

**Planning proposal to introduce noise mitigation clause for new licensed premises**

Proposal Title : **Planning proposal to introduce noise mitigation clause for new licensed premises**

Proposal Summary : **The aim of the planning proposal is to ensure that, prior to the determination of an application for a licensed premise, the consent authority must consider noise impacts on residential accommodation in the vicinity of the premises, and adopt mitigation measures if appropriate.**

PP Number : **PP\_2015\_MANLY\_001\_00**      Dop File No : **15/07172**

**Proposal Details**

Date Planning Proposal Received : **29-Apr-2015**      LGA covered : **Manly**

Region : **Metro(CBD)**      RPA : **Manly Council**

State Electorate : **MANLY**      Section of the Act : **55 - Planning Proposal**

LEP Type : **Policy**

**Location Details**

Street :

Suburb :      City :      Postcode :

Land Parcel : **Manly LGA**

**DoP Planning Officer Contact Details**

Contact Name : **Lauren Templeman**

Contact Number : **0285754112**

Contact Email : **lauren.templeman@hotmail.com**

**RPA Contact Details**

Contact Name : **Nayeem Islam**

Contact Number : **0299761582**

Contact Email : **nayeem.islam@manly.nsw.gov.au**

**DoP Project Manager Contact Details**

Contact Name :

Contact Number :

Contact Email :

**Land Release Data**

Growth Centre :      Release Area Name :

Regional / Sub Regional Strategy : **Metro Inner North subregion**      Consistent with Strategy : **N/A**

## Planning proposal to introduce noise mitigation clause for new licensed premises

|                        |   |                                                      |     |
|------------------------|---|------------------------------------------------------|-----|
| MDP Number :           |   | Date of Release :                                    |     |
| Area of Release (Ha) : |   | Type of Release (eg Residential / Employment land) : | N/A |
| No. of Lots :          | 0 | No. of Dwellings (where relevant) :                  | 0   |
| Gross Floor Area :     | 0 | No of Jobs Created :                                 | 0   |

The NSW Government Lobbyists Code of Conduct has been complied with : **Yes**

If No, comment : **The Department of Planning and Environment's Code of Practice in relation to communication and meetings with lobbyists has been complied with. Metropolitan Region (East) has not met any lobbyist in relation to this proposal, nor has the Director been advised of any meetings between other Department officers and lobbyists concerning this proposal.**

Have there been meetings or communications with registered lobbyists? : **No**

If Yes, comment :

### Supporting notes

Internal Supporting Notes : **Council's preference is for a new stand-alone clause within Manly LEP 2013 to:**  
- capture all development applications for licensed premises (including change of use), not just development applications for selected zones or sites; and  
- ensure that noise impacts are not overlooked or marginalised by an applicant.

**Newcastle LEP 2012 contains a similar local provision which aims to ensure that development applications for licensed premises consider any impact on public safety (clause 6.5 Public safety - licensed premises).**

**While noise impacts of new developments are considered under Section 79C of the Environmental Planning and Assessment Act, 1979 (EP&A Act), the proposal is considered to have merit as it aims to highlight the importance of managing noise impacts from licensed premises on residential accommodation in Manly. The proposal also aims to ensure that potential land use conflicts are addressed upfront, creating greater certainty for businesses about their conditions of operation.**

**The planning proposal is not inconsistent with relevant s117 Directions or State Environmental Planning Policies. The proposal not inconsistent with the relevant strategic planning framework.**

**Manly Council has accepted the Minister's offer to delegate his plan-making functions under the EP&A Act. Council is seeking delegation to carry out the Minister's functions under section 59 of the EP&A Act to progress this planning proposal.**

External Supporting Notes : **On 12 May 2014, Council resolved to implement a number of noise mitigation measures for Manly Cove, including an amendment to Manly LEP 2013.**

**Council anticipate the proposed noise control provision in the Manly LEP 2013 would help reduce the number of submissions received for development applications relating to licensed premises particularly in the vicinity of Manly Cove and Manly Corso.**

### Adequacy Assessment

**Statement of the objectives - s55(2)(a)**

Is a statement of the objectives provided? **Yes**

Comment : The aim of the planning proposal is to ensure that, prior to the determination of an application for a licensed premise, the consent authority must consider noise impacts on residential accommodation in the vicinity of the premises, and adopt mitigation measures if appropriate.

**Explanation of provisions provided - s55(2)(b)**

Is an explanation of provisions provided? **Yes**

Comment : The planning proposal seeks to amend Manly LEP 2013 by inserting the following clause in Part 6 - Additional Local Provisions:

**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. The Liquor Act 2007 defines licensed premises to mean "the premises to which a licence relates."

The Liquor Act 2007 includes seven licence categories.

hotel licence - applying premises where the primary purpose is the sale and supply of alcohol ie. hotel venues, small and large bars;

club licence - applying to registered clubs;

small bar licence - applying to bar restricted to a maximum of 60 patrons;

package liquor licence - applying to liquor stores selling takeaway alcohol only;

on-premises licence - applying to various premises including accommodation venues, restaurants, tertiary institutions, vessels, public entertainment venues;

producer/wholesaler licence - applying to wine producers, brewers, distillers and wholesalers;

limited licence - allowing alcohol sales for consumption at a function, special event or trade fair.

**Justification - s55 (2)(c)**

a) Has Council's strategy been agreed to by the Director General? **No**

b) S.117 directions identified by RPA :

\* May need the Director General's agreement

Is the Director General's agreement required? **No**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

**SREP (Sydney Harbour Catchment) 2005**

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e) List any other matters that need to be considered :

The planning proposal is not inconsistent with any Section 117 Directions or State Environmental Planning Policies.

Manly Wharf is located within the Foreshores and Waterways Area under the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Harbour SREP). Manly Council is the consent authority for land/water interface development under clause 5(1) of the Harbour SREP.

The Harbour SREP provides a comprehensive strategic planning framework for land within the Foreshores and Waterways Area, including a range of matters for consideration by consent authorities when assessing development within the Foreshores and Waterways Area.

Given the new noise provision will only operate on land to which Manly LEP 2013 applies, the planning proposal may not assist Council in controlling noise for new licensed premises where the REP applies instead (for example, Manly Wharf).

Prior to exhibition, the planning proposal should be revised to include a discussion on how the planning proposal would work with the provisions of the REP in the event of a development application for land/water interface development, in particular, at Manly Wharf. This explanation should be consistent with recent Land and Environment Court judgements relating to Manly Wharf.

Have inconsistencies with items a), b) and d) being adequately justified? **N/A**

If No, explain :

### Mapping Provided - s55(2)(d)

Is mapping provided? **No**

Comment :

The planning proposal does not require new LEP maps or LEP map amendments.

A non-LEP map showing Foreshore and Waterways Areas under the Harbour SREP, where Manly Council is the consent authority for land/water interface development ie. Manly Wharf, is required. This map should refer to the explanatory note as requested above.

### Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment :

Consultation will be undertaken in accordance with the conditions of the Gateway Determination. 14 days is considered sufficient.

Council is required to consult with Transport for NSW - Roads and Maritime Services and NSW Trade and Investment - Office of Liquor, Gaming and Racing.

### Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

### Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment :

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### Proposal Assessment

#### Principal LEP:

Due Date : **April 2015**

Comments in  
relation to Principal  
LEP :

**On 5 April 2013, Manly LEP 2013 was published on the NSW Legislation website and came into effect on 19 April 2013.**

#### Assessment Criteria

Need for planning  
proposal :

**The planning proposal was prompted by noise impacts from hotels and restaurants in Manly Wharf, ferries and other activities on the foreshore, on residents living in the dense residential zone around Manly Cove.**

Consistency with  
strategic planning  
framework :

**The planning proposal is not inconsistent with the aims of A Plan for Growing Sydney and will not limit any sub-regional strategy.**

**The planning proposal is consistent with Manly Council's Community Strategic Plan - Beyond 2024 which identifies the need for Manly to improve public safety and local amenity by addressing Manly drinking culture and introduction of small bars.**

Environmental social  
economic impacts :

#### **Environmental Impacts:**

**No critical habitat, threatened species, populations, ecological communities or their habitats will be adversely affected as a result of the proposal.**

#### **Social and Economic Impacts:**

**The planning proposal was prompted by noise impacts, from hotels and restaurants in Manly Wharf, ferries and other activities on the foreshore, on residents living in Manly Cove.**

**The aim of the proposal is to make applicants for licensed premises in Manly fully aware of the importance Council places on minimising noise impacts on residential accommodation. It also aims to address potential land use conflicts upfront and provide greater certainty for businesses about their conditions of operation.**

#### Assessment Process

|                 |                |                                    |                |
|-----------------|----------------|------------------------------------|----------------|
| Proposal type : | <b>Routine</b> | Community Consultation<br>Period : | <b>14 Days</b> |
|-----------------|----------------|------------------------------------|----------------|

|                            |                 |              |            |
|----------------------------|-----------------|--------------|------------|
| Timeframe to make<br>LEP : | <b>6 months</b> | Delegation : | <b>RPA</b> |
|----------------------------|-----------------|--------------|------------|

|                                                   |                                                                                                                           |
|---------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------|
| Public Authority<br>Consultation - 56(2)<br>(d) : | <b>Trade and Investment NSW - Office of Liquor, Gaming and Racing<br/>Transport for NSW - Roads and Maritime Services</b> |
|---------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------|

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons :

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

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Identify any additional studies, if required, :

If Other, provide reasons :

Identify any internal consultations, if required :

**No internal consultation required**

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

### Documents

| Document File Name                                                                              | DocumentType Name        | Is Public |
|-------------------------------------------------------------------------------------------------|--------------------------|-----------|
| Letter to Carolyn McNally NSW Department of Planning and Environment.pdf                        | Proposal Covering Letter | No        |
| Manly LEP 2013 Planning Proposal Local Noise Mitigation Provision.pdf                           | Proposal                 | No        |
| Attachment 1 - Report and Resolution to Council Planning and Strategy Meeting 4 August 2014.pdf | Proposal                 | No        |
| Attachment 2 - Notice of Motion 12 May 2014.pdf                                                 | Proposal                 | No        |
| Manly Council Ordinary Meeting Report and Resolution 20 April 2015.pdf                          | Proposal                 | No        |
| land and environment court judgement.pdf                                                        | Study                    | No        |

### Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions:

Additional Information : **It is recommended that:**

- 1. The planning proposal be supported;**
- 2. The planning proposal be considered low impact and exhibited for a period of no less than 14 days;**
- 3. During exhibition, Council seek comment from Transport for NSW - Roads and Maritime Services and NSW Trade and Investment - Office of Liquor, Gaming and Racing. Each authority is to be given at least 21 days to comment on the proposal.**
- 4. Council update the planning proposal to outline how the planning proposal would operate with the provisions of:**
  - the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005; and**
  - the Liquor Act 2007, and associated regulations.**

**This explanation should clearly articulate why the planning proposal is the best means of achieving Councils intended outcomes, in the context of existing legislation and recent Land and Environment Court judgements relating to Manly Wharf, and whether there are other options available outside of the LEP to deal with this matter.**
- 5. Council include a map in the planning proposal that shows Foreshore and Waterways Areas under the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005, where Manly Council is the consent authority for land/water interface development ie. Manly Wharf;**
- 6. A public hearing is not required;**

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7. The planning proposal is to be finalised within 6 months from the date of the gateway determination.

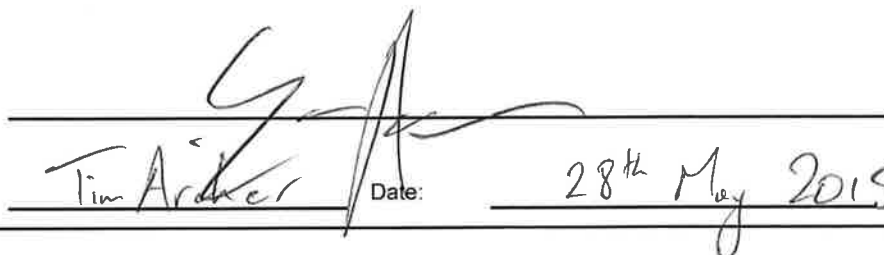
8. Manly Council be granted delegation to carry out the Minister's functions under section 59 of the EP&A Act to progress this planning proposal.

Supporting Reasons :

While the consideration of noise impacts in relation to a development application is covered under Section 79C of the Environmental Planning and Assessment Act, 1979, the proposal is considered to have merit as it aims to elevate the importance of managing noise impacts from licensed premises on residential accommodation. The proposal also aims to ensure that potential land use conflicts are addressed upfront, creating greater certainty for businesses about their conditions of operation.

The planning proposal is not inconsistent with any relevant s.117 Direction or State Environmental Planning Policies. The proposal not inconsistent with the relevant strategic planning framework.

Signature:



Printed Name:

Tim Archer

Date:

28<sup>th</sup> May 2015