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**EP/12 Planning Proposal - Miscellaneous Amendments****Responsible Officer: Director Environment and Planning**

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**Executive Summary**

This report outlines miscellaneous amendments to Mosman Local Environmental Plan 2012 (MLEP 2012) in response to sections 3.8(3) and 3.21 of the Act, which require councils to review and, if necessary, update their local environmental plans to give effect to the district strategic plan and ensure that the objects of the Act are achieved having regard to changing circumstances as may be relevant.

Over the past three years, Council has undertaken significant strategic planning work to ensure consistency in local planning for Mosman with the Greater Sydney Region Plan and North District Plan. This work has included the preparation of an LEP Review Report, Local Strategic Planning Statement, Community Participation Plan and Local Housing Strategy. Work has now commenced on the final stage – the preparation of a series of planning proposals to amend MLEP 2012.

Further, Council planning staff maintain a list of map anomalies, issues with respect to operation of the LEP and submissions received which seek an amendment to MLEP 2012 for particular land and which have been assessed as having merit. It is timely to incorporate these amendments into MLEP 2012 to ensure that it remains transparent and contemporary.

The Planning Proposal – Miscellaneous Amendments, attached to this report, proposes a number of amendments to MLEP 2012. These are:

- Item 1: Amend Zone B1 and B2 local objectives to reference the importance of traditional shop-front proportions, local character and village atmosphere;
- Item 2: Insert wall height objectives for clause 4.3A and define mansard roof;
- Item 3: Insert a standard earthworks local provision in part 6;
- Item 4: Amend schedule 2 to increase the capital investment value for exempt development at Taronga Zoo from \$1m to \$1.5m; and
- Item 5: Amend maps to correct anomalies on various land in respect of land zoning, floor space ratio, building height and/or lot size.

The Mosman Local Planning Panel has provided advice in support of the planning proposal.

Following Council endorsement, the planning proposal will be submitted to the NSW Department of Planning, Industry and Environment (DPIE) for Gateway Determination, and subject to approval, it will be placed on public exhibition and community feedback sought. It is anticipated that this would occur later in 2021.

**Officer's Recommendation**

The Director Environment and Planning recommends that Council:

1. Note the advice provided by the Mosman Local Planning Panel in support of the Planning Proposal – Miscellaneous Amendments.
2. Endorse the Planning Proposal – Miscellaneous Amendments to amend Mosman Local Environmental Plan 2012, which has been prepared to meet Council's obligations under sections 3.8(3) and 3.21 of the *Environmental Planning and Assessment Act 1979*.

3. Submit the Planning Proposal – Miscellaneous Amendments to the NSW Department of Planning, Industry and Environment for Gateway determination under section 3.34 of the *Environmental Planning and Assessment Act 1979*.
4. Publicly exhibit the Planning Proposal – Miscellaneous Amendments in accordance with the Gateway determination issued by the NSW Department of Planning, Industry and Environment.
5. Receive a further report following exhibition outlining any submissions received.

## Background

On 4 September 2018 Council considered report EP/53 Strategic Planning which addressed NSW Government amendments to the Act, including the requirement for Council to undertake strategic planning work to ensure consistency in local planning with the Greater Sydney Region Plan and North District Plan. The status of this work is as follows:

Strategic Work To Be Completed By Council	Status
1. An <b>LEP Review Report</b> (or 'health check' assessment) of MLEP 2012 against the North District Plan's planning priorities and actions (s. 3.8(4) the Act).	<b>Complete.</b> Endorsed by Greater Sydney Commission on 21 December 2018.
2. A <b>Community Participation Plan</b> to outline how and when council will undertake community participation in relation to planning functions under the Act (s. 2.23(1) the Act).	<b>Complete.</b> Adopted by Council on 12 November 2019.
3. A <b>Local Strategic Planning Statement</b> to articulate a clear vision for the future of Mosman, providing a link between the North District Plan and MLEP 2012 (s. 3.9(1) the Act).	<b>Complete.</b> Adopted by Council on 3 December 2019, and endorsed by Greater Sydney Commission on 4 March 2020.
4. A <b>Local Housing Strategy</b> to identify how housing growth to accommodate the change in population is to be managed, including delivery of housing supply targets (Action 3, Greater Sydney Region Plan).	<b>Nearly complete.</b> Adopted by Council on 10 November 2020. Currently waiting for approval from NSW DPIE.
5. A <b>Planning Proposal or Proposals</b> as necessary to amend MLEP 2012 to give effect to the North District Plan (s. 3.8(3) the Act).	<b>Underway.</b> See comments below

Work has now commenced on the final stage; the preparation of a series of planning proposals to give effect to the North District Plan as required under section 3.8(3) of the Act –

As soon as practicable after a district strategic plan is made, the council for each local government area in the district to which the plan applies must review the local environmental plans for the area and prepare such planning proposals under section 3.33 as are necessary to give effect to the district strategic plan.

A planning proposal is the means to amend an LEP. It is a document prepared by a council in accordance with section 3.33(2) of the Act and NSW DPIE document, *A Guide to Preparing Planning Proposals*, 2018. A planning proposal explains the intended effect of a proposed amendment to an LEP and sets out the justification for making that amendment. The LEP Review Report completed in 2018 found that generally MLEP 2012 is closely aligned to the North District Plan, although a number of potential amendments to the LEP were identified. These have been included as actions in the Mosman Local Strategic Planning Statement (MLSPS) to be completed over the coming years, as most require further strategic planning research work.

Discussions with NSW DPIE have indicated that a staged approach to meeting obligations under section 3.8(3) of the Act is reasonable and consistent with the approach being taken by many other councils in NSW. This staged approach will consist of a series of planning proposals to amend

MLEP 2012 in response to the MLSPS as further research, consultant studies and collaboration with State agencies and others as necessary is completed. This work will be undertaken over the next 5-10 years subject to budget allocation and resourcing.

The planning proposal that is the subject of this report responds to planning priorities in the MLSPS relating to building construction, design and centres. It is the second in the series of planning proposals prepared by Council in response to the MLSPS. The first, endorsed by Council on 1 December 2020 (Report EP/52 Scenic Protection Area – Planning Proposal), seeks to rezone land within the Mosman Scenic Protection Area from Zone R2 Low Density Residential to Zone E4 Environmental Living. This currently awaits Gateway Determination with the NSW DPIE.

The Act includes an additional requirement for LEP review under section 3.21 –

- (1) The Planning Secretary shall keep State environmental planning policies and councils shall keep their local environmental plans and development control plans under regular and periodic review for the purpose of ensuring that the objects of this Act are, having regard to such changing circumstances as may be relevant, achieved to the maximum extent possible.
- (2) Every 5 years following such a review, the Planning Secretary is to determine whether relevant State environmental planning policies should be updated and a council is to determine whether relevant local environmental plans should be updated.

MLEP 2012 is subject to regular review to ensure that it remains transparent and contemporary. Since the LEP commenced on 1 February 2012 it has been subject to 42 amendments, of which 10 were Council-initiated and 32 the result of changes in State legislation. The LEP has again been reviewed as part of strategic planning work undertaken over the past three years. A number of map anomalies, issues with respect to operation of the LEP and other minor amendments have been identified.

### **Current Position**

Planning Proposal – Miscellaneous Amendments has been prepared to meet Council's obligations under sections 3.8(3) and 3.21 of the Act. It seeks to amend MLEP 2012 in the following manner:

- Item 1: Amend Zone B1 and B2 local objectives to reference the importance of traditional shop-front proportions, local character and village atmosphere;
- Item 2: Insert wall height objectives for clause 4.3A and define mansard roof;
- Item 3: Insert a standard earthworks local provision in part 6;
- Item 4: Amend schedule 2 to increase the capital investment value for exempt development at Taronga Zoo from \$1m to \$1.5m; and
- Item 5: Amend the LEP maps for land zoning, floor space ratio, building height and/or lot size to correct anomalies on the following land:
  - 133 Awaba Street, Lot 100 DP 1256368;
  - Cowles Road, Lot 1 DP 388205 (adjacent to no. 89B Cowles Road);
  - Harnett Avenue (south of Crown Road);
  - Hordern Lane (adjacent to 80-86 Spit Road);
  - Rear of 37-45 Mandolong Road, Lots 1 and 3-5 DP 1138034, and Lot 1 DP 117108;
  - Upper Spit Road, Lot 1 DP 831055 (Sydney Water asset).

The planning proposal is included as an attachment to this report. It outlines objectives or intended outcomes, an explanation of provisions, justification, mapping requirements, community consultation program, and a project timeline for exhibition, reporting and finalising the proposal.

The planning proposal is presented to Council for endorsement prior to being submitted to the NSW DPIE for Gateway Determination under section 3.34 of the Act. Subject to approval, the planning proposal would then be publicly exhibited and feedback on the proposed changes sought.

Discussions with the NSW DPIE have indicated that, once the proposed changes are finalised the date of the LEP will also be amended upon gazettal, for example, to Mosman LEP 2022.

The proposed changes are explained in the 'Comments' section of this report.

### **Advice of the Mosman Local Planning Panel**

It is a requirement of the Local Planning Panels Direction—Planning Proposals issued by the Minister for Planning under section 9.1 of the Act, that a planning proposal be referred to the local planning panel for advice, accompanied by a staff assessment report, and that advice be provided prior to council considering whether or not to forward it to the Minister under section 3.34 of the Act.

The Planning Proposal – Miscellaneous Amendments and report MLPP/23 was considered by the Mosman Local Planning Panel at a meeting held on 14 May 2021. The Panel has provided advice in support of the planning proposal, with a suggested minor variation to the wording of Item 3. The minutes of the MLPP meeting are attached to this report. This minor variation is supported, as discussed later in this report.

### **Consultation**

Consultation with the Mosman community has been undertaken over the past three years as part of strategic planning work. Submissions received in response to the public exhibition of the MLSPS in 2019 and Mosman Local Housing Strategy in 2020 have been considered in preparing this planning proposal. Several requests made to amend MLEP 2012 in respect of particular land are supported and included in this planning proposal. All submissions were summarised in reports to Council on 3 December 2019 (EP/52) and 10 November 2020 (EP/47).

In March 2021, letters were sent to landowners of properties identified in Item 5 for which a change is proposed to correct mapping anomalies.

Consultation on this planning proposal will be undertaken following endorsement by Council and approval by the NSW DPIE. Consultation will be undertaken in accordance with the Mosman Community Participation Plan, NSW DPIE Gateway Determination and the *Environmental Planning and Assessment Regulations 2000*. It is anticipated that this will occur later in 2021.

### **Financial Implications**

The financial implications for Council would be minimal to insignificant.

### **Relationship with MOSPLAN**

Strategic Direction 3 - An Attractive and Sustainable Environment  
Strategic Direction 6 - Well Designed, Liveable and Accessible Places  
Strategic Direction 7 - A Healthy and Active Village Lifestyle.

### **Comment**

The proposed amendments to MLEP 2012 outlined in the planning proposal are briefly explained below. The changes are primarily minor in nature. More comprehensive detail is included in the planning proposal attached to this report.

### Item 1: Amend Zone B1 and B2 local objectives

Retail planning in neighbourhood and local centres was the subject of reports to Council on 2 July 2019 (EP/28) and 3 March 2020 (EP/8), and a Councillor Workshop on 2 February 2020.

Council resolved to undertake a review of Zone B1 Neighbourhood Centre and B2 Local Centre objectives in MLEP 2012 to strengthen the small-scale nature of neighbourhood centres and the local character and village atmosphere in Mosman Junction. Suggested amendments to the zone objectives were presented in the Council reports and at the Workshop.

Consistent with this, it is proposed to amend the Zone B1 and B2 objectives to add reference to the importance of development reflecting “*traditional shop front proportions*” at street level, “*protecting and enhancing the village atmosphere of Mosman Junction*”, and maintaining “*the local character of Mosman Junction by limiting the bulk and scale of development*”.

### Item 2: Insert wall height objectives for clause 4.3A and define mansard roof

Clause 4.3A of MLEP 2012 applies a maximum 7.2 metre wall height development standard to most residential zoned land in Mosman, however there are no objectives included in the clause. This poses difficulty in development assessment when an applicant seeks to vary the standard under clause 4.6 ‘Exceptions to development standards’ of MLEP 2012, because the consent authority must be satisfied that the proposed development is “*consistent with the objectives of the particular standard*” prior to granting development consent (clause 4.6(4)(a)(ii)).

It is proposed to include a new subclause (1A) in clause 4.3A containing objectives for wall height. These are based on the current objectives for building height in clause 4.3 and reference the importance of sharing public and private views, minimising the adverse effects of bulk and scale of buildings, and encouraging two-storey buildings consistent with desired future character.

It is also proposed to include new subclause (4A) in clause 4.3A to clarify when a mansard roof is included in the wall height calculation. A mansard roof is a type of roof having two slopes on every side, with the lower slope being considerably steeper than the upper. The new subclause explains that for the purpose of measuring wall height associated with a mansard roof, the roof volume is considered to be enclosed by walls if the enclosing roof has a pitch exceeding 45 degrees. In this instance, the wall height is to be measured at a height of 1.8m above the finished floor level within the mansard roof space. An illustration is provided within the planning proposal. A definition of ‘mansard roof’ is also proposed for inclusion in clause 4.3A.

The proposed changes will strengthen development assessment and provide transparency.

### Item 3: Insert standard earthworks local provision in part 6

Excavation commonly occurs as part of construction and development in Mosman, and in some instances this may be substantial given the topography and scale of development. There is no earthworks clause currently in MLEP 2012.

It is proposed to include new clause 6.7 Earthworks in MLEP 2012 to require the consideration of the impact of excavation so as to mitigate any adverse impacts relating to soil erosion, sedimentation, the natural features of the land, trees and vegetation, impacts on adjoining properties and the like. The clause would apply to all development that is the subject of a development application. The proposed clause is based on a NSW draft model local provision included in many council LEPs including in North Sydney, Willoughby and Woollahra. It would complement existing objectives and planning controls in Mosman’s DCPs relating to excavation and site management.

The Mosman Local Planning Panel recommended that the words “natural features of and any trees and vegetation on, the site and adjoining lands” be added to the clause to recognise the importance of mitigating any adverse impacts on the natural features of the land, trees and vegetation. This is supported, and this change has been made in the attached planning proposal. Many council LEPs which contain an earthworks clause include minor variations to the NSW standardised wording. The change suggested by the Panel is consistent with North Sydney LEP 2013, clause 6.10 Earthworks.

Item 4: Amend schedule 2 to increase the CIV for exempt development at Taronga Zoo

Schedule 2 contains a list of certain types of development that may be undertaken at Taronga Zoo as exempt development, that is, without the need for a development application. This includes development having a capital investment value (CIV) of less than \$1 million for purposes such as works to buildings and animal facilities, temporary structures, environmental protection works, landscaping works and the erection of signage. It does not include works to a heritage item.

Taronga Conservation Society Australia made a submission to Council during public exhibition of the MLSPS in 2019 seeking an increase in the CIV to \$2 million on the basis of escalation in construction costs and the specialist nature of activities carried out and animal structures.

The intent of schedule 2 is to identify minor works of ‘minimal environmental impact’ for which exempt development can occur. The clause for Taronga Zoo was included in MLEP 2012 on 14 June 2013 with a CIV of \$1 million. It is reasonable that the CIV is increased given inflation and the rising costs of construction works, however it is proposed that it be amended to \$1.5 million consistent with the intent of the schedule.

Item 5: Amend maps to correct anomalies on various land in respect of land zoning, floor space ratio, building height and/or lot size

➤ 133 Awaba Street, Lot 100 DP 1256368

It has become evident with the recent amalgamation of lots at 133 Awaba Street that the property has a split-zoning and mix of development standards that should be corrected. It is proposed to apply Zone R3 Medium Density Residential and consistent development standards for floor space ratio and lot size to the entirety of the land. This is a minor amendment to correct an anomaly.

➤ Cowles Road, Lot 1 DP 388205 (adjacent to no. 89B Cowles Road)

It is proposed to rezone Lot 1 DP 388205 in Cowles Road to B6 Enterprise Corridor and amend development standards consistent with the B6 zoning. The land is a narrow vacant lot, around 2.6 metres at its widest point, located between 89A and 89B Cowles Road. The land has been purchased by the owners of 89B Cowles Road, a heritage item (‘the Whitehouse’) zoned B6 and recently redeveloped for a hotel. The zoning change will enable the land to be used as curtilage to the hotel.

➤ Harnett Avenue (south of Crown Road)

It is proposed to rezone a portion of Harnett Avenue (south of Crown Road) to RE1 Public Recreation. The land is within the study area for the Reid-Harnett Parks Plan of Management, currently being drafted. The zoning change is consistent with the zone applied to other land within this area, including Centenary Drive. It is a requirement under NSW DPIE Guidelines that all land in a local government area be zoned, including roads. The zoning change will not alter the use or function of the land as a public road providing access to Reid Park and privately-owned residential land in Harnett Avenue.

➤ Hordern Lane (adjacent to 80-86 Spit Road)

It is proposed to remove the development standards for floor space ratio, height of buildings and lot size that apply to a portion of Hordern Lane. This land was dedicated to Council as part of the recent redevelopment of 80-86 Spit Road. This mapping change is consistent with the NSW DPIE guidelines which do not apply development standards to public roads.

➤ Rear of 37-45 Mandolong Road, Lots 1 and 3-5 DP 1138034, and Lot 1 DP 117108

Land at the rear of 37-45 Mandolong Road was formerly owned by Queenwood School for Girls and utilised for access to the school site during construction works over a decade ago. The title of the land has since been transferred to the landowners of the adjacent residential properties, however whilst the land is used as an extension of these residential properties, its zoning remains that of a school use. It is proposed to rezone the land to R2 Low Density Residential, being the same zone as surrounding residential land, and apply development standards for floor space ratio, height and lot size to the land consistent with the R2 zoning.

Mandolong Road is within the Mosman Scenic Protection Area (MSPA) for which a planning proposal is currently under consideration with NSW DPIE to rezone all R2 zoned land to E4 Environmental Living. The outcome of the MSPA planning proposal will have bearing on the zoning of land at the rear of 37-45 Mandolong Road - that is, if the MSPA planning proposal progresses, then this land would need to be rezoned to Zone E4, instead of Zone R2. This would be consistent with the zoning change applied to surrounding residential land within the MSPA.

➤ Upper Spit Road, Lot 1 DP 831055 (Sydney Water Asset)

It is proposed to rezone a Sydney Water asset in Upper Spit Road to SP2 Infrastructure – Public Utility Undertaking, recognising the use of the land for vital water and sewerage infrastructure for the Northern Beaches Ocean Outfall. This is consistent with the zoning of other Sydney Water assets in Mosman. The Sydney Water Corporation made a submission to Council during public exhibition of the MLSPS in 2019 seeking this zoning change.

### Next steps

The steps in the planning proposal process are:

1. Submission to the Mosman Local Planning Panel for advice
2. Report (with the Panel's advice) to Council Meeting seeking endorsement
3. Submission to NSW DPIE for Gateway determination
4. Public exhibition for 14-28 days minimum
5. Consider submissions and report to Council for endorsement
6. Liaise with NSW Parliamentary Counsel on legal drafting of LEP amendment
7. LEP amendment is made when published in the NSW Government Gazette.

This process typically takes 12 months. A more detailed timeline is included in the planning proposal.

### **Recommended Action**

It is recommended that the Officer's Recommendation be supported.

Recommendation endorsed by General Manager.

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### **Attachments**

1. Minutes of Mosman Local Planning Panel - 14 May 2021 [**EP/12.1** - 3 pages]
2. Planning Proposal - Miscellaneous Amendments to Mosman LEP 2021 [**EP/12.2** - 34 pages]