

TO: Planning and Strategy Committee - 4 August 2014
REPORT: Environmental Services Division Report No. 25
SUBJECT: Report on options to amend Manly LEP 2013 in relation to noise mitigation measures for Manly Cove and other areas.
FILE NO: MC/14/63035

SUMMARY

This report presents two (2) options available to Council to amend the Manly Local Environmental Plan 2013 in regards to mitigating noise impacts around Manly Cove and other areas. The preferred option is option one (1) as presented in this report.

REPORT

BACKGROUND

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.

This report is prepared for Council's consideration in regards to part 5 (five) of Council's resolution in amending the LEP to assist with the issues raised.

In relation to options presented, consideration has been given to ensure there is no inconsistency with *State Environmental Planning Policy (Sydney Harbour Catchment) 2005*.

Council will need to confirm the viability of a planning proposal with the Department of Planning and Environment prior to submitting any planning proposal for an LEP amendment in regards to local noise provisions.

Environmental Services Division Report No. 25 (Cont'd)**Potential Opportunities for LEP Amendments**

It is considered that there are two (2) options available to Council in amending the Manly LEP 2013.

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.

The term 'licensed premises' does not appear in the LEP Dictionary, therefore the meaning under the *Liquor Act 2007* will need to be referenced under this local provision.

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.

Other LEPs with a similar clause

No other NSW Metropolitan LEPs are referenced in relation to this option. However it is noted that clause 6.5 'Public safety – licensed premises' of the *Newcastle LEP 2012* provides for similar considerations required for licensed premises but is in relation to 'public safety' rather than noise.

Newcastle LEP 2012 states:

6.5 Public safety—licensed premises

- (1) *The objective of this clause is to ensure that development applications for licensed premises consider any impact on public safety.*

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- (2) *Before granting consent for development involving the use of land as licensed premises, the consent authority must consider any impact of the proposed development on public safety.*
- (3) *In this clause:
licensed premises means a hotel within the meaning of the Liquor Act 2007 or a registered club.*

Option 1 for a local Manly LEP provision has been drafted similar to the existing Newcastle LEP 2012 local provision.

Option 2 – Amendment to Manly LEP Clause 6.13 – Design Excellence

This option utilises the existing Manly LEP clause 6.13 'Design excellence.' This clause requires that development exhibits design excellence (considering a range of matters) at specific sites.

6.13 Design excellence

- (1) *The objective of this clause is to deliver in Manly the highest standard of architectural and urban design of buildings and public spaces.*
- (2) *This clause applies to development involving the erection of a new building or external alterations to an existing building:*
 - (a) *on land in Zone B2 Local Centre, and*
 - (b) *on land to which clause 6.19 applies.*
- (3) *Development consent must not be granted for development to which this clause applies unless the consent authority considers that the development exhibits design excellence.*
- (4) *In considering whether development exhibits design excellence, the consent authority must give consideration to whether the development:*
 - (a) *contains buildings that consist of a form, bulk, massing and modulation that are likely to overshadow public open spaces, and*
 - (b) *is likely to protect and enhance the streetscape and quality of the public realm, and*
 - (c) *clearly defines the edge of public places, streets, lanes and plazas through separation, setbacks, amenity, and boundary treatments, and*
 - (d) *minimises street clutter and provides ease of movement and circulation of pedestrian, cycle, vehicular and service access, and*
 - (e) *encourages casual surveillance and social activity in public places, streets, laneways and plazas, and*
 - (f) *is sympathetic to its setting, including neighbouring sites and existing or proposed buildings, and*
 - (g) *protects and enhances the natural topography and vegetation including trees, escarpments or other significant natural features, and*
 - (h) *promotes vistas from public places to prominent natural and built landmarks, and*
 - (i) *uses high standards of architectural design, materials and detailing appropriate to the building type and location, and*
 - (j) *responds to environmental factors such as wind, reflectivity and permeability of surfaces, and*
 - (k) *coordinates shared utility infrastructure to minimise disruption at street level in public spaces.*

While these considerations include a range of amenity issues, particular reference to noise impacts is not currently included.

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Council may propose an additional consideration at sub clause (4) stating that the Council must give consideration to whether the development is likely to protect residential accommodation in the vicinity from significant adverse noise impacts, particularly in the evening.

To ensure the design excellence clause applies to relevant sites around Manly Cove, it is proposed the sites are placed on the LEP Key Sites Map. The clause would then be amended under sub clause (2) to include land to which the LEP Key Sites Map applies, in addition to Zone B2 Local Centre and *clause 6.19 'Development in St Patrick's Estate'*.

As such, the consideration of noise impacts would also apply to Manly's Local Centres (Manly, Balgowlah and Seaforth) where development assessment regularly deals with the impacts of noise (generally) on residential uses. The amelioration of potential noise impacts in the design of buildings would be recognised as part of design excellence.

This amendment supports paragraph 4.2.5.6 – Late Night Venues, of the Manly DCP 2013.

Other LEPs with a similar clause

The addition of this sub clause is referenced in various City of Sydney LEPs, Randwick LEP and Leichhardt LEP, which include consideration of 'acoustical privacy' and/or 'noise' as matters of consideration in determining design excellence.

In drafting such an amendment the current application to 'new buildings or external alterations' may also be reviewed to include internal alterations that may effectively provide design excellence including minimising amenity impacts such as noise nuisance.

CONCLUSION

This report presents two options to amend the Manly LEP 2013 in relation to noise mitigation measures. Council will need to confirm the viability of a planning proposal with the Department of Planning and Environment prior to submitting any planning proposal for an LEP amendment in regards to local noise provisions.

Option 1 (one) is the preferred option in regards to considering noise impacts on neighbouring residential accommodation from licenced premises. It is a stand-alone clause that would be distinct and separate from the exhaustive list of design excellence requirements. This would reduce the likelihood of being overlooked or marginalised by any applicant. Option 1 will also capture all developments (including change of use), whereas Option 2 will not.

RECOMMENDATION

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.

ATTACHMENTS

There are no attachments for this report.

Environmental Services Division Report No. 25**Report on options to amend Manly LEP 2013 in relation to noise mitigation measures for Manly Cove and other areas. (MC/14/63035)****SUMMARY**

This report presents two (2) options available to Council to amend the Manly Local Environmental Plan 2013 in regards to mitigating noise impacts around Manly Cove and other areas. The preferred option is option one (1) as presented in this report.

MOTION (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.

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

Against the Resolution: Nil.

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.

Environmental Services Division Report No. 26**Development Applications Being Processed During August 2014 (MC/14/84983)****SUMMARY**

Development applications being processed during August 2014.

MOTION (Le Surf / Heasman)

THAT the information be received and noted.