

## 11.0 PLANNING PLACE AND COMMUNITY DIVISION REPORTS

<b>ITEM 11.1</b>	<b>PLANNING PROPOSAL - FACILITATING ACTIVITIES ON COMMUNITY LAND - MANLY LEP 2013</b>
<b>REPORTING MANAGER</b>	<b>EXECUTIVE MANAGER STRATEGIC AND PLACE PLANNING</b>
<b>TRIM FILE REF</b>	<b>2018/528759</b>
<b>ATTACHMENTS</b>	<b>1 <a href="#">P</a> Planning Proposal (Included In Attachments Booklet 1)</b> <b>2 <a href="#">P</a> Gateway Determination - Manly LEP Temporary Events Community Land (Included In Attachments Booklet 1)</b> <b>3 <a href="#">P</a> Consultant Report with Submissions Review and Comments (Included In Attachments Booklet 1)</b>

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### EXECUTIVE SUMMARY

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#### PURPOSE

To inform Council of the outcomes of the public exhibition of the Planning Proposal to amend Manly Local Environmental Plan 2013 (Manly LEP) to permit activities on Community Land without the need for development consent.

#### SUMMARY

At its meeting on 27 March 2018, Council resolved to prepare a Planning Proposal to amend Manly LEP to enable activities on Community Land without the need to obtain development consent (Attachment 1).

The change was proposed to simplify the approvals process for events, festivals and social activities on Council land in Manly and to make the approval process for these activities consistent across the Northern Beaches.

A Gateway Determination was issued by the Department of Planning and Environment (the Department) on 3 May 2018 (Attachment 2). The Planning Proposal was publicly exhibited from 27 May 2018 to 24 June 2018.

Five (5) submissions were received during the consultation comprising three submissions from State agencies and two public submissions, including a submission from a Council staff member.

As the Planning Proposal involved changes to the approval process for the use of Council land, and a submission from a Council staff member, a peer review of the proposal and the submissions received was sought from an independent planning consultant (Attachment 3).

Following consideration of submissions and the independent consultant's report it is recommended that the exhibited Planning Proposal be finalised without further change.

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#### RECOMMENDATION OF GENERAL MANAGER PLANNING PLACE AND COMMUNITY

That:

- A. Council approve amendments under Schedule 2 of *Manly Local Environmental Plan 2013* in accordance with the publicly exhibited Planning Proposal.
- B. Council exercise its delegation to undertake the functions of the Minister for Planning under section 3.36 of the *Environmental Planning and Assessment Act 1979* to amend *Manly Local Environmental Plan 2013* to give effect to the publicly exhibited Planning Proposal.

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## REPORT

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### BACKGROUND

Events, festivals and social activities provide opportunities to bring people together and support greater connectivity between cross-sections of the community.

Warringah Local Environmental Plan 2011 (Warringah LEP) and Pittwater Local Environmental Plan 2014 (Pittwater LEP) allow the use of outdoor areas on Community Land for commercial purposes as Exempt Development subject to the use being authorised in keeping with the requirements of a relevant Plan of Management under the *Local Government Act 1993*.

Manly Local Environmental Plan 2013 (Manly LEP) does not contain this provision, hindering Council's ability to program community events, as development consent must be obtained for each event on Community Land before it can proceed.

In order to support the management and delivery of our annual event programs, and to make the approval process for these activities consistent across the Northern Beaches, a change is proposed to the Manly LEP to make outdoor commercial activities on Community Land "Exempt Development" where authorised under a Plan of Management in accordance with the requirements of the *Local Government Act 1993*.

Council at its meeting on 27 March 2018 resolved:

*That Council approves the submission of a Planning Proposal to the Department of Planning and Environment (the Department) to insert a new provision into Schedule 2 of Manly Local Environmental Plan 2013 to make the use of "outdoor areas of community land for commercial purposes" Exempt Development subject to the use being in keeping with the requirements of the relevant Plan of Management.*

A Planning Proposal was submitted to the Department of Planning & Environment (the Department) on 4 April 2018. A Gateway determination was subsequently issued by the Department on 3 May 2018 which enabled Council to proceed with consultation.

### PLANS OF MANAGEMENT

Plans of Management categorise land, authorise leases or licenses and determine what development can take place on Community Land. The key values of the land and its purpose are identified so they can be protected and enhanced. Council must undertake public consultation prior to the adoption of, and amendments to, any Plan of Management.

The Beaches Produce Market at Warriewood for example, is authorised as a weekly outdoor event of community land for commercial purposes, not requiring a development consent under the North Narrabeen Reserve Plan of Management 2004.

The North Narrabeen Reserve Plan of Management 2004 identifies Markets as Exempt Development. North Narrabeen Reserve (the Reserve) was considered suitable for a market due to its location context, management precincts, environmental quality, access, circulation and parking. Objectives in the Plan of Management support the establishment of the Reserve as a venue of non-sporting community events.

In addition to the specific requirements of Plans of Management, all Exempt Development is also subject to requirements contained in each of Council's LEPs which seek to ensure Exempt Development is of minimal environmental impact. In this regard, the LEPs specify certain lands on which Exempt Development cannot be carried out including areas declared as a critical habitat area or outstanding biodiversity or listed in the State Heritage Register. Requirements of the Building Code of Australia and the clearing of vegetation also apply under existing LEP clauses.

## CONSULTATION

### Public Authority Consultation

The Department's Gateway Determination required consultation with the Office of Environment and Heritage, Environmental Protection Authority, Department of Primary Industries – Crown Land Division, and Road and Maritime Services. As a result of the consultations undertaken 3 NSW Agency submissions were received as detailed below:

**Office of Environment and Heritage (OEH):** The OEH recommends that Plans of Management for an activity conducted in accordance with the Planning Proposal include appropriate provisions to manage hazards and risks to the natural environment in relation to flooding and Aboriginal cultural heritage.

**Comment:** The Local Government Act 1993 provides sufficient safeguards to ensure Council will address the management of hazards and risks regarding flooding and Aboriginal cultural heritage. Council accepts that upfront studies may be required before certain activities are authorised by a Plan of Management, or that studies may be required in a Plan of Management before undertaking certain authorised uses. Council's Events team undertakes an assessment of all major events before their approval, involving liaison with all relevant teams within Council to ensure potential environmental impacts are addressed.

**Environmental Protection Authority (EPA):** The EPA recommends that Plans of Management for an activity conducted in accordance with the Planning Proposal include appropriate controls to manage potential pollution caused by the activity. This includes but is not limited to the issue of noise and waste management.

**Comment:** Plans of Management may contain requirements to address pollution matters. In addition, Council is the appropriate regulatory authority under the Protection of the Environment Operations Act 1997 for activities under a Plan of Management. Council must ensure activities are carried out in an environmentally sensitive manner including noise and waste management. For example, Council's Event Waste Management Guidelines include requirements for Event Waste Management Plans and related conditions of use. Council's Events team undertakes an assessment of all major events before their approval, involving liaison with all relevant teams within Council to ensure potential environmental impacts are addressed.

**Road and Maritime Services (RMS):** The RMS raise no objections to the proposal but request the Plans of Management are referred to Council's Local Traffic Committee for review when required.

**Comment:** Where Plans of Management are being prepared or reviewed, Council will refer the matter to its Local Traffic Committee where local traffic matters are involved. This will be achieved by advising all relevant Council Managers of the requirement. The Local Traffic Committee meets on a monthly basis and in addition, referrals may be made as required to individual members of the Local Traffic Committee including Council's Traffic Engineer, Traffic Safety Officer and the Police.

### Public Exhibition

The amended Planning Proposal was publicly exhibited for 28 days from 27 May 2018 to 24 June 2018.

The Planning Proposal and all relevant documents were publically available at the Manly Town Hall, Manly Library and the Civic Centre Dee Why as well as on Council's website. An advertisement was placed in the Manly Daily notifying the community of the public exhibition period on Saturday 18 November 2018. Council's 'Have Your Say' website registered a total of 201 visits to the web page and 74 document downloads.

In response to the public exhibition period 2 submissions were received. Below mentioned *Submission # 2* was received from a resident who is also an employee within the Strategic and Place Planning Branch in Council.

A summary of submissions and Council's response is provided below:

**Resident Submission #1:** This submission queries the nature and type of 'outdoor commercial activities' referred to in the proposal. Clarification is sought regarding commercial and non-commercial activities; what constitutes minimal environmental impact; and a particular query regarding requirements for a concert. Other queries concerned Council's intended approach to recent changes in the management of Crown Land under the new Crown Lands Act.

**Comment:** The proposed new clause does not extend the range of permissible uses on any land. The range of permissible uses is regulated by the zoning of the land in the Local Environment Plan and relevant State Environmental Planning Policies (SEPPs) including the SEPP (Infrastructure) 2006. The clause has the effect only of removing the requirement for development consent for a permissible use to be obtained in certain circumstances i.e. "outdoor areas of community land for commercial purposes".

It is important to also note that all activities to which the Planning Proposal applies will still require authorisation of that activity under the Local Government Act 1993 in accordance with the relevant Plan of Management for the land. Community consultation occurs in the preparation and amendment of any Plan of Management.

Where a proposed activity is outside the scope of the relevant Plan of Management, development consent will still be required for the activity. The Planning Proposal enables a simpler approval pathway where an activity is already authorised by a Plan of Management under the Local Government Act 1993.

**Resident Submission #2:** This submission considers that the intended outcome of the Planning Proposal is unclear, gives inadequate justification and is inconsistent with Ministerial Directions by the Minister for Planning. Concern is raised in relation to the assessment of potential impacts of commercial activities on the local community under the Planning Proposal.

**Comment:** It is proposed to clarify that the intended outcome of the Planning Proposal is the vision, management and delivery of events in accordance with Council's adopted "Northern Beaches Events Strategy". It is considered that sufficient justification has been provided for the Planning Proposal, particularly considering the existence of similar provisions in other Northern Beaches LEPs and the level of control offered by the Plan of Management process. The Planning proposal is consistent with relevant Ministerial directions for the making of Local Environmental Plan amendments.

The Planning Proposal does not provide for a blanket exemption provision and will only be applied where a matter is authorised with a Plan of Management. Where an activity is not authorised by a Plan of Management, development consent will still be required.

### Peer Review by Planning Consultant

Having regard to the staff submission and also given that the proposal affects Council land, external Town Planning consultants were engaged to undertake a Peer Review of the Planning Proposal and the submissions received. The Consultant's report concludes that the Planning Proposal is consistent with the provisions of the Environmental Planning and Assessment Act 1979 and that the submissions do not warrant changes to the Planning Proposal. The Consultant's report and comments on the submissions are at Attachment 3.

## **POST EXHIBITION AMENDMENTS TO THE PLANNING PROPOSAL DOCUMENTATION**

Following the public exhibition, two minor changes have been made to the Planning Proposal documentation.

The first change is to provide clarification that the intended outcome of the Planning Proposal is to support the vision, management and delivery of events.

The second change is administrative to reflect the fact that the Council has adopted the Northern Beaches Events Strategy and the Northern Beaches Community Strategic Plan.

Neither of these changes affects the proposed drafting of the new LEP provision.

## **CONCLUSION**

There are currently inconsistencies between Council's LEPs regarding approval requirements for the use of outdoor areas on Community Land in the Council area.

The inconsistency hinders Council's ability to program community events, as development consent must currently be obtained for each event on Community Land before it can proceed. This includes markets and other community based events.

Proposed amendments to the Manly LEP will make outdoor commercial activities on Community Land exempt development i.e. it will not require development consent. However, this exemption will only apply where those commercial activities are authorised under a Plan of Management in accordance with the requirements of the *Local Government Act 1993*, similar to Pittwater and Warringah LEPs.

Plans of Management categorise land, authorise leases or licenses and determine what development can take place on Community Land. The key values of the land and its purpose are identified so they can be protected and enhanced. Where uses are not authorised by a Plan of Management, development consent will still be required.

Public consultation occurs prior to the adoption of, and amendments to any Plan of Management. In addition, Council LEPs specify Exempt Development cannot be carried out on certain land including areas declared as critical habitat area, outstanding biodiversity, or listed in the State Heritage Register. Requirements for compliance with the Building Code of Australia and restrictions on the clearing of vegetation also apply under existing LEP clauses.

## **FINANCIAL CONSIDERATIONS**

The preparation of the Planning Proposal is to be funded through Council's Operational budget as Council is the proponent for the Planning Proposal.

## **SOCIAL CONSIDERATIONS**

The Planning Proposal seeks to provide improved and consistent approval pathways for approval of outdoor events on Community Land. These events contribute to social cohesion, community participation and enhanced sense of place and liveability.

## **ENVIRONMENTAL CONSIDERATIONS**

The Planning Proposal is drafted to ensure environmental impacts are addressed and minimised. Exempt development can only be carried out where a use is permissible under the zoning of the land and if already authorised under the *Local Government Act 1993* through a Plan of Management.

**GOVERNANCE AND RISK CONSIDERATIONS**

As the Planning Proposal would affect the use of Council-owned land, and a submission was received from a Council staff member, a planning consultant was engaged to undertake a peer review of the Planning Proposal and to review and comment on the submissions received. The review found that the Planning Proposal was warranted and that no changes were required as a result of submissions received.