

**TO:** Planning and Strategy Committee - 7 September 2009  
**REPORT:** Planning And Strategy Division Report No. 35  
**SUBJECT:** Manly Local Environmental Plan 1988 Draft Amendment re Third Party Advertising  
**FILE NO:**

## SUMMARY

This report recommends exempting third party advertising signage from development consent in accordance with Council's resolution in this matter on 15 June 2009 and where such signage conforms to the Manly DCP definition of "commercial sign". The mechanism for such an exemption would be to amend the Manly LEP 1988 by adding this development type to the schedule of Exempt Development (schedule 8, MLEP). Potential impacts in relation to this proposal are considered in the drafting of the recommended LEP amendment and Council is also advised of the next steps in the process. The requirements for preparing a planning proposal to the Department of Planning are detailed. It is recommended that Council initiate an amendment to Manly Local Environmental Plan 1988 to permit third part advertising structures as exempt development.

## REPORT

### Introduction

At its Ordinary Meeting of 15 June 2009, the Council resolved:

*"That in order that there be clarity and consistency in terms of the status of third party advertising signage, pursuant to the provisions of Manly Local Environmental Plan 1988 and Manly Development Control Plan for Advertising Signs 1993, third party advertising signage be deemed exempt development where such signage conforms to the definition of "commercial sign" of Manly Development Control Plan for Advertising Signs 1993."*

The purpose of this report is to respond to the above resolution by detailing an amendment to Manly Local Environmental Plan 1988 to make third party advertising signage exempt development (i.e. no DA approval required) where such signage conforms to the definition of "commercial sign" in Part E of Manly Development Control Plan for Advertising Signs 1993. The definition of "commercial sign" is detailed below under 'Existing Plans and Policies'.

The Manly DCP definition of 'commercial sign' broadly includes signs that identify or describe the place or premises, particulars of any occupation, directional signs as well as signs that advertise certain goods provided at the place or premises.

Third party advertising signage may be generally described as signs used to advertise a certain good or service as distinct from signs that identify buildings and occupations and generally assist people to find their way around Manly. Third party advertising signs, as permitted under the DCP definition are only loosely related to the places or premises where they are proposed. For example, a third party sign may advertise a certain drink, ice cream or cigarettes etc. if any of these goods are sold on the premises. The size of such a sign

under the DCP definition would also need to fit within a rectangular figure 1.2m in length and 0.6m in height.

## **Existing Plans and Policies**

### *Manly Local Environmental Plan 1988 ('The LEP')*

Third party advertising signage is not a development type that is listed as exempt development under clause 10A and Schedule 8 under the LEP. The only exemptions in the LEP concern certain identification signs. Advertising structures are generally permissible with development consent in Manly Business and Industrial zones; and prohibited in the Residential, Open Space and Special Use zones.

Also, the relevant objectives concerning advertising structures in the LEP Business Zone is:

*"1. To communicate to people in Manly the facilities, amenities, goods and services which exist within the Business Zone."*

### *Manly Development Control Plan for Advertising Signs 1993 ('The DCP')*

Under Part E the DCP, 'commercial sign' are subject to the following definitional terms:

*'an advertisement whether illuminated or not which:*

- (i) has an outline that would fit within a rectangular figure 1.2m in length and 0.6m in height; and*
- (ii) in respect of any place or premises to which it is affixed contains only:*
  - (a) a reference to the identification or description of the place or premises;*
  - (b) a reference to the identification or description of any person residing or carrying on an occupation at the place or premises;*
  - (c) particulars of any occupation carried on at the place or premises;*
  - (d) such directions or cautions as are usual or necessary relating to the place or premises or any occupation carried on there at;*
  - (e) particulars or notifications required or permitted to be displayed by or under any Act or any Act of the Parliament of the Commonwealth;*
  - (f) particulars relating to the goods, commodities or services dealt with or provided at the place or premises;*
  - (g) a notice that the place or premises is or are for sale or letting together with particulars of the sale or letting;*
  - (h) particulars of any activities held or to be held at the place or premises; or*
  - (i) a reference to an affiliation with a trade, professional or other association relevant to the business conducted on the place or premises;*

The Objectives of the DCP refer to the need to ensure advertising is 'in harmony with the buildings to which they are attached' and as such appear to limit third party signage. In this regard general objective b) is as follows:

*"To ensure that advertising is in harmony with the buildings to which they are attached, and to their surroundings."*

Section 2.10 of the DCP specifically deals with the advertising content of signs and states:

*"Only under exceptional conditions will third party advertising be permitted i.e. advertising content must relate to the building or premises or goods sold on the premises to which it is attached. No cigarette or alcohol advertising will be permitted, unless it relates to goods sold on the premises and does not dominate the advertising area of the subject sign."*

Comment: Third party advertising is not specifically defined in the DCP but as discussed above, is considered to be a type of advertisement under the DCP definition of 'commercial sign'. All such commercial signs must under the DCP definition relate to goods sold on the premises.

*State Environmental Planning Policy (Exempt and Complying Development) 2007 (the Codes SEPP)*

The Codes SEPP specifies certain advertisements as exempt development. At this stage the Codes SEPP only lists changes to the content of identification signs as a type of exempt development. However the Department of Planning indicate that further amendments to the Codes SEPP will exempt a wider range of advertising structures. It is also noted that the Codes SEPP override any similar LEP provisions.

In relation to the draft codes on exhibition earlier this year the Department identified advertising structures as complying development where not on a heritage item, not illuminated or not encroaching over the footpath less than 2.6m above ground level. Notwithstanding these exhibited draft documents, it is not certain at this stage whether third party advertisements will be a type of exempt developments under future versions of the Codes SEPP. Should Council proceed with the exempt development type as resolved, then similar provisions are recommended in the drafting of the proposed amendment as recommended.

### **Draft LEP Amendment**

The purpose of the proposed amendment is to permit third party advertising signage as exempt development subject to compliance with the definition of commercial signs in the DCP i.e. complying with minimum dimensions and advertising a product sold on the premises. Also, it is proposed that the exemption be limited to non-illuminated signs in centres; with just one sign per premises and not on a heritage item. The drafted LEP amendment (including a minor clarifying amendment in the DCP) is described as follows:

1. Insert into Schedule 8 "Exempt Development" in the Manly LEP 1988, a new development type with additional standards as follows:

*"Development Type: 'Signs – Third Party Advertising'  
Additional Standards:*

- Only one sign per premises;
- In business and industrial zones only;
- Comply with the definition of 'commercial sign' in the Advertising DCP. In particular:
  - Advertising content must relate to a good, commodity or service dealt with or provided at the place or premises;
  - outline that would fit within a rectangular figure 1.2m in length and 0.6m in height;
  - must not be illuminated;
  - not encroach on a footpath or street (as defined by the Roads Act, 1993)"

2. Reword DCP paragraph 2.10 - 'Advertising Content', to clarify conditions for third party advertising to read:

*"The advertising content of all third party advertising must*

- *do not relate to the building or premises or goods sold on the premises to which it is attached*
- *do not dominate the advertising area of the subject sign."*

## **Assessment**

Exempt development is development of minimal environmental impact that may be carried out without any approval under the planning system.

Third Party Advertisement Signs are of a commercial nature or for promotional purposes that do not generally serve to assist people in identifying premises or places or providing directional assistance. As well, the signs are only loosely related to the buildings or uses they are located. As such, third party signs can detract from other signs which assist and serve to identify buildings or uses. The potential also exists for advertising signage to detrimentally affect amenity and townscape qualities, and adding to the visual clutter of a locality.

### *Preparation of a Planning Proposal*

The next stage in preparing the amending LEP is the preparation of a Planning Proposal is to explain the effect of and justification for the plan under s.55(1) of the EP&A Act. The Minister of Planning (or delegate) will then determine whether the planning proposal is to proceed through what is described as the 'Gateway' process. The Gateway acts as a checkpoint to ensure that the proposal is justified before further studies are done and resources are allocated to the preparation of a plan. A community consultation process is also determined at this time. Consultations occur with relevant public authorities and, if necessary, the proposal is varied.

Council's justification for the recommended LEP amendment under s.55(2)(c) of the EP&A Act include the following considerations where relevant.

#### *Need for the planning proposal:*

- 1. Is the planning proposal 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?*
- 3. Is there a net community benefit?*

#### *Environmental, social and economic impact:*

- 1. How has the planning proposal adequately addressed any social and economic effects?*
- 2. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?*

#### *Relationship to strategic planning framework:*

- 1. 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?*
- 2. Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?*

3. Is the planning proposal consistent with applicable state environmental planning policies?

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

With particular regard to considerations of potential impacts above, the drafting of the LEP amendment for third party advertising as a type of exempt development is drafted such that these signs are controlled to minimise any impact as detailed above and summarised as follows:

- Only one sign per premises in business or industrial zones and not on a heritage item;
- Advertising content must relate to a good, commodity or service dealt with or provided at the place or premises;
- The size of the sign must fit within a rectangular figure 1.2m in length and 0.6m in height;
- The sign must not be illuminated or encroach on a footpath or street.

## **Conclusion**

Council has resolved to exempt third party signs from the requirement for development consent. The next step in progressing this resolution is to prepare an LEP amendment which is now drafted and recommended for submission to the Department of Planning as a Planning Proposal. Council is further advised that it may otherwise consider deferring such considerations until the NSW Codes SEPP introduces state-wide provisions for advertising structures. In this case the state-wide Codes SEPP provisions will supersede any existing or future LEP exemptions for Advertising Structures including third party Advertisements. Furthermore, Council may also otherwise determine that Third Party Advertising Structures are not an appropriate development type to be exempt development to ensure that potential environmental impacts may be assessed as either a complying development or with consent in a development application. In relation to such potential environmental impacts (including concerns about the potential proliferation of signage in Manly Centres) the draft LEP amendment recommended in this report seeks to control such signage in a manner that minimises potential impacts.

## **RECOMMENDATION**

THAT Council initiate an amendment to Manly Local Environmental Plan 1988, and an accompanying amendment to the DCP for Advertising to permit third part advertising structures as exempt development, pursuant to sections 54-55 and 74C(1)(a) of the *Environmental Planning & Assessment Act, 1979*.

## **ATTACHMENTS**

There are no attachments for this report.

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## **Manly Local Environmental Plan 1988 Draft Amendment re Third Party Advertising**

### **SUMMARY**

This report recommends exempting third party advertising signage from development consent in accordance with Council's resolution in this matter on 15 June 2009 and where such signage conforms to the Manly DCP definition of "commercial sign". The mechanism for such an exemption would be to amend the Manly LEP 1988 by adding this development type to the schedule of Exempt Development (schedule 8, MLEP). Potential impacts in relation to this proposal are considered in the drafting of the recommended LEP amendment and Council is also advised of the next steps in the process. The requirements for preparing a planning proposal to the Department of Planning are detailed. It is recommended that Council initiate an amendment to Manly Local Environmental Plan 1988 to permit third part advertising structures as exempt development.

### **MOTION (Norek / LeSurf)**

THAT Council initiate an amendment to Manly Local Environmental Plan 1988, and an accompanying amendment to the DCP for Advertising to permit third part advertising structures as exempt development, pursuant to sections 54-55 and 74C(1)(a) of the *Environmental Planning & Assessment Act, 1979*.

### **PS166/09 RESOLVED: (Norek / LeSurf)**

THAT Council initiate an amendment to Manly Local Environmental Plan 1988, and an accompanying amendment to the DCP for Advertising to permit third part advertising structures as exempt development, pursuant to sections 54-55 and 74C(1)(a) of the *Environmental Planning & Assessment Act, 1979*.

**For the Resolution:** Councillors Hay, Heasman, Whitting, Murphy, LeSurf, Morrison and Norek

**Against the Resolution:** Councillors Griffin, Aird and Burns

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