

TO: Ordinary Meeting - 20 April 2015
REPORT: Environmental Services Division Report No. 12
SUBJECT: Proposed Amendment to Manly LEP 2013 Regarding Noise Mitigation Measures for Licensed Premises
FILE NO: MC/15/42271

SUMMARY

This report proposes an amendment to the Manly LEP 2013 regarding a specific local noise provision that would require new development applications for licensed premises to consider noise impacts to residential accommodation in the vicinity the premises. This report follows on from previous Council reports regarding noise impacts on residents around Manly Cove. Council has received advice from the Department of Planning and Environment to proceed with a noise impact provision within the Local Provision section of MLEP 2013.

REPORT

Council at its Ordinary Meeting on 12 May 2014 considered a Notice of Motion (report no.20) in relation to noise mitigation measures for Manly Cove and resolved as follows:

66/14 RESOLVED: (C Griffin / Heasman)

1. That Manly Council request:
 - a. TMG and RMS to fund a consultant's report to determine the extent of the problem regarding noise impact on residents around Manly Cove and recommend noise mitigation strategies for the existing premises on Manly Wharf, for any future developments on the wharf, as well as the operations of the public ferries/jet cats.
 - b. RMS to develop a masterplan for the Manly Wharf precinct that will include a capacity study for the entire wharf; and
2. Council investigate the installation and use of a noise analyser to monitor noise activities at Manly Cove, Eastern Hill at a time that is appropriate, taking into account activity, climatic and atmospheric conditions;
3. Council write to the local State MP, Mike Baird seeking support for the above actions;
4. The General Manager take whatever immediate steps are possible to ensure noise (especially bass sound) from any licensed premises on Manly Wharf is not at a level that can be heard in any residents homes and therefore in breach of condition of consent or other statutory limits.
5. Council consider an amendment to the LEP to assist with the issues raised; and
6. Council be provided with an update on this matter within 3 months.

At Council's Planning and Strategy Meeting on 4th August 2014, Council Officers provided two (2) options available to Council to amend the Manly LEP 2013 in regards to mitigating noise impacts around Manly Cove and other areas. Option one (1) was the preferred option – a specific local LEP provision for noise impacts from licensed premises.

Option 1 – A Specific Local LEP Provision for noise impacts from licensed premises

This option proposes an additional local clause in Part 6 of the LEP which requires additional considerations in relation to 'licensed premises' This clause would require that in determining any development applications for licensed premises, considerations must be given to noise impacts on any residential accommodation in the vicinity.

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Inserting this clause into the LEP would require statutory consideration of noise impacts in relation to any licensed premises irrespective of which zone they are in. This includes land that is unzoned and outside the LEP Land Application Map such as Manly Wharf and other foreshore buildings.

The proposed draft text is as follows:

6.21 Noise impacts - licensed premises

- (1) *The objective of this clause is to ensure that development applications for licensed premises consider noise impacts on any residential accommodation in the vicinity.*
- (2) *Before determining a development application involving the use of land as licensed premises, the consent authority must consider any impact of the proposed development in relation to noise nuisance on any residential accommodation in the vicinity.*
- (3) *In this clause:*
licensed premises *has the same meaning as it has in the Liquor Act 2007*

The consideration of noise impacts would apply to any development proposal involving licensed premises in Manly where a development application is required. The land to which the clause applies does not need to be mapped as the clause would apply on any land where licensed premises are permissible with development consent.

Currently the assessment of noise impacts arising from licensed premises is a common matter of consideration, particularly in relation to impacts on existing residential accommodation within the vicinity. This amendment supports paragraph 4.2.5.6 – Late Night Venues, of the Manly DCP 2013.

Council Resolution

Council resolved at its Planning and Strategy Meeting 4 August 2014 as follows:

36/14 RESOLVED: (Le Surf / Burns)

That Council:

1. *Note the above report and concur with the findings of the report including the proposed preferred Option 1 – Specific Local LEP Provision for noise impacts from licensed premises;*
2. *Agree for staff to approach the Department of Planning and Environment with the report, enabling the Department to review the proposal in preparation for drafting a local provision for the MLEP 2013; and*
3. *on receipt of the Department's agreement in principle, Council submit a Planning Proposal to the Department of Planning and Environment for a Gateway Determination, enabling Council to make the LEP under delegation.*

Council officers sent a letter dated 11 August 2014 to the Department of Planning and Environment with the Council report, requesting to meet with the Department.

Officers met with the Department's Metropolitan Region (East) team on 22 September 2014 to discuss the proposal, presenting Council's concerns and case for a planning proposal. Officers have since been pursuing the Department for an answer regarding the proposed LEP. Council officers have provided additional information to the Department on several occasions to clarify Council's position, including a supportive evidence base incorporating court appeals.

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The Department initially preferred the second option (the noise provision to only affect land in Zone B2 Local Centre). However Officers have been successful in redirecting the Department to Council's preferred first option (as noted in this report). Officers have given clear justifications for Council's preferred option and why the alternative option would be ineffective on development on Manly Wharf (the initial reason for the proposal) as it is not zoned B2 Local Centre. The first option would allow any new licensed premises, anywhere in Manly, to be subject to the noise provision.

Department's agreement in principle and Planning Proposal

On 20 March 2015, Council officers received a letter from the Department of Planning and Environment (see **Attachment 1**) stating a recommendation to submit a planning proposal for the local LEP provision.

A planning proposal has now been drafted (see **Attachment 2**) to submit to the Department of Planning and Environment and request an amendment to the MLEP 2013 to insert the local noise provision as per Council's preferred option. It is recommended Council seeks ministerial delegation to make and amend the LEP.

CONCLUSION

Council have received an agreement in principle from the Department of Planning and Environment to a specific local LEP provision regarding noise mitigation measures for licensed premises in the Manly area. It is recommended that Council proceed with the attached planning proposal and request a Gateway Determination from the Department and seek delegation for Council to make the amending LEP.

As part of the Gateway Determination process, it is anticipated a public exhibition will be required. Once this is complete, a report will be presented to Council taking into consideration all submissions made to the proposal. Council can then resolve to either:

1. Proceed with the proposal as exhibited,
2. Make amendments to the proposal in light of submissions made, or
3. Not proceed with the proposal.

RECOMMENDATION

THAT Council

1. Adopt the Planning Proposal to amend the Manly LEP 2013 to insert a specific LEP noise provision regarding noise mitigation measures for licensed premises.
2. Submit the Planning Proposal to the Department of Planning and Environment's LEP Gateway Determination Panel for determination and making of the Amending Manly LEP 2013 under delegation.

ATTACHMENTS

AT-1	Letter from Department of Planning and Environment Regarding Council's Noise Control Provision (dated 19th March 2015)	1 Page
AT-2	Planning Proposal for Local LEP Provision Regarding Noise Mitigation Measures for Licensed Premises	7 Pages

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***** End of Environmental Services Division Report No. 12 *****

ATTACHMENT 1

Environmental Services Division Report No. 12.DOC - Proposed Amendment to Manly LEP 2013 Regarding Noise Mitigation Measures for Licensed Premises
Letter from Department of Planning and Environment Regarding Council's Noise Control Provision (dated 19th March 2015)



**Planning &
Environment**

Mr Stephen Clements
Deputy General Manager, Land Use & Sustainability
Manly Council
PO Box 82
MANLY NSW 1655

14/16380

Attention: Mr Nayeem Islam, Manager Land Use Planning

Dear Mr Clements

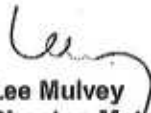
I refer to Council's letter of 11 August 2014 requesting a meeting with the Department of Planning and Environment to discuss Council's proposed noise control provision in the Manly Local Environment Plan 2013 (Manly LEP).

I understand Council met with the Department's Metropolitan Region (East) team on 22 September 2014 to discuss the proposed amendment to the Manly LEP. I appreciate noise impacts from licensed premises, particularly around Manly Cove, are a common issue for Council.

I recommend Council submits a planning proposal to insert a new local noise provision for licensed premises into the Manly LEP for the Department's consideration. Council should ensure the planning proposal contains sufficient justification in accordance with section 55 of the *Environmental Planning and Assessment Act 1979* and the Department's 'A guide to preparing planning proposals'.

If you have any further questions about this matter, please contact Ms Nava Sedghi of the Department's Metropolitan Region (East) branch on (02) 8575 4117.

Yours sincerely


Lee Mulvey
Director, Metropolitan Region (East)
Planning Services

17/3/15

ATTACHMENT 2

Environmental Services Division Report No. 12.DOC - Proposed Amendment to Manly LEP 2013 Regarding Noise Mitigation Measures for Licensed Premises Planning Proposal for Local LEP Provision Regarding Noise Mitigation Measures for Licensed Premises

Manly LEP 2013 Planning Proposal

New Local LEP Provision regarding noise mitigation measures for licensed premises.

Part 1 – Objectives of the planning proposal

The objective of this planning proposal is to ensure that any determination for a development application for the use of licensed premises must consider any detrimental noise impacts on any residential accommodation in the vicinity of the premises, and adopt mitigation measures if appropriate.

Part 2 – Explanation of provisions

This planning proposal seeks to amend the Manly LEP 2013 written instrument by inserting a new clause in Part 6 'Additional Local Provisions' of the LEP. The new clause would require any development application (including a change of use) for a licensed premise to have regard to noise nuisance on any residential accommodation in the vicinity.

The consent authority (i.e. Manly Council) would be required to have a statutory consideration for the impact of noise from the proposed licensed premises on any residential accommodation in the vicinity when determining development applications

This will be achieved by inserting the following clause in Part 6 of the LEP;

6.21 Noise impacts - licensed premises

- (1) *The objective of this clause is to ensure that development applications for licensed premises consider noise impacts on any residential accommodation in the vicinity.*
- (2) *Before determining a development application involving the use of land as licensed premises, the consent authority must consider any impact of the proposed development in relation to noise nuisance on any residential accommodation in the vicinity.*
- (3) *In this clause:*

licensed premises has the same meaning as it has in the Liquor Act 2007

The term '*licensed premises*' is included in the clause as it does not appear in the Standard Instrument LEP dictionary. For the purpose of the clause, licensed premises has the same meaning as it has in the *Liquor Act 2007*. The *Liquor Act 2007* defines licensed premises as

licensed premises means the premises to which a licence relates.

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There are seven (7) liquor licence categories in NSW, and which the clause would be applicable if development applications are received in relation to these licensed premises. The following licence categories and descriptions are taken from NSW Trade & Investment – Office of Liquor, Gaming & Racing (http://www.olgr.nsw.gov.au/liquor_license_apps.asp#l)

Hotel licence - Hotel licences apply to premises where the primary purpose is the sale and supply of alcohol. This includes a variety of hotel venues (including accommodation hotels), as well as small and large bars.

Club licence - Club licences apply to registered clubs.

Small bar licence - A small bar licence allows liquor to be sold in a bar that is restricted to a maximum of 60 patrons.

Packaged liquor licence - Packaged liquor licences will apply to liquor stores selling takeaway alcohol only.

On-premises licence - On-premises licences apply to a variety of purposes including accommodation venues, restaurants, catering services, vessels, tourism businesses, tertiary institutions, and public entertainment venues.

Producer/wholesaler licence - Producer/wholesaler licences apply to wine producers, brewers, distillers, and wholesalers.

Limited licence - Limited licences will allow alcohol sales for consumption on the licensed premises at a function or multiple functions a special event and a trade fair.

Part 3 – Justification

The following section addresses questions set out in Section 2.3(a) of *A Guide to Preparing Planning Proposals* in meeting the objectives of the planning proposals.

Section A – Need for the planning proposal

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

No. The planning proposal is not a result of any strategic study or report.

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

Yes. The planning proposal is the best means of applying the consideration of noise impacts from licensed premises on nearby residential accommodation.

At Council's Planning and Strategy Meeting 4th August 2014, Council considered two options (see **Attachment 1**).

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The first option is the subject of this planning proposal and the preferred option Council resolved to adopt.

The second option was to amend LEP clause 6.13 'Design Excellence' to incorporate an additional subclause stating that Council must give consideration to whether development is likely to protect residential accommodation in the vicinity from significant adverse noise impacts. However, this option only affected land in Zone B2 Local Centres and Key Sites mapped on the LEP Key Sites Map. It also did not stipulate the type of development i.e. license premises.

Therefore, the first option was considered the most appropriate, and the option that Council resolve to base this planning proposal on.

Section B – Relationship to strategic planning framework

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

Yes. The planning proposal will reduce land use conflicts, better improving residential amenity whilst also ensuring applicants for licenced premises have a greater certainty over any noise mitigation requirements early in the development application process.

The planning proposal is considered to be consistent with the objectives and actions of "A Plan for Growing Sydney", and will not limit any regional or sub-regional strategy. The objective of this planning proposal will better balance residential amenity in regards to acoustic impacts from licenced premises, making development considerate for Manly's residential population, whilst also offering applicants for licensed premises an opportunity to address any noise concerns through the LEP.

4. Is the planning proposal consistent with Council's local strategy or other local strategic plan?

Yes. The planning proposal is considered consistent with Manly Council's *Community Strategic Plan - Beyond 2024* local strategy, and will not limit any other local strategic plans.

Chapter 5 'Community Goals and Strategies' of the Community Strategic Plan identifies the need for Manly to improve public safety and local amenity by addressing "*Manly's drinking culture and introduction of small bars*".

The planning proposal aims to meet the needs of local residential amenity, in regards to noise, by making licensed premises considerate of their noise impacts on residential accommodation in the vicinity. In addition, licenced premises will benefit from having full regard to noise mitigation measures considered before development proceeds, reducing any potential for complaints or expensive retrofitting.

The planning proposal will therefore enable Manly Council to meet the objectives identified in Chapter 5 of its Community Strategic Plan.

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

Yes, the planning proposal is considered consistent with applicable State Environmental Planning Policies (SEPPs).

The list of applicable SEPPs in Manly are:

- *State Environmental Planning Policy 19 – Bushland in Urban Areas*
- *State Environmental Planning Policy 21 – Caravan Parks*
- *State Environmental Planning Policy 30 – Intensive Agriculture*
- *State Environmental Planning Policy 32 – Urban Consolidation (Redevelopment of Urban Land)*
- *State Environmental Planning Policy 33 – Hazardous and Offensive Development*
- *State Environmental Planning Policy 50 – Canal Estate Development*
- *State Environmental Planning Policy 55 – Remediation of Land*
- *State Environmental Planning Policy 64 – Advertising and Signage*
- *State Environmental Planning Policy 65 – Design Quality of Residential Flat Development*
- *State Environmental Planning Policy 70 – Affordable Housing (Revised Schemes)*
- *State Environmental Planning Policy 71 – Coastal Protection*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*
- *State Environmental Planning Policy (Major Development) 2005*
- *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*
- *State Environmental Planning Policy (Infrastructure) 2007*
- *State Environmental Planning Policy (Miscellaneous Consent Provisions) 2007*
- *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*
- *State Environmental Planning Policy (Affordable Rental Housing) 2009*
- *State Environmental Planning Policy (State and Regional Development) 2011*
- *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Deemed State Environmental Planning Policy)*

The planning proposal does not counteract any SEPP that is applicable to the Manly LGA. The planning proposal adds a statutory consideration of the noise impact of licensed premises on residential accommodation within the vicinity of the premises. It does not restrict, or add any additional land uses to any zones, or impose over onerous development considerations not already outlined by a SEPP.

The planning proposal is considered consistent with the *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*. It does not seek to restrict the development potential of the Sydney Harbour Catchment.

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

Yes. The planning proposal is consistent with applicable Section 117 Ministerial directions.

The planning proposal does not seek to rezone land, or include additional land uses in any of the standard instrument Land Use tables. Nor does it seek to place any further development standards on any land or land use within the Manly LGA or the standard instrument LEP. It also does not seek to prohibit development in any area of Manly. It is therefore considered not to have a major impact on any Section 117 directions.

The addition of the consideration of noise nuisance in the planning proposal seeks to reinforce the existing and future compatibility of development by the use of appropriate mitigation measures, and reduce the possibility of land use conflict through these measures.

Section C – Environmental, social and economic impact

7. 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 critical habitat, threatened species, populations, ecological communities or their habitats will be adversely affected as a result of the proposal.

8. 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 likely environmental effects as a result of the planning proposal.

9. Has the planning proposal adequately addressed any social and economic effects?

Yes. The planning proposal seeks to address existing challenges the Manly LGA faces regarding land use conflicts between licensed premises and residential amenity.

The need for a planning proposal originally arose out of problems regarding noise impacts on residents around Manly Cove from Manly Wharf, and the need for mitigation strategies for existing and future premises on Manly Wharf. A Notice of Motion was presented to Council's Ordinary Meeting on 12 May 2014 raising concerns regarding noise from licensed premises within the area. Please see **Attachment 2**.

It is anticipated the planning proposal will greatly reduce social and economic issues related to these two types of development, by:

- Reducing noise complaints from the operation of licenced premises,
- Ensuring land use conflicts are addressed before any development proceeds, creating applicant certainty from their business investment

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- Through the clause, applicants for licenced premises are forewarned and fully aware of the importance Council places in considering noise nuisance on residential accommodation.
- The introduction of a systematic and statutory requirement for the consideration of noise nuisance, ensuring social and economic certainty for residents and applicants have been addressed by Manly Council.

Section D - State and Commonwealth interests

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

The issue of public infrastructure is not applicable to the planning proposal.

11. What are the view of State and Commonwealth public authorities consulted in accordance with the Gateway determination?

Council has sought support from the Department of Planning and Environment since the Council's Planning and Strategy Meeting on *4th August 2014* (see **Attachment 1**)

Council wrote to the Department on *11 August 2014* of Councils intention to proceed with an LEP amendment, and meet with the Department of Planning and Environment's Metropolitan (East) team on *22nd September 2014* to present and discuss the case for a planning proposal. Council officers have provided additional information to the Department on several occasions to clarify Council's position.

Council received a letter from the Department dated *19th March 2015* recommending a planning proposal be submitting to the Department to insert a new local noise provision for licensed premises in the LEP (see **Attachment 3**)

Other relevant public authorities will be consulted with in accordance with the Gateway determination.

Part 4 – Mapping

This planning proposal does not comprise of any new maps or map amendments.

Part 5 – Community Consultation

It is considered the planning proposal will be publically exhibited for a period of 14 days, and open to consultation with State agencies and public authorities for 21 days.

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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)	June 2015.
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)	July 2015 (21 days)
Public exhibition period	July 2015 (14 days)
Timeframe for consideration of submissions	August 2015.
Date of submission to the department to finalise the LEP	September 2015.
Anticipated date RPA (Manly Council) will make the plan (if delegated)	September 2015.
Anticipated date RPA (Manly Council) will forward to the department for notification	September/October 2015.

44/15 RESOLVED: (Heasman / Burns)

THAT Council proceed to prepare and make the Draft Amendment to the Manly Local Environmental Plan in relation to Manly Hospital and Dalwood Children's' Home, as exhibited.

Environmental Services Division Report No. 12

Proposed Amendment to Manly LEP 2013 Regarding Noise Mitigation Measures for Licensed Premises (MC/15/42271)**MOTION (Le Surf / J Griffin)**

That:

1. Council adopt the Planning Proposal to amend the Manly LEP 2013 to insert a specific LEP noise provision regarding noise mitigation measures for licensed premises; and
2. Council Submit the Planning Proposal to the Department of Planning and Environment's LEP Gateway Determination Panel for determination and making of the Amending Manly LEP 2013 under delegation.

For the Motion: Councillors Aird, Burns, Heasman, Bingham, Pickering, Le Surf, J Griffin, C Griffin and Hay AM

Against the Motion: Nil.

45/15 RESOLVED: (Le Surf / J Griffin)

That:

1. Council adopt the Planning Proposal to amend the Manly LEP 2013 to insert a specific LEP noise provision regarding noise mitigation measures for licensed premises; and
2. Council Submit the Planning Proposal to the Department of Planning and Environment's LEP Gateway Determination Panel for determination and making of the Amending Manly LEP 2013 under delegation.

Environmental Services Division Report No. 13

Proposed Rezoning of Manly Industrial Estate, Balgowlah, from Zone IN2 Light Industrial, to Zone B6 Enterprise Corridor. (MC/15/44571)**MOTION (Le Surf / Pickering)**

That:

Council prepare to make a Planning Proposal to amend the Manly LEP 2013 to rezone land from Zone IN2 Light Industrial to Zone B6 Enterprise Corridor at the Manly Industrial Estate, Balgowlah.

For the Motion: Councillors Aird, Burns, Heasman, Bingham, Pickering, Le Surf, J Griffin, C Griffin and Hay AM

Against the Motion: Nil.