply to land within an environment protection zone or land otherwise identified for environment protection purposes in both Manly LEPs 1988 and 2013.

Direction 2.3 Heritage Conservation

The objective of this Direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance and applies to all relevant planning authorities. As this Planning Proposal retains existing heritage provisions including the listing of an Item of the Environmental Heritage on land at 34 Stuart Street; the objectives of this planning proposal are satisfied and the planning proposal is consistent with the direction in that it facilitates the ongoing conservation of items, places, buildings, works, relics and the like.

Direction 3.1 Residential Zones

This direction applies where land affects an existing or proposed residential zone or any other zone in which significant residential development is permitted or proposed to be permitted. The objectives of this Direction are to encourage housing choice; efficiently use and provide access to infrastructure and services; and to minimise the impact of residential development on the environment and resource lands.

Under this Direction the planning proposal must include provisions that encourage the provision of housing that will:

- broaden the choice of building types and locations available in the housing market,;
- make more efficient use of existing infrastructure and services; and
- reduce the consumption of land for housing and associated urban development on the urban fringe, and be of good design.

As required in this Direction, the land is considered to be adequately serviced.

The Planning Proposal is considered to be consistent with the terms of this Direction.

Direction 3.3 Home Occupations

This direction applies to Manly in preparing a Planning Proposal and requires that home occupations be permitted without the need for development consent to encourage low-impact small businesses in dwelling houses. This Planning Proposal permits home occupations consistent with this Direction.

Direction 3.4 Integrating Land Use and Transport

This direction applies when a planning proposal creates, alters or removes a zone or a provision relating to land zoned for residential, business, industrial, village or tourist purposes. The objective of this direction is to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve certain planning objective. These objectives include improving access to housing, jobs and services by walking, cycling and public transport, and increasing the choice of available transport.

In accordance with this direction, the Planning Proposal is considered to locate zones for appropriate urban purposes and is consistent with the aims, objectives and principles of: Improving Transport Choice – Guidelines for planning and development (DUAP 2001).

Direction 4.1 Acid Sulfate Soils

The objective of this Direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils. This direction applies to Manly in relation to land having a probability of containing acid sulfate soils. In this regard the land subject of this planning proposal is Class 4 under Manly LEP 2013.

The Acid Sulfate Soils Planning Guidelines (Department of Planning) has been considered in preparing this planning proposal. While the Planning Proposal involves intensification of land uses on land with some probability of containing acid sulfate soils; an acid sulfate soils study is not prepared and assessed at this stage. In this regard the clause 6.1 of the LEP exists to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage and it is considered in this planning proposal is consistent with Direction 4.1 given these existing LEP provisions for assessment at the DA stage.

Direction 4.3 Flood Prone Land

This Direction applies to planning proposals that zone or make provisions affecting flood prone land to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005. In this regards the existing provisions of Manly LEP 2013 apply to flood prone land at clause 6.3 which is considered commensurate with the consideration of the potential flood impacts under this Direction in relation to the subject land. There is no existing flood study adopted by Council that identifies that the land is flood prone land.

Direction 6.1 Approval and Referral Requirements

This Direction requires that a planning proposal must minimise the inclusion of provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority. The objective of this direction is to encourage the efficient and appropriate assessment of development. The Planning Proposal is consistent with this direction.

Direction 6.2 Reserving Land for Public Purposes

This Direction applies to the preparation of all planning proposals in Manly requiring that the proposal shall not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the relevant public authority and the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General). In this regard, Manly Council is the relevant public authority for local open space, zoned Public Recreation in Manly LEP 2013.

The objectives of this Direction are to facilitate the provision of public services and facilities by reserving land for public purposes, and to facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition.

This Planning Proposal does not involve a request by the Minister or public authority to reserve land for a public purpose and the intent is that the land would be no longer required to be acquired under Division 3 of Part 2 of the Land Acquisition (Just Terms Compensation) Act 1991. The zoning of the land under this Planning Proposal is a zone appropriate to its intended future use which as resolved by Council is generally residential.

Direction 6.3 Site Specific Provisions

The objective of this direction is to discourage unnecessarily restrictive site specific planning controls when a relevant planning authority prepares a planning proposal that will allow a particular development to be carried out. Appropriate development standards are proposed with the planning proposal consistent with this direction and detailed elsewhere in the report.

Direction 7.1 Implementation of the Metropolitan Plan for Sydney 2036

The objective of this Direction is to give legal effect to the vision, transport and land use strategy, policies, outcomes and actions contained in the Metropolitan Plan for Sydney 2036.

This Direction applies to the preparation of all planning proposals in Manly requiring that the Proposal be consistent with the NSW Government's Metropolitan Plan for Sydney 2036 published in December 2010 ("the Metropolitan Plan").

A planning proposal may be inconsistent with the terms of this direction only if the Relevant Planning Authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General), that the extent of inconsistency with the Metropolitan Plan:

- (a) is of minor significance, and
- (b) the planning proposal achieves the overall intent of the Plan and does not undermine the achievement of its vision, land use strategy, policies, outcomes or actions.

The planning proposal is consistent with the above mentioned Ministerial directions (s.117 directions) and as further detailed in this report.

C. Environmental, Social and Economic Impact.

C1. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

Little Manly Beach and Cove is in the vicinity of Critical Habitat for Little Manly Penguins. The Figure below identifies the location of Penguin Threatened Habitat and Penguin Potential Habitat which are a minimum distance away from the land the subject of this planning proposal of 210m and 90m respectively.

Figure: Penguin Threatened Habitat and Penguin Potential Habitat



The land, the subject of this planning proposal, is not considered likely to be adversely affected critical habitat or threatened species, populations or ecological communities, or their habitats. In this regard the land is of an urban nature largely behind an established sea wall and not affected by the established Foreshore Building Line. Provisions are established at the Development Application stage in relation to the protection of Penguin Threatened Habitat and requirements for an Assessment of Significance Report also apply to the land in relation to Long Nosed Bandicoots under Part 5A of the Environmental Planning and Assessment Act 1979.

C2. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

There are no negative environmental effects that are considered to significantly arise from this Draft Amending Local Environmental Plan. The proposed residential / environmental living zoning is of land that is currently largely improved with residential purposes as detailed in this report.

Heritage

The proposed continued listing of heritage items detailed in this report will lessen the likelihood of environmental effects due to the continued identification and protection of heritage significance.

Further, the existing memorial was a consideration in Manly Council's resolution to prepare this planning proposal as it resolved:

The General Manager to consult with the Heritage Committee regarding the Farrell Family memorial and anchor;

In relation to the above mentioned resolution of Council the required consultation are intended to take place following the Gateway Determination and prior to public consultation.

Coastal Hazard Risk and Sea Level Rise

The subject site is in a foreshore location on Sydney Harbour. The NSW Government issued the Coastal Planning Guideline: Adapting to Sea Level Rise in August, 2010. This applies to all Coastal areas of NSW, as well as Sydney Harbour, Botany Bay, the Hawkesbury River and their tidal tributaries. This guideline presents a range of principles affecting land use planning, which requires a balance between social, economic and environmental considerations. The guideline requires all Councils in Coastal areas to identify Sea Level Rise Investigation Areas, for the purpose of completing detailed coastal erosion and flood studies. The studies will then be used to inform hazard lines on maps separately identifying risk from coastal erosion and coastal flooding. These maps will then become part of the LEP and be used to determine development applications. The entire process of investigation, studies and mapping will take place throughout 2013. It is not yet clear whether the subject properties will be affected either in part or full by the sea level rise investigation areas. The LGSA are in discussions with NSW Planning to challenge the lack of clarity in determining the land use zoning for land in Sea Level Rise Investigation Areas.

Manly Council's report 'Identification of Coastal Hazard Risk Areas to Projected Seal Level Rise for the Manly Local Government Area' prepared by Water Research Laboratory was adopted by Council on 7 May 2012. This report was prepared consistent with best practice guidance by NSW Government (OEH) at the time and using best available coastal science and engineering practice to identify coastal erosion and recession, and coastal inundation hazard areas.

This report identified the most significant hazards in the location as beach erosion, shoreline recession and climate change. Sand drift was also considered a less significant hazard as it was restricted by the existence of the sea wall. Predicted loss in beach over 20-30 years is estimated conservatively at 3-8 metres based on a width of approximately 25-30 metres. The seawall was considered to be in a fair condition; however the study did raise concerns for the stability of the sea wall during storms.

While the report does not list individually impacted properties, but does contain mapping relevant to the Stuart Street properties within Little Manly Cove as follows:

- Coastal Erosion Hazard Lines with seawall. Figure C.6
- Coastal Erosion Hazard Lines without seawall. Figure C.18
- Coastal Inundation Zones (incl. Wave and wind setup). Figure D.8

These maps indicate that the present and future (2050, 2100) coastal erosion and recession hazard at Little Manly Beach *with* the current seawall in place. These maps also indicate that the present and future (2050, 2100) coastal erosion and recession hazard at Little Manly Beach if the seawall was *not* present. These maps indicate the hazard is largely controlled by the existence of the present seawall.

The boundary of the sea wall is currently within 21-22 metres distance from the mean high water mark. The properties are 2 metres above sea level at the lowest lying point, rising to 2.5 metres above sea level at the principal facade of the remaining residential dwellings between 36-40 Stuart Street and approx 3.5 metres above sea level at the front of number 34 Stuart Street. Crib retaining walls separate the frontage of the properties from the street and the properties at 38-40 Stuart Street sit around 5 metres below the road.

C3. How has the planning proposal adequately addressed any social and economic effects?

The economic and social effects of the rezoning are considered to be adequately addressed.

D. State and Commonwealth interests.

D1. Is there adequate public infrastructure for the planning proposal?

The planning proposal does not increase the demand for public infrastructure having regard to existing land use, functions and activities on the subject lands.

D2. What are the views of State and Commonwealth Public Authorities consulted in accordance with the gateway determination, and have they resulted in any variations to the planning proposal?

(Note: the views of State and Commonwealth Public Authorities will not be known until after the initial gateway determination. This section of the planning proposal is completed following consultation with those public authorities identified in the gateway determination.)

The planning proposal has been endorsed by Council and is being submitted for the Gateway Panels' issue of delegation to Council to proceed.

The proposed amendments have been discussed with the Department of Planning Sydney East Regional Team at the Quarterly meeting between Council and the Department on 13 March 2013.

Part 4 – Mapping

The maps included in this planning proposal are consistent with *Standard technical requirements for LEPs*.

The location of the proposal is already mapped in Part 2 Individual Site Details

There are a total of eight (8) maps included in this proposal.

List of maps

Current	Proposed
Land Reservation Acquisition Map MLEP 2013	Land Reservation Acquisition Map MLEP 2013
Floor Space Ration Map MLEP 2013	Floor Space Ration Map MLEP 2013
Minimum Lot Size Map MLEP 2013	Minimum Lot Size Map MLEP 2013
Height of Buildings Map MLEP 2013	Height of Buildings Map MLEP 2013

Part 5 – Community Consultation

Council proposes that the LEP be publically exhibited in accordance with the Environmental Planning and Assessment Act 1979 for a period of 28 days.

It is considered that extensive consultation with State or Commonwealth public authorities is not required as the Planning Proposal is not likely to increase the demand for public infrastructure. However, consultations with the Office of Environment and Heritage are recommended in relation to environmental issues raised in this planning proposal including Threatened Species and Coastal Hazards (Sea Level Rise).

It is intended that this consultation take place following the gateway determination under section 56 of the Act (delegated), and prior to undertaking community consultation in satisfaction of section 57 of the Act.

Manly Council will take into account any comments made in the preparation of the Amending LEP sought in this planning proposal.

Part 6 – Project timeline

The proposed timeline for completion of the planning proposal is as follows:

Plan Making Step	Estimated Completion
Anticipated commencement date (date of Gateway determination)	May 2013
Anticipated timeframe for the completion of required technical information	None anticipated
Timeframe for government agency consultation (pre and post exhibition as required by Gateway determination)	May 2013 (3 weeks). Pre-exhibition only with Office of Environment and Heritage.
Public exhibition period	June 2013 (28 days)
Timeframe for consideration of submissions	July 2013 (3 weeks)
Date of submission to the department to finalise the LEP	None – proposal to be subject to delegation
Anticipated date RPA (Manly Council) will make the plan (if delegated)	August 2013
Anticipated date RPA (Manly Council) will forward to the department for notification	August 2013

CONCLUSION

Council intends to undertake amendments to the Manly LEP 2013 to rezone 34, 36 and 38 Stuart Street from RE1 Public Recreation to Zone E4 Environmental Protection. In addition the LEP is to be amended to remove land labeled 'local open space' on that map at 38 Stuart Street from the LEP Land Reservation Acquisition Map and that Council adopt appropriate development standards over the land including Floor Space Ratio (0.6:1); Height of Building (8.5m) and Minimum Lot Size 250 sqm per dwelling. In the event that the Manly LEP 2013 is not published in time for this Planning Proposal to proceed, then this Planning Proposal seeks to similarly amend the existing Manly LEP 1988 as detailed in this report.

This Planning Proposal is considered to contain enough information to demonstrate that relevant environmental, social, economic and other site specific matters have been identified and where necessary and appropriate identifies issues that can be addressed with additional information and /or through consultation with agencies and the community.

The recommended amendments are consistent with Council's intended future of the subject land, to permit future redevelopment of the land consistent with the objective and permissible land uses under Zone E4 – Environmental Living. Council has resolved to initiate the proposed LEP amendments and a planning proposal is now prepared and provided to the Department's LEP Gateway Panel for review and Council's exercise of delegation (if granted).