

Planning Proposal

**Rezone land within the Mosman Scenic Protection Area
from R2 Low Density Residential to C4 Environmental
Living**



November 2020

- With revisions May 2021 and September 2021 for public exhibition.
- Further minor revisions made post-exhibition in January 2022.

NOTES

Amendments made in accordance with Gateway Determination – August 2021

On 19 August 2021 the NSW Department of Planning, Industry and Environment issued Gateway approval under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) for this Planning Proposal (Department Ref: PP-2021-3682) to proceed subject to conditions, including the following:

Prior to community consultation, the planning proposal is to be updated to:

- a. *provide an assessment against the Greater Sydney Region Plan's Objective 27 - Biodiversity is protected urban bushland and remnant vegetation is enhanced and Objective 30 Urban tree canopy cover is increased,*
- b. *provide higher resolution maps of current zoning,*
- c. *provide map overlays for the proposed C4 zone area to identify the lots within this area that are subject to the environmental values identified in the environmental values analysis.*
- d. *remove the revoked 9.1 Ministerial Direction 7.1 Implementation of a Plan for Growing Sydney from Part 3 Section B (6) Ministerial Directions.*

The Planning Proposal was amended accordingly.

Public exhibition then occurred from 30 September to 10 November 2021.

Amendments made post-exhibition – January 2022

Under section 3.35 of the Act, Council may vary the Planning Proposal as a consequence of its consideration of any submission or report during community consultation, or for any other reason. A revised planning proposal is to be forwarded to the Minister. Further community consultation is not required unless the Minister so directs in a revised determination.

The following variations to the Planning Proposal were made post-exhibition:

1. Removal of lots with less than 50% lot area within the Mosman Scenic Protection Area (MSPA)

The MSPA boundary is aligned with the 60 metre contour, and as a consequence it cuts through some lot boundaries identified on the cadastral plan (survey plan). However, the exhibited Planning Proposal identifies all R2 zoned lots that are partially within the MSPA as being rezoned to C4, because it is not good planning practice in NSW to 'split-zone' land.

In response to submissions received, a more fine-grained analysis of lots partially within the MSPA was undertaken following exhibition. This analysis found that there are 408 lots proposed to be zoned C4 that are partially within the MSPA, with the extent to which the lots are within the MSPA varying depending on the topography of the land.

The primary aims of the Planning Proposal are to (a) protect the MSPA from inappropriate development to preserve the aesthetic value of the area, and (b) maintain the status quo in terms of planning controls and policies that currently apply. Whilst all land within the MSPA is excluded from the NSW Housing Code and subject to Council local planning controls and DA assessment, that part of a lot that is not affected by the MSPA can currently be developed under the Housing Code if criteria are met. By rezoning land to C4, the ability for a landowner to apply the Housing Code to that part of their lot that is outside the MSPA would be lost.

It is recommended that a more balanced approach be taken to only rezone land to C4 if 50% or more of the lot is within the MSPA. Analysis has found that 213 of the 408 lots do not meet this threshold. Accordingly, these lots are recommended to be removed from the Planning Proposal (i.e. to remain zoned R2). A list of such properties to be removed from the Planning Proposal follows. Updated draft LEP maps will be included in **Attachment G**.

<i>House No.</i>	<i>Street Name</i>	<i>House No.</i>	<i>Street Name</i>	<i>House No.</i>	<i>Street Name</i>
13	Bapaume Road	7	Euryalus Street	9	Pindari Ave
15	Bapaume Road	9	Euryalus Street	13	Pindari Ave
17	Bapaume Road	11	Euryalus Street	15	Pindari Ave
19	Bapaume Road	13	Euryalus Street	30	Pindari Ave
21	Bapaume Road	15	Euryalus Street	5	Pretoria Ave
26	Beaconsfield Road	17	Euryalus Street	7	Pretoria Ave
28	Beaconsfield Road	19	Euryalus Street	9	Pretoria Ave
28A	Beaconsfield Road	21	Euryalus Street	11	Pretoria Ave
6	Bickell Road	23	Euryalus Street	13	Pretoria Ave
33	Bullecourt Road	27	Euryalus Street	15	Pretoria Ave
37	Bullecourt Road	29	Euryalus Street	8	Prince Albert Street
9	Burrawong Ave	31	Euryalus Street	10	Prince Albert Street
40	Burrawong Ave	17A	Euryalus Street	12	Prince Albert Street
6 (lot 1)	Burrawong Ave	19 (lot 1)	Euryalus Street	14	Prince Albert Street
6 (lot A)	Burrawong Ave	6	Glencarron Ave	16	Prince Albert Street
1	Cabramatta Road	8	Glencarron Ave	18	Prince Albert Street
3	Cabramatta Road	16	Gordon Street	20	Prince Albert Street
5	Cabramatta Road	21A	Gordon Street	22	Prince Albert Street
7	Cabramatta Road	2	Hampden Street	68	Prince Albert Street
9	Cabramatta Road	37	Holt Ave	70	Prince Albert Street
11	Cabramatta Road	39	Holt Ave	6	Quakers Road
14	Cabramatta Road	41	Holt Ave	11	Queen Street
23	Calypso Ave	43	Holt Ave	13	Queen Street
25	Calypso Ave	45	Holt Ave	15	Queen Street
28	Calypso Ave	47	Holt Ave	19	Queen Street
29	Central Ave	49	Holt Ave	21	Queen Street
30	Central Ave	51	Holt Ave	25	Queen Street
31	Central Ave	53	Holt Ave	23 (lot 29)	Queen Street
37	Central Ave	55	Holt Ave	23 (lot 30)	Queen Street
49	Central Ave	102	Holt Ave	73	Raglan Street
51	Central Ave	104	Holt Ave	75	Raglan Street
35A	Central Ave	43 (lot 1)	Holt Ave	77	Raglan Street
35B	Central Ave	21	Kardinia Road	79	Raglan Street
39A	Central Ave	23	Kardinia Road	4/85	Raglan Street
49A (lot 1)	Central Ave	19A	Kardinia Road	5/85	Raglan Street
49A (lot 2)	Central Ave	1	Keston Ave	7	Redan Street
52	Clan Alpine Street	2	Keston Ave	9	Redan Street
54	Clan Alpine Street	4 (pt3)	Keston Ave	14	Ryrie Ave
6 (lot 36)	Clifton Street	24	Killarney Street	16	Ryrie Ave
6	Cobbittee Street	24A	Killarney Street	13	Silex Road
8	Cobbittee Street	3	Kirkoswald Ave	11A	Silex Road
9	Cobbittee Street	12	Kirkoswald Ave	9A	Silex Road
10	Cobbittee Street	3	Medusa Street	4	Simpson Street
12	Cobbittee Street	5	Medusa Street	7	Simpson Street
14	Cobbittee Street	7	Medusa Street	23	Spencer Road
16	Cobbittee Street	15	Medusa Street	26	Spencer Road
14	Countess Street	21	Medusa Street	28	Spencer Road
43	Countess Street	23	Medusa Street	30	Spencer Road
45	Countess Street	25	Medusa Street	9	Stanley Ave
47	Countess Street	27	Medusa Street	11	Stanley Ave
49	Countess Street	29	Medusa Street	13	Stanley Ave
51	Countess Street	31	Medusa Street	21	Stanley Ave
53	Countess Street	33	Medusa Street	23	Stanley Ave
55	Countess Street	37	Medusa Street	25	Stanley Ave
57	Countess Street	39	Medusa Street	27	Stanley Ave
59	Countess Street	41	Medusa Street	29	Stanley Ave
19	Cowles Road	1	Mitchell Lane	31	Stanley Ave
24	Cowles Road	8	Noble Street	23	Stanton Road
156	Cowles Road	11A	Parriwi Road	25	Stanton Road
12	David Street	9-9A	Parriwi Road	23A	Stanton Road
14	David Street	7	Pindari Ave	3	Tivoli Street
5	Euryalus Street	8	Pindari Ave	6	Tivoli Street

<i>House No.</i>	<i>Street Name</i>	<i>House No.</i>	<i>Street Name</i>	<i>House No.</i>	<i>Street Name</i>
15	Whiting Beach Road	53	Wolseley Road	18	Wyong Road
13A	Whiting Beach Road	12	Wunda Road	20	Wyong Road
1A	Wolger Road	2	Wyong Road	22	Wyong Road
1B	Wolger Road	4	Wyong Road	24	Wyong Road
39	Wolseley Road	6	Wyong Road	26	Wyong Road
41	Wolseley Road	8	Wyong Road	28	Wyong Road
45	Wolseley Road	10	Wyong Road	2A	Wyong Road
47	Wolseley Road	12	Wyong Road		
49	Wolseley Road	14	Wyong Road		
51	Wolseley Road	16	Wyong Road		

The Planning Proposal as exhibited indicated that there were around 2,631 lots proposed to be rezoned to C4. However, with the removal of the above 213 lots, this would bring the total number of lots to be rezoned to C4 under the revised Planning Proposal to around 2,418 lots, along with adjacent public roads. This figure has been updated throughout this Planning Proposal.

2. Administrative amendments to reflect changes in NSW planning legislation

The NSW Government is currently reforming some aspects of the planning system, and as a result, some changes to the exhibited Planning Proposal are required to be made. The changes are minor and of an administrative nature only.

All references to “E4” throughout the Planning Proposal have been changed to “C4” consistent with the prefix change for the Environmental Living Zone made by the *Standard Instrument (Local Environmental Plan) Amendments (Land Use Zones) Order 2021* that came into effect on 1 December 2021. As a result of this change, Zone E4 Environmental Living is now known as Zone C4 Environmental Living. The change is purely administrative and of name only; the objectives and land use tables remain the same with the only changes being to the prefix (from ‘E’ to ‘C’) and zone category. Any references to E4 that remain in this document and attachments (such as in maps and other images) are to be taken to be a reference to C4.

Whilst the names of some State environmental planning policies have been changed by the NSW Government - for example, the change of “State Environmental Planning Policy (Affordable Rental Housing) 2009 (the Affordable Housing SEPP)” to “State Environmental Planning Policy (Housing) 2021 (the Housing SEPP)” as a result of the repeal and introduction of new policy on 26 November 2021 – these changes have not been made in this Planning Proposal, because the policy names and assessment undertaken was accurate at the time of Gateway determination and exhibition in 2021.

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1.0 Introduction

This planning proposal has been prepared to support the proposal to rezone land within the Mosman Scenic Protection Area from R2 Low Density Residential to C4 Environmental Living under Mosman Local Environmental Plan 2012 (MLEP 2012), along with other associated amendments.

Under revisions to the Planning Proposal made in January 2022 (refer to note on pages 2-4 above), the proposed rezoning of land to C4 would affect around 2,418 lots, along with adjacent public roads.

Sydney Harbour is widely recognised as one of the most beautiful urban harbours in the world and the gateway to Sydney. Mosman, being prominently located within Sydney Harbour across from The Heads, is an integral part of this landscape. Protecting the visual significance and landscape quality of Mosman's foreshore slopes, and the amenity of existing residential properties, has been a Council priority for many years.

Through careful planning and ongoing lobbying by Council, the foreshore lands, known as the Mosman Scenic Protection Area (see **Figure 1**), have been excluded from the NSW Government's Housing Code since 2009. However this exclusion is time limited and, despite continued efforts by Council to obtain more permanent protective measures, is due to cease on 30 November 2021.

The Housing Code was introduced by the NSW Government to allow 'fast track' approval (known as complying development) of new one and two storey dwelling houses, and alterations and additions to existing dwelling houses, under State-wide controls and the private certification system, bypassing the need for Council approval and the development application process. However, as complying development:

- There would be no meaningful consultation with surrounding landowners.
- Council's long-standing controls for building bulk/scale, landscaping, view sharing, privacy, overshadowing and the visual impact of development, would not be considered.
- The impact this may have on residents' amenity as well as the landscape, particularly in a cumulative sense, may be detrimental and irreversible.

To ensure ongoing protection of foreshore land, Council is proposing to apply a C4 Environmental Living zone to all land within the Mosman Scenic Protection Area that is currently zoned R2 Low Density Residential under MLEP 2012. The land would remain a low-density residential area with Council controls continuing to apply. The Housing Code would not apply to land zoned C4.

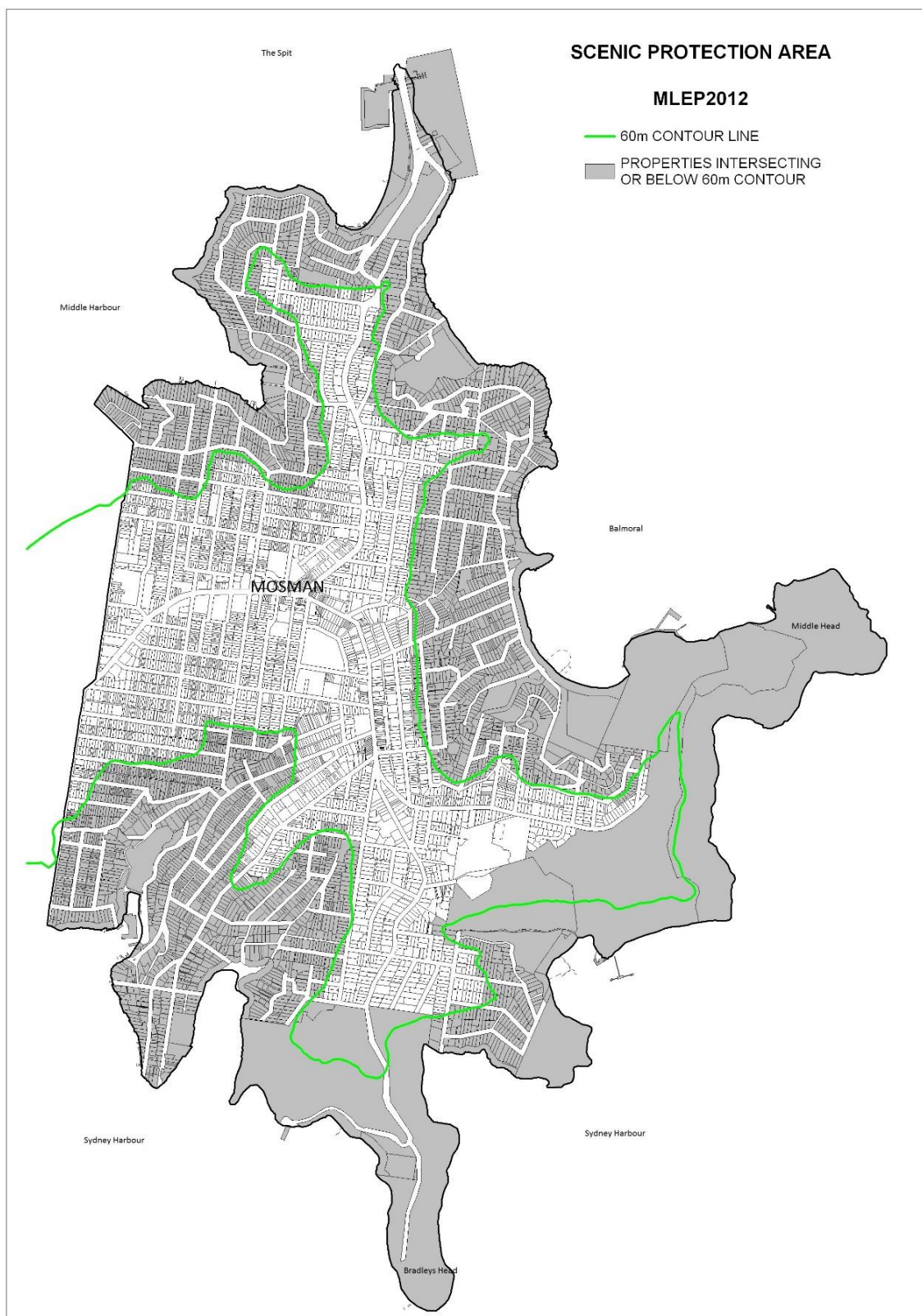


Figure 1 – Mosman Scenic Protection Area

2.0 Background

Importance of the Mosman Scenic Protection Area

Sydney Harbour is a place of significant national and heritage values. The harbour shapes Sydney's identity and image like no other natural feature, making it an important natural asset to the people of Sydney, NSW and beyond.

The municipality of Mosman is prominently located within Sydney Harbour across from The Heads. It is an integral part of this landscape and highly visible from surrounding waterways and land areas across the water, including the Northern Beaches and Eastern Suburbs. The significance of Mosman's foreshore slopes has been recognised in State and Council planning since the 1960s, and through good planning, Mosman's foreshore slopes remain predominantly characterised by a dominance of vegetation over built form.

The Mosman Scenic Protection Area applies to all land in Mosman from the waterline to the 60 metre contour, identified as a benchmark for significant views to and from Sydney and Middle Harbours in strategic planning studies undertaken in the 1990s. It comprises land used primarily for residential purposes, although there are also large areas of national park and open space, along with land used for military purposes and the zoo.

The Scenic Protection Area is given effect by clause 6.4 of Mosman Local Environmental Plan 2012 (MLEP 2012) (extract below), which requires consideration of the visual impact of development prior to granting development consent. This is accompanied by other planning controls in MLEP 2012 and in Mosman Residential Development Control Plan 2012 (MRDCP 2012). Together, these local planning controls apply a fine-grained assessment of proposed development considering matters such as landscaping, view sharing to the harbour and iconic landmarks, bulk, scale and design, along with zone objectives which seek to maintain the general dominance of landscape over built form.

6.4 Scenic protection

- (1) The objectives of this clause are as follows:
 - (a) to recognise and protect the natural and visual environment of Mosman and Sydney Harbour,
 - (b) to reinforce the dominance of landscape over built form,
 - (c) to ensure development on land to which this clause applies is located and designed to minimise its visual impact on those environments.
- (2) This clause applies to land identified as "Scenic Protection Area" on the Scenic Protection Map.
- (3) Development consent must not be granted to any development on land to which this clause applies unless the consent authority is satisfied that:
 - (a) measures will be taken, including in relation to the location and design of the proposed development, to minimise the visual impact of the development to and from Sydney Harbour, and
 - (b) the development will maintain the existing natural landscape and landform.

Additional background information is included in **Attachment A**.



Pearl Bay, Mosman



Quakers Hat Bay, Mosman

The Housing Code and temporary exclusion of Mosman Scenic Protection Area

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (the Codes SEPP) identifies development that may be carried out as exempt development (requires no approval) or complying development (approval by an accredited private certifier) throughout NSW subject to criteria set out in the Code. The SEPP is comprised of a number of Codes, including the Housing Code (previously called, General Housing Code) which allows new one and two storey dwelling houses, and alterations and additions to existing dwelling houses, to be built as complying development provided State-wide criteria are met.

There is a long history associated with the temporary exclusion of Mosman's Scenic Protection Area from the Housing Code, and measures undertaken by Council to secure permanent protection of this area. A brief summary follows.

- When the Codes SEPP commenced in February 2009, it recognised that land identified by an environmental planning instrument (i.e. a local environmental plan) as being within a 'foreshore scenic protection area' was excluded from the General Housing Code. At the time, this encompassed a considerable area of the Mosman municipality. This provision was later repealed by the NSW Government.
- In 2010, strong advocacy by Council led to a five-year exclusion of Mosman's Scenic Protection Area (a reduced area, see Figure 1) from the General Housing Code, until 30 November 2015, under clauses 1.19(2) and 1.19(3) of the SEPP. This exclusion was granted to enable Council and the then NSW Department of Planning and Environment to explore the range of planning mechanisms available to protect the sensitive harbour slopes from inappropriate development. It was determined early on that permanent exclusion under the SEPP was the best solution.
- As part of the ongoing negotiations with the Department during the preparation of MLEP 2012, the overriding need to protect and recognise the significance of the harbour slopes of Mosman was acknowledged by the Director General and planning staff. In 2011 Council applied for a local exclusion of the Scenic Protection Area from the General Housing Code.
- In 2015, with no decision made on Council's application, Council prepared a planning proposal to amend clause 6.4 Scenic Protection in MLEP 2012 by renaming this a 'protected area', thereby securing permanent exclusion from the Housing Code under clause 1.19(1)(e)(v) of the SEPP. However this planning proposal was withdrawn at the Department's request when an extension to the temporary exclusion of Mosman's Scenic Protection Area from the Housing Code was granted on 27 November 2015 for a further three years.
- Subsequently, Council has continued to seek permanent exclusion of the Scenic Protection Area from the Housing Code, whilst exploring the range of suitable options under NSW planning legislation. In 2018, a further three year extension to the temporary exclusion was granted. This is now due to cease on 30 November 2021.

Concern about the Housing Code

Without the exclusion that currently applies to Mosman's Scenic Protection Area, complying development in the form of new one and two-storey dwelling houses, and alterations and additions to existing dwelling houses, could be approved through the private certification system. This would mean that:

- There would be no neighbour notification inviting submissions from surrounding landowners;
- The dominance of vegetation over built form is a defining feature of Mosman which would not be protected;
- There would be no consideration of:
 - Views to, or from, Sydney and Middle Harbours;
 - The visual impact of development; or
 - Retention of canopy trees; and
- The development approved could be greater in bulk and scale, and have less landscaped area.

Under the private certification system, approval would be issued by a private certifier under State-wide "one-size-fits-all" controls, bypassing Council and the development application process. The planning regime would change overnight and may adversely affect Mosman residents in terms of their amenity and enjoyment of their property, and create uncertainty about what development may occur in their proximity. It may also significantly change the visual quality of the Mosman foreshore slopes as viewed from Sydney and Middle Harbours, and enjoyed by the residents of Sydney and visitors. The potential impact on the foreshore slopes, especially in a cumulative sense would be adverse.

The significance of the area is unchanged and the scenic qualities of Sydney Harbour need to be maintained for future generations. New development, and alterations and additions to existing development, still require a finer grain of assessment than afforded under the Housing Code. As such, it is considered appropriate that land within the Scenic Protection Area be permanently excluded from the Housing Code.

A comparison table of the Housing Code v. Mosman local planning controls is included in **Attachment B** to this planning proposal.



Sirius Cove, Mosman

About Zone C4 Environmental Living

Zone C4 Environmental Living is a low-density residential zone that can be applied to land in NSW with special ecological, scientific or aesthetic values. It is a standardised zone under the NSW Government's Standard Instrument–Principal Local Environmental Plan, and can be applied to land that exhibits these qualities, through a council's local environmental plan.

The C4 zone is used in 41% of local environmental plans applying to land throughout the Sydney metropolitan area. This includes foreshore land and bushland areas in the local government areas of:

- Blue Mountains,
- Camden,
- Campbelltown,
- Hawkesbury,
- Hornsby,
- Ku-ring-gai,
- Lane Cove,
- Liverpool,
- North Sydney,
- Northern Beaches,
- Parramatta,
- Penrith,
- Sutherland,
- The Hills,
- Willoughby, and
- Wollondilly.

There are mandated objectives, and permissible and prohibited land uses, that must be included for the C4 zone, however a council can add to these with local objectives and land uses that are compatible with the zone. The following is an extract from the Standard Instrument–Principal Local Environmental Plan:

Zone C4 Environmental Living

1 Objectives of zone

- To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.
- To ensure that residential development does not have an adverse effect on those values.
- *[Council can add local objectives if compatible]*

2 Permitted without consent

Home occupations *[Council can add land uses if compatible]*

3 Permitted with consent

Dwelling houses; Oyster aquaculture; Pond-based aquaculture; Tank-based aquaculture
[Council can add land uses if compatible]

4 Prohibited

Industries; Service stations; Warehouse or distribution centres; Any other development not specified in item 2 or 3 *[Council can add land uses if compatible]*

Low density residential areas within the Mosman Scenic Protection Area have the qualities attributable to the C4 Environmental Living zone, in particular, special aesthetic value. It is therefore proposed to apply Zone C4 Environmental Living to all land within the Mosman Scenic Protection Area that is currently zoned R2 Low Density Residential under MLEP 2012. There are around 2,418 lots to be rezoned under this revised planning proposal. Refer to **Figure 2**.

It is Council's intention that the range of permissible land uses (including dwelling-houses and semi-detached dwellings) and controls that currently apply to land zoned R2 Low Density Residential would continue to be applied under the new C4 Environmental Living zone, without significant change. Importantly, clause 6.4 Scenic Protection of MLEP 2012 would continue to be a matter for consideration in the assessment of any development application, requiring consideration of the location, design and visual impact of the proposed development, along with the natural landscape and landform.

The Housing Code would not apply to land zoned C4.

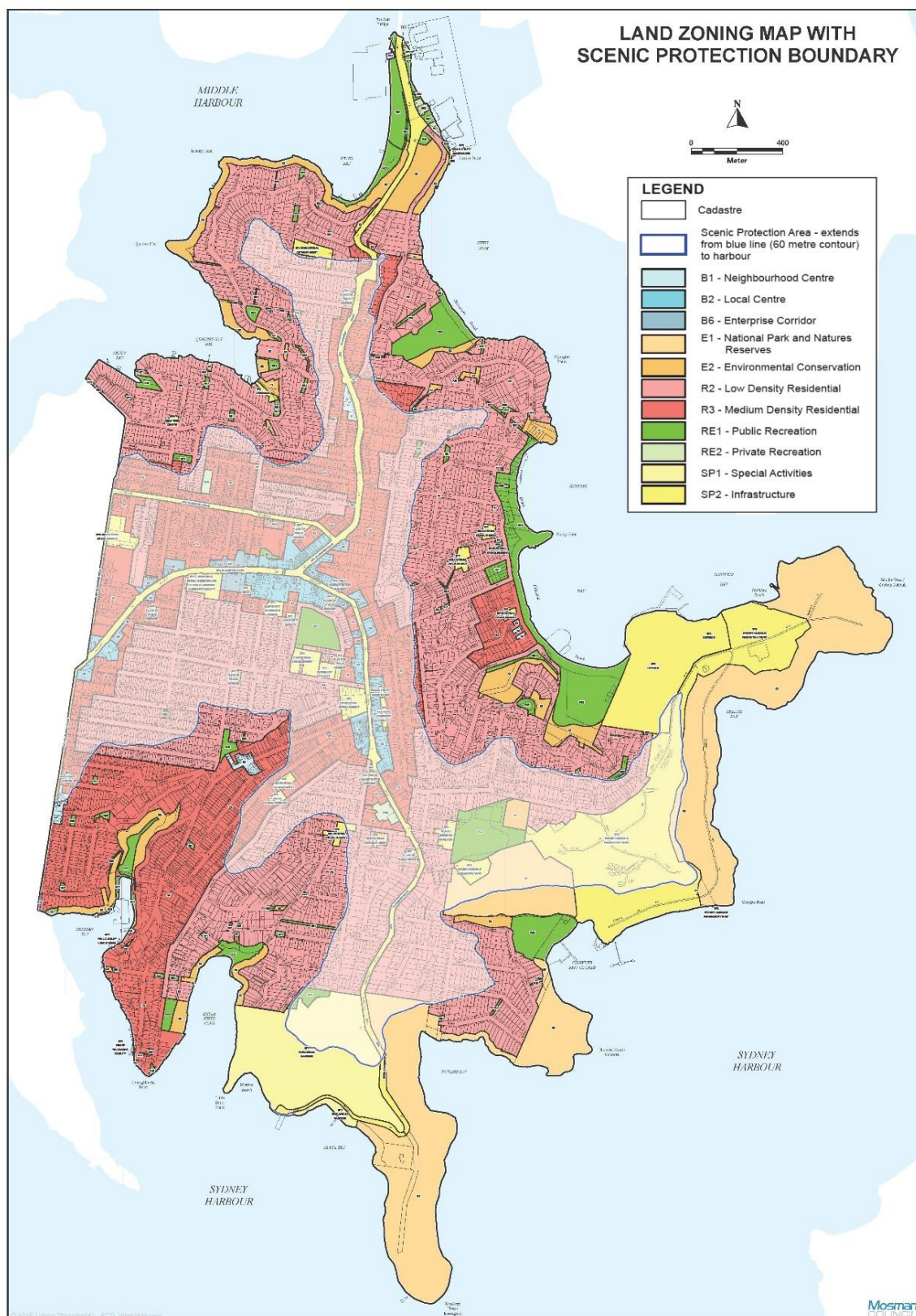


Figure 2 - Mosman Scenic Protection Area boundary with current land zoning under MLEP 2012.

Note: Areas outside the Scenic Protection Area are faded out.
Land in Zone R2 Low Density Residential is coloured light pink.

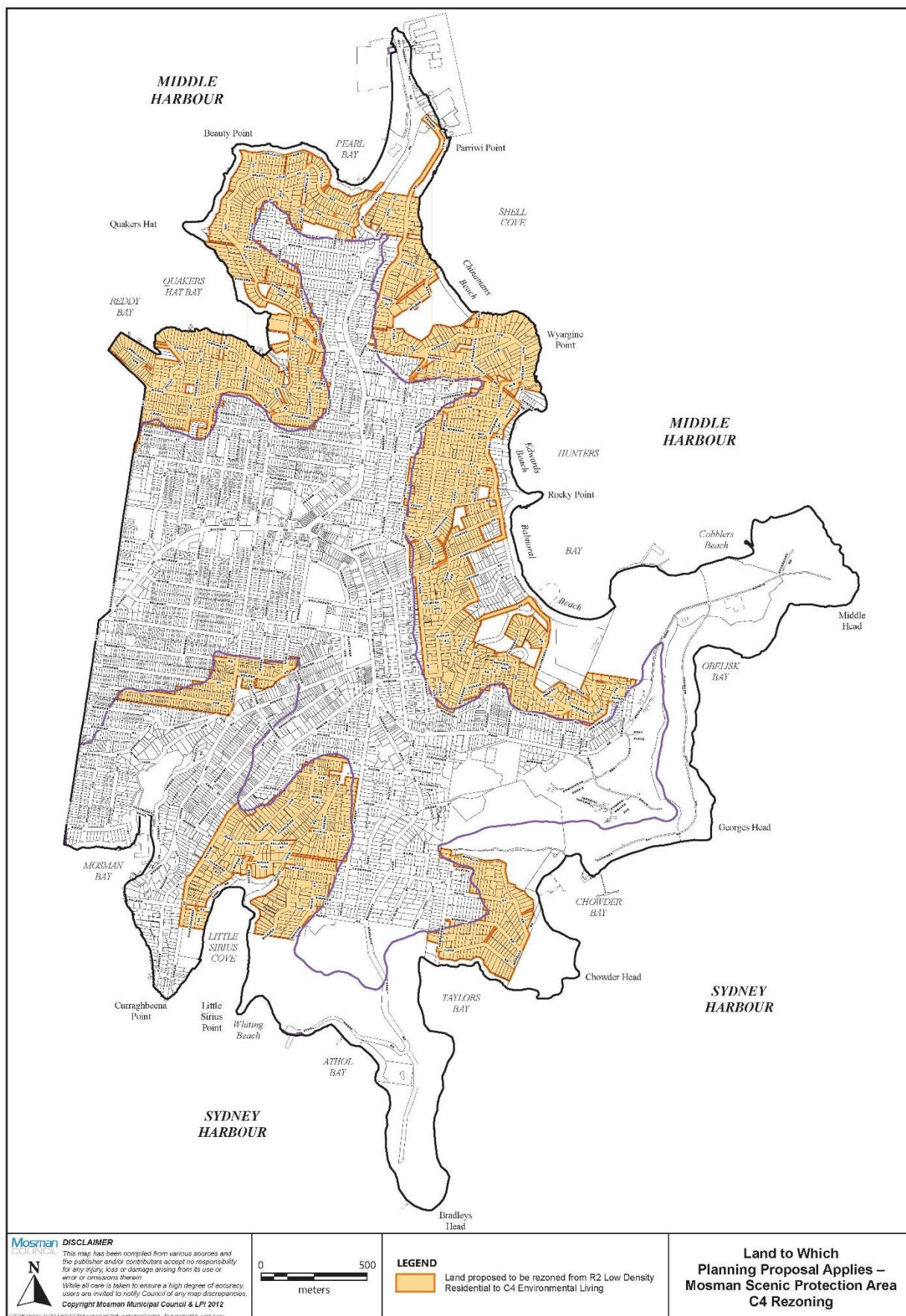


Figure 3 – Land proposed to be rezoned to Zone C4 Environmental Living under MLEP 2012.
(Updated January 2022 – refer to note on pages 2-4).

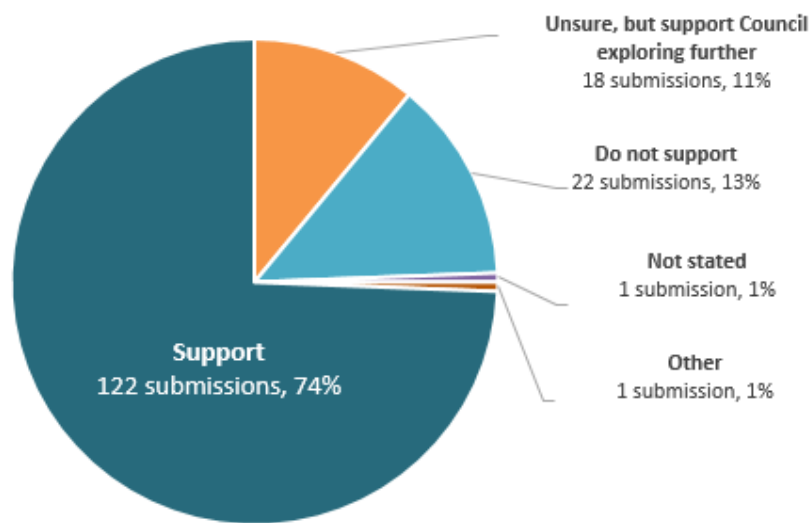
Initial consultation with landowners

Consultation was undertaken from 10 September to 5 October 2020. The purpose of this consultation was to inform, and seek initial feedback from, affected landowners and the wider Mosman community about the option to rezone land within the Mosman Scenic Protection Area from Zone R2 Low Density Residential to Zone C4 Environmental Living under MLEP 2012.

In response, 164 submissions were received, of which 96% (157 submissions) were from affected land owners, that is, an owner of land that is zoned R2 within the Scenic Protection Area. Of these submissions, 149 were completed online surveys and 15 were emails or letters to Council.

The majority of submissions received (74%) were in support of Council rezoning land from R2 to C4 within the Scenic Protection Area, with a further 11% noting that they were unsure if they support this option, but do support Council exploring this option further.

Support for Rezoning Land from R2 to E4



Respondents in support of the C4 zone gave reasons for this including:

- Protect the amenity, natural beauty and landscape quality of the foreshore area;
- Retain the integrity of the Mosman areas as it is;
- Maintain local control to protect character, heritage, views and privacy;
- Housing Code will detract from the amenity and value of Mosman properties; and
- Essential that residents have the opportunity to comment on proposed development.

Submissions were also received in opposition to the rezoning. Council received 22 submissions (13%) which expressed concern about rezoning land from R2 to C4, for reasons including:

- C4 zone is unnecessarily restrictive;
- Excessive bureaucracy, cost and delays in obtaining development approval; and
- Housing Code parameters are reasonable, transparent and objective.

Given the complexity of this issue, a survey question asked respondents whether they felt they had a sufficient understanding of the matter, to which most indicated in the affirmative.

Environmental Values Analysis

The following provides a brief analysis of the environmental value of land that is proposed to be rezoned from R2 Low Density Residential to Zone C4 Environmental Living within the Mosman Scenic Protection Area under MLEP 2012.

Environmental values criteria

Environmental values criteria are detailed in the NSW Department of Planning, Industry and Environment (DPIE) 2009 Practice Note PN 09-002 *Environmental Protection Zones* and 2015 *Northern Councils E Zone Review* for the E2 and E3 zones (now C2 and C3 zones), however there are no criteria detailed for a C4 zone. For the purpose of this analysis however, these criteria are considered. Additional criteria are also considered.

Analysis

It is evident that land within the proposed Mosman Scenic Protection Area Zone C4 area has the following environmental values. In the analysis below, the number of lots identified are those within the proposed Zone C4 area that are subject to the environmental value. The number of lots is approximate.

Note - for items 2 to 12 below, the number of lots referenced has not been updated following revisions made to the planning proposal in January 2022 to remove 213 lots that have less than 50% of lot area within the MSPA. Refer to note on pages 2-4.

1. *Areas of special aesthetic attributes e.g. scenic protection areas*

All 2,418 lots that are proposed to be zoned C4 satisfy the environmental value of being an area with “special aesthetic attributes”. This land is within the Mosman Scenic Protection Area which is recognised under clause 6.4 of MLEP 2012. Planning controls exist within clause 6.4 to manage scenic and visual amenity in conjunction with low-density residential development on this land.

2. *Native vegetation on coastal foreshores*

State Environmental Planning Policy (Coastal Management) 2018 (the Coastal Management SEPP) recognises 442 lots as being within a ‘coastal environment area’, that is, being land adjoining the harbour containing natural features such as beaches, headlands and rock platforms in need of protection.

3. *Areas of transition between high conservation value land, e.g. zoned E1 or E2*

There are 234 lots identified in MLEP 2012 as being in an areas of transition between high conservation value land, that is, immediately adjacent to land zoned E1 National Parks and Nature Reserves or E2 Environmental Conservation.

4. *Culturally significant lands - Aboriginal object sites and sensitivity areas*

The Mosman Aboriginal Heritage Study completed in 2005 in consultation with various NSW Government departments and Council, recognises 13 lots as being an Aboriginal Heritage site and 216 lots as having High or Moderate Sensitivity for the potential for containing artefacts such as middens or rock engravings.

5. *Acid sulphate soils areas and buffer areas*

MLEP 2012 identifies 194 lots as being affected by acid sulphate soils and having the potential to cause environmental damage, particularly around Balmoral and Quakers Hat Bay. Clause 6.1 of the LEP provides development assessment criteria.

6. *Littoral rainforest (100m buffer area)*

The Coastal Management SEPP identifies 110 lots within a 100m buffer area to Littoral Rainforest in Clifton Gardens and Balmoral. A further 40 lots near Rosherville Reserve identified in a Council study are under consideration for inclusion within the Littoral Rainforest buffer area.

7. *Wetland protection areas*

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (the Sydney Harbour SREP) identifies 109 lots within a Wetlands Protection Area, including in areas around Taylors Bay, Balmoral and Quakers Hat Bay.

8. *Land subject to coastal hazards including climate change effects*

There are 109 lots identified and mapped in MLEP 2012 as being subject to a foreshore building line due to coastal hazards. Clause 6.3 of the LEP provides development assessment criteria.

9. *Natural watercourses*

MLEP 2012 identifies a further 8 lots as containing a natural watercourse. Clause 6.2 of the LEP provides development assessment criteria.

10. *Biodiversity and habitat link areas*

There are 1,169 lots identified on Council's Biodiversity Corridor and Habitat Link map within Mosman Residential DCP 2012, clause 4.4, as either containing or immediately adjoining existing core or cosmopolitan habitat. Planning controls encourage the retention and expansion of habitat areas for native fauna.

11. *Steeply sloping land*

Due to the nature of Mosman's topography, there are some areas proposed to be zoned C4 that are subject to very steep topography. Extending from the foreshore area are outcrops of land which are extensions of the ridges. The slopes generally comprise cliffs, terraces and rock outcrops, together with enclosed gullies and valleys formed around natural drainage lines. There are 84 lots identified on contour mapping that are affected by steeply sloping land with the degree of slope being 33 degrees or greater. Controls apply in part 6.6 of the Mosman Residential DCP 2012 pertaining to slope and instability.

12. *Bushfire Prone land*

There are 467 lots identified as being within a Bushfire Prone Area, identified on mapping endorsed by the NSW Rural Fire Service.

Table and Maps

A table of environmental values criteria and maps relevant to the Mosman local government area are included **Attachment C**. A series of map overlays is currently being prepared for the proposed C4 zone area to identify the lots within this area that are subject to these environmental values. These map overlays will accompany the planning proposal at the public exhibition stage.

Conclusion

Mosman residents and the broader Sydney community recognise that the Mosman foreshore has strong environmental values. These include an extensive mature tree canopy, wildlife corridors, Aboriginal history, wildlife habitat and high value natural coastal areas.

Whilst many of these attributes could be perceived as granular in nature, when combined, these multiple elements create a cohesive whole that complement the history of residential development and urban occupation.

Mosman and its community place a great environmental value in the Mosman Scenic Protection Area, and the continual works done to protect it is a reflection of this value. Whilst a superior environmental zoning may not be applicable, the information provide does support the classification of the area to Zone C4.

Scenic Amenity Study

About the Study

In 2017, Council engaged the consultancy services of Spackman Mossop Michaels (SMM) to undertake a visual survey of land within Mosman's Scenic Protection Area. The aims of the study were to:

1. Assess the visual character of Mosman's foreshore slopes as viewed from Sydney and Middle Harbours.
2. Understand the effectiveness of State and local planning controls and other strategies to protect and enhance the visual significance of Mosman's foreshore slopes.
3. Explore options to reduce negative impacts and enhance the existing landscape and visual environment within Mosman's foreshore slopes.

Overview and Findings

The SMM *Mosman Foreshores Visual Character and Scenic Amenity Analysis* (February 2018) report is a comprehensive, 212 page study, which provides:

- An overview of the Mosman Scenic Protection Area, context and previous foreshore studies;
- A visual assessment, identifying 20 landscape precincts within the Mosman Scenic Protection Area, and for each, providing a:
 - Rating of scenic quality, based on an assessment of landscape character (% landscape cover + built form 'fit' within the natural landscape) and visual values (colour, diversity pattern and balance);
 - Rating of visual importance, based on prominence within the foreshore slopes; and
 - List of key attributes, changes over time and opportunities to enhance scenic values.
- Opportunities and recommendations; and
- Planning framework and analysis report, prepared by MG Planning Pty Ltd

An extract summarising the ratings for each precinct is included in **Attachment D** to this planning proposal.

The Study has found that, while the significance of the Mosman foreshores is unchanged, there has been a decline in the landscape and vegetation cover, in particular trees. This is despite numerous planning and other studies that have found that vegetation cover is integral to the scenic character of the foreshore slopes with their scenic quality derived to a large extent from the predominance of landscape over built form.

Study Recommendations

The Study provides 24 recommendations to assist in protecting and enhancing the scenic qualities and values of the harbour foreshores within the Mosman Scenic Protection Area. These include amendments to MLEP 2012, Mosman Residential DCP 2012, public domain improvements and representations to the NSW Department of Planning, Industry and Environment (DPIE). The recommendations are being considered by Council as part of local strategic planning work.

Of particular relevance, the Study recommends that Council –

- *Consider rezoning R2 areas in the Scenic Protection Area to C4 Environmental Living to effect an exclusion from the Housing Code more appropriately reflecting the scenic and landscape significance of the foreshore slopes.*
- *Make representations to the NSW DPIE regarding the exclusion of Hunters Hill River Front Area from the Housing Code as compared to the inclusion of Mosman's SPA. There does not appear to be any valid reason for this inconsistency, particularly given the very high scenic value of the foreshore slopes of Mosman and their contribution to the overall scenic quality of Sydney Harbour.*

The complete study will accompany this planning proposal.

Local Housing Strategy and Zone C4

Mosman Local Housing Strategy was adopted by Council at its meeting on 10 November 2020 and subsequently submitted to the NSW DPIE for approval. The Strategy outlines projected population growth and housing demand in Mosman over the next 20-25 years, and the Council's strategy to meet future housing needs.

The Strategy notes that population growth in Mosman will be minimal over the next 20-25 years, increasing from a current (2016) population of 30,260 people, to 31,630 people by 2041, and that there will be demand for up to 1,358 additional dwellings in Mosman by 2041.

The proposal to rezone around 2,418 lots within the Mosman Scenic Protection Area from R2 Low Density Residential to C4 Environmental Living will not affect Mosman's ability to meet housing demand, for the following reasons -

1. In rezoning land to zone C4, there is no change proposed to the permissible land uses, minimum subdivision lot size or other development standards that currently apply to the land under MLEP 2012. The land is currently identified as a low density residential area and this will remain.
2. Housing capacity modelling indicates that there is more than sufficient capacity within Mosman's existing medium density R3, B1, B2 and B6 zones to meet demand.
3. The focus of future housing growth in Mosman will largely be in existing medium density areas close to public transport, shops and services, and not in the low density R2 / C4 zone areas.

A detailed overview of the Strategy is included in **Attachment E** to this planning proposal.

The difference between a C4 zone and Mosman's current R2 zone is minimal, and the continued exclusion of the Codes SEPP is unlikely to produce any difference to Council achieving its housing targets.



Quakers Hat Bay, Mosman



Balmoral, Mosman

3.0 The Planning Proposal

This planning proposal has been prepared in accordance with section 3.33 of the *Environmental Planning and Assessment Act 1979* (the Act), which provides the following:

3.33 Planning proposal authority to prepare explanation of and justification for proposed instrument—the planning proposal

1. Before an environmental planning instrument is made under this Division, the planning proposal authority is required to prepare a document that explains the intended effect of the proposed instrument and sets out the justification for making the proposed instrument (the *planning proposal*).
2. The planning proposal is to include the following—
 - (a) a statement of the objectives or intended outcomes of the proposed instrument,
 - (b) an explanation of the provisions that are to be included in the proposed instrument,
 - (c) the justification for those objectives, outcomes and provisions and the process for their implementation (including whether the proposed instrument will give effect to the local strategic planning statement of the council of the area and will comply with relevant directions under section 9.1),
 - (d) if maps are to be adopted by the proposed instrument, such as maps for proposed land use zones; heritage areas; flood prone land—a version of the maps containing sufficient detail to indicate the substantive effect of the proposed instrument,
 - (e) details of the community consultation that is to be undertaken before consideration is given to the making of the proposed instrument.
3. The Planning Secretary may issue requirements with respect to the preparation of a planning proposal.

This planning proposal has also been prepared in accordance with the NSW Department of Planning, Industry and Environment (DPIE) documents:

- *A guide to preparing planning proposals*, December 2018. The guideline, issued under section 3.33(3) of the Act, provides guidance and information on the process for preparing planning proposals.
- *A guide to preparing local environmental plans*, December 2018.

Part 1 – Objectives or Intended Outcomes

This part responds to section 3.33(a) of the Act - a statement of the objectives or intended outcomes of the proposed instrument.

The objectives or intended outcomes of this planning proposal are:

1. To recognise low-density residential land within the Mosman Scenic Protection Area that has special aesthetic value, with an environmental land use zone.
2. To ensure that the range of permissible and prohibited land uses, and development standards, that currently apply to the land zoned R2 Low Density Residential Zone in Mosman Local Environmental Plan 2012, will continue to apply to the land under the C4 Environmental Living zone.
3. To ensure that proposed development on this land that currently requires development consent through the development application pathway, continues to do so, with assessment under Council's local planning controls in Mosman Local Environmental Plan 2012, in particular clause 6.4 Scenic Protection.
4. To ensure that this land is permanently excluded from Part 3 Housing Code of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.
5. To ensure that minor proposed development on this land that can currently be undertaken as exempt development, can continue to be undertaken as such notwithstanding the change in zone.

Part 2 – Explanation of Provisions

This part responds to section 3.33(b) of the Act - an explanation of the provisions that are to be included in the proposed instrument.

To achieve the objectives or intended outcomes of this planning proposal, the following amendments to Mosman Local Environmental Plan 2020 (MLEP 2012) are proposed:

- **Item 1** - Rezone all land within the Mosman Scenic Protection Area that is currently zoned R2 Low Density Residential, to Zone C4 Environmental Living, on the Land Zoning Map.
- **Item 2** - In Part 2, insert Zone C4 Environmental Living in the list of land use zones within clause 2.1, and insert a Zone C4 Environmental Living Land Use Table.
- **Item 3** - In Part 4, clauses 4.1, 4.3, 4.3A and 4.4, and in Part 6, clauses 6.5 and 6.6, make it clear that the provisions relating to minimum lot size, height of buildings, floor space ratio, location of sex services premises and landscaped area that currently apply to land zoned R2 Low Density Residential, will apply to land zoned C4 Environmental Living.
- **Item 4** - In Part 4, clause 4.6(6), amend the note to recognise that Zone C4 Environmental Living is now included in MLEP 2012.
- **Item 5** - In Schedule 2, amend the schedule to make it clear that the exempt development provisions that currently apply to land zoned R2 Low Density Residential will apply to land zoned C4 Environmental Living.

These amendments are explained on the following pages.

Note that the final legal drafting of the proposed amendments to MLEP 2012 is subject to approval by the NSW DPIE and Parliamentary Counsel.

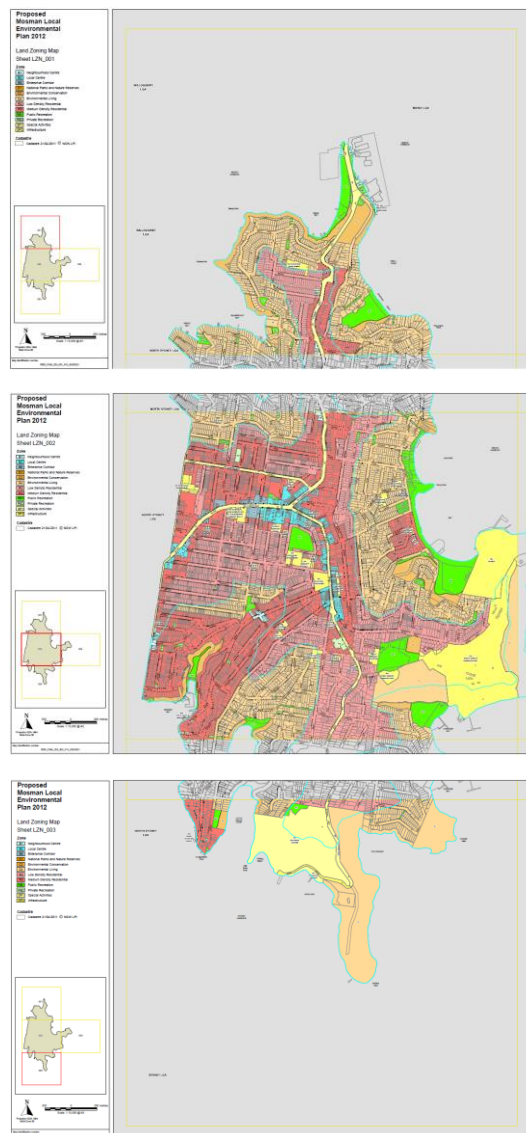
Item 1 - Rezone all land within the Mosman Scenic Protection Area that is currently zoned R2 Low Density Residential, to Zone C4 Environmental Living, on the Land Zoning Map.

The Zoning Map within MLEP 2012 is the means to identify the land use zone applicable to land within the Mosman local government area.

The Planning Proposal will rezone all land within the Scenic Protection Area from R2 to C4, maintaining the land for low-density residential use and recognising its special aesthetic value. Where the Scenic Protection Area boundary cuts across a lot, the entirety of the lot will be rezoned to C4 if around 50% or more of the lot is within the MSPA*, consistent with best planning practice to avoid split zones. In total, around 2,418 lots will be rezoned. Local roads adjacent to such lots will also be rezoned consistent with NSW planning guidelines. (*This follows a revision made to the Planning Proposal in January 2022. Refer to notes on pages 2-4.)

The Scenic Protection Area boundary is at the 60 metre contour line, established as the benchmark for significant views to and from Sydney and Middle Harbours. This boundary is given effect by clause 6.4 Scenic Protection of MLEP 2012.

The current MLEP 2012 zoning map is included in **Attachment F** to this planning proposal. The proposed amendments to the LEP Zoning Map are included in **Attachment G**.



Item 2 – In Part 2, insert Zone C4 Environmental Living in the list of land use zones within clause 2.1, and insert a Zone C4 Environmental Living Land Use Table.

Clause 2.1 lists the applicable land use zones under MLEP 2012. As a result of the proposed rezoning, the new zone C4 Environmental Living must be included within this list. The following is an extract from MLEP 2012. The amendment to clause 2.1 is shown in red.

2.1 Land use zones

The land use zones under this Plan are as follows—

Residential Zones

R2 Low Density Residential

R3 Medium Density Residential

Business Zones

B1 Neighbourhood Centre

B2 Local Centre

B6 Enterprise Corridor

Special Purpose Zones

SP1 Special Activities

SP2 Infrastructure

Recreation Zones

RE1 Public Recreation

RE2 Private Recreation

Environment Protection Zones

E1 National Parks and Nature Reserves

E2 Environmental Conservation

C4 Environmental Living

A land use table must be included in MLEP 2012 for each zone applied to land in Mosman. It sets out the objectives of the zone, the land uses that are permissible with or without consent in the zone, and those that are prohibited.

The land use table proposed for Zone C4 Environmental Living to be included in MLEP 2012 is outlined below, shown in red. It includes both mandated (that is, content that must be included for the zone, as required by the NSW Government Standard Instrument – Principal Local Environmental Plan – shown underlined below) and local content (that is, content that has been included by Council to reflect the existing and desired character of the land).

The objectives, permitted and prohibited land uses for the C4 zone are the same as those for the R2 zone currently in MLEP 2012, with a few minor exceptions. This is explained in a comparison table in **Attachment H**.

Zone C4 Environmental Living

1 Objectives of zone

- To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.
- To ensure that residential development does not have an adverse effect on those values.
- To retain the single dwelling character of the environmentally sensitive residential areas of Mosman.
- To maintain the general dominance of landscape over built form, particularly on harbour foreshores.
- To ensure that sites are of sufficient size to provide for buildings, vehicular and pedestrian access, landscaping and retention of natural topographical features.
- To ensure that development is of a height and scale that seeks to achieve the desired future character.

- To encourage residential development that maintains or enhances local amenity and, in particular, public and private views.
- To minimise the adverse effects of bulk and scale of buildings.

2 Permitted without consent

Home occupations

3 Permitted with consent

Bed and breakfast accommodation; Boarding houses; Centre-based child care facilities; Community facilities; Dwelling houses; Group homes; Home businesses; Oyster aquaculture; Places of public worship; Pond-based aquaculture; Recreation areas; Respite day care centres; Roads; Secondary dwellings; Semi-detached dwellings; Tank-based aquaculture

4 Prohibited

Industries; Service stations; Warehouse or distribution centres; Any other development not specified in item 2 or 3

Item 3 - In Part 4, clauses 4.1, 4.3, 4.3A and 4.4, and in Part 6, clauses 6.5 and 6.6, make it clear that the provisions relating to minimum lot size, height of buildings, floor space ratio, location of sex services premises and landscaped area that currently apply to land zoned R2 Low Density Residential, will apply to land zoned C4 Environmental Living.

These clauses in MLEP 2012 currently apply to land zoned R2 Low Density Residential, and reference Zone R2 or the term 'residential zones' within the clause. With the change to Zone C4 Environmental Living, these clauses need to be amended to make it clear that the objectives, development standards and/or controls that currently apply to the land, will continue to apply to the land under the new land zoning. No change to the actual development standards or planning controls is proposed.

The proposed amendments to these clause is shown in red on the following pages.

4.1 Minimum subdivision lot size

- (1) The objectives of this clause are as follows—
 - (a) to retain the pattern of subdivision in ~~residential zones~~ **Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone C4 Environmental Living** while allowing infill development of smaller lots in some areas,
 - (b) to ensure lots have a minimum size that is sufficient to provide useable area for building and landscaping,
 - (c) to require larger lots along the foreshore or where the topography or other natural features of a site limit its subdivision potential,
 - (d) to provide small lot subdivision in some zones as an alternative to redevelopment for the purpose of multi dwelling housing and the like to ensure the retention of the existing dwelling stock and the amenity of the area.
- (2) This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.
- (3) The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.
- (4) This clause does not apply in relation to the subdivision of any land—
 - (a) by the registration of a strata plan or strata plan of subdivision under the *Strata Schemes Development Act 2015*, or
 - (b) by any kind of subdivision under the *Community Land Development Act 1989*.
- (4A) For the purpose of calculating the size of a battle-axe lot, the area of the access handle is excluded.

4.3 Height of buildings

- (1) The objectives of this clause are as follows—
 - (a) for development on land in Zone R2 Low Density Residential, ~~or~~ **Zone R3 Medium Density Residential or Zone C4 Environmental Living**—
 - (i) to share public and private views, and
 - (ii) to minimise the visual impact of buildings particularly when viewed from the harbour and surrounding foreshores, and
 - (iii) to ensure that buildings are compatible with the desired future character of the area in terms of building height and roof form, and
 - (iv) to minimise the adverse effects of bulk and scale of buildings,
 - (b) for development on land in Zone B1 Neighbourhood Centre, Zone B2 Local Centre or Zone B6 Enterprise Corridor—
 - (i) to ensure that buildings are compatible with the desired future character of the area in terms of building height and roof form and will produce a cohesive streetscape, and

- (ii) to provide opportunities for buildings of a greater height than existing development in suitable locations to achieve the Council’s residential strategy and provide opportunities for economic growth.
- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

4.3A Height of buildings (additional provisions)

- (1) This clause applies to all land in ~~a residential zone~~ Zone R2 Low Density Residential, Zone R3 Medium Density Residential or Zone C4 Environmental Living to which a maximum building height of 8.5 metres applies as shown on the Height of Buildings Map.
- (2) The consent authority may refuse development consent for the erection of a building on land to which this clause applies if the building has more than two storeys above ground level (existing).
- (3) However, the consent authority may grant development consent for an additional storey in the foundation space of an existing building on land to which this clause applies if the consent authority is satisfied that the building height and bulk is of an appropriate form and scale.
- (4) A building on land to which this clause applies must not have a wall height, at any point of the building (other than at a chimney, gable end or dormer window), that exceeds 7.2 metres.
- (5) In this clause—

dormer window means a window in the roof plane that measures no more than 25% of the width of the roof in that plane.

wall height means the vertical distance between the ground level (existing) and the underside of the eaves at the wall line, parapet or flat roof, whichever is the highest.

4.4 Floor space ratio

- (1) The objectives of this clause are as follows—
 - (a) for development on land in Zone R2 Low Density Residential, ~~or~~ Zone R3 Medium Density Residential or Zone C4 Environmental Living—
 - (i) to ensure that buildings are compatible with the desired future character of the area in terms of building bulk and scale, and
 - (ii) to provide a suitable balance between landscaping and built form, and
 - (iii) to minimise the adverse effects of bulk and scale of buildings,
 - (iv) to limit excavation of sites and retain natural ground levels for the purpose of landscaping and containing urban run-off,
 - (b) for development on land in Zone B1 Neighbourhood Centre, Zone B2 Local Centre or Zone B6 Enterprise Corridor, to ensure that buildings are compatible with the desired future character of the area in terms of building bulk and scale,
 - (c) for development on land in Zone B2 Local Centre or Zone B6 Enterprise Corridor, to provide opportunities for buildings of a greater scale than existing development in suitable locations to achieve the Council’s residential strategy and provide opportunities for economic growth.
- (2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

6.5 Location of sex services premises

- (1) The objective of this clause is to minimise land use conflicts and adverse amenity impacts by providing a reasonable level of separation between sex services premises, specified land uses and places regularly frequented by children.
- (2) In deciding whether to grant development consent to development for the purposes of sex services premises, the consent authority must consider the following—
 - (a) whether the premises will be located on land that adjoins, is directly opposite or is separated only by a local road from land—
 - (i) in Zone R2 Low Density Residential, Zone R3 Medium Density Residential, **Zone C4 Environmental Living** or Zone RE1 Public Recreation, or
 - (ii) used for the purposes of a centre-based child care facility, a community facility, a school or a place of public worship,
 - (b) the impact the proposed development and its hours of operation would have on any place likely to be regularly frequented by children—
 - (i) that adjoins the proposed development, or
 - (ii) that can be viewed from the proposed development, or
 - (iii) from which a person can view the proposed development.
- (3) If the sex services premises are proposed to be located in a building that contains one or more dwellings, development consent must not be granted to development for the purpose of sex services premises unless the sex services premises can only be accessed by a separate street entrance that does not provide access to the rest of the building.

6.6 Landscaped areas

- (1) The objectives of this clause are as follows—
 - (a) to have the landscape and townscape area character of Mosman’s residential areas maintained and enhanced by requiring landscaping of sites in conjunction with other development,
 - (b) to have a general visual dominance of landscape over buildings maintained, particularly on harbour foreshores, while recognising the difficulty of achieving this on small lots where there are existing buildings such as semi-detached dwellings,
 - (c) to have adequate and usable ground level open space for recreation, landscaping and containing urban run-off.
- (2) This clause applies to land in Zone R2 Low Density Residential, ~~or~~ Zone R3 Medium Density Residential **or Zone C4 Environmental Living**.
- (3) The consent authority may refuse to grant development consent to development involving the erection of a building unless at least the following minimum landscaped area of a site (as a percentage of the site area) is provided for the development—
 - (a) for development resulting in one dwelling per lot or for a non-residential building—
 - (i) 25%, if the site area is less than 400m²,
 - (ii) 30%, if the site area is at least 400m² but less than 500m²,
 - (iii) 35%, if the site area is at least 500m² but less than 650m²,
 - (iv) 40%, if the site area is at least 650m² but less than 750m²,
 - (v) 45%, if the site area is at least 750m² but less than 900m²,
 - (vi) 50%, if the site area is at least 900m²,
 - (b) for development resulting in more than one dwelling per lot—
 - (i) 50%, for land identified on the Floor Space Ratio Map as having a maximum floor space ratio of 0.6:1 or less,
 - (ii) 40%, for land identified on the Floor Space Ratio Map as having a maximum floor space ratio greater than 0.6:1.

Item 4 - In Part 4, clause 4.6(6), amend the note to recognise that Zone C4 Environmental Living is now included in MLEP 2012.

Clause 4.6 is a mandated clause within MLEP 2012. It sets out provisions to provide an appropriate degree of flexibility in applying certain development standards to particular development.

Subclause (6) applies only to certain zones. The note to the subclause identifies those zones to which the clause applies that are not included within MLEP 2012, that is, the zones do not exist in Mosman. With the rezoning of land to Zone C4, the note to the clause must be amended to omit reference to this zone. The proposed amendment to the clause is shown in red below.

4.6 Exceptions to development standards

- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone C4 Environmental Living if—
- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note—When this Plan was made it did not include Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential; ~~or Zone E3 Environmental Management or Zone C4 Environmental Living.~~

Item 5 - In Schedule 2, amend the schedule to make it clear that the exempt development provisions that currently apply to land zoned R2 Low Density Residential will apply to land zoned C4 Environmental Living.

Schedule 2 of MLEP 2012 lists certain types of minor development that can be carried out without development consent.

A clause for 'Advertising structures – business identification signs' is currently included in schedule 2 of MLEP 2012. It sets out controls for the size, content and visibility of signage for business land uses that are permissible in a residential zone. With the change to Zone C4 Environmental Living, an amendment to this clause is needed to make it clear that the provisions that currently apply to land Zoned R2 Low Density Residential will continue to apply under the new land zoning. The amendment to the clause is shown in red below.

Advertising structures—business identification signs

- (1) In Residential Zones **and in Zone C4 Environmental Living—**
- (a) maximum area—0.75m², and
 - (b) must only identify the approved use of the premises to which the sign is affixed and not promote products, and
 - (c) must not be illuminated or flashing, and
 - (d) are not on a heritage item or on land within the curtilage of a heritage item.

Part 2 Exempt Development Codes of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (the Codes SEPP) identifies a range of minor types of development that may be carried out without development consent. Many of these are ancillary to residential development and can currently be carried out as exempt development on land zoned R2 Low Density Residential within the Scenic Protection Area, provided standards within the Code are met.

With the proposed rezoning of land from R2 to C4, it is Council's intention that there would be no change to the range of exempt development that can be carried out on the land. That is, types of exempt development that are currently permitted on the land under the R2 zone, would continue to be permitted as exempt development under the C4 zone – for example, cabanas, fences, rainwater tanks etc. To ensure that this can occur, amendment to Schedule 2 of MLEP 2012 is proposed with the inclusion of the following clause:

Development in Zone C4 Environmental Living

Exempt development standards specified for development in Zone C4 Environmental Living are the same as those specified for Zone R2 Low Density Residential in Division 1 and Division 2, Part 2 Exempt Development Codes under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

Alternatively, it may be that amendment to the Codes SEPP is necessary to make it clear that exempt development standards for a 'residential zone' also apply to land that is zoned C4 in Mosman. This is a matter for discussion with the NSW DPIE.

Part 3 – Justification

This part responds to section 3.33(c) of the Act - the justification for those objectives, outcomes and provisions and the process for their implementation (including whether the proposed instrument will give effect to the local strategic planning statement of the council of the area and will comply with relevant directions under section 9.1). This part also responds to the Secretary's requirements which include specific matters that must be addressed in Part 3 of the planning proposal.

Section A – Need for the planning proposal

1. Is the planning proposal a result of an endorsed local strategic planning statement, strategic study or report?

Yes. The Mosman Local Strategic Planning Statement (MLSPS) sets out the Council's 20-year vision for land use planning in Mosman. It was endorsed by Council in December 2019, and a letter of support for the statement was issued by the Greater Sydney Commission in March 2020.

This planning proposal is the result of the following planning priorities and actions identified in the MLSPS:

Mosman Local Strategic Planning Statement, March 2020

- Planning Priority 12: Protect, conserve and enhance Mosman's urban tree canopy, landform, waterways and bushland.
 - Action 1: Maintain, and review as necessary, planning controls within Mosman's Local Environmental Plan and Development Control Plans relating to landscaped area and landscaping to ensure a general visual dominance of landscape over buildings is maintained in residential areas, particularly on harbour foreshores
- Planning Priority 13: Protect, conserve and enhance the natural, visual, environmental and heritage qualities of Mosman's foreshore scenic area, and significant views to and from foreshore areas.
 - Action 2: Explore options to ensure that proposed development within Mosman's Scenic Protection Area continues to be assessed under the suite of planning controls within Mosman's Local Environmental Plan and Development Control Plans.

The proposed rezoning of land from R2 Low Density Residential to C4 Environmental Living under MLEP 2012 will ensure that proposed development on this land continues to be assessed under the applicable suite of local planning controls within MLEP 2012 and MRDCP 2012. The Housing Code does not apply to land zoned C4.

Of relevance, the MLSPS (page 58) notes that:

A major ongoing challenge for Council is the protection of Mosman's significant foreshore slopes as the temporary exclusion of this land from the NSW Government's Housing Code and Low Rise Medium Density Housing Code of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 ('the Codes SEPP') will expire on 30 November 2021. Council is continuing to investigate and advocate for more permanent protection measures.

It is not proposed to apply the C4 zone to land zoned R3 Medium Density Residential within the Scenic Protection Area, as this would 'down-zone' land contrary to Local Planning Directions issued by the NSW DPIE. A solution to ensure ongoing protection of R3 zoned land remains outstanding.

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

The simplest method of ensuring ongoing protection of Mosman's foreshore land would be to amend clause 1.19(3)(b) of the Codes SEPP to remove the temporary nature of the current exclusion. All land within the Mosman Scenic Protection Area is currently excluded from the Housing Code, and Low Rise Housing Diversity Code, until 30 November 2021. Amending clause 1.19(3)(b) would obviate the need to rezone land to C4, and would ensure that both R2 and R3 zoned lands within the Mosman Scenic Protection Area are permanently excluded from these Codes. However, advice from the NSW DPIE is that this change to clause 1.19(3)(b) may not be supported, and other options should be explored.

Therefore, this planning proposal proposes an alternate approach to achieving the objectives or intended outcomes set out above, through amending land use zoning under MLEP 2012. It is a more complex option, and will ensure ongoing protection only for land that is currently zoned R2 within the Scenic Protection Area.

Section B – Relationship to strategic planning framework

3. Will the planning proposal give effect to the objectives and actions of the applicable regional, or district plan or strategy (including any exhibited draft plans or strategies)?

Yes. The Greater Sydney Region Plan and North District Plan, issued by the Greater Sydney Commission in March 2018, are the applicable regional and district plans applying to Mosman.

Greater Sydney Region Plan

The Greater Sydney Region Plan, *A Metropolis of Three Cities*, sets a 40-year vision (to 2056) and establishes a 20-year plan to manage growth and change for Greater Sydney in the context of social, economic and environmental matters.

This planning proposal will give effect to the following:

Greater Sydney Region Plan, March 2018

- Direction: A city in its landscape: valuing green spaces and landscape.
- Objectives 27, 28 and 30

➤ Objective 27: Biodiversity is protected, urban bushland and remnant vegetation is enhanced.

The Sydney Basin bioregion is one of the most biodiverse in Australia. The Greater Sydney Region Plan notes the importance of managing the impacts on biodiversity as Greater Sydney grows and changes, in particular on page 156:

"Urban bushland, particularly bushland on public land, will be protected and managed so that it continues to provide clean air and water, cooler urban environments and local habitat. Managing the impacts of urban development at the urban-bushland interface can help reduce the degradation of bushland caused by edge-effect impacts, including stormwater runoff, weeds, domestic pets and unmanaged or informal recreation trails."

Within the Mosman Scenic Protection Area, there are considerable areas of urban bushland zoned E1 National Parks and Natural Reserves and E2 Environmental Conservation under MLEP 2012. This includes wetlands protection areas and littoral rainforest. Over 230 properties that are proposed to be zoned C4 Environmental Living adjoin land zoned E1 or E2, and are a transition to this high conservation value land. The planning proposal will ensure that the impacts of urban development at this urban-bushland interface continue to be considered through the development assessment process and Council's local controls.

Additionally, over 1,160 properties proposed to be zoned C4 are identified on Council's Biodiversity Corridor and Habitat Link map within Mosman Residential DCP 2012, clause 4.4, as either containing or immediately adjoining existing core or cosmopolitan habitat. Council's local planning controls

encourage the retention and expansion of habitat areas for native fauna, and this would continue to be a consideration with the proposed rezoning of land.

➤ Objective 28: Scenic and cultural landscapes are protected.

The Sydney Harbour foreshores are an important element of this iconic waterway. Sydney Harbour shapes Sydney's identity and image like no other natural feature in the city, making it an important asset to the people of Sydney, NSW and beyond. Mosman, being prominently located within Sydney Harbour spearheaded with Middle Head and across from North and South Heads, is an integral part of this landscape and highly visible from both surrounding waterways and land areas across the water.

The Greater Sydney Region Plan (page 158) notes that "*Scenic and cultural landscapes create symbols of Greater Sydney and connect the contemporary urban environment with natural and historic urban landscapes*", and further that "*Their continued protection is important for their aesthetic, social and economic values and for the character of the region*".

The planning proposal will ensure ongoing protection of this iconic harbour foreshore landscape. Potential indicators for achieving this Direction are: increased urban tree canopy and expanded Greater Sydney Green Grid; both of which would be supported by this planning proposal.

➤ Objective 30: Urban tree canopy cover is increased.

The Greater Sydney Region Plan (page 164) notes that "*The urban tree canopy is a form of green infrastructure providing shade, which reduces ambient temperatures and mitigates the heat island effect.... It provides habitat, helps protect the health of waterways and removes fine particles from the air to improve air quality*" and further that "*Greater Sydney's urban tree canopy is made up of trees along streets, in parks and other public spaces, and on privately owned land including front and backyards.... As Greater Sydney grows and urban areas become denser, extending urban tree canopy is one of the most effective ways to improve amenity.... Planning controls need to protect urban tree canopy on privately owned land.*"

The planning proposal to rezone low density land within the Scenic Protection Area to C4 Environmental Living will support this objective. A proposed LEP objective for the C4 zone is "*To maintain the general dominance of landscape over built form, particularly on harbour foreshores.*" Council's local planning controls that currently apply to this land and that will continue to apply with the proposed change in zone encourage the retention of canopy trees, with Council planners routinely working with applicants to ensure tree retention through good design. Planting additional trees is commonly a requirement of development consent.

North District Plan

The North District Plan covers Hornsby, Hunter's Hill, Ku-ring-gai, Lane Cove, Mosman, North Sydney, Northern Beaches, Ryde and Willoughby local government areas. It is a 20-year plan to manage growth in the context of economic, social and environmental matters, and is the means to achieve the vision of the Greater Sydney Region Plan at a district level.

This planning proposal will give effect to the following:

North District Plan, March 2018

- Planning Priority N17: Protecting and enhancing scenic and cultural landscapes.
 - Action 67: Identify and protect scenic and cultural landscapes.
 - Action 68: Enhance and protect views of scenic and cultural landscapes from the public realm.

Sydney Harbour is recognised as a key asset of the North District. The North District Plan (page 105) includes the following content about the importance of scenic landscapes, and of Sydney Harbour:

The scenic and cultural landscapes of the North District contribute to the identity and international profile of Greater Sydney. Scenic and cultural landscapes encourage an appreciation of the natural environment, protect heritage and culture, and create economic opportunities, particularly for recreation and tourism. Scenic and cultural landscapes can complement green infrastructure, particularly where scenic landscapes include waterways and urban bushland.

Continued protection of the North District's scenic and cultural landscapes is important for the sustainability, liveability and productivity of the District. It can complement the protection of biodiversity and habitat, help manage natural hazards and support tourism. Protecting scenic and cultural landscapes can also help preserve links to Aboriginal cultural heritage.

One of the District's key assets is its stunning Harbour and coastline. The Harbour and coastal views contribute to, and shape, the character of the District and the way people live. Tree-lined ridges and escarpments provide natural backdrops enjoyed from the Harbour. Beaches, bays and rock outcrops also contribute to these scenic views. Views from the Harbour, and views to the Harbour and foreshores, are both important.

The planning proposal will give effect to the North District Plan by recognising the significance of Mosman's foreshore slopes, and ensuring that proposed development continues to be subject to Council local controls and the development application pathway. Local planning controls in MLEP 2012 and MRDCP 2012 focus on the importance of tree canopy retention, the dominance of landscape over built form within the foreshore slopes, and view sharing.

The planning proposal will not affect Mosman's ability to meet housing targets set by the North District Plan. Mosman's 0-5 year housing target is 300 additional dwellings for the period 2016-2021, and a similar target is applied for the 6-10 year period (2021-2026). In rezoning land from Zone R2 to Zone C4, there is no change proposed to the permissible land uses, minimum subdivision lot size or other development standards that currently apply to the land under MLEP 2012. The land is currently identified as a low density residential area and this will remain. Refer to Part 2.0 of this planning proposal for additional information.

4. Will the planning proposal give effect to a council's endorsed local strategic planning statement, or another endorsed local strategy or strategic plan?

Yes. The planning proposal will give effect to the Mosman Local Strategic Planning Statement, March 2020. Refer to comments made in Section A-1, above.

Council's Community Strategic Plan, MOSPLAN 2018-28, is the suite of documents that plan for Mosman's future. MOSPLAN responds to the aspirations of the Mosman community and its elected Council, and ensures that services can be provided to the Mosman community effectively, efficiently and sustainably. MOSPLAN 2018-2028 was adopted by Council in June 2018. This planning proposal will give effect to the following:

Community Strategic Plan, MOSPLAN, 2018-2028

- Strategic Direction 3: An attractive and sustainable environment.
 - Strategy 1: Protect and enhance Mosman's natural areas and local biodiversity.
- Strategic Direction 6: Well designed, liveable and accessible places.
 - Strategy 2: Value and strengthen the special aesthetic qualities of Mosman.

It is noted in MOSPLAN (page 36) that a major ongoing challenge for Council is the protection of Mosman's significant foreshore slopes, and that Council is continuing to investigate and advocate for more permanent protection measures.

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

Yes. State environmental planning policies (SEPPs) are policies issued by the NSW Government to regulate planning matters of State or regional significance. SEPPs of particular relevance to this planning proposal are discussed below. Refer also to **Attachment I**.

SEPP 19 – Bushland in Urban Areas

Clause 10 identifies matters that must be considered by a council when preparing a draft local environmental plan. These matters include having regard to the general and specific aims of the policy, and giving priority to retaining bushland.

The general aim of the policy, set out in clause 2(1), is to protect and preserve bushland within urban areas identified (this includes Mosman) because of its value to the community as part of the natural heritage, its aesthetic value, and its value as a recreational, education and scientific resource. The specific aims of the policy, set out in clause 2(2), include (g) *to protect bushland for its scenic values and to retain the unique visual identity of the landscape.*

The planning proposal is consistent with the aims of SEPP 19 in that it seeks to ensure that bushland within low-density residential areas along Mosman's foreshore slopes is protected and preserved through good design and other local controls. Planning objectives and controls within MLEP 2012 and MRDCP 2012 seek to maintain a dominance of landscape over built form, particularly in foreshore areas. Rezoning land from R2 to C4 would ensure that proposed development continues to be subject to these local controls and the development application pathway, rather than State-wide controls under the Housing Code, which do not have the same focus on bushland preservation.

The flora and fauna of Mosman are among the major attractions of the area. A comprehensive flora and fauna survey of Mosman's bushland areas, undertaken as part of Council's Bushland Management Review, identified 430 species of flora and 221 species of fauna in Mosman. The dominant vegetation community represented in Mosman's bushland sites is a subclass of the Sydney Sandstone Gully Forest, that being Regrowth SSGF, and there are also sites of Undisturbed Sydney Sandstone Gully Forest, Coastal Sandstone Heath and Littoral Rainforest. Mosman's bushland provides habitat for a variety of native animals including the Powerful Owl, a threatened fauna species.

The fragmented nature of the total bushland area, and the position and shape of individual sites, mean that most bushland sites in Mosman have a high edge to area ratio and therefore are greatly exposed to disturbances such as stormwater resulting in impacts such as weed incursion and erosion. The planning proposal would ensure the ongoing viability and conservation of Mosman's bushland areas through connectivity and a reduction of potential new impacts from development. It is important that local biodiversity is a priority consideration in development assessment to maintain Mosman's biodiversity for future generations. This would not be a consideration under the Housing Code.

SEPP (Affordable Rental Housing) 2009

The policy aims to provide a consistent planning regime for the provision of affordable rental housing in NSW. Part 2 contains provisions that allow secondary dwellings (i.e. granny flats), boarding houses and group homes to be carried out on land in a residential zone. As such, this currently applies to land zoned R2, however, this requirement would not apply to land zoned C4.

In rezoning land from R2 to C4, it is Council's intention that as much as possible, the planning regime that currently applies to the land will continue to apply under the C4 zone. As such, secondary dwellings are included as a permissible land use within the Land Use Table for Zone C4 to be included in MLEP 2012. Boarding houses and group homes are also listed as permissible land uses in the C4 zone, as these are carried across from the current R2 zone Land Use Table in MLEP 2012.

SEPP (Exempt and Complying Development Codes) 2008 (the Codes SEPP)

The policy aims to provide streamlined assessment processes for development that complies with specified development standards. The Codes SEPP is comprised of a number of individual Codes that facilitate exempt or complying development on land throughout NSW relating to housing, commercial and industrial development.

In drafting this planning proposal, consideration has been given to whether there would be any change to the application of these individual Codes to land in Mosman as a result of the change in zone from R2 to C4. Of particular relevance are the following:

- *Part 2 Exempt development codes* – Some standards applied to exempt development apply only to a residential zone, and would not apply to land zoned C4. It is proposed to include a clause in Schedule 2 of MLEP 2012 to make it clear that the exempt development provisions that currently

apply to land zoned R2 Low Density Residential in Mosman will apply to land zoned C4 Environmental Living.

- *Part 3 Housing Code* – No change. The land is currently excluded from this Code under clause 1.19(2) and (3) until 30 November 2021. The land would continue to be excluded as a C4 zone under clause 3.1(3)(a), as the Code only applies to R1, R2, R3, R4 or RU5 zoned land.
- *Part 3B Low Rise Housing Diversity Code* – No change. This Code does not apply to land zoned R2 in Mosman, as medium density type land uses are not permissible in the zone under MLEP 2012. This Code would not apply to land zoned C4 in Mosman.
- *Part 4 Housing Alterations Code* – No change. This Code applies to residential development and this would be unaffected by the planning proposal. This Code is not zone based.

SEPP (Housing for Seniors or People with a Disability) 2004

The policy aims to encourage the provision of housing that will increase the supply and diversity of residences that meet the needs of seniors or people with a disability. It applies to all land that is zoned primarily for urban purposes, and adjoining land, if dwelling houses or other specified land uses are permitted on the land. It allows seniors housing in the form of a residential care facility, hostel, group of self-contained dwellings or a combination of these on such land, setting aside local planning controls in a council's local environmental plan that would prevent the development of such housing. The policy applies to land zoned R2 within the Mosman Scenic Protection Area.

In drafting this planning proposal, consideration has been given to whether there would be any change to the application of this policy as a result of the change in zone from R2 to C4. Within clause (4) of the policy, there is no specific exclusion for land zoned C4, meaning that the SEPP would likely apply to land zoned C4. However, subclause (4)(6) identifies that the policy does not apply to 'environmentally sensitive land', which is defined in Schedule 1 as land identified as 'scenic' within another environmental planning instrument (i.e. a council local environmental plan), but not land that is so identified if the land is within a residential zone. With a change from zone R2 to C4, the land would no longer be in a 'residential zone' and as such, the restriction on scenic areas may apply. This is a matter for further discussion with the NSW DPIE.

The proposed Zone C4 Land Use Table for MLEP 2012 includes a range of low-density housing types that provide a diversity of accommodation for older residents and people with a disability. This includes: boarding houses; dwelling houses; group homes; secondary dwellings; and semi-detached dwellings.

6. Is the planning proposal consistent with applicable Ministerial Directions (s.9.1 directions)?

Yes. Ministerial Directions are issued by the Minister for Planning under section 9.1 of the *Environmental Planning and Assessment Act 1979* and set out matters for consideration in local plan making. The directions cover issues such as employment, environment and heritage, housing, infrastructure and urban development. Ministerial Directions of particular relevance to this planning proposal are discussed below. Refer also to **Attachment J**.

D2.1 Environmental Protection Zones

The objective of this direction is to protect and conserve environmentally sensitive areas. The direction provides that a planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas, and must not reduce the environmental protection standards that apply to the land. An environmental sensitive area is defined under the *Environmental Planning and Assessment Regulation 2000* as including areas with identified coastal wetlands, littoral rainforest, National Park, marine estate and like areas.

In Mosman, areas of littoral rainforest are identified at Balmoral, Clifton Gardens, Middle Head, Parriwi Point and Sirius Cove. These rainforest areas are adjacent to land that is proposed to be rezoned from R2 to C4 under this planning proposal. This rezoning would not reduce the environmental protection standards that apply to the land, but rather, would support the conservation of these areas through local planning controls.

D2.2 Coastal Protection

This direction applies to land in a coastal zone. The direction provides that a planning proposal must include provisions that give effect to, and are consistent with, the objects of the *Coastal Management Act 2016* and associated manual, toolkit, design guidelines and programs. It further provides that a planning proposal must not rezone land which would enable increased development or more intensive land-use on land within a coastal vulnerability area, land that is affected by a coastal hazard or land that is identified as a coastal wetlands or littoral rainforest area.

Land around the Mosman foreshore is identified as being within a coastal zone. Existing provisions of MLEP 2012 that relate to coastal development include clause 5.7 Development below mean high water mark, 6.1 Acid sulfate soils and clause 6.3 Foreshore building line. These clauses are not affected by this planning proposal. Rezoning land from R2 to C4 would not facilitate increased development or more intensive land use. The subject land would remain a low-density residential area, with the same land uses continuing to be permissible.

D2.3 Heritage Conservation

The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance. The direction provides that a planning proposal must contain provisions that facilitate the conservation of items, places, buildings, works, relics, moveable objects or precincts of environmental heritage significance to an area, and Aboriginal areas, Aboriginal objects, Aboriginal places or landscapes.

Within the Mosman Scenic Protection Area, some land is identified as a heritage item or within a heritage conservation area under MLEP 2012, with clause 5.10 Heritage conservation applying. The heritage status of this land and provisions in clause 5.10 are unaffected by this planning proposal. The provisions of the Codes SEPP in regards to heritage would also be unaffected by this planning proposal. The Housing Code does not apply to land that is identified as a heritage item, and is limited on land that is identified as being within a heritage conservation area, within a council's local environmental plan. A change to zone C4 would ensure that no development under the Housing Code could occur on land that is a heritage item or within a heritage conservation area identified in MLEP 2012.

In 2005, an Aboriginal Heritage Study of Mosman was produced on behalf of the Office of Environment and Heritage, Metropolitan Local Aboriginal Land Council, Sydney Harbour Federation Trust and Mosman Council. The aims of the study were to survey the LGA and provide accurate location information for Aboriginal archaeological sites, and map the LGA for Aboriginal archaeological sensitivity with a ranking of low, moderate or high based on the statistical potential that the land would contain unidentified Aboriginal objects e.g. sandy deposits or sandstone rock platforms.

There are a number of areas along Mosman's foreshore that are zoned R2 Low Density Residential currently and identified on the Aboriginal Heritage Sensitivity Map with a 'moderate' sensitivity ranking, and there are some R2 zoned properties identified as known Aboriginal sites. Aboriginal heritage would not be a consideration under the Housing Code. The advice of the Study is that any activity in these areas that would disturb the ground would require a due diligence assessment to assess the potential impact of the proposed activity, however this would not be a consideration under the Housing Code.

The planning proposal supports this Ministerial Direction to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.

D2.6 Remediation of Contaminated Land

The objective of this direction is to reduce the risk of harm to human health and the environment by ensuring that contamination and remediation are considered by planning proposal authorities. The direction provides that a planning proposal must not include land in a particular zone, if the inclusion of the land in that zone would permit a change of use of the land.

In rezoning land from R2 to C4, this planning proposal would not permit a change of use of the land. The range of land uses that are permissible and prohibited in the R2 zone currently under MLEP 2012, are proposed to be carried over into the new C4 zone. The land would remain a low-density residential area.

D3.1 Residential Zones

The objectives of this direction are to encourage a variety and choice of housing types to provide for existing and future housing needs, make efficient use of existing infrastructure and services, and minimise the impact of residential development on the environment and resource lands. The direction provides that a planning proposal must include provisions that encourage the provision of housing that will broaden the choice of building types and locations available in the housing market; make more efficient use of existing infrastructure and services; and be of good design. A planning proposal must not contain provisions which will reduce the permissible residential density of land.

This planning proposal will permit a range of low-density residential housing types on the land under a C4 zone, the same as that permitted on the land under the current R2 zone in MLEP 2012. Local planning controls in MLEP 2012 and DCP will continue to apply, facilitating good design. The permissible residential density of land will not be reduced.

Refer to Part 2.0 and **Attachment E** of this planning proposal for commentary on Mosman's Local Housing Strategy and the C4 Zone.

D4.4 Planning for Bushfire Protection

The objectives of this direction are to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, and to encourage sound management of bush fire prone areas. The direction provides that a planning proposal must have regard to *Planning for Bushfire Protection*, introduce controls that avoid placing inappropriate developments in hazardous areas, and ensure that bushfire hazard reduction is not prohibited within the APZ. The relevant planning authority must consult with the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination under section 56 of the Act.

Some land within the Mosman Scenic Protection Area is identified as bush fire prone on the Mosman Bush Fire Prone Land Map 2018. In preparing this planning proposal, consideration has been given to the current *Planning for Bushfire Protection (PBP) 2019*, particularly section 4 which considers strategic planning matters. In rezoning land from R2 to C4, this planning proposal does not seek to change or intensify the permissible uses on the land. The land will remain a low-density residential area, and *PBP 2019* would continue to be a consideration for any proposed development as part of the development application process. Consultation with the Commissioner of the NSW Rural Fire Service will be undertaken as part of the statutory consultation process for this planning proposal.

Refer to bushfire map in discussion of environmental values criteria analysis in **Attachment C**.

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. There would be no likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, would be adversely affected as a result of the proposal. In fact, the planning proposal have a positive impact on Mosman's biodiversity. By rezoning land to C4 Environmental Living, the planning proposal would ensure that a development application would continue to be required for most proposed development on Mosman's foreshore land, where tree removal and impact on flora and fauna species are considered prior to consent being granted.

Areas of Littoral Rainforest are identified in Mosman on land at Balmoral, Clifton Gardens, Middle Head, Parriwi Point and Sirius Cove. These littoral rainforest areas, protected under SEPP (Coastal Management) 2018, are located adjacent to R2 zoned land that is proposed to be rezoned in this planning proposal. This planning proposal will not reduce the environmental protection standards that apply, but rather, would support the conservation of these areas through the continued application of local planning controls.

Powerful Owls (*Ninox strenua*), listed as vulnerable in Schedule 1 of the Biodiversity Conservation Act 2016, have been seen roosting at Balmoral. On the coast, Powerful Owl habitat requires a tall shrub layer and abundant hollows that support a high density of arboreal marsupials. Another important factor for the presence of Powerful Owls in Mosman is connectivity with other areas of bushland which provides green corridors for wildlife and therefore may support productivity. The planning proposal would support the conservation of Mosman's biodiversity for future generations.

An analysis of the environmental values criteria of land proposed to be zoned C4 is included in Part 2.0 of this planning proposal.

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

It is unlikely that there would be any adverse environmental effects as a result of the planning proposal, however a positive impact on the environment is a likely outcome. The treed foreshore slopes would be identified with an environmental zone, and as such, this would ensure that proposed development on the land remains subject to Council's local planning controls and the development application pathway.

Less landscaped area for proposed development is required under the Housing Code, than compared with that required under MLEP 2012, potentially resulting in increased urban run-off and less area for landscape planting. For example, for a 900m² lot, the Housing Code requires only 39% of the site area to be landscaped area, compared with 50% under MLEP 2012. Similarly, for a 300m² lot, the requirement is 15% under the Housing Code, compared with 25% under MLEP 2012.

Further, the Housing Code permits trees up to 8 metres in height to be removed to facilitate the erection of a dwelling house, without any requirement to consider retaining the existing tree canopy in the design of proposed development. In comparison, under Council's local planning controls, a permit is required to be obtained from Council for the removal of any tree more than 5 metres in height, and Council routinely works with applicants during the assessment of a development application to consider design solutions to ensure retention of canopy trees where possible.

Retaining the dominance of landscape over built form is a key feature of the Mosman Scenic Protection Area, and is important not only for its aesthetic value, but also for reducing urban temperatures (i.e. the urban heat island effect) and providing fauna habitat.

Refer to **Attachment B** for a more detailed comparison of the Housing Code v. Mosman local planning controls.

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

Yes. The planning proposal would have a positive social and economic effect in that it would maintain the subject land as a low-density residential area, with the same range of permissible and prohibited land uses, development standards and planning controls that currently apply to the land under MLEP 2012 and MRDCP 2012, continuing to apply without change. A development application would remain the means by which development consent would be obtained for alterations and additions to existing dwellings, or for new housing in the area, with assessment under Council's local planning controls.

The visual amenity and bushland character of Mosman is recognised as important by the local community, as evident in consultation undertaken for Council's Community Strategic Plan, MOSPLAN 2018-2028 and Mosman Local Strategic Planning Statement 2020. This planning proposal would ensure the ongoing protection of these values, with matters such as view sharing, tree canopy retention and the visual impact of development remaining a consideration in development assessment.

The C4 zone is used in 41% of all local environmental plans applied to land in the Sydney metropolitan area, including in neighbouring North Sydney, Willoughby and Northern Beaches local government areas. The zone is applied to many areas of harbour foreshore land, similar to the approach proposed in this planning proposal.

Initial consultation with affected landowners and the wider Mosman community has indicated that the majority of respondents support the proposed rezoning. Refer to Part 2.0 Background of this planning proposal. Further consultation will be undertaken as part of the statutory public exhibition process.

Section D – State and Commonwealth interests

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

Not relevant.

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

Consultation with relevant authorities will take place as part of the Gateway determination.

NSW Department of Planning, Industry and Environment (DPIE)

Permanent exclusion of the Mosman Scenic Protection Area from the Housing Code has been the subject of discussion between Council and the NSW DPIE for many years.

On 23 November 2018, the NSW DPIE wrote to Council to advise that an amendment had been made to the Codes SEPP to extend the temporary exclusion in clause 1.19(3) of the SEPP by a further three years to 30 November 2021, noting that this extension would give Council time to "*review its local environmental plan, prepare its Local Housing Strategy and Local Strategic Planning Statement and to prepare additional information to support Council's request for permanent exclusion.*"

On 24 June 2019, the matter was further discussed with the Minister for Planning, the Hon. Rob Stokes, and DPIE staff, at which time Council was advised that an amendment to MLEP 2012 to apply Zone C4 Environmental Living to the land may be a suitable option, rather than relying on a change to the Codes SEPP.

A planning proposal was prepared and endorsed by Council at its meeting on 1 December 2020 (Report EP/52), and subsequently submitted to the NSW DPIE for Gateway determination. This planning proposal (PP-2021-154) was then the subject of discussion between the DPIE and Council regarding information required to support an assessment of the proposal, with the DPIE requesting that Council withdraw and resubmit the planning proposal accompanied by additional supporting information.

On 21 May 2021, the DPIE provided the following advice to Council:

“The Department of Planning, Industry and Environment (the Department) shares Mosman Municipal Council’s view that the amenity, landscape significance and high-quality views from Sydney and Middle Harbour’s should be maintained and enhanced.

With respect to planning proposal PP-2021-154 and the application of environmental zones, I can advise that the Department’s position is that scenic and aesthetic qualities are an acceptable reason to apply a C4 zone as per Practice Note 09-002 – E zones.

On 30 April 2021, Council’s General Manager, Dominic Johnson met with the Department and agreed to resubmit the planning proposal with the Scenic Amenity Study for the Mosman Scenic Protection Area that identifies the special scenic qualities of Mosman R2 low density residential land.

To appreciate the constraints of the R2 zone, it was also agreed that the planning proposal should include a mapping overlay showing areas of high scenic quality as well as other environmental constraints such as steep slopes, threatened species and endangered ecological communities. This will help inform Council’s explanation and justification for why the Mosman foreshore area differs from other foreshore areas in Sydney.

Finally, the planning proposal needs to discuss the likely impact of the proposed C4 zone on Council’s ability to deliver housing targets in its local housing strategy. This explanation is best informed by a plain English explanation of how the development rights of individual landowners will change under the proposed C4 zone.

Following our meeting, a letter from Mr Dominic Johnson was received that included an environmental analysis, information on how Council’s housing targets will be met and the Scenic Amenity Study. The Department can confirm that the additional material is satisfactory, with the exception that no mapping was provided on existing environmental constraints.

The maps and material should now be included in a revised holistic planning proposal that is submitted via the planning portal and the previous planning proposal withdrawn. I can confirm that the proposal does not need to be reported back to Council for a resolution to undertake these steps.

As Council is aware, exclusion of Council’s Scenic Protection Area from the Housing Code, Low-Rise Medium Density Code and the Exempt and Complying Development Codes State Environmental Planning Policy (Codes SEPP) is a temporary consideration.

The Department has employed a sincere effort to resolve this matter with Council over a number of years and to determine an appropriate pathway forward. Further, the Department has extended an exclusion from the Codes SEPP to 30 May 2022, allowing Council the time to prepare the relevant additional information it needs, to support a revised planning proposal.

The Department welcomes the opportunity to work with Council ahead of a new planning proposal being submitted.”

Greater Sydney Commission

The visual significance of Mosman’s foreshore slopes has been the subject of discussion between Council and the Greater Sydney Commission in finalising the Mosman Local Strategic Planning Statement (MLSPS) during 2019-2020.

The Commission has provided advice to Council in assurance meetings held in 2019 that the MLSPS contains “strong approaches to scenic landscapes befitting their spectacular landscape” and “good detail on preserving scenic and cultural landscapes around the harbour setting”.

The letter of support issued by the Commission to Council dated 4 March 2020 notes that, in order to implement the MLSPS, support is given for Council to “work with DPIE in relation to the ongoing protection of Mosman’s established Scenic Protection Area”.

Part 4 – Mapping

This part responds to section 3.33(d) of the Act - if maps are to be adopted by the proposed instrument, such as maps for proposed land use zones; heritage areas; flood prone land—a version of the maps containing sufficient detail to indicate the substantive effect of the proposed instrument.

As a result of this planning proposal, MLEP 2012 maps will be amended to reflect a change in zone on land within the Mosman Scenic Protection Area from R2 Low Density Residential to C4 Environmental Living. The following maps will be affected by this change:

- Land Zoning Map
 - LZN_001
 - LZN_002
 - LZN_003

The proposed Land Zoning Maps are included in **Attachment G**.

The maps have been updated following revisions made to the planning proposal in January 2022 to remove 213 lots from the proposal. Refer to notes on page 2-4.

Maps will be prepared consistent with the advice issued by the NSW DPIE for standard technical requirements for spatial datasets and maps.

Part 5 – Community Consultation

This part responds to section 3.33(e) of the Act - details of the community consultation that is to be undertaken before consideration is given to the making of the proposed instrument.

Community consultation will be undertaken in respect of this planning proposal, to be informed by:

- Part 6.5.2 Community consultation of *A guide to preparing local environmental plans*, NSW Department of Planning and Environment document, December 2018; and
- *Mosman Community Participation Plan*, Mosman Council, June 2020.

The planning proposal will be publicly exhibited for a minimum period (as instructed in the Gateway determination), with notification given, for example:

- In Council's regular MosmanNow e-newsletter;
- In the local newspaper, the Mosman Daily;
- On Council's engagement website www.yourvoicemosman.com.au;
- On Council's social media, for example, Facebook and Twitter;
- On Council's Urban Planning website www.mosmanplanning.net, for example, blog posts;
- In Council's bi-monthly Urban Planning e-newsletter;
- In posters on noticeboards and the like within the Civic Precinct; and
- By letter to affected landowners.

The written notice will:

- Give a brief description of the objectives or intended outcomes of the planning proposal;
- Indicate the land affected by the planning proposal;
- State where and when the planning proposal can be inspected;
- Give the name and address of the Council for the receipt of submissions;
- Indicate the last date for submissions; and
- Confirm whether delegation for making the LEP has been issued to Council.

During the exhibition period, the following material will be made available for inspection on Council's engagement website and at Council's offices in the Civic Precinct, 573 Military Road, Spit Junction:

- The planning proposal in the form approved for community consultation by the Gateway determination;
- The Gateway determination; and
- Any information or technical information relied upon by the planning proposal.

All exhibition material will be in plain language. Other engagement and response tools may be used as appropriate, such as surveys, community meetings, drop-in sessions, and events such as market stalls. Submissions will be invited, in writing, by letter or email to Council, and by other methods such as completing an online submission form.

Additionally, Council will:

- Acknowledge each submission received, in writing to the author;
- Consider feedback received during an evaluation of the planning proposal;
- Post-exhibition, prepare a planner's report to Council that will include:
 - a summary of issues raised in submissions;
 - how these issues were considered, and
 - what changes, if any, have been made to the planning proposal as a result; and
- Provide updates on the progress of the planning proposal on www.mosmanplanning.net.

Part 6 – Project Timeline

This part responds to the Secretary's requirement to include a project timeline to detail the anticipated timeframe for the plan making process for the planning proposal.

The following timeline for the planning proposal is an estimation only.

It has been revised to reflect the re-submission of the planning proposal to the NSW DPIE, and advice from the DPIE that the current temporary exclusion of the Mosman Scenic Protection Area from the Codes SEPP will be extended to 30 May 2022.

Task	Timeframe / target date
Report to Council for endorsement of planning proposal and decision to send to NSW DPIE for gateway determination	Council Meeting 1 December 2020
Planning proposal is re-submitted to NSW DPIE for gateway determination, with additional supporting information	May 2021
Gateway determination is issued by NSW DPIE to Council with approval to proceed to exhibition	June 2021
Engagement strategy is finalised and consultation material prepared	July - September 2021
Public exhibition period	October - November 2021
Consideration of submissions received and any amendments to planning proposal as necessary	December 2021 - January 2022
Report to Council for endorsement of planning proposal with any amendments as necessary	February 2022
Liaise with Parliamentary Counsel in drafting of amending LEP written instrument, and with NSW DPIE in preparing LEP maps	March 2022
Council delegate to make LEP amendment (assuming delegation), or submission of draft LEP amendment to NSW DPIE with a request to be made (if no delegation)	April 2022
NSW DPIE notifies LEP amendment in NSW Government Gazette	May 2022

Attachments

Attachment A – Mosman Scenic Protection Area History

Historically, planning has played an important role in maintaining the significance and beauty of the harbours and surrounding foreshore land.

State planning

A scenic protection area had its genesis in studies by the State government in the 1960s and 70s. “*The Sydney Harbour Foreshore Study*” in 1967 by the State Planning Authority was undertaken “to provide a basis for determining policies and action to guide the future use and development of the harbour area in a manner which has full regard to the importance of this great natural asset to the people of Sydney and to the State”. The report recognised that on the Mosman slopes the natural landscape was dominant over buildings, and concluded that,

“It is indeed difficult to see how a general control code can be effectively applied where site conditions and topography vary as much as they do around Sydney Harbour.” p.20

The “*Sydney Harbour Foreshore Development Report 1971*” also by the State Planning Authority was undertaken to expand on the 1967 Study and develop a procedure which would enable affected council areas to develop in a manner consistent with the overall constraints imposed by Sydney Harbour and each of its separate elements. The Study found that from a visual perspective the vegetative cover in certain areas (known in the Study as Peninsula, Valley Slopes and Middle Slopes) should be conserved and where possible increased.

In these studies the whole of Mosman was covered by a Foreshore Scenic Protection Area (FSPA). This situation was again confirmed by Sydney Regional Environmental Plan (SREP) 23 – Sydney and Middle Harbours (1990). SREP 23 applied to the whole of Mosman LGA. It required consideration of the appearance of development from the waterway and foreshore –

18 A consent authority must not consent to the carrying out of development unless it is satisfied that the proposed development is consistent with development of the land to which this plan applies in accordance with the objectives of this plan, and it has considered such of the following matters as are of relevance to the development –

(a) the appearance of the development from the waterway and the foreshores;

This plan was subsequently replaced by SREP – Sydney Harbour Catchment 2005, which applied to a much more restricted area adjacent to the harbour, generally only one street back from the interface with the harbour. It includes planning principles to consider when preparing environmental planning instruments (EPDs) and DCPs under Part 3 of the Act. This latest SREP was developed and drafted within a planning framework where controls were in place at the local level (eg FSPA and DCPs) to protect more extensive but significant areas visible from the harbours and with views to the harbour.

Local Planning

The concept of a FSPA was introduced at the local level by Mosman LEP No.49 (Gazetted 26 August 1994). The FSPA covered most of residential land except for the ridges. It was introduced to require consideration of the impact of proposed development on the natural environment, visual environment and environmental heritage of Mosman. Council could refuse an application if it considered that a proposal would adversely affect these environments. The LEP also introduced landscaping requirements reinforcing the link between the significance of the harbour, foreshores, the landscape and built form. Maintaining the dominance of landscape over built form was a primary consideration.

Another planning control introduced in 1994 (MLEP No. 51 Gazetted 16 Dec 1994) identified visually sensitive sloped areas of Mosman as being unsuitable for detached dual occupancy development. The 60m (200 foot) contour was identified as the benchmark for significant views to and from the harbour, where landscape dominated over built form, and where visual considerations were paramount. This LEP built on the work of strategic studies undertaken on behalf of Council such as the *Urban Design Study 1990* by McDonald McPhee Pty Ltd, and the *Development Control Guidelines for Rosherville Reserve, Clifton Gardens and Sirius Cove 1993* by Lester Firth Associates. The methodology used by this latter Study was the basis upon which the justification for this LEP was developed.

This package of controls was further supported by the *Mosman Heritage Review 1996* and the development of the Mosman Residential Development Control Plan (MRDCP) in 1999. These various

studies and related controls recognise the important relationship between the harbour, the landform and resulting land based development in defining Mosman's unique character.

MLEP 1998, a comprehensive LEP gazetted 24 December 1998, included a FSPA under clause 27.

27 Foreshore scenic protection area

- (1) The objectives of establishing a foreshore scenic protection area are:
 - (a) to recognise, protect and enhance the natural, visual, environmental and heritage qualities of Mosman, and
 - (b) to co-ordinate planning controls with Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 and ensure its objectives are met.
- (2) The Council must not consent to the alteration or erection of a building on land in the foreshore scenic protection area unless it has made an assessment, having regard to the objectives of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005, of the impact of the proposed development on the natural environment, the visual environment and the environmental heritage of Mosman.
- (3) If, after having made the assessment, the Council considers that the proposed development impacts adversely on the natural environment, the visual environment or the environmental heritage of Mosman, the Council may refuse to consent to the proposed development.
- (4) This clause does not affect any requirement of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

The combination of the SREP (Sydney Harbour Catchment) 2005, MLEP 1998 provisions for landscaping and clause 27 (above) together with controls in the MRDCP addressing planning matters such as views, setbacks (especially substantial rear setbacks), and maintenance of trees and landscaping natural features (such as rockwalls), ensured that the significance of the harbour and the sloped land surrounding it was protected from any adverse effects of development.

The current MLEP 2012, which commenced on 1 February 2012, includes a Scenic Protection Area (SPA) given effect by clause 6.4:

6.4 Scenic protection

- (1) The objectives of this clause are as follows:
 - (a) to recognise and protect the natural and visual environment of Mosman and Sydney Harbour,
 - (b) to reinforce the dominance of landscape over built form,
 - (c) to ensure development on land to which this clause applies is located and designed to minimise its visual impact on those environments.
- (2) This clause applies to land identified as "Scenic Protection Area" on the Scenic Protection Map.
- (3) Development consent must not be granted to any development on land to which this clause applies unless the consent authority is satisfied that:
 - (a) measures will be taken, including in relation to the location and design of the proposed development, to minimise the visual impact of the development to and from Sydney Harbour, and
 - (b) the development will maintain the existing natural landscape and landform.

The area of the SPA is significantly less than the FSPA under the previous MLEP 1998. The boundary of the Scenic Protection Area corresponds to the 60m contour line identified in earlier strategic work of council establishing visually significant land in Mosman. The extent of the previous FSPA had been questioned in the past due to the inclusion of areas that were either not visible from the harbour or harbour reserves, or areas that don't themselves have harbour views. The current Scenic Protection Area in MLEP 2012 addresses those issues and is an area that can withstand more critical appraisal on its ability to meet planning objectives.

Attachment B – Comparison of Mosman local controls and Housing Code

Criteria	Mosman local planning controls - for Zone R2/C4	NSW Government Housing Code, Codes SEPP
Consultation with adjoining property owners	14 days consultation period, submissions invited. The <i>Mosman Community Participation Plan 2020</i> requires adjacent property owners to be notified of proposed development. Submissions are invited and considered as part of the development assessment process.	No genuine consultation. Adjacent property occupants are informed of the receipt of a complying development application, but no submissions are invited.
Height of building (maximum)	8.5 metres building height 7.2 metres wall height MLEP 2012 cl 4.3 + 4.3A. Wall height requires buildings to be stepped in to the roof, allowing view sharing between buildings and minimising overshadowing.	8.5 metres cl 3.8 No wall height control, although the side setback to a boundary is increased as the height of a building increases, i.e. a defacto wall height - cl. 3.10(4).
Floor Space Ratio (maximum)	0.5:1 MLEP 2012 cl 4.4 and 4.4A.	0.4:1 – 0.8:1 depending on lot size cl 3.9 On lots 650sqm in area or less, a higher FSR can be achieved under the Housing Code than under Council's local controls.
Landscaped Area (minimum)	25 - 50% of the lot area depending on lot size MLEP 2012 cl 6.6 Council's local planning controls require more landscaped area than the Housing Code for all lot sizes. The difference can be as much as 20% - for example, for a 900sqm site, only 270sqm of landscaped area is required under the Code, compared with 450sqm under MLEP 2012.	10 - 45% of the lot area depending on lot size cl 3.13 Less landscaped area, together with greater floor space ratio of buildings, results in greater bulk and scale, increased urban runoff and less landscape planting.
Scenic protection area	Minimise visual impact of development to and from Sydney Harbour; maintain the existing natural landscape and landform. MLEP2012 cl 6.4	No requirement to consider.
View sharing	Achieve view sharing through good design. To consider: <ul style="list-style-type: none"> • What views are to be affected? • How are the views obtained and assessed? • Where is the view enjoyed from? • Is the proposal reasonable? MRDCP 2012 part 4.3	No requirement to consider.

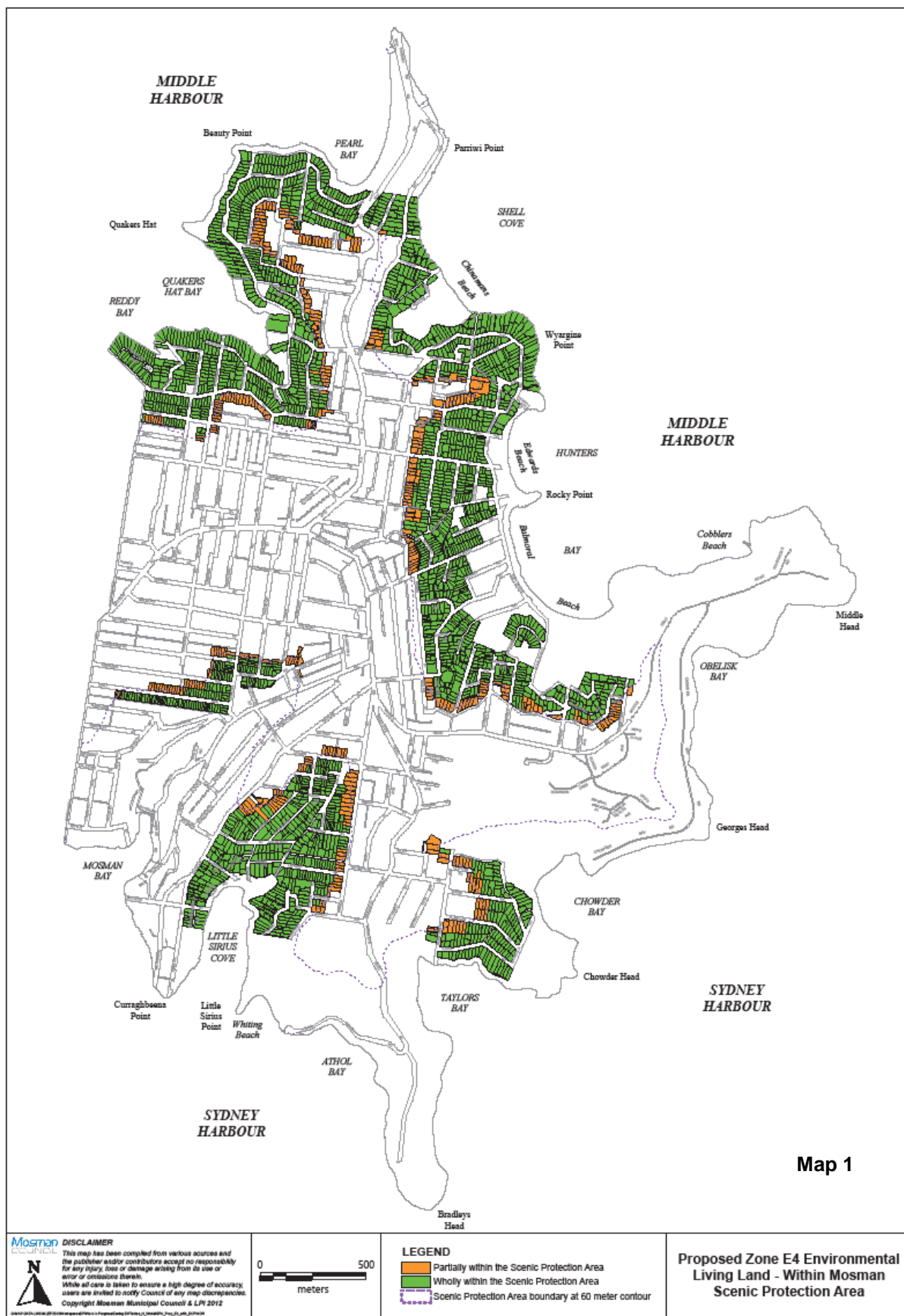
Attachment C – Environmental Values Criteria Analysis

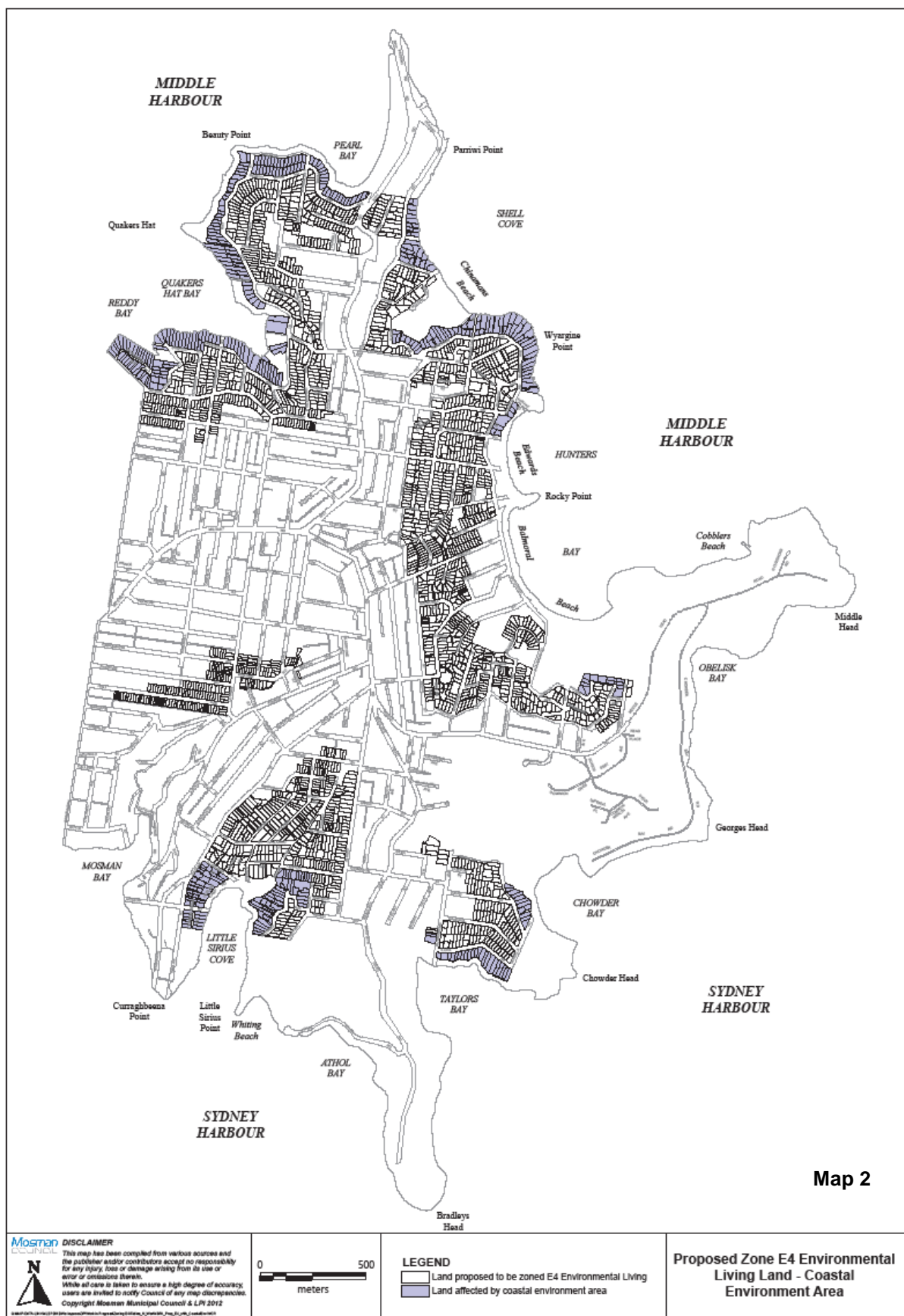
*Note – None of figures in this analysis (apart from the MSPA figure) or following maps have been updated following the removal of 213 lots from the planning proposal in January 2022. Refer to notes on pages 2-4.

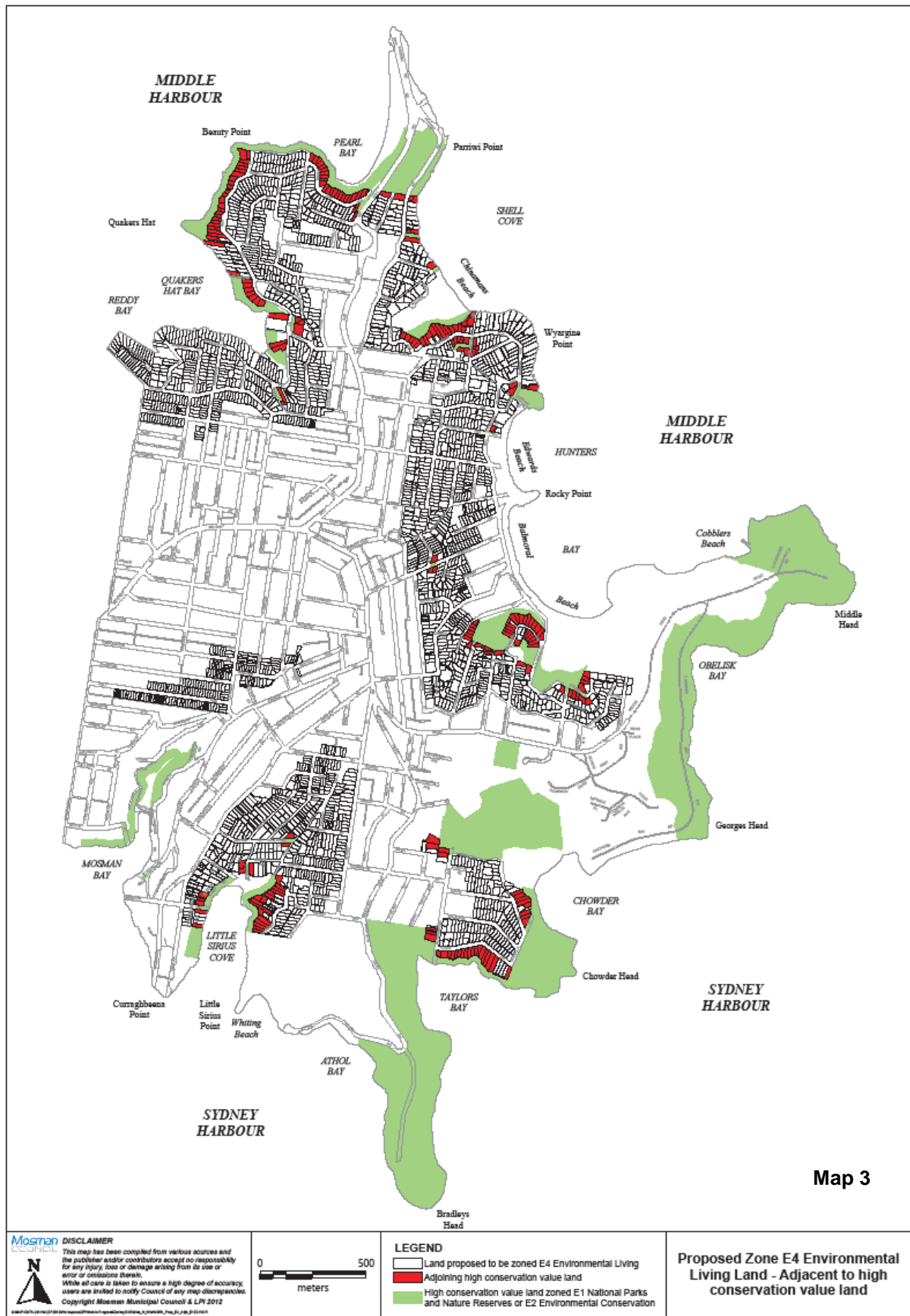
Environmental Values Criteria	No. lots proposed to be zoned C4 that are affected (approximate)	Detail	Map Reference
NSW DPIE environmental values criteria:			
Areas of special ecological, scientific, cultural or aesthetic attributes that require management in conjunction with other low-impact uses, e.g. scenic protection areas, areas with contiguous native vegetation or forest cover	2,418*	2,418 lots identified within the Mosman Scenic Protection Area under clause 6.4 of Mosman LEP 2012.	Map 1 - Scenic Protection Area
Native vegetation on coastal foreshores - Native vegetation on land with frontage, or adjoining or adjacent to, a beach, estuary, coastal lake, headland, cliff or rock platform	442	442 lots within the Coastal Environment Area identified in Coastal Management SEPP (being within approx. 100m to Sydney and Middle Harbours)	Map 2 - Coastal Environment Area
Land that is a transition between high conservation value land, e.g. land zoned E1 or E2 and other land such as that zoned rural or residential	234	34 lots adjoin land zoned E1 National Parks and Nature Reserves and 200 lots adjoin land zoned E2 Environmental Conservation under Mosman LEP 2012; this considers only land that is immediately adjoining E1 or E2 zoned land where the boundaries meet and are not separated by a road	Map 3- Adjacent to High Conservation Value Land
Culturally significant lands such as Aboriginal object sites, Aboriginal places of heritage significance, and other significant objects identified by the local Aboriginal community.	229	13 lots identified as Aboriginal Heritage Sites; 5 lots identified as High Sensitivity and 211 lots identified as Moderate Sensitivity - within Mosman Aboriginal Heritage Study (AMBS Consulting, NSW National Parks and Wildlife Service, Sydney Harbour Federation Trust, Mosman Council and Metropolitan Aboriginal Land Council, 2005); AMBS work basis for sensitivity mapping (Kelleher and Nightingale Consulting, 2011) - confidential	Map 4 - Aboriginal Heritage Sensitivity
Highly constrained land where elements such as slope, erodible soils or salinity may have a key impact on water quality within a hydrological catchment	194	25 lots within Acid Sulphate Soils area and 169 lots within Acid Sulphate Soils Buffer Area identified under clause 6.1 of Mosman LEP 2012	Map 5 - Acid Sulphate Soils
Land mapped as littoral rainforest in State Environmental Planning Proposal (Coastal Management) 2018 (Coastal Management SEPP)	150	0 lots within Littoral Rainforest Area; 110 lots within 100m Buffer Area to Littoral Rainforest Area; 40 lots (approx.) within 100m Buffer Area to Littoral Rainforest Area identified in Mosman Flora and Fauna Study (Ecosure, 2016) and in 2018 submitted to DPIE for inclusion in Coastal Management SEPP maps.	Map 6 - Littoral Rainforest
Land comprising riparian and estuarine vegetation on waterfront land, defined under the NSW Water Management Act 2000, or	109	109 lots within Wetlands Protection Area identified in Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	Map 7 - Wetland Protection Area

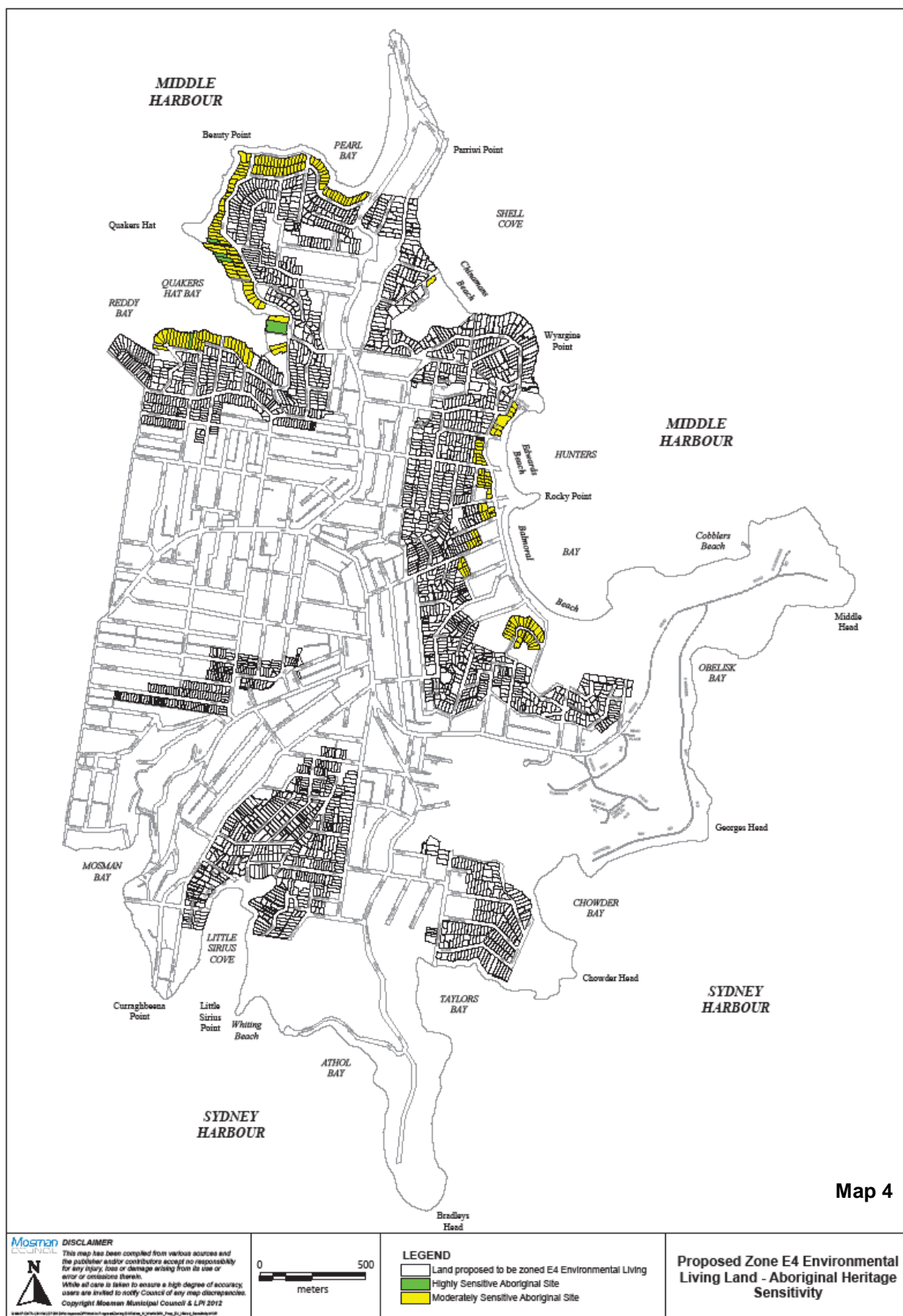
Environmental Values Criteria	No. lots proposed to be zoned C4 that are affected (approximate)	Detail	Map Reference
wetland areas other than those mapped as Coastal Management SEPP			
Coastal foreshores and land subject to coastal hazards, including climate change effects	109	109 lots are affected by a foreshore building line under clause 6.3 of Mosman LEP 2012; clause applies to such land in response to coastal hazards including sea level rise.	Map 8 - Foreshore Building Line
Land where strict controls on development apply, e.g. steeply sloping escarpment lands, land slip areas	84	84 lots are affected by steeply sloping land with the degree of slope being 33 degrees or greater. Controls apply in part 6.6 of the Mosman Residential DCP 2012 pertaining to slope and instability.	Map 9 - Slope
Land mapped as coastal wetlands in Coastal Management SEPP	0		
High conservation coastal foreshores and land acquired or proposed for acquisition under a Coastal Lands Protection Scheme	0		
Land with a registered BioBanking agreement	0		
Land under the care, control and management of another catchment authority such as the Department of Water and Energy or a council for critical town water supply, aquifer or catchment as appropriate	0		
Land where rehabilitation and restoration of its special environmental qualities are the primary purpose	0		
Land containing vegetation communities listed as Endangered Ecological Communities under the Threatened Species Conservation Act 1995 and the Environment Protection and Biodiversity Conservation Act 1999	-	<i>Council does not have information to assess this criteria</i>	
Lands with very high conservation values and/or key threatened species habitat such as old-growth forests, significant wildlife, and habitats for threatened species or endangered populations that cannot withstand further loss where the threatened species or endangered population is present	-	<i>Council does not have information to assess this criteria</i>	
Land comprising areas of rare, endangered and vulnerable forest ecosystems as defined by the Joint ANZEC/MCFFA National Forest Policy Statement Implementation sub-committee (JANIS) (Commonwealth of Australia 1997)	-	<i>Council does not have information to assess this criteria</i>	

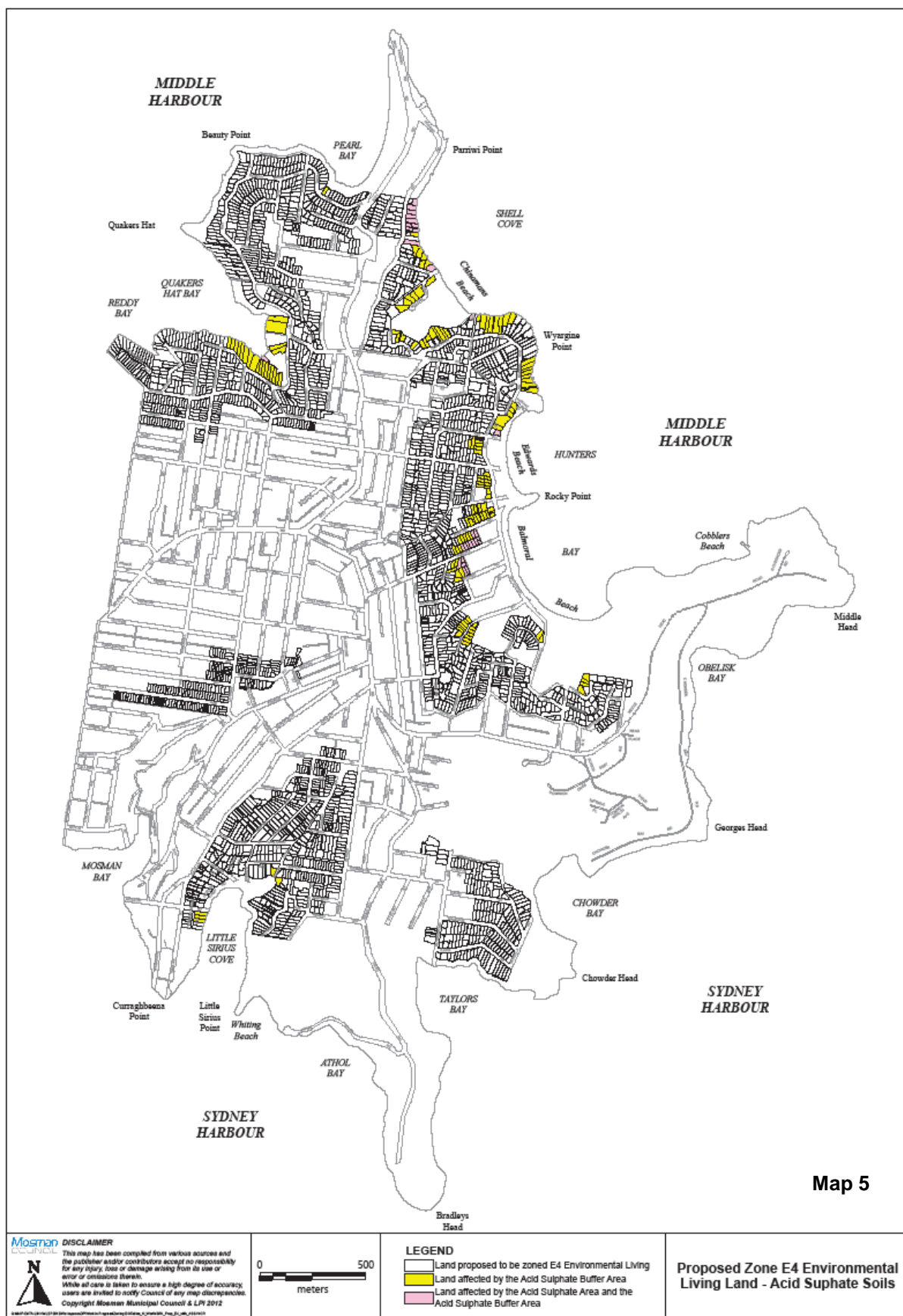
Environmental Values Criteria	No. lots proposed to be zoned C4 that are affected (approximate)	Detail	Map Reference
Additional environmental values criteria:			
Biodiversity Corridor and Habitat Link	1,169	1169 lots identified as Proposed Habitat Link - of these, 10 contain core habitat, 8 contain cosmopolitan habitat; 207 immediately adjoin existing core habitat and 114 immediately adjoin existing cosmopolitan habitat. Land identified in map identified under part 4.4 of Mosman Residential DCP 2012.	Map 10 - Biodiversity Corridor and Habitat Link
Bushfire affected land	467	467 lots identified as being within a Bushfire Prone Area – identified on mapping endorsed by the NSW Rural Fire Service	Map 11 - Bushfire Prone Area
Natural watercourses	8	8 lots identified upon which a natural watercourse is located under clause 6.2 of Mosman LEP 2012	Map 12 - Natural Watercourses

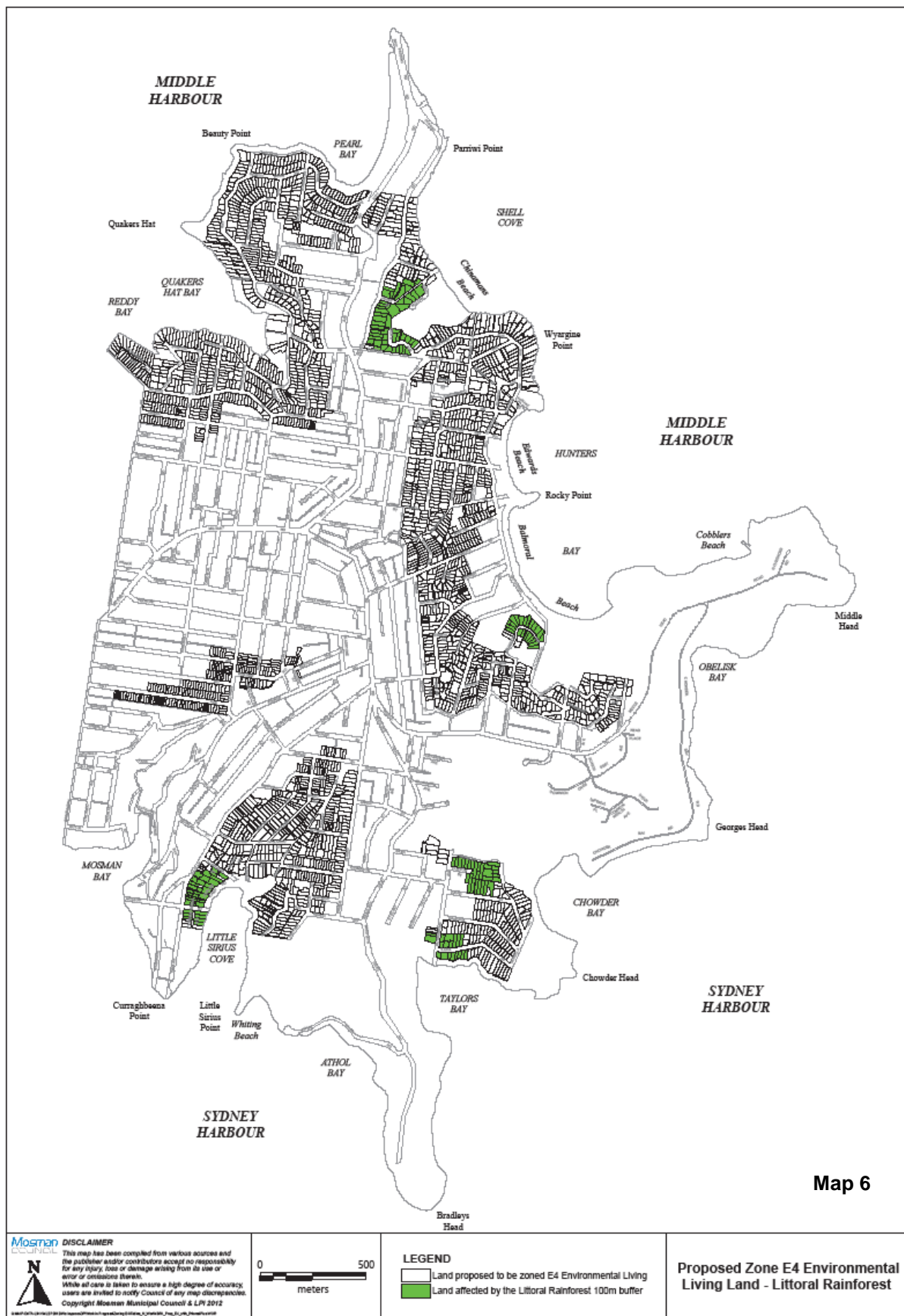


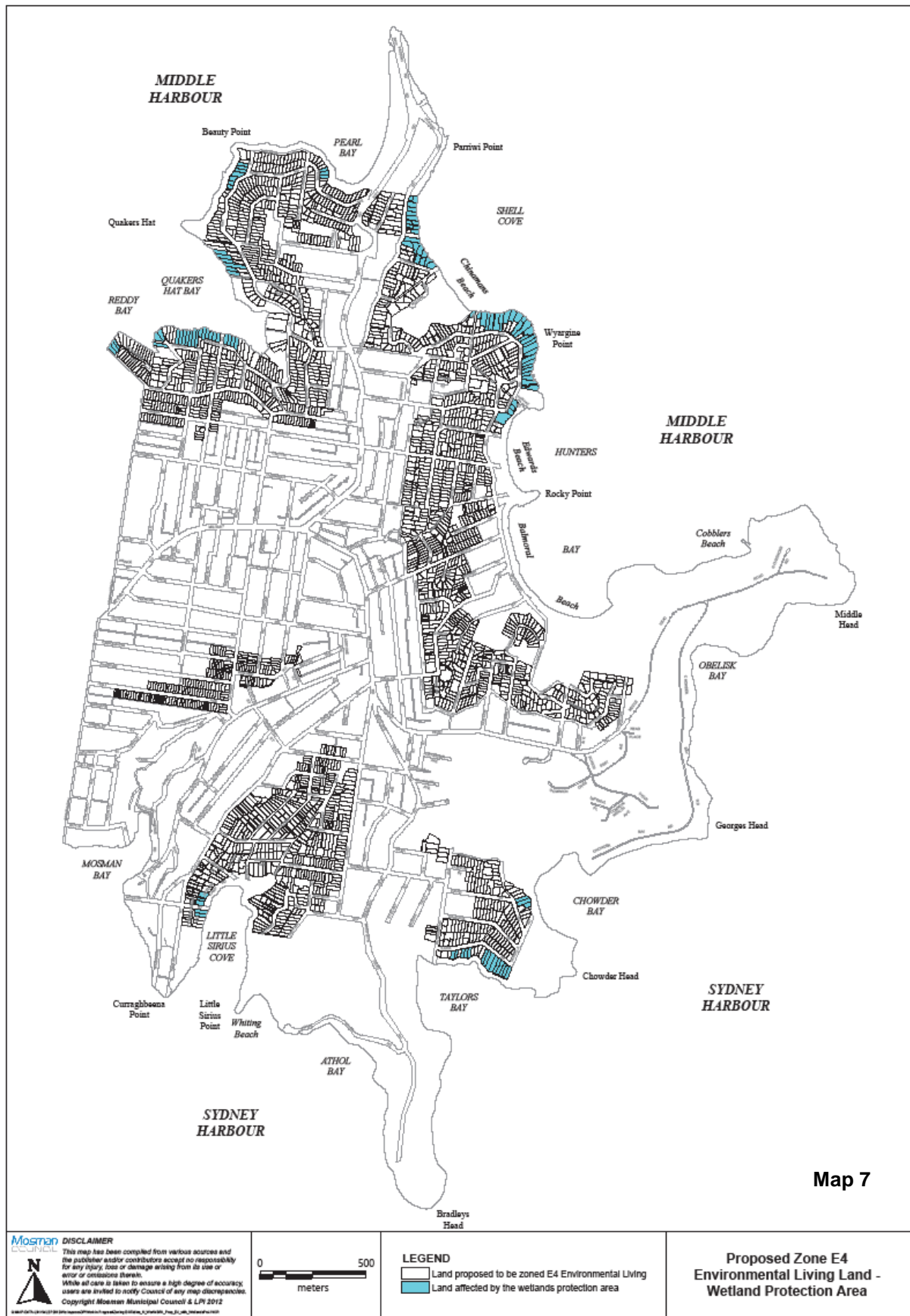


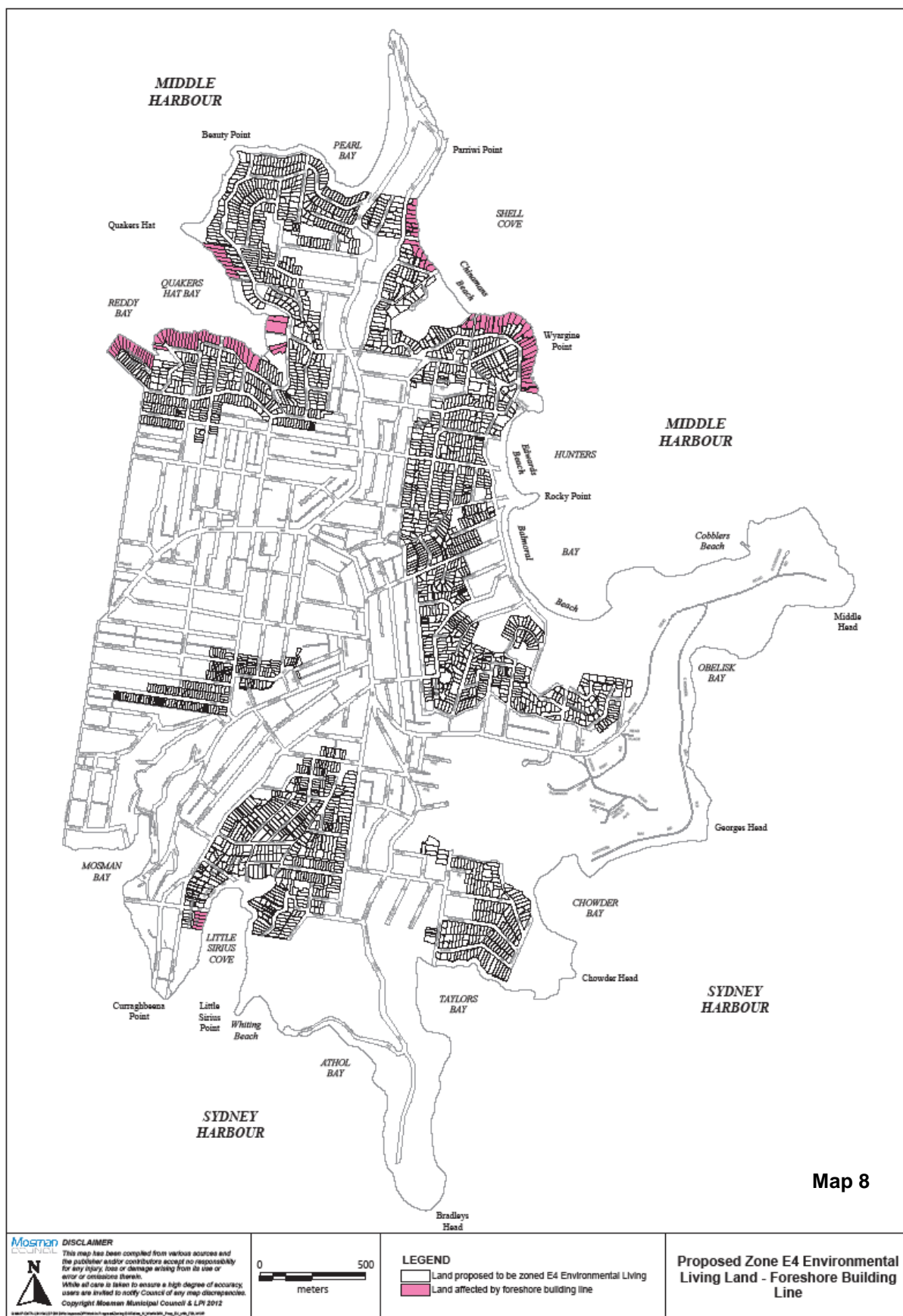


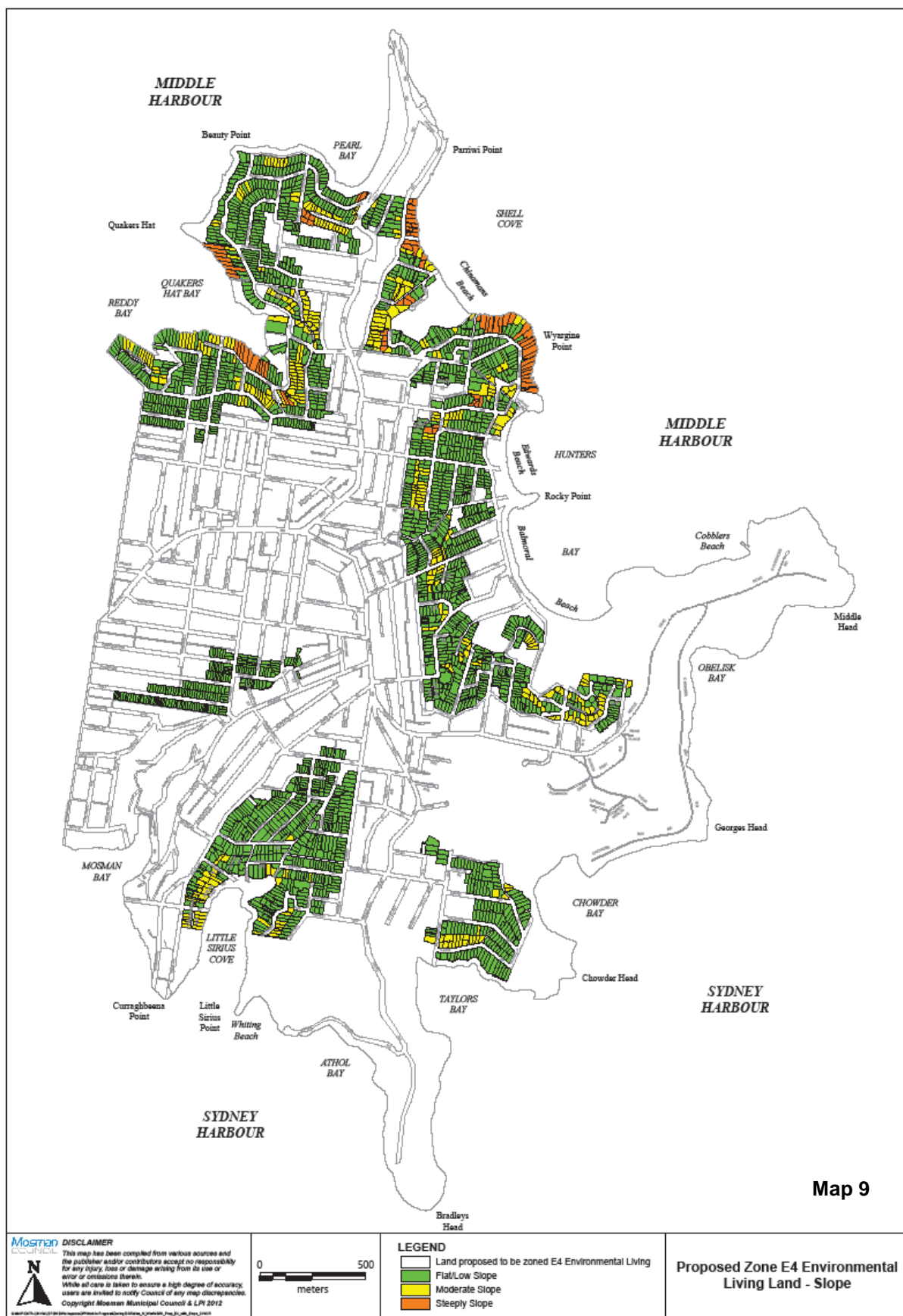


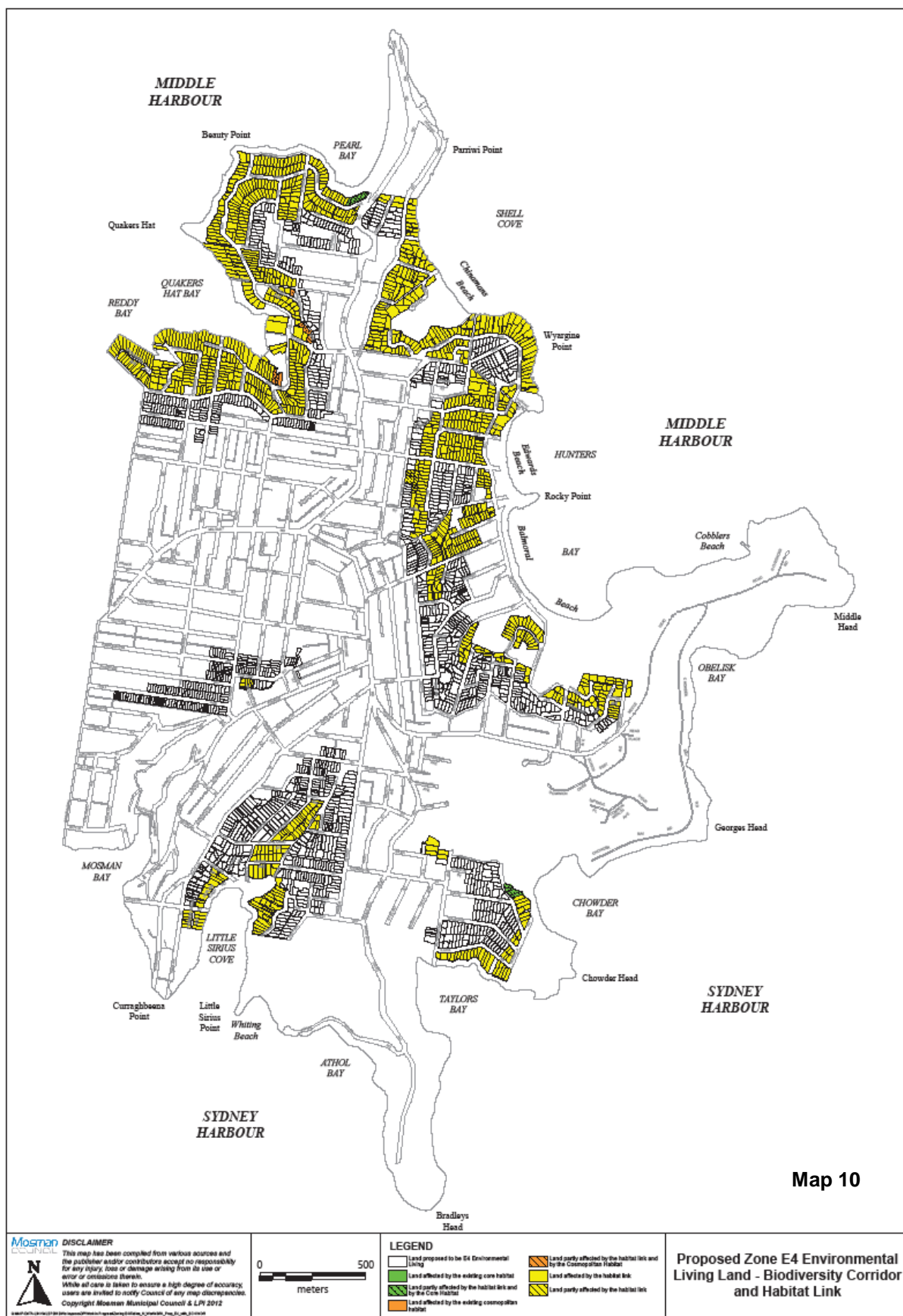


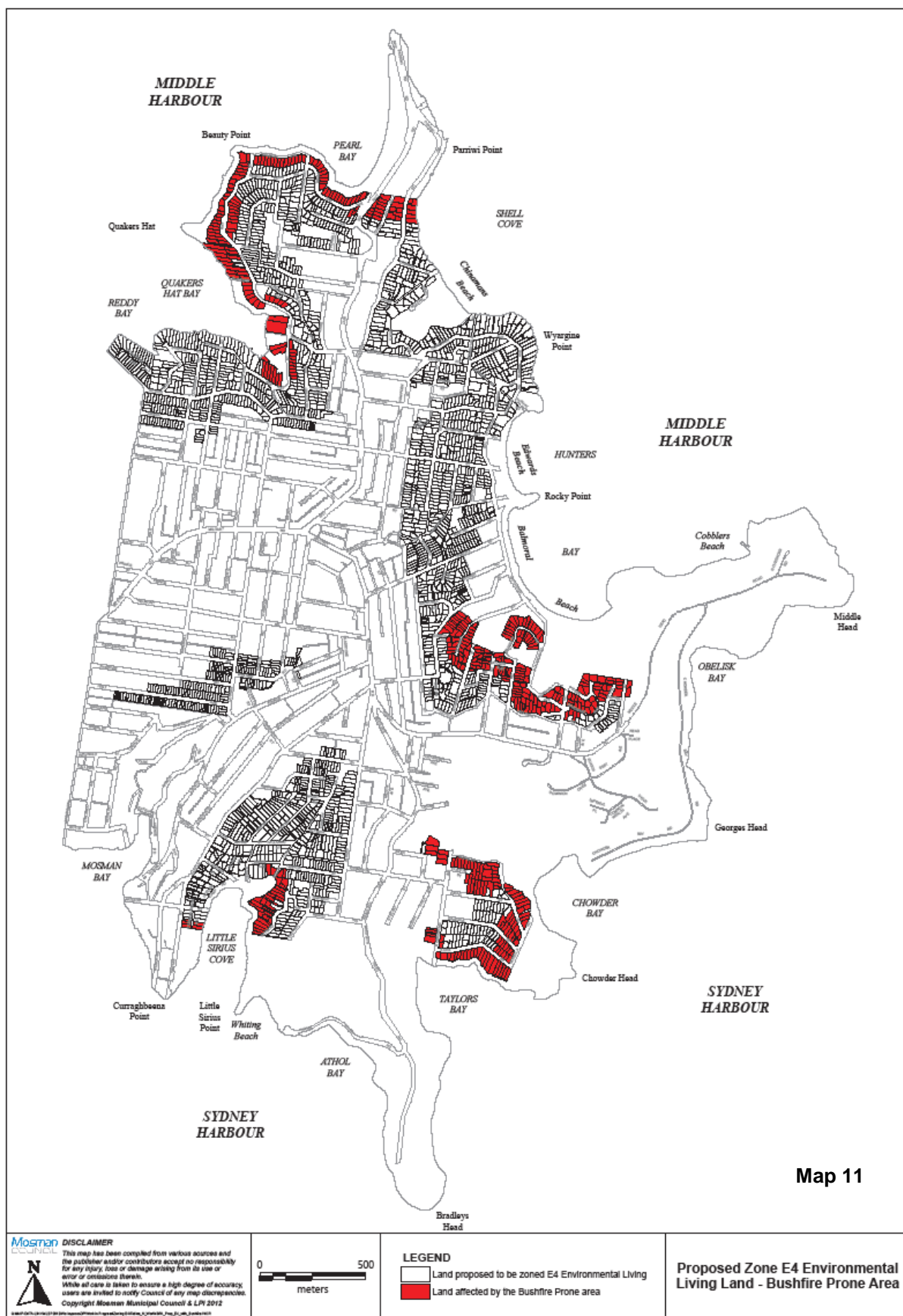


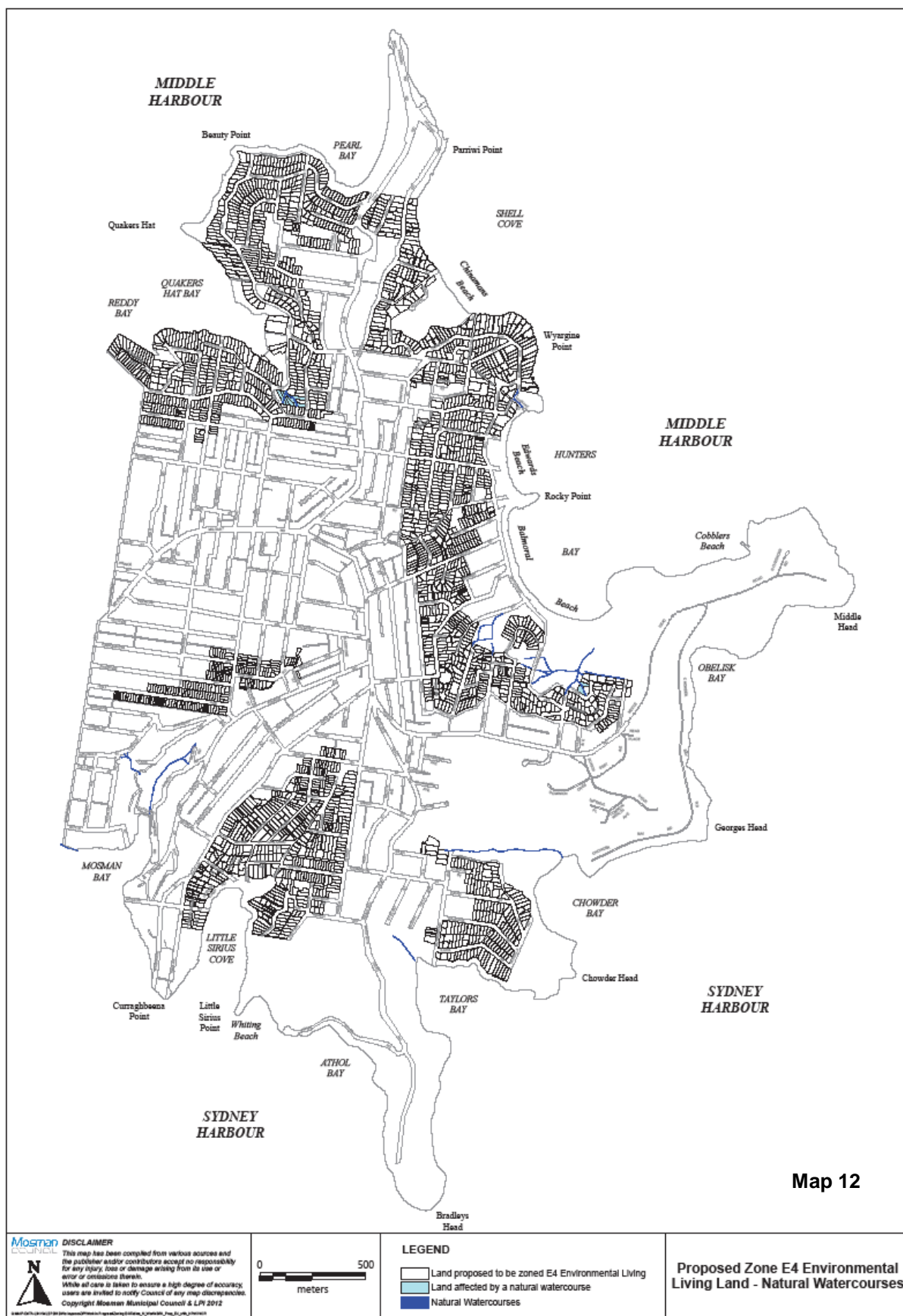












Attachment D – Mosman Scenic Amenity Study




Extracts from Spackman Mossop Michaels *Mosman Foreshores Visual Character and Scenic Amenity Analysis* (February 2018) – pages 42-43 summarising the ratings for each precinct.

Precinct	Landscape rating	Visual value rating	Scenic quality rating	Visibility rating	Visual importance
1 - Boyle Street	5	11	55	1	55
2 - Reid Park	6	11	66	1	66
3 - Mosman Bay Wharf	4	9	36	1	36
4 - Curraghbeena Point	2	6	12	2	24
5 - Sirius Cove	5	10	50	2	100
6 - Bradleys Head	6	12	72	3	216
7 - Taylors Bay	4	11	44	3	132
8 - Chowder Head	6	11	66	3	198
9 - Clifton Gardens	4	8	36	3	96
10 - Chowder Bay	6	12	72	3	216
11 - Georges Head and Middle Head	6	11	66	3	198
12 - HMAS Penguin	5	10	50	2	100
13 - Balmoral Park	6	11	66	2	132
14 - Balmoral Beach	3	5	15	2	30
15 - Wyargine Point	2	7	14	2	28
16 - Rosherville Reserve	6	11	66	2	132
17 - Parriwi Road	4	6	24	2	48
18 - The Spit	5	11	55	2	110
19 - Beauty Point	5	10	50	1	50
20 - Quakers Hat Bay	3	6	18	1	18

Table 5: Visual Assessment summary table

LEGEND

Scenic quality rating

	High
	Medium
	Low

Visual importance rating




	High
	Medium
	Low



Figure 15: Mosman foreshores landscape character precincts

Attachment E – Proposed C4 Rezoning and Mosman Local Housing Strategy

The Mosman Local Housing Strategy (MLHS) was adopted by Council at its meeting on 10 November 2020, and submitted to the NSW DPIE for approval on 11 November 2020.

The MLHS notes the following –

- Population growth in Mosman will be minimal over the next 20-25 years, increasing from a current (2016) population of 30,260 people, to 31,630 people by 2041. It will be an ageing population, with a high proportion of older residents (26% aged 65 years +).
- There will be demand for up to 1,358 additional dwellings in Mosman by 2041 (implied dwelling requirement). Modelling indicates that there is sufficient capacity for additional dwellings to meet anticipated demand without the need for change to Mosman LEP 2012 - a theoretical 2,196 net dwelling capacity in medium density zones R3, B1, B2 and B6 (with a more realistic figure of 1,886 dwellings).
- A variety of housing types are permissible under the LEP to ensure housing diversity to meet demand and the projected trend towards smaller household sizes and more people living alone. Most additional housing built in Mosman are medium or high density dwellings.
- Mosman's 0-5 year housing target is 300 additional dwellings for the period 2016-2021. DPIE 2019 forecast data shows that this target will largely be met with a small shortfall (of 40 dwellings). This is reasonable as:
 - The target is higher than the likely dwelling demand based on revised population projections issued by the DPIE in December 2019 (that is, for up to 272 additional dwellings for this period), and in this context the shortfall is minor;
 - DPIE data does not account for 'non-standard' housing supply, such as from granny flats, aged care facilities and nursing homes, which exist in Mosman;
 - Housing supply in Mosman fluctuates over time, and it is evident based on recent approvals and development in the pipeline that any shortfall in supply could be met in the next period.
- Mosman is not an area earmarked by the NSW Government as being subject to a high level of growth and change, reflecting the geography, infrastructure capacity and constraints of the area, and it is reasonable that a similar target be applied for the 6-10 year period (2021-2026).
- In meeting future housing needs, Council will maintain its long-established land use planning approach and focus additional housing in existing medium density areas close to public transport, shops and services, and retain low-density areas that are generally on sloping harbour foreshore land and environmentally sensitive.

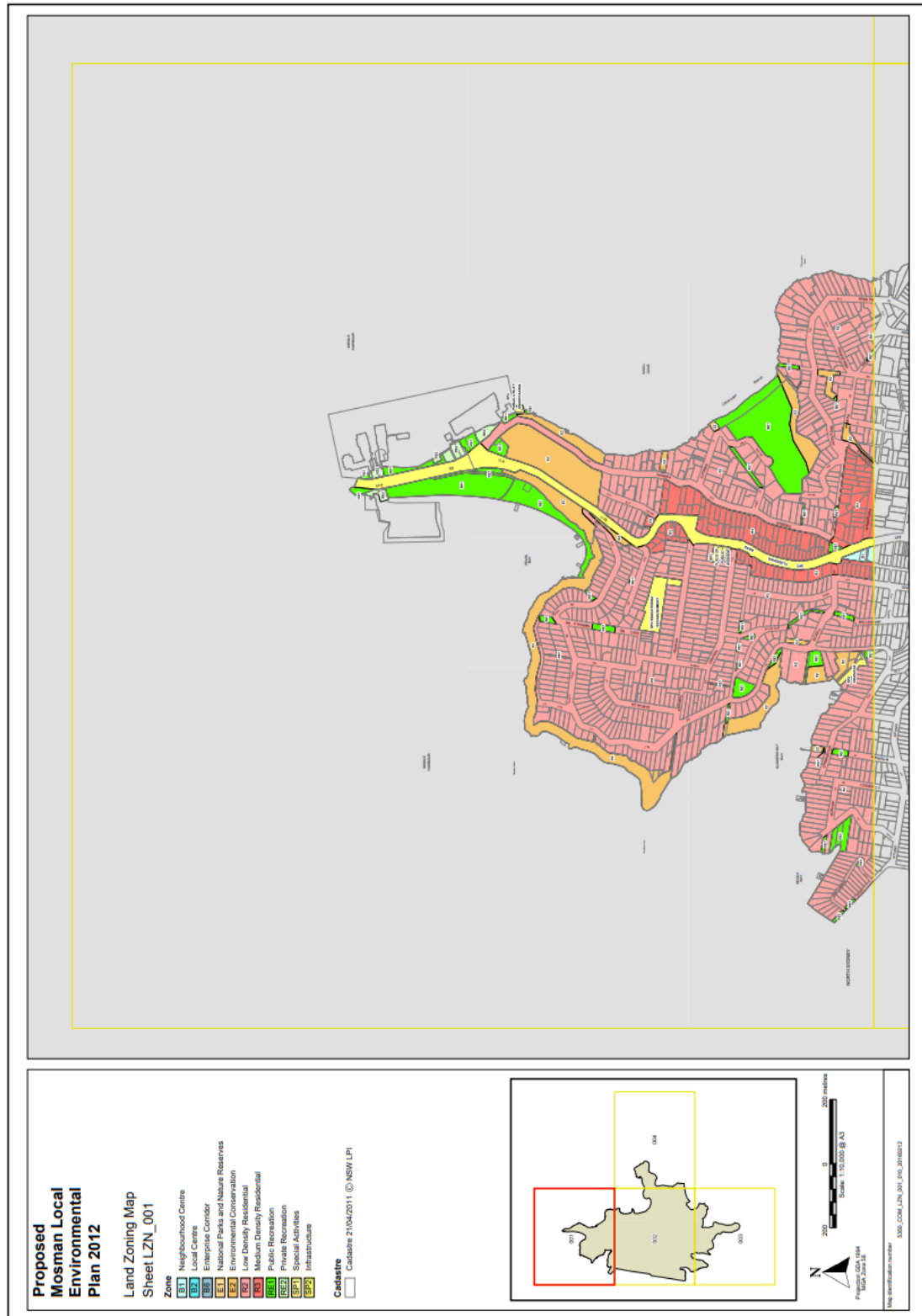
The proposal to rezone around 2,418 lots within the Mosman Scenic Protection Area (MSPA) from R2 Low Density Residential to C4 Environmental Living will not affect Mosman's ability to meet housing demand, for the following reasons:

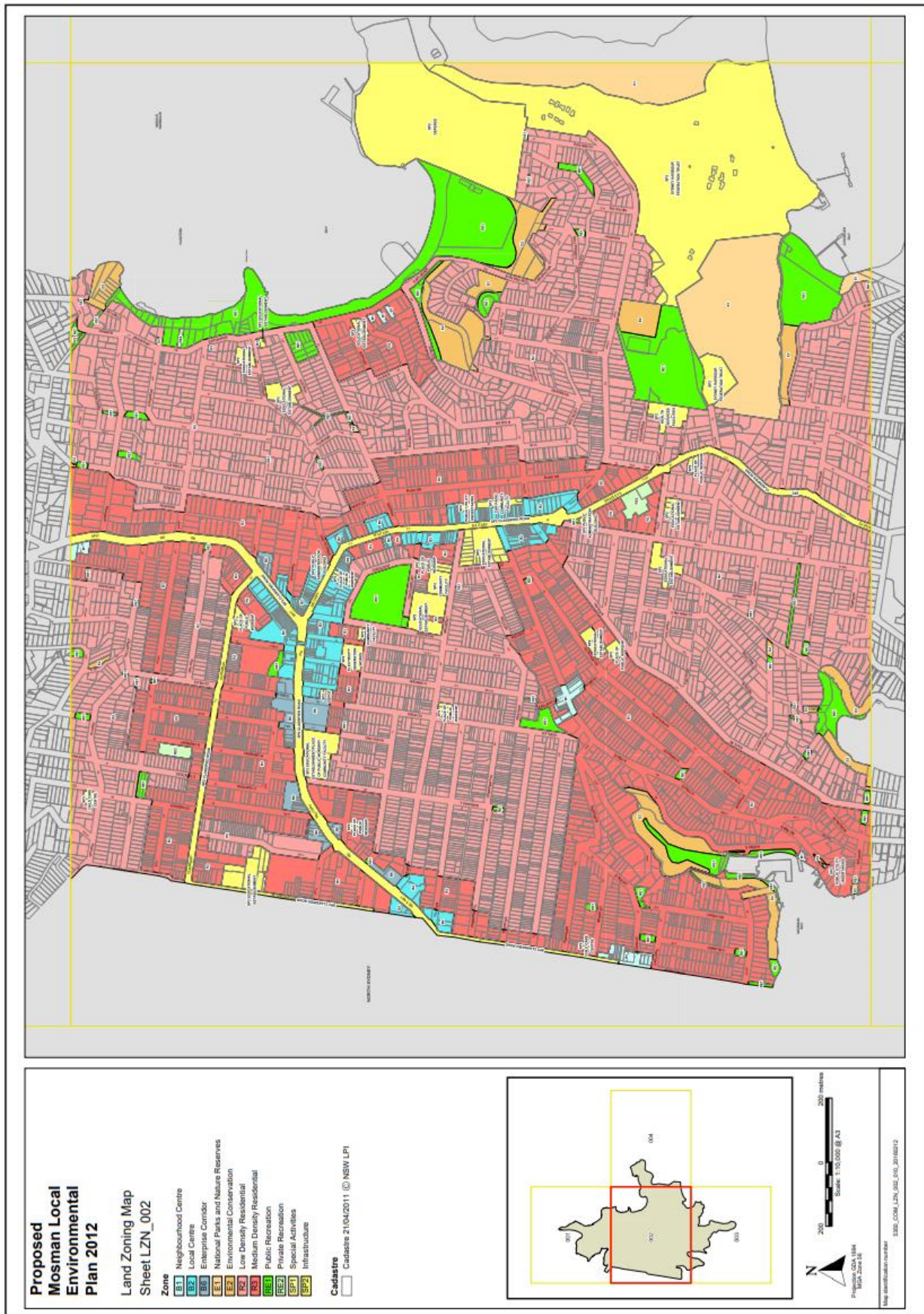
1. In rezoning land to zone C4, there is no change proposed to the permissible land uses, minimum subdivision lot size or other development standards that currently apply to the land under Mosman LEP 2012. The land is currently identified as a low density residential area and this will remain.
2. Housing capacity modelling indicates that there is more than sufficient capacity within Mosman's existing medium density R3, B1, B2 and B6 zones to meet demand.
3. The focus of future housing growth in Mosman will largely be in existing medium density areas close to public transport, shops and services, and not in the low density R2 / C4 zone areas.

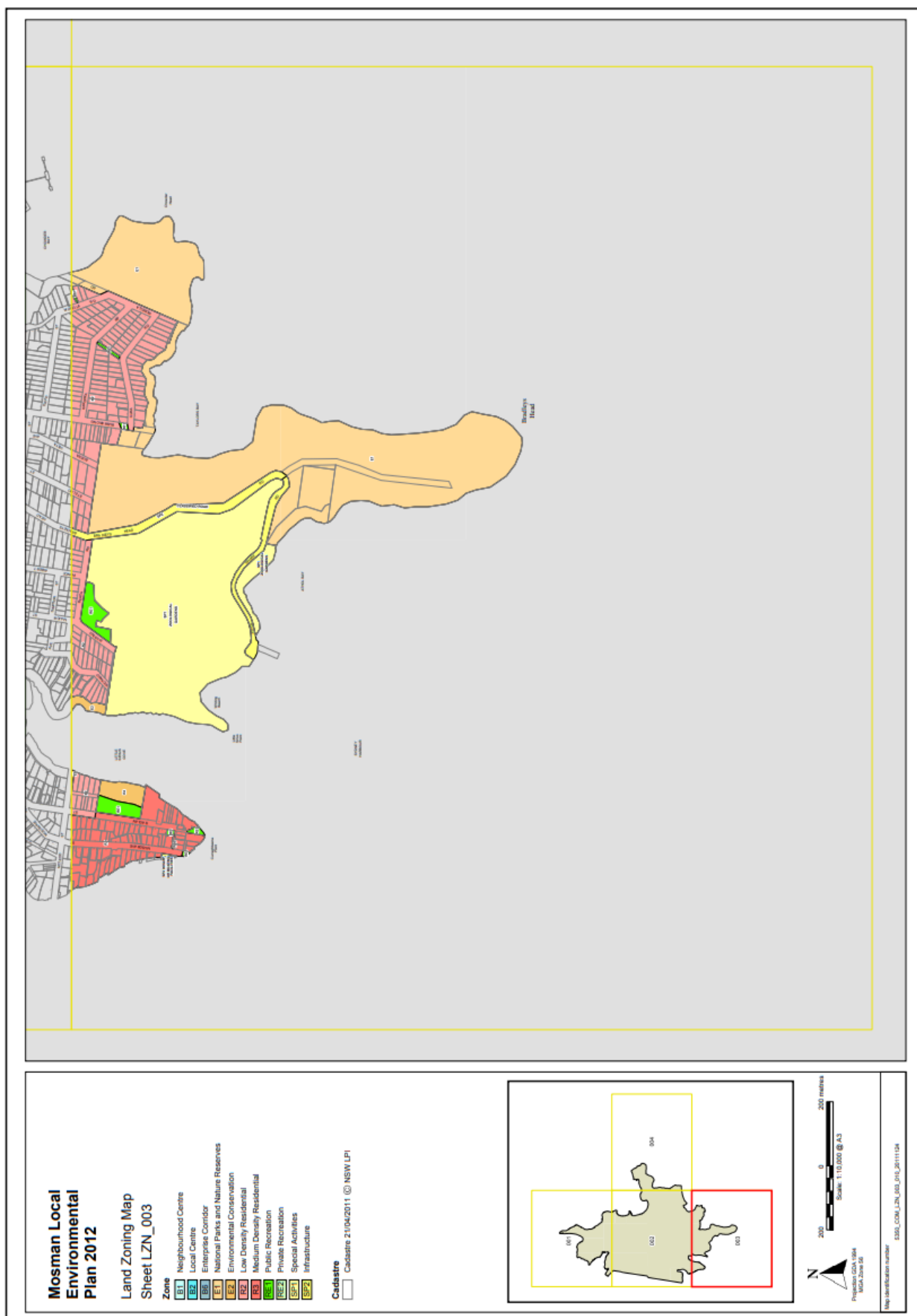
Attachment F – Current MLEP 2012 Zoning Map

Current MLEP 2012 Zoning Maps are available on the NSW Planning Portal

<https://www.planningportal.nsw.gov.au/publications/environmental-planning-instruments/mosman-local-environmental-plan-2012>

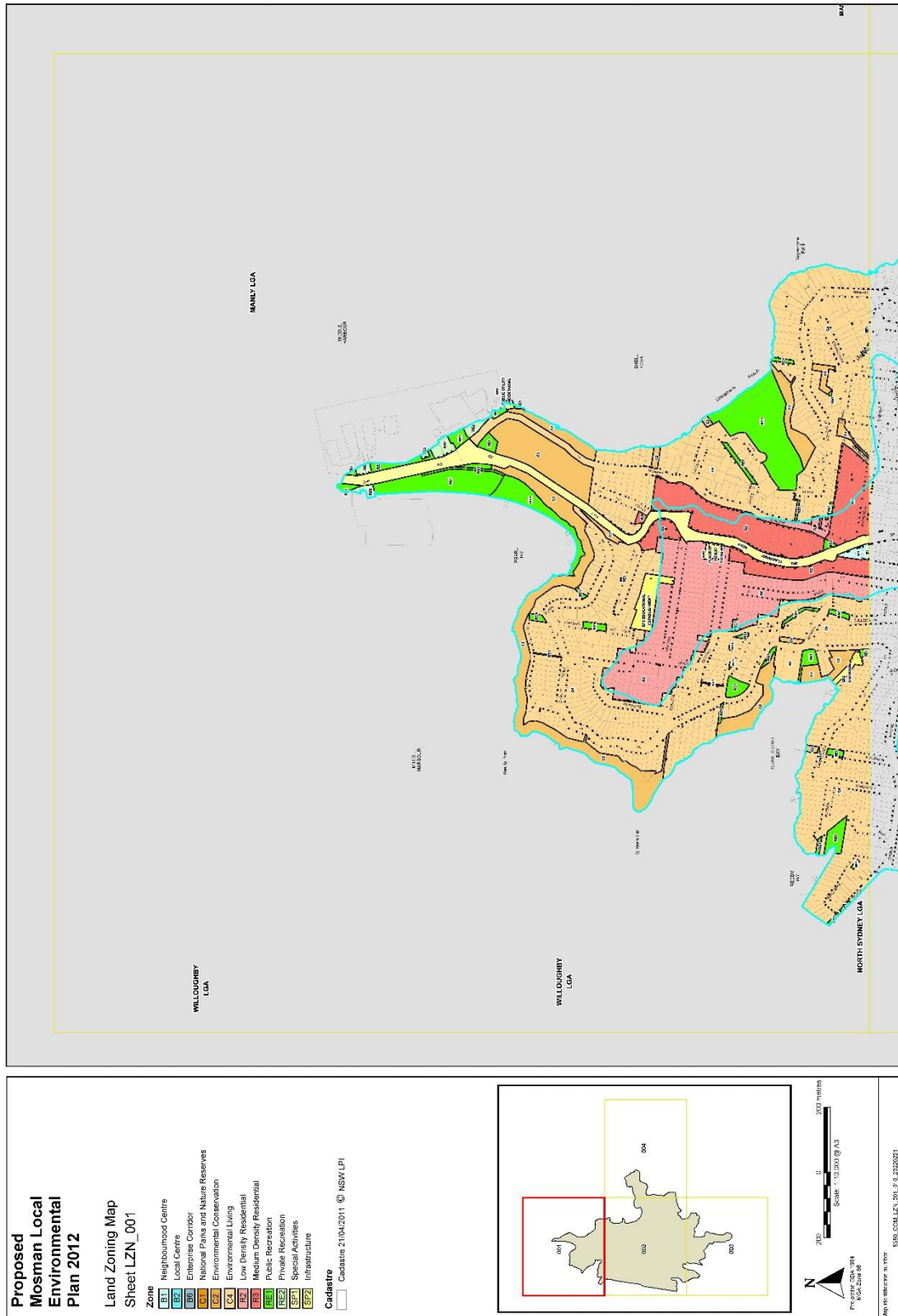


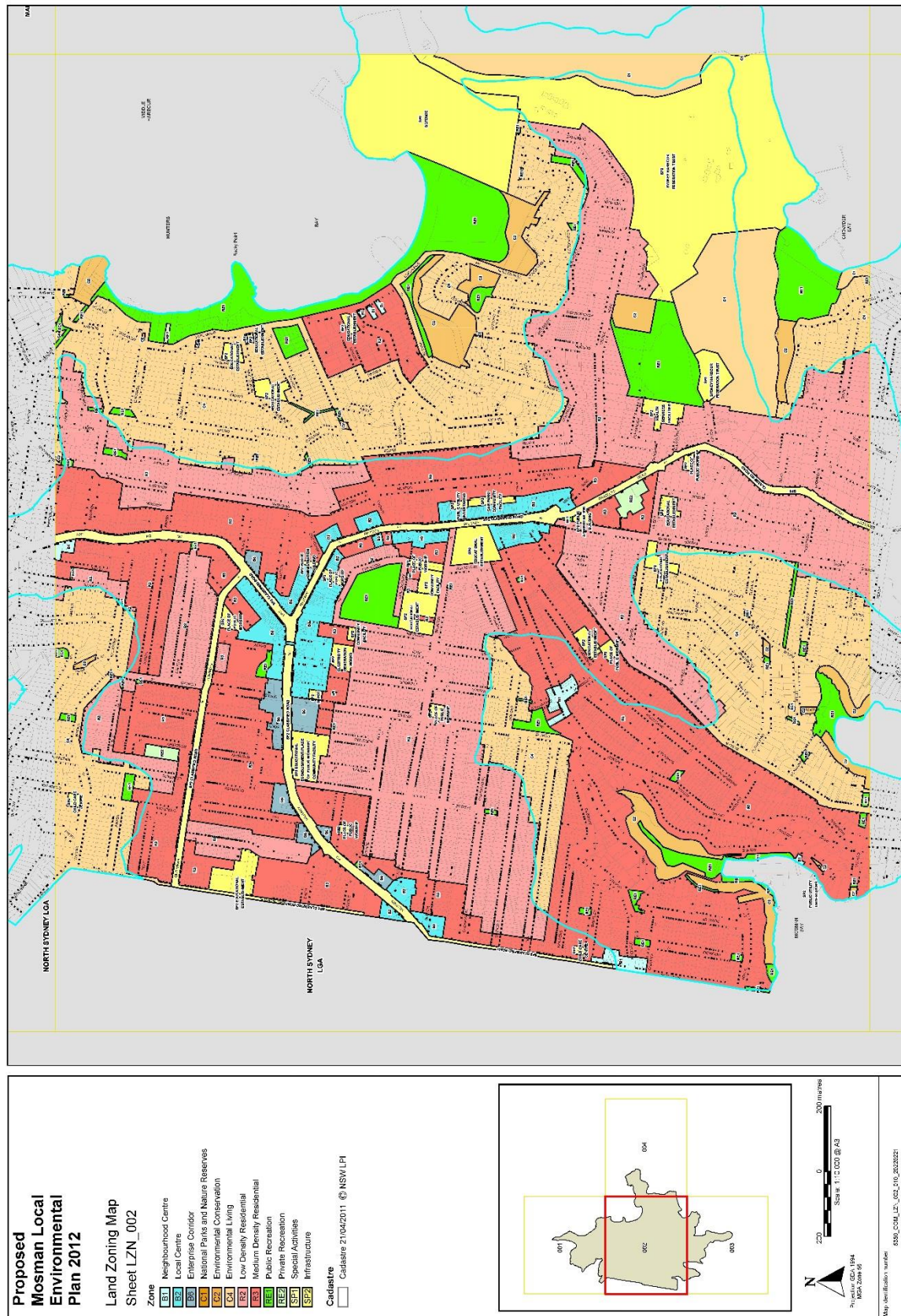


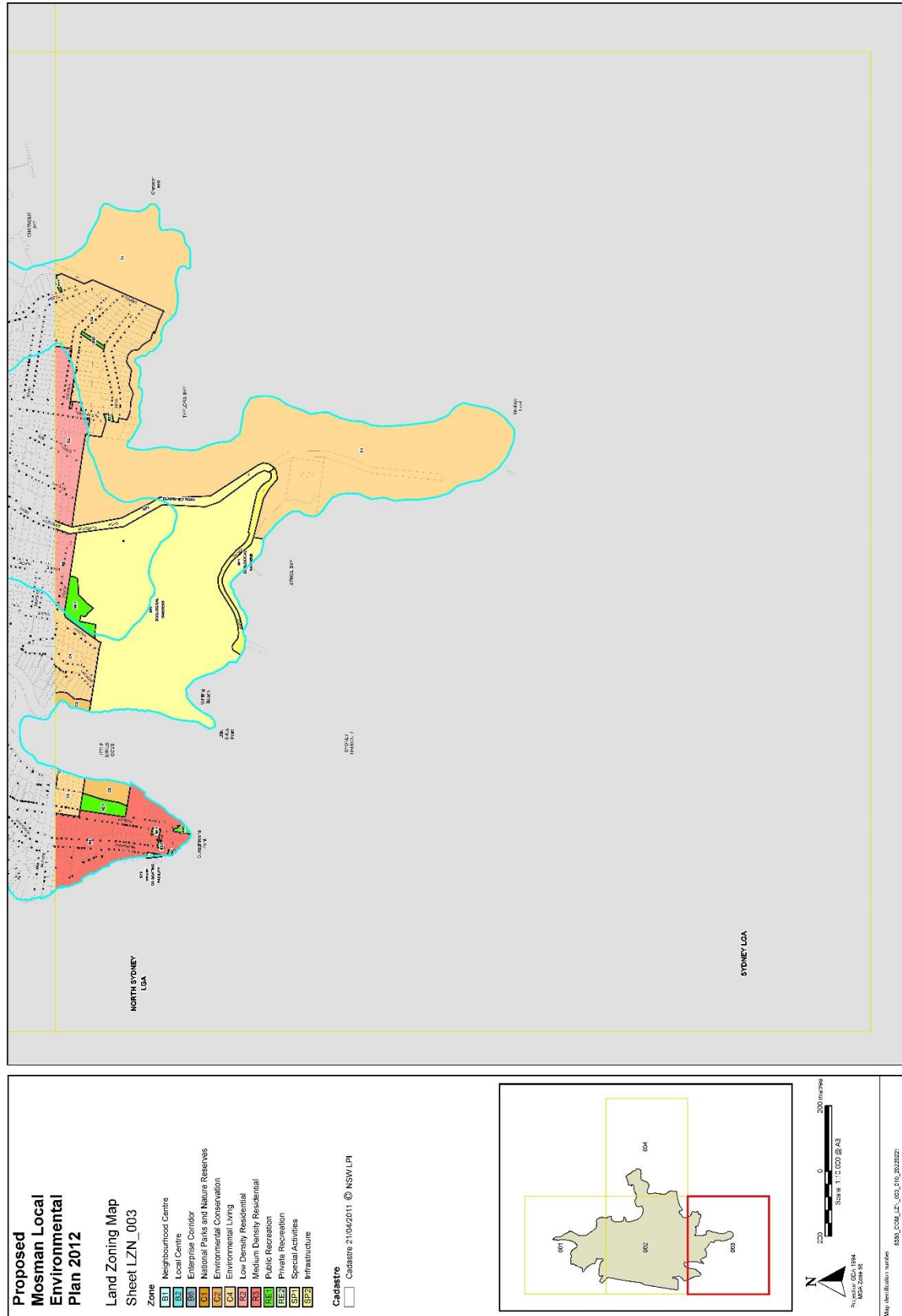


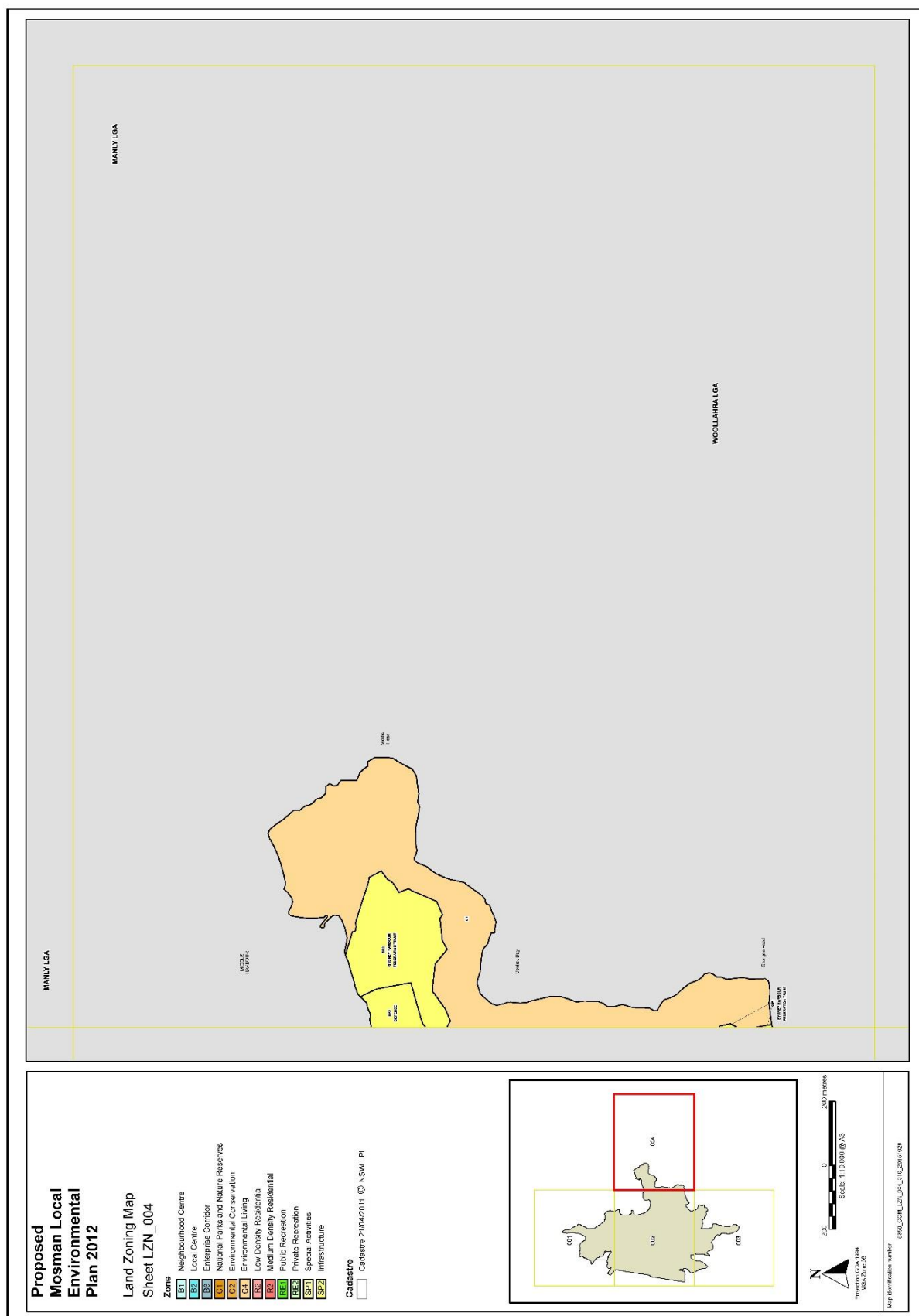
Attachment G - Draft Mosman LEP 2012 Zoning Map

Maps updated January 2022. Refer to note on pages 2 to 4 of this planning proposal. The Scenic Protection Area boundary is shown marked as point of reference.









Attachment H – Comparison R2 and C4 Zones

Note: Content mandated by the NSW Government's Standard Instrument – Principal Local Environmental Plan is underlined.

Zone R2 Low Density Residential (currently in MLEP 2012)	Zone C4 Environmental Living (proposed for MLEP 2012)
<p>1 Objectives of zone</p> <ul style="list-style-type: none"> • <u>To provide for the housing needs of the community within a low density residential environment.</u> • <u>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</u> • To retain the single dwelling character of the environmentally sensitive residential areas of Mosman. • To maintain the general dominance of landscape over built form, particularly on harbour foreshores. • To ensure that sites are of sufficient size to provide for buildings, vehicular and pedestrian access, landscaping and retention of natural topographical features. • To ensure that development is of a height and scale that seeks to achieve the desired future character. • To encourage residential development that maintains or enhances local amenity and, in particular, public and private views. • To minimise the adverse effects of bulk and scale of buildings. 	<p>1 Objectives of zone</p> <ul style="list-style-type: none"> • <u>To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.</u> • <u>To ensure that residential development does not have an adverse effect on those values.</u> • To retain the single dwelling character of the environmentally sensitive residential areas of Mosman. • To maintain the general dominance of landscape over built form, particularly on harbour foreshores. • To ensure that sites are of sufficient size to provide for buildings, vehicular and pedestrian access, landscaping and retention of natural topographical features. • To ensure that development is of a height and scale that seeks to achieve the desired future character. • To encourage residential development that maintains or enhances local amenity and, in particular, public and private views. • To minimise the adverse effects of bulk and scale of buildings.
<p>2 Permitted without consent</p> <ul style="list-style-type: none"> • <u>Home occupations</u> 	<p>2 Permitted without consent</p> <ul style="list-style-type: none"> • <u>Home occupations</u>
<p>3 Permitted with consent</p> <ul style="list-style-type: none"> • Bed and breakfast accommodation; • <u>Boarding houses;</u> • <u>Centre-based child care facilities;</u> • Community facilities; • <u>Dwelling houses;</u> • <u>Group homes;</u> • Home businesses; • <u>Oyster aquaculture;</u> • Places of public worship; • <u>Pond-based aquaculture;</u> • Recreation areas; • <u>Respite day care centres;</u> • Roads; • Semi-detached dwellings; • <u>Tank-based aquaculture</u> 	<p>3 Permitted with consent</p> <ul style="list-style-type: none"> • Bed and breakfast accommodation; • Boarding houses; • Centre-based child care facilities; • Community facilities; • <u>Dwelling houses;</u> • Group homes; • Home businesses; • <u>Oyster aquaculture;</u> • Places of public worship; • <u>Pond-based aquaculture;</u> • Recreation areas; • Respite day care centres; • Roads; • Secondary dwellings; • Semi-detached dwellings; • <u>Tank-based aquaculture</u>
<p>4 Prohibited</p> <ul style="list-style-type: none"> • Any development not specified in item 2 or 3 	<p>4 Prohibited</p> <ul style="list-style-type: none"> • <u>Industries;</u> • <u>Service stations;</u> • <u>Warehouse or distribution centres;</u> • <u>Any other development not specified in item 2 or 3</u>

Comment

1. Objectives of zone

Objectives 1 and 2 differ for the R2 and C4 zones, as they are mandated by the NSW Government's Standard Instrument – Principal Local Environmental Plan. Mandated content must be included in a council's local environmental plan and cannot be amended.

The first objective for both zone R2 and C4 are similar in that they both reference a 'low-impact' or 'low-density' residential environment. The difference is within the second part of the first objective and in the second objective for the C4 zone where reference is made to the "special ecological, scientific or aesthetic values" of places and the importance of ensuring that development does not have an "adverse effect" on those values. Although not currently a zone R2 objective, this is consistent with the aims in MLEP 2012 and in controls and objectives relating to the Mosman Scenic Protection Area.

The second objective for the R2 zone is to enable other land uses to meet resident needs. This objective is mandated for Zone R2, but not for Zone C4. It is not necessary to include this objective for Zone C4, as there is no change to the permissible uses for the zone.

The remainder of the objectives are the same for both the R2 and C4 zones.

2. Permitted without consent

Same for R2 and C4 zone.

3. Permitted with consent

Secondary dwellings (i.e. granny flats) are listed as a permissible land use for the C4 zone, but not for the R2 zone in the MLEP 2012 land use table – however despite this, secondary dwellings are currently permissible on the land under SEPP (Affordable Rental Housing) 2009 and will continue to be permissible under a C4 zone. The SEPP permits secondary dwellings on land throughout NSW in an R2 zone regardless of any provision in a council's local environmental plan, and so it is unnecessary to also list this land use in the MLEP 2012 land use table. However, the SEPP does not have this same provision for a C4 zone. To ensure the same range of permissible uses in both the R2 and C4 zones, it is for this reason that secondary dwellings are included in the land use table for the C4 zone.

All other permissible land uses are the same for the R2 and C4 zone.

4. Prohibited

Same for R2 and C4 zone.

Attachment I – State Environmental Planning Policies

Applicable State Environmental Planning Policies (SEPPs)	(tick only one)			Comment
	Not relevant	Consistent	Justifiably inconsistent	
SEPP 19 – Bushland in Urban Areas		✓		Refer to 3.0, Part 3, Section B-5 of this planning proposal.
SEPP 21 – Caravan Parks	✓			
SEPP 33 – Hazardous and Offensive Development	✓			
SEPP 50 – Canal Estate Development	✓			
SEPP 55 – Remediation of Land	✓			
SEPP 64 – Advertising and Signage	✓			
SEPP 65 – Design Quality of Residential Apartment Development	✓			
SEPP 70 – Affordable Housing (Revised Schemes)	✓			
SEPP (Affordable Rental Housing) 2009		✓		Refer to 3.0, Part 3, Section B-5 of this planning proposal.
SEPP (Building Sustainability Index: BASIX) 2004		✓		
SEPP (Coastal Management) 2018		✓		
SEPP (Concurrences and Consents) 2018		✓		
SEPP (Educational Establishments and Child Care Facilities) 2017		✓		
SEPP (Exempt and Complying Development Codes) 2008		✓		Refer to 3.0, Part 3, Section B-5 of this planning proposal.
SEPP (Housing for Seniors or People with a Disability) 2004		✓		
SEPP (Infrastructure) 2007		✓		
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	✓			
SEPP (Primary Production and Rural Development) 2019	✓			
SEPP (State and Regional Development) 2011	✓			
SEPP (State Significant Precincts) 2005	✓			
SEPP (Vegetation in Non-Rural Areas) 2017		✓		
Deemed SEPP - Sydney REP (Sydney Harbour Catchment) 2005		✓		

Attachment J – Ministerial Directions

Applicable Ministerial Directions under s.9.1 of the EP&A Act	(tick only one)			Comment
	Not relevant	Consistent	Justifiably inconsistent	
D1. Employment and Resources				
D1.1 Business and Industrial Zones	✓			
D1.2 Rural Zones	✓			
D1.3 Mining, Petroleum Production and Extractive	✓			
D2. Environment and heritage				
D2.1 Environmental Protection Zones		✓		Refer to 3.0, Part 3, Section B-6 of this planning proposal.
D2.2 Coastal Protection			✓	
D2.3 Heritage Conservation			✓	
D2.4 Recreation Vehicle Areas		✓		
D2.6 Remediation of Contaminated Land		✓		Refer to 3.0, Part 3, Section B-6 of this planning proposal.
D3. Housing, Infrastructure and Urban Development				
D3.1 Residential Zones		✓		Refer to 3.0, Part 3, Section B-6 of this planning proposal.
D3.2 Caravan Parks and Manufactured Home Estates	✓			
D3.3 Home Occupations		✓		
D3.4 Integrating Land Use and Transport		✓		
D3.5 Development Near Regulated Airports and Defence Airfields	✓			
D3.6 Shooting Ranges	✓			
D4. Hazard and Risk				
D4.1 Acid Sulfate Soils				
D4.2 Mine Subsidence and Unstable Land	✓			
D4.3 Flood Prone Land	✓			
D4.4 Planning for Bushfire Protection		✓		Refer to 3.0, Part 3, Section B-6 of this planning proposal.
D5. Regional Planning				
D5.11 Development of Aboriginal Council land	✓			
D6. Local Plan Making				
D6.1 Approval and Referral Requirements		✓		
D6.2 Reserving Land for Public Purposes	✓			
D6.3 Site Specific Provisions	✓			