

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.

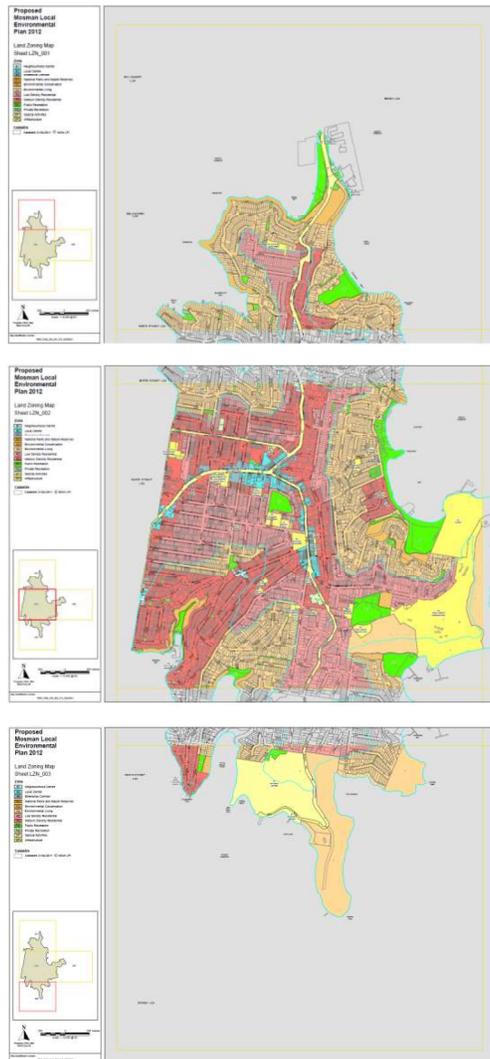
Item 1 - Rezone all land within the Mosman Scenic Protection Area that is currently zoned R2 Low Density Residential, to Zone C4 Environmental Living, on the Land Zoning Map.

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.