

Memo

Deputy General Manager Planning and Community

To: Administrator

Cc: Governance Manager
Andrew Pigott
Executive Manager Strategic Land Use Planning (Operations)

From: David Kerr
Acting Deputy General Manager Planning and Community

Date: 10 October 2016

Subject: 11 October Council meeting: Item 9.0 - Increased Floor Area for
Secondary Dwellings Planning Proposal

**Record
Number** 2016/333711

Regarding Item 9.0 - Increased Floor Area for Secondary Dwellings Planning Proposal, due to clerical error, the two attachments in the business papers are not current.

In view of this, it is recommended the two incorrect attachments are replaced with the two current attachments enclosed.



David Kerr
Acting Deputy General Manager Planning and Community

Enclosed:

2016/331928 – Gateway Determination
2016/331931 - Increased Floor Area for Secondary Dwellings Planning Proposal



Gateway Determination

Planning proposal (Department Ref: PP_2016_NBEAC_002_00): to make an amendment to the Manly Local Environmental Plan 2013 to increase the size of internal secondary dwellings to 75 square metres.

I, the Director, Sydney Region East at the Department of Planning and Environment as delegate of the Greater Sydney Commission, have determined under section 56(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the *Manly Local Environmental Plan 2013* to make amendments to the size of internal secondary dwellings should proceed subject to the following conditions:

1. Community consultation is required under sections 56(2)(c) and 57 of the Act as follows:
 - (a) the planning proposal must be made publicly available for a minimum of 28 days; and
 - (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of *A Guide to Preparing LEPs* (Department of Planning and Infrastructure 2013).
2. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
3. The timeframe for completing the Local Environmental Plan is to be 9 months from the week following the date of the Gateway determination.
4. Northern Beaches Council be granted delegation to carry out the Greater Sydney Commission's functions under section 59 of the EP&A Act to progress this planning proposal.

Dated *1st* day of *AUGUST* 2016


Karen Armstrong
Director, Sydney Region East
Planning Services
Department of Planning and Environment

Delegate of the Greater Sydney Commission

PLANNING PROPOSAL

Increased Floor Area for Secondary Dwellings

Manly LEP 2013

Prepared by Northern Beaches Council

Submitted to gateway determination - June 2016

Updated to incorporate gateway determination - August 2016

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ACRONYMS USED IN THIS REPORT

Council	Northern Beaches Council
CSP	Community Strategic Plan
Department	Department of Planning and Environment
SEPPARH 2009	State Environmental Planning Policy (<i>Affordable Rental Housing</i>) 2009
Manly LEP 2013	<i>Manly Local Environmental Plan 2013</i>

INTRODUCTION

This Planning Proposal seeks to amend *Manly Local Environmental Plan 2013 (Manly LEP 2013)* to allow secondary dwellings with floor areas up to 75 square metres, within existing dwelling houses, subject to development consent. This will allow for development of two bedroom secondary dwellings, suitable for an increased range of demographics. This Planning Proposal does not change floor space limits for other types of secondary dwellings.

The Department of Planning and Environment's *State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPPARH 2009)* allows for secondary dwellings to be complying development in some circumstances and provides permissibility for secondary dwellings within the following zones:

- (a) Zone R1 General Residential,
- (b) Zone R2 Low Density Residential,
- (c) Zone R3 Medium Density Residential,

SEPP (Affordable Rental Housing) 2009 allows for secondary dwellings to be constructed up to 60m². Unlike the family flat provisions, secondary dwelling provided under *SEPP (Affordable Rental Housing) 2009* are not required to be attached to or within the primary dwelling. Detached secondary dwellings are often the cause of complaints to Council as they are more likely to result in impacts on the amenity.

During the drafting of the *Manly LEP 2013* clause 5.4(9) was adopted that reduced the maximum size of secondary dwelling from 75m² to 60m² or 30% of the floor area of the primary dwelling to comply with the Department of Planning and Environment's requirements for Standard Instrument LEPs.

Warringah Local Environment Plan 2011 Amendment 16

Northern Beaches Council recently amended the *Warringah Local Environmental Plan (WLEP) 2011* to allow a secondary dwelling to be built up to 75m². This amendment was published on 6 May 2016. The Mayoral Minute that requested this LEP amendment makes clear that it seeks to replicate Manly's previous controls for family flats. The amendment adopted an additional local provision clause 6.10 in the WLEP which states as follows:

"6.10 Development for the purposes of secondary dwellings in Zones R2 and R3

- (1) *The objective of this clause is to ensure that secondary dwellings on land to which this clause applies are of low impact and without adverse effects on the specific ecological, social and aesthetic values of the land.*
- (2) *This clause applies to land in the following zones:*
 - (a) *Zone R2 Low Density Residential,*
 - (b) *Zone R3 Medium Density Residential.*
- (3) *Despite clause 5.4 (9), development consent may be granted for development for the purposes of a secondary dwelling on land to which this clause applies if:*
 - (a) *the total floor area of the secondary dwelling does not exceed 75 square metres, and*
 - (b) *the consent authority is satisfied that the secondary dwelling will be located entirely within an existing principal dwelling that contains no other secondary dwelling.*
- (4) *In this clause:*

development for the purposes of a secondary dwelling includes the following:

(a) the erection of, or alterations or additions to, a secondary dwelling,

(b) alterations or additions to a principal dwelling for the purposes of a secondary dwelling.

Note. See also Division 2 of Part 2 of State Environmental Planning Policy (Affordable Rental Housing) 2009.”

On 16 June 2016, Northern Beaches Council resolved to prepare a planning proposal adopting a similar clause to clause 6.10 of the *Warringah LEP 2011*, allowing secondary dwellings up to 75m² within existing dwelling houses applicable for Zones R1 General Residential, R2 Low Density Residential, R3 Medium Density Residential, E3 Environmental Management and E4 Environmental Living within the *Manly LEP 2013*. This Planning Proposal seeks to amend *Manly LEP 2013* as per the resolution.

THE PLANNING PROPOSAL

This Planning Proposal comprises parts consistent with the *A Guide to Preparing Planning Proposals* (October 2012) and *A Guide to Preparing Local Environmental Plans* (April 2013):

Part 1 - Objectives or Intended Outcomes

Part 2 - Explanation of Provisions

Part 3 - Justification

Part 4 - Community Consultation

PART 1: OBJECTIVES OR INTENDED OUTCOMES

The objective of this Planning Proposal is to allow secondary dwellings up to 75 square metres in floor area, subject to development consent, if they are:

- Within Zones R1 General Residential, R2 Low Density Residential, R3 Medium Density Residential, E3 Environmental Management or E4 Environmental Living.
- Within an existing dwelling house.

The intended outcome of the Planning Proposal is that larger Secondary Dwellings could be developed in established residential areas, increasing housing choice without increasing the size of existing dwellings. This outcome is supported by the objectives of Council's Community Strategic Plan, *A Plan for Growing Sydney (2014)* and *SEPP (Affordable Rental Housing)*, as described in Part 3.

The 60m² maximum set by state policy allows for a large 1 bedroom unit, a two bedroom secondary dwelling can only be achieved with smaller living areas that are below the current standards for unit sizes in residential flat buildings.

The Apartment Design Guide provides for the minimum sizes for apartments of residential flat buildings and requires the following minimum sizes:

Apartment type	Minimum internal area
Studio	35m ²
1 bedroom	50m ²
2 bedroom	70m ²
3 bedroom	90m ²

The apartment design guide requires an additional 5m² if the unit has more than 1 bathroom. As a result 75m² secondary dwelling provide for a moderate sized two bedroom secondary dwelling.

The effect of the State policy limit of 60m² is that secondary dwellings are less suitable for young families who require more space than single persons or older residents. The former Manly Council area, has significant housing affordability problems with many younger persons leaving the area due to housing affordability. Larger secondary dwellings provide for greater housing choice and are generally more affordable in terms of rent. It should be noted that secondary dwellings cannot be separably titled and as a result are an effective form of affordable rental housing. The adoption of a larger secondary dwelling is likely to encourage existing large houses to be adapted to allow families to co-habit within the same dwelling house with increased privacy. This policy would also allow retirees to create an income stream from renting part of the existing dwelling house (either the secondary dwelling or the primary dwelling). This allows for a more efficient use of the existing housing stock and community infrastructure.

PART 2: EXPLANATION OF PROVISIONS

Subject to future consultation with Parliamentary Counsel's Office for legal drafting of the amendment, Council foreshadows that the Planning Proposal would involve the following amendments to *Manly LEP 2013*:

Relevant sections of <i>Manly LEP 2013</i>	Proposed Amendments
Land Use Table: Zone R1 General Density Residential	Insert new item in 3. Permitted with consent "Secondary Dwellings"
Land Use Table: Zone R2 Low Density Residential	Insert new item in 3. Permitted with consent "Secondary Dwellings"
Land Use Table: Zone R3 Medium Density Residential	Insert new item in 3. Permitted with consent "Secondary Dwellings"
Part 6 Additional Local Provisions	<p>Additional clause that:</p> <ul style="list-style-type: none"> - Contains an objective that states 'The objective of this clause is to ensure that secondary dwellings on land to which this clause applies are of low impact and without adverse effects on the specific ecological, social and aesthetic values of the land.' - Insert the following three operative clause <ol style="list-style-type: none"> (1) The objective of this clause is to ensure that secondary dwellings on land to which this clause applies are of low impact and without adverse effects on the specific ecological, social and aesthetic values of the land. (2) This clause applies to land in the following zones: <ol style="list-style-type: none"> (a) Zone R1 General Residential, (b) Zone R2 Low Density Residential, (c) Zone R3 Medium Density Residential, (d) Zone E3 Environmental Management, (e) Zone E4 Environmental Living. (3) Despite clause 5.4 (9), development consent may be granted for development for the purposes of a secondary dwelling on land to which this clause applies if: <ol style="list-style-type: none"> (a) the total floor area of the secondary dwelling does not exceed 75 square metres, and (b) the consent authority is satisfied that the secondary dwelling will be located entirely within an existing principal dwelling that contains no other secondary dwelling. (4) In this clause: development for the purposes of a secondary dwelling includes the following: <ol style="list-style-type: none"> (a) the erection of, or alterations or additions to, a secondary dwelling, (b) alterations or additions to a principal dwelling for the purposes of a secondary dwelling. <p>Note. See also Division 2 of Part 2 of State Environmental Planning Policy (Affordable Rental Housing) 2009.'</p>

Table 1: Explanations of Provisions

PART 3: JUSTIFICATION

Section A - Need for the Planning Proposal.

Is the Planning Proposal a result of any strategic study or report?

The Planning Proposal is the result of Council resolution 027/16 made on 16 June 2016 and the historic controls of the Council prior to the adoption of the standard instrument *Manly LEP 2013*. Council resolved as follows:

9.2 PLANNING PROPOSAL FOR 75M2 SECONDARY DWELLINGS WITHIN EXISTING DWELLINGS

027/16 RESOLVED

D Persson

That Council prepare a planning proposal adopting a similar clause to clause 6.10 of the *Warringah LEP 2011*, allowing secondary dwellings up to 75m² within existing dwelling houses applicable for Zones R1 General Residential, R2 Low Density Residential, R3 Medium Density Residential, E3 Environmental Management and E4 Environmental Living within the *Manly LEP 2013*.

Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The Planning Proposal is an appropriate means of achieving the objective listed in Part 1. The following is noted in support of this view:

- Secondary Dwellings controls are primarily defined by *SEPP (Affordable Rental Housing)*.
- *SEPP (Affordable Rental Housing)* allows environmental planning instruments, such as *Manly LEP 2013*, to increase limits to the total floor area of Secondary Dwellings.
- The proposed amendment allows for additional floor space for 'internal' Secondary Dwellings and does not modify or limit current controls on 'attached' or 'detached' Secondary Dwellings.
- The proposed amendment modifies *Manly LEP 2013* in a way which is consistent with existing controls in *SEPP (Affordable Rental Housing)*.

Is there a net community benefit?

The Planning Proposal will deliver a net community benefit. The key community benefits include:

- Delivery of additional housing choice in the Northern Beaches.
- Maintenance of the existing character and built form of established areas.

Section B - Relationship to Strategic Planning framework

Is the planning proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy, including the Sydney Metropolitan Strategy and exhibited draft strategies?

1. *A Plan For Growing Sydney (2014)*

A Plan for Growing Sydney is the latest metropolitan strategy released by the Department of Planning and Environment to set the framework for Sydney's growth to 2031 and beyond.

A key focus of the strategy is boosting housing and jobs growth across Sydney. The strategy sets a dwelling target (net additional) of 664,000 new dwellings across Sydney by 2031.

The Planning Proposal is consistent with the relevant objectives summarised in the table below:

A Plan For Growing Sydney Action	Consistency
2.1.1 Accelerate housing supply and local housing choices	The Planning Proposal will allow for more flexible secondary dwelling layouts that will improve housing choice, benefiting land owners and future tenants.
2.1.2 Accelerate new housing in designated infill areas (established urban areas) through the priority precincts and Urbangrowth NSW programs	The Planning Proposal supports development within existing residential areas. This will take advantage of current infrastructure and reduces the need for greenfield development.
2.2.3 Deliver more opportunities for affordable housing	The Planning Proposal encourages the development of secondary dwellings, a type of affordable rental housing. By allowing larger Secondary Dwellings, they are likely to be more appealing to a wider variety of household types. This supports the objective to deliver more opportunities for affordable housing.

Table 2: A Plan for Growing Sydney Actions Summary

2. Draft North East Subregional Strategy (2007)

The draft *North East Subregional Strategy* translates the objectives of NSW Government's *Metropolitan Strategy* (2005) to the local level. The following actions are relevant to the Planning Proposal:

Draft North East Subregion Strategy Action	Consistency
C2.3.2 North East councils to provide for an appropriate range of residential zoning to cater for changing housing needs	The Planning Proposal will allow for larger secondary dwellings in R1, R2 R3, E3 and E4 Zones. Larger secondary dwellings can provide more flexible affordable housing layouts for downsizing seniors, young families and other demographics.

Table 3: A Plan for Growing Sydney Actions Summary

Is the Planning Proposal consistent with council's local strategy or other local strategic plan?

The Planning Proposal is consistent with the Community Strategic Plan. While the Planning Proposal is not directly related to an action area of the CSP, it is consistent with the following objective:

Objective	Consistency
2 Create liveable neighbourhoods with more affordable housing choices	The Planning Proposal will encourage the provisioning of a variety of housing choices across the Northern Beaches. Internally constructed secondary dwellings will complement the local character of residential areas by maintaining the built form of the local area, thereby maintaining the liveability of neighbourhoods.

Table 4: CSP Objective Summary

Is the Planning Proposal consistent with applicable State Environmental Planning Policies (SEPP's)?

The Planning Proposal is consistent with the relevant SEPP. The relevant SEPP is summarised below:

SEPP	Consistency
SEPPARH 2009	The SEPP provides a consistent planning regime for the provision of affordable rental housing. The Planning Proposal allows for larger secondary dwellings, a type of housing allowed by the SEPP. This will allow for more flexibility in the types of secondary dwellings built in the Northern Beaches (South).

Table 5: SEPP Summary

Is the Planning Proposal consistent with applicable Ministerial Directions (s117 directions)?

The following Ministerial Directions are applicable to the proposal:

- 3.1 Residential Zones
- 3.4 Integrating Land Use and Transport
- 6.1 Approval and Referral Requirements
- 7.1 Implementation of the Metropolitan Plan for Sydney 2036

Ministerial Direction	Objectives	Comment
3.1 Residential Zones	<p>The objectives of this direction are:</p> <p>(a) to encourage a variety and choice of housing types to provide for existing and future housing needs,</p> <p>(b) to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and</p> <p>(c) to minimise the impact of residential development on the environment and resource lands.</p>	<p>The Planning Proposal is consistent with the objectives of the direction and will:</p> <ul style="list-style-type: none"> - encourage variety and choice of housing types by allowing more types of affordable housing development - promote development in established areas, maintaining access to infrastructure and services - reduce the need for development on the urban fringe by increasing the development potential of established areas
3.4 Integrating Land Use and Transport	<p>The objective of this direction is to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve the following planning objectives:</p> <p>(a) improving access to housing, jobs and services by walking, cycling and</p>	<p>The Planning Proposal is consistent with the objectives of the direction as it will increase housing choice in established areas.</p> <p>New residents may take advantage, and enhance the viability of existing services (e.g. commercial uses and public</p>

Ministerial Direction	Objectives	Comment
	<p>public transport, and</p> <p>(b) increasing the choice of available transport and reducing dependence on cars, and</p> <p>(c) reducing travel demand including the number of trips generated by development and the distances travelled, especially by car, and</p> <p>(d) supporting the efficient and viable operation of public transport services, and</p> <p>(e) providing for the efficient movement of freight</p>	transportation).
6.1 Approval and Referral Requirements	The objective of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development.	The Planning Proposal is consistent with the objective of the direction as it will encourage efficient and appropriate assessment of developments.
7.1 Implementation of the Metropolitan Plan for Sydney 2036	The objective of this direction is to give legal effect to the vision, transport and land use strategy, policies, outcomes and actions contained in the Metropolitan Plan for Sydney 2036.	The Planning Proposal is consistent with the <i>Plan for Growing Sydney</i> , the most recent Metropolitan Plan, as discussed above.

Table 6: S117 Summary

Section C - Environmental, Social and Economic impact.

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?

The type of development, secondary dwellings within existing dwellings, is currently permitted. The proposal will not increase the likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected.

Are there any other likely environmental effects as a result of the Planning Proposal and how are they proposed to be managed?

The type of development, secondary dwellings within existing dwellings, is currently permitted. Development controls are managed through *SEPPARH 2009*, *SEPP (Exempt and Complying Development) 2008*, *Manly LEP 2013* and *Manly Development Control Plan 2013*.

Future applications allowed by the Planning Proposal will be assessed under the same suite of controls which mitigate the likelihood of environmental effects. Any environmental effects that may occur will be managed through those controls.

As the amendment only allows 75m² secondary dwellings within the footprint of existing dwelling house the adoption of this policy will not result in significant visual bulk, amenity or streetscape impacts. Clause 22(4)(b) of *SEPP (Affordable Rental Housing) 2009* prevents Council from requiring additional car parking for secondary dwellings.

Has the Planning Proposal adequately addressed any social and economic effects?

The Planning Proposal will have positive social and economic effects, as it will allow for more flexibility in the types of affordable housing in the Northern Beaches. This will increase housing choice, providing benefits for both land owners and tenants.

Section D - State and Commonwealth interests.

Is there adequate public infrastructure for the Planning Proposal?

The type of development, secondary dwellings within existing dwellings, is currently permitted. The Planning Proposal may increase development of Secondary Dwellings, increasing density by a marginal amount. However, any additional density would be located in established areas with a nominal impact on public infrastructure and this would be offset by section 94 contributions.

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

The views of State and Commonwealth agencies will be known after the gateway determination.

PART 4: COMMUNITY CONSULTATION

Council exhibited the Planning Proposal in accordance with the requirements of section 57 of the *Environmental Planning and Assessment Act 1979*.

Council also undertook community consultation in accordance with Council's adopted Community Engagement Policy, in the following manner:

- Advertise the Planning Proposal in a local newspaper and on Council's website at the start of the exhibition period
- Exhibit the Planning Proposal for the period of time stipulated by the Gateway Determination. (28 days from 15 August to 12 September 2016. No submissions were received during the public exhibition period).

CONCLUSION

The Planning Proposal has been written with consideration to the Department's *Guide to Preparing Planning Proposals, SEPP (Affordable Rental Housing)* and State and local strategies. It contributes to Council's commitment to create liveable neighbourhoods with more affordable housing choices.

The Planning Proposal will amend controls in *Manly LEP 2013* to allow development of secondary dwellings, of floor areas up to 75 square metres, when within existing dwellings. In doing so, it will increase the capacity for affordable housing choice within the Northern Beaches and provide for viable homes for a range of demographics.

By encouraging larger secondary dwellings within existing dwellings additional housing can be provided while preserving the local character by maintaining the bulk and scale of existing dwellings. In addition, development will largely be located in established areas, allowing for use of existing services and infrastructure.

