

Council Resolution Item

Action is required from the Council Meeting on **03 June 2014** as per the Resolution outlined below.

EP/28 Amendment (EP)	Mosman Residential Development Control Plan 2012 -
EP/28:	Mosman Residential Development Control Plan 2012 - Amendment (EP)
MOSPLAN REF:	BE.01
REPORT BY:	Senior Strategic Planner

SUMMARY

Amendment to Mosman Residential Development Control Plan 2012 is proposed to omit planning objectives and controls that are to be included in Mosman Local Environmental Plan 2012, and to correct a minor error.

OFFICER'S RECOMMENDATION

The Manager Urban Planning recommends that:

1. Council resolve under section 74C of the *Environmental Planning and Assessment Act 1979* to amend Mosman Residential Development Control Plan 2012 to:
 - a. Omit objective O1 and planning control P1 in Part 4.2 Siting and Scale relating to maximum wall height and maximum number of storeys of development
 - b. Omit objectives O1, O2 and O3 and planning control P1 in Part 4.4 Landscaping relating to minimum landscaped area of a site
 - c. In objective O3 in Part 5.10 Transport, Access and Parking, replace the word "off" with the word "on"
 2. The draft amendments to Mosman Residential Development Control Plan 2012 be publicly exhibited as required under the *Environmental Planning and Assessment Regulation 2000* for a period of 28 days.
 3. Public exhibition be undertaken concurrently with the planning proposal to amend objectives for R2 Low Density Residential zones, clauses 4.3 and 4.4, and introduce new local clauses for wall height, number of storeys and landscaped area in *Mosman Local Environmental Plan 2012*.
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REPORT

Background

In early 2013 a review of the Mosman Development Assessment Panel (MDAP) was undertaken to evaluate its operation and the development application assessment process.

The results of the review were presented to Council Meetings on 18 June 2013 and 6 August 2013, and on this latter date Council resolved to review objectives in Mosman Local Environmental Plan 2012 (MLEP 2012) for the R2 Low Density Residential zone, height of buildings and floor space ratio clauses, and objectives for commonly varied guidelines in Mosman Residential Development Control Plan 2012 (MRDCP 2012).

On 31 October 2013 a facilitated workshop was held with Councillors, the Hon. Paul Stein AM QC (MDAP Chair), Council's lawyers and Council staff in regards to these objectives, and amendments to strengthen objectives and controls and for consistency within the planning documents were considered. A further workshop was held with Councillors on 20 February 2014 at which proposed amendments to MLEP 2012 were presented and the planning process to amend an LEP was outlined.

At the Council Meeting of 1 April 2014, Council considered a report on a planning proposal to amend objectives for the R2 zone, height of buildings and floor space ratio clauses in MLEP 2012, and include new local clauses for wall height, number of storeys and landscaped area in the LEP. Council resolved to endorse the planning proposal and refer it to NSW Planning and Infrastructure for gateway determination under section 56 of the *Environmental Planning and Assessment Act 1979*.

The NSW Department of Planning and Environment (formerly known as NSW Planning and Infrastructure) issued its gateway determination on 14 May 2014 and has approved the planning proposal to proceed to public exhibition for a minimum of 28 days.

Content to omit from DCP

Planning objectives and controls relating to wall height, number of storeys and landscaped area currently reside in Mosman Residential Development Control Plan 2012 (MRDCP 2012).

Section 74C(5) of the *Environmental Planning and Assessment Act 1979* provides that a provision in a DCP has no effect to the extent that it is the same or substantially the same as a provision in an environmental planning instrument (i.e. an LEP) or is inconsistent or incompatible with a provision of any such instrument.

Therefore, as planning objectives and controls relating to wall height, number of storeys and landscaped area are to be included in MLEP 2012 as part of the abovementioned planning proposal, this content should be omitted from MRDCP 2012.

It is therefore recommended that MRDCP 2012 be amended to omit the following:

- Objective O1 in Part 4.2 Siting and Scale
 - O1. To have the effects of bulk and scale of buildings arising from new development minimised.*

- Planning control P1 in Part 4.2 Siting and Scale relating to maximum wall height and maximum number of storeys of development;
 - P1. For all residential zoned land to which a maximum building height of 8.5 metres applies under the LEP, the following also applies:*
 - (a) a maximum wall height of 7.2m;*
 - (b) a maximum of two storeys (above ground level (existing)). Council may allow an additional storey in attic roof space of existing and new buildings, or in the foundation space of existing buildings, provided that the building height and bulk is of an appropriate form and scale.*

- Objectives O1, O2 and O3 in Part 4.4 Landscaping

- O1. 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.
 - O2. To have a general visual dominance of landscape over buildings maintained, particularly on harbour foreshores and on land in Zone R2 Low Density Residential.
 - O3. To have adequate and useable ground level open space for recreation, landscaping and containing urban run-off
- Planning control P1 in Part 4.4 Landscaping relating to minimum landscaped area of a site.
 - P1. The minimum landscaped area of a site (as a percentage of the site area) should be:
 - a) For land zoned R2 Low Density Residential:
 - (i) 30%, where the site area is 500sqm or less;
 - (ii) 50%, where the site area is 900sqm or more;
 - (iii) in accordance with the following formula, where the site area is more than 500sqm but less than 900sqm:

$$LA = [30 + \frac{(SA - 500)}{20}] \%$$

Where LA is landscaped area, and SA is site area. This formula is shown graphically in a sliding scale on the following page. (NB. Graph not reproduced here in Council report).

(b) For land zoned R3 Medium Density Residential:

- (i) 50%, for land identified in the LEP as having a maximum floor space ratio of 0.55:1 or 0.6:1;
- (ii) 40%, for land identified in the LEP as having a maximum floor space ratio of 0.7:1 or 1:1.

Error to be corrected in DCP

A minor error has been identified in objective O3 in Part 5.10 Transport, Access and Parking of MRDCP 2012. The objective reads:

O3. To have adequate on site car parking provided so that development does not generate additional off street parking demand.

Reference to "off street parking" is incorrect. This should read "on street parking". The objective should be amended to reflect this.

Conclusion

The *Environmental Planning and Assessment Regulation 2000*, clause 22, allows for a council to amend a DCP by a subsequent DCP. The process for amending a DCP is the same as for preparing a new one and includes:

1. Resolving to prepare a DCP under section 74C of the *Environmental Planning and Assessment Act 1979*.
2. Public notice and exhibition of draft DCP for at least 28 days.
3. Consideration of any submissions and report to Council to adopt DCP amendment.
4. Public notice of Council's decision.

It is intended that the amendments to MRDCP 2012 outlined in this report would come into effect on the same day that amendments to MLEP 2012 are gazetted and come into force. Until this occurs, objectives and planning controls for wall height, number of storeys and landscaped area would remain in MRDCP 2012. This process will be detailed in the report to be considered by Council following consideration of any submissions noted in point 3 above.

Recommendation endorsed by Acting Director Environment and Planning.

COUNCIL RESOLUTION

Motion Menzies/Sherlock

That the Officer's Recommendation be adopted.

CARRIED UNANIMOUSLY