

FOR ACTION

Meeting: INFRASTRUCTURE, PLANNING AND ENVIRONMENTAL SERVICES COMMITTEE

Meeting Date: 1/12/2015

TO: Strategic Planning Projects Coordinator (Peter Wotton)

Subject: Draft Marrickville Local Environmental Plan 2011 (Amendment No. 4)

Target Date: 15/12/2015

Notes:

Public speaker: Brian Metledge

Motion: Tyler/Macri

THAT:

1. action on draft amendments to MLEP 2011 and MDCP 2011 be deferred and referred to a Councillor Conference, with the exception of the bus shelter item (Recommendation L-Sch2 (01)) which is to proceed;
2. Council resolves to prepare a Planning Proposal to amend MLEP 2011 to incorporate recommendation (Recommendation L-Sch2 (01)), relating to signage on bus and taxi rank shelters;
3. Council submits the draft Planning Proposal to the Department of Planning and Environment for Gateway determination; and
4. Council publicly exhibits the draft Planning Proposal.

Motion Carried

For Motion: Councillors Barbar, Brooks, Ellsmore, Gardiner, Hanna, Haylen, Leary, Macri, Tyler and Woods

Against Motion: Nil

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**PLANNING PROPOSAL TO AMEND
MARRICKVILLE LOCAL ENVIRONMENTAL PLAN 2011 (MLEP 2011)
MLEP 2011 (AMENDMENT NO. 4)**

DECEMBER 2015

Introduction

This planning proposal seeks Gateway approval to amend Marrickville Local Environmental Plan 2011 (MLEP 2011) to list the development type "Advertisements – signage on bus and taxi rank shelters" in Schedule 2 - Exempt Development of MLEP 2011.

At its meeting on 1 December 2015 Council considered a report which recommended that Council resolve to prepare a draft Planning Proposal to make a number of amendments to Marrickville Local Environmental Plan 2011.

One of those amendments recommended was to add an additional development type in Schedule 2 - Exempt Development of MLEP 2011 relating to signage on bus and taxi rank shelters.

An extract from the report considered by Council in relation to the matter is reproduced below:

"MLEP 2011: Schedule 2 Exempt development

Signage on bus shelters

Council's Manager Design and Investigation has requested an amendment be made to MLEP 2011 to facilitate the installation of advertising on bus and taxi rank shelters.

The request reads (in part) as follows:

"By way of background, the funding of council's bus shelter program through our contractor Adshel is premised on them being able to obtain advertising revenue to cover the capital costs of shelters and their ongoing maintenance.

Each advertising shelter funds itself plus an additional 2 non advertising shelters. The provision of shelters is considered an important initiative in encouraging public transport use.

In addition to this business model providing council with potentially up to 111 roadside shelters to service public transport (bus and taxi zones) at no cost to Council (an equivalent \$2.5 million capital investment plus ongoing maintenance over 15 years). Council also shares in revenue raised from advertising which in turn is utilised to fund other public infrastructure.

This business model is common throughout local government for the provision of road side shelters. If not able to be continued it would place a significant financial burden on council's ability to provide such public infrastructure.

The current LEP prevents new shelters with advertising panels in residential areas even though these may be on major transport routes such as Salisbury Road, hence Council cannot provide additional shelters under the current rollout.

There are already several advertising shelters on such routes under existing use rights.

I understand from discussions with Adshel that other councils (Canada Bay, Baulkham Hills Shire were nominated examples) have amended their LEPs to resolve this anomaly.

The timeline for the contract rollout of shelters is well advanced and is now being hindered by the LEP restrictions. It's highly desirable that this be addressed as soon as possible."

Comment

Under Clause 97 of State Environmental Planning Policy (Infrastructure) 2007 bus shelters (but not including any commercial advertising on them) are exempt development subject to satisfying certain criteria.

Clause 10 (1) of State Environmental Planning Policy No. 64 – Advertising and Signage (SEPP 64) reads as follows:

- (1) *"Despite the provisions of any other environmental planning instrument, the display of an advertisement is prohibited on land that, under an environmental planning instrument, is within any of the following zones or descriptions:*

environmentally sensitive area

heritage area (excluding railway stations)

natural or other conservation area

open space

waterway

residential (but not including a mixed residential and business zone, or similar zones)

scenic protection area

national park

nature reserve"

Under the mapping requirements under the Standard Instrument all roads were required to be zoned. In earlier environmental instruments such as Marrickville Local Environmental Plan 2001 (MLEP 2001) most roads were unzoned. Under Clause 30 of MLEP 2001 the erection of a structure was permitted with development consent. Consequently the erection of an advertising structure on a bus or taxi rank shelter on an unzoned road was permitted with development consent.

The coming into effect of Marrickville Local Environmental Plan 2011 in December 2011 meant that advertising structures on bus and taxi rank shelters on land in zones and descriptions specified in SEPP 64 was prohibited.

Some Council's, such as Canada Bay, Fairfield City and Willoughby have amended their respective LEP's to make such signage exempt development subject to satisfying certain criteria.

To address the issue raised by Council's Manager Design and Investigation it is recommended that a provision be included in Schedule 2 Exempt development of MLEP 2011 that permits advertisements on bus shelters and taxi rank shelters as exempt development.

Recommendation L-Sch2 (01):

That an additional development type be included in Schedule 2 of MLEP 2011 after "Advertisements – real estate signs (advertising premises or land for sale or rent) in residential zones" reading as follows:

"Advertisements – signage on bus and taxi rank shelters

- (1) Must be on Council owned or controlled land.
- (2) Must not extend beyond the perimeter of the shelter.
- (3) Only 1 advertising panel per shelter that may comprise an advertisement on 2 sides.
- (4) Must not contain flashing or neon signage.
- (5) Must be positioned to not adversely impact on pedestrian movements.
- (6) Must not obstruct the line of sight of vehicular traffic or pedestrian traffic."

In dealing with that report Council resolved (in part):

"THAT:

1. action on draft amendments to MLEP 2011 and MDCP 2011 be deferred and referred to a Councillor Conference, with the exception of the bus shelter item (Recommendation L-Sch2 (01)) which is to proceed;
2. Council resolves to prepare a Planning Proposal to amend MLEP 2011 to incorporate recommendation (Recommendation L-Sch2 (01)), relating to signage on bus and taxi rank shelters;
3. Council submits the draft Planning Proposal to the Department of Planning and Environment for Gateway determination; and
4. Council publicly exhibits the draft Planning Proposal."

PART 1: OBJECTIVE OR INTENDED OUTCOME

To make advertisements on bus and taxi rank shelters exempt development under the provisions of Marrickville Local Environmental Plan 2011.

PART 2: EXPLANATION OF PROVISION

The proposed provision is self explanatory.

PART 3: JUSTIFICATION

Section A – Need for the planning proposal

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

The justification for this planning proposal is included in the extract from the report considered by Council reproduced earlier under the heading "Introduction".

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

The planning proposal is considered the best way of achieving the desired objective. Apart from possibly making changes to State Environmental Planning Policy No. 64 – Advertising and Signage there does not appear to be another way of achieving the desired objective.

As detailed earlier, the approach recommended is an approach similar to that adopted by some other Councils.

The planning proposal is essentially to address a situation which has occurred as a consequence of the requirement to zone roads under the Standard Instrument and the advertising prohibitions under Clause 10 of State Environmental Planning Policy No. 64 – Advertising and Signage on land including prohibitions relating specifically to “zones”.

That situation did not exist under Council’s former environmental planning instrument.

3. Is there a net community benefit?

The net community benefits from the planning proposal are detailed in extract from the report considered by Council reproduced earlier under the heading “Introduction”.

Section B – Relationship to strategic planning framework

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

The planning proposal is not inconsistent with the objectives and actions contained within the applicable regional or sub-regional strategy.

5. Is the planning proposal consistent with the local council’s Community Strategic Plan, or other local strategic plan?

The planning proposal is not inconsistent with council’s Strategic Plan, *Marrickville Community Strategic Plan (Our Place, Our Vision)* which was adopted in 2010 to define the long term aspirations and strategic directions for the community.

6. Is the planning proposal consistent with applicable State Environmental Planning Policies (SEPPs)?

The planning proposal has been assessed against all relevant State Environmental Planning Policies (SEPPs) as detailed below. Based on that assessment, Council has concluded that overall, the planning proposal is consistent with all relevant SEPPs.

SEPP 64 (Advertising and Signage)

Description of SEPP: This SEPP provides controls and guidelines to regulate the display of advisements.

Assessment: The planning proposal to make signage on bus and taxi rank shelters exempt development would mean that the SEPP would not apply to that signage (by virtue of Clause 6 (2) of the SEPP).

SEPP (Infrastructure) 2007

Description of SEPP: This SEPP provides a consistent planning regime for infrastructure and the provision of services across NSW. It is intended to provide greater flexibility in the location of infrastructure and service facilities along with improved regulatory certainty and efficiency.

Assessment: The SEPP includes provisions relating to bus shelters. Under Clause 97 of the SEPP bus shelters (but not including any commercial advertising on them) are exempt development subject to satisfying certain criteria. The planning proposal would not be inconsistent with this SEPP.

SEPP (Exempt and Complying Development Codes) 2008

Description of SEPP: This SEPP simplifies assessment processes for development that complies with specified development standards. It identifies types of minor development that may be carried out without development consent, or carried out in accordance with a complying development certificate.

Assessment: The SEPP does not include provisions relating to signage on bus and taxi rank shelters. Consequently the planning proposal would not be inconsistent with this SEPP.

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

Below the planning proposal has been assessed against all relevant s.117 Directions. From this assessment, Council has concluded that overall, the proposed amendment is consistent with all applicable Ministerial (s.117) Directions.

Direction 1.1: Business & Industrial Zones

Description of Direction: This Direction aims to encourage employment growth in suitable locations, protect employment land in business and industrial zones and support the viability of identified strategic centres. This Direction applies when a planning proposal will affect land within an existing or proposed business or industrial zone, including the alteration of any existing business or industrial zone boundary.

Assessment: Whilst the planning proposal will technically affect land within existing business and industrial zones, the land affected relates only to roads that are zoned business or industrial. As such it is considered that the planning proposal is not inconsistent with Direction 1.1.

Direction 3.1: Residential Zones

Description of Direction: The objectives of this Direction are to (a) encourage a variety and choice of housing types to provide for existing and future housing needs; (b) make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure; and (c) minimise the impact of residential development on the environment and resource lands. This Direction applies to a residential zone or any other zone in which significant residential development is permitted.

Assessment: Whilst the planning proposal will technically affect land within existing residential zones, the land affected relates only to roads that are zoned residential. As such it is considered that the planning proposal is not inconsistent with Direction 3.1.

Direction 6.1: Approval & Referral Requirements

Description of Direction: The objective of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development. According to this Direction, A planning proposal must: (a) minimise the inclusion of provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority, and (b) not contain provisions requiring concurrence, consultation or referral unless the relevant planning authority has obtained approval (c) not identify development as designated development unless the relevant planning authority has approval.

Assessment: The planning proposal is consistent with this Direction.

Section C – Environmental, social and economic impact

8. **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?**

No

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

No. Safeguards have been incorporated into the clause that such signage has to satisfy to be exempt development. The criteria that needs to be satisfied includes that the signage must “not contain flashing or neon signage”, “be positioned to not adversely impact on pedestrian movements” and “not obstruct the line of sight of vehicular traffic or pedestrian traffic.”

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

Yes.

Section D – State and Commonwealth Interests

11. **Is there adequate public infrastructure for the planning proposal?**

Yes

12. **What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?**

As this planning proposal has not yet proceeded to Gateway determination, the views of State and Commonwealth public authorities have not been sought, nor is this required at this stage. In accordance with the Gateway determination process, the Department of Planning and Environment will inform Council which State and Commonwealth authorities are to be formally consulted during the public exhibition period.

PART 4: MAPPING

The proposed amendment does not necessitate any changes to the MLEP 2011 Maps.

PART 5: COMMUNITY CONSULTATION

Council considers this planning proposal to have a low impact overall. It is not a principal LEP and the amendment is generally consistent with the LEP's strategic planning framework. The proposed amendment does not seek to reclassify public land, nor would it create the need for significant additional infrastructure servicing. It is anticipated that this planning proposal would be publically exhibited for 28 days, as required by the Gateway determination.

As is standard practice (and in some instances required) for planning proposals, public exhibition of this planning proposal would include:

- notices in local newspapers and Council's e-newsletter;
- notice and planning proposal documentation available on Council's website;
- print copy of notice and documentation in the foyer in Council's administration building and in local libraries;

PART 6: PROJECT TIMELINE

Following are estimated dates (month/year) for completion of key tasks in the planning proposal process:

- anticipated commencement date (date of Gateway determination) – January 2016;
- anticipated timeframe for the completion of required technical information – N/A as all technical information completed;
- timeframe for government agency consultation (pre and post exhibition as required by Gateway determination) – to be determined after Gateway determination;
- commencement and completion dates for public exhibition period – February 2016;
- dates for public hearing (if required) – N/A at this stage;
- timeframe for consideration of submissions – March 2016;
- timeframe for the consideration of a proposal post exhibition – April 2016;
- date of submission to the department to finalise the LEP – May 2016;
- anticipated date RPA will make the plan (if delegated) – N/A at this stage; and
- anticipated date RPA will forward to the department for notification N/A.

ATTACHMENT 1 – INFORMATION CHECKLIST

STEP 1: REQUIRED FOR ALL PROPOSALS

(under s55(a) – (e) of the EP&A Act)

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| <ul style="list-style-type: none"> Objectives and intended outcome Mapping (including current and proposed zones) Community consultation (agencies to be consulted) | <ul style="list-style-type: none"> Explanation of provisions Justification and process for implementation (including compliance assessment against relevant section 117 direction/s) |
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STEP 2: MATTERS – CONSIDERED ON A CASE BY CASE BASIS

(Depending on complexity of planning proposal and nature of issues)

PLANNING MATTERS OR ISSUES	To be considered	N/A	PLANNING MATTERS OR ISSUES	To be considered	N/A
Strategic Planning Context			- Resources (including drinking water, minerals, oysters, agricultural lands, fisheries, mining) - Sea level rise		
- Demonstrated consistency with relevant Regional Strategy - Demonstrated consistency with relevant Sub-Regional strategy - Demonstrated consistency with or support for the outcomes and actions of relevant DG endorsed local strategy - Demonstrated consistency with Threshold Sustainability Criteria			Urban Design Considerations		
Site Description/Context			- Existing site plan (buildings, vegetation, roads, etc) - Building mass/block diagram study (changes in building height and FSR) - Lighting impact - Development yield analysis (potential yield of lots, houses, employment generation)		
- Aerial photographs - Site photos/photomontage			Economic Considerations		
Traffic and Transport Considerations			- Economic impact assessment - Retail centres hierarchy - Employment land		
- Local traffic and transport - TMAP - Public transport - Cycle and pedestrian movement			Social and Cultural Considerations		
Environmental Considerations			- Heritage impact - Aboriginal archaeology - Open space management - European archaeology - Social & cultural impacts - Stakeholder engagement		
- Bushfire hazard - Acid Sulphate Soil - Noise impact - Flora and/or fauna - Soil stability, erosion, sediment, landslip assessment, and subsidence - Water quality - Stormwater management - Flooding - Land/site contamination (SEPP55)			Infrastructure Considerations		
			Infrastructure servicing and potential funding arrangements		
			Miscellaneous/Additional Considerations		
			List any additional studies		

ATTACHMENT 4 – EVALUATION CRITERIA FOR THE DELEGATION OF PLAN MAKING FUNCTIONS

Checklist for the review of a request for delegation of plan making functions to councils

Local Government Area: Marrickville

Name of draft LEP: Marrickville Local Environmental Plan 2011 (Amendment No. 4)

Address of Land (if applicable): N/A

Intent of draft LEP:

To amend Marrickville Local Environmental Plan 2011 (MLEP 2011) to list the development type "Advertisements – signage on bush and taxi rank shelters" in Schedule 2 - Exempt Development of MLEP 2011.

Additional Supporting Points/Information: Nil

Evaluation criteria for the issuing of an Authorisation	Council response		Department assessment	
	Y/N	Not relevant	Agree	Not agree
(Note: where the matter is identified as relevant and the requirement has not been met, council is attach information to explain why the matter has not been addressed)				
Is the planning proposal consistent with the Standard Instrument Order, 2006?	Y			
Does the planning proposal contain an adequate explanation of the intent, objectives, and intended outcome of the proposed amendment?	Y			
Are appropriate maps included to identify the location of the site and the intent of the amendment?		NA		
Does the planning proposal contain details related to proposed consultation?		NA		
Is the planning proposal compatible with an endorsed regional or sub-regional planning strategy or a local strategy endorsed by the Director-General?		NA		
Does the planning proposal adequately address any consistency with all relevant S117 Planning Directions?		NA		
Is the planning proposal consistent with all relevant State Environmental Planning Policies (SEPPs)?	Y			
Minor Mapping Error Amendments	Y/N			
Does the planning proposal seek to address a minor mapping error and contain all appropriate maps that clearly identify the error and the manner in which the error will be addressed?		NA		
Heritage LEPs	Y/N			
Does the planning proposal seek to add or remove a local heritage item and is it supported by a strategy/study endorsed by the Heritage Office?		NA		
Does the planning proposal include another form of endorsement or support from the Heritage Office if there is no supporting strategy/study?				
Does the planning proposal potentially impact on an item of State Heritage Significance and if so, have the views of the Heritage Office been obtained?				

Reclassifications	Y/N			
Is there an associated spot rezoning with the reclassification?		NA		
If yes to the above, is the rezoning consistent with an endorsed Plan of Management (POM) or strategy?				
Is the planning proposal proposed to rectify an anomaly in a classification?				
Will the planning proposal be consistent with an adopted POM or other strategy related to the site?				
Will the draft LEP discharge any interests in public land under section 30 of the Local Government Act, 1993?				
If so, has council identified all interests; whether any rights or interests will be extinguished; any trusts and covenants relevant to the site; and, included a copy of the title with the planning proposal?				
Has the council identified that it will exhibit the planning proposal in accordance with the department's Practice Note (PN 09-003) Classification and reclassification of public land through a local environmental plan and Best Practice Guideline for LEPs and Council Land?				
Has council acknowledged in its planning proposal that a Public Hearing will be required and agreed to hold one as part of its documentation?				
Spot Rezonings	Y/N			
Will the proposal result in a loss of development potential for the site (ie reduced FSR or building height) that is not supported by an endorsed strategy?		NA		
Is the rezoning intended to address an anomaly that has been identified following the conversion of a principal LEP into a Standard Instrument LEP format?		NA		
Will the planning proposal deal with a previously deferred matter in an existing LEP and if so, does it provide enough information to explain how the issue that lead to the deferral has been addressed?		NA		
If yes, does the planning proposal contain sufficient documented justification to enable the matter to proceed?		NA		

Does the planning proposal create an exception to a mapped development standard?	N			
Section 73A matters				
Does the proposed instrument a. correct an obvious error in the principal instrument consisting of a misdescription, the inconsistent numbering of provisions, a wrong cross-reference, a spelling error, a grammatical mistake, the insertion of obviously missing words, the removal of obviously unnecessary words or a formatting error?; b. address matters in the principal instrument that are of a consequential, transitional, machinery or other minor nature?; or c. deal with matters that do not warrant compliance with the conditions precedent for the making of the instrument because they will not have any significant adverse impact on the environment or adjoining land? (NOTE – the Minister (or Delegate) will need to form an Opinion under section 73(A)(1)(c) of the Act in order for a matter in this category to proceed).		NA		

NOTES

- Where a council responds 'yes' or can demonstrate that the matter is 'not relevant', in most cases, the planning proposal will routinely be delegated to council to finalise as a matter of local planning significance.
- Endorsed strategy means a regional strategy, sub-regional strategy, or any other local strategic planning document that is endorsed by the Director-General of the department.