

Mayoral Minute No. MM1 / 12



Subject: Randwick Draft Comprehensive LEP
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Introduction

The draft comprehensive LEP was placed on public exhibition last week seeking our community's feedback and submissions.

This is an important step in reviewing and updating our City's planning controls and bringing these into line with State templates and strategies (which were introduced by the former State Government), for a simpler system across NSW, using the same terminology when we talk about planning, conservation and development.

The public exhibition has a range of opportunities for residents, business owners and other stakeholders to view the exhibition materials and to discuss and comment on the draft LEP. While our role as Councillors is to assess all community views (and this must necessarily occur when all views have been collected over the exhibition period), several queries have been raised with me, primarily about the LEP process, which I consider would be helpful to address in this early stage of the exhibition.

A number of Councillors recently attended a Coogee resident precinct meeting and noted that residents were seeking clarification relating to the possibility of adding 'external wall height' controls to the draft LEP, the process and timing of the draft comprehensive LEP and DCP exhibition, its relationship to the current review of the NSW Environmental Planning and Assessment Act 1979 (the Act), and the weight given to the draft LEP within the DA assessment process during the exhibition period.

I propose that Council holds a public hearing in respect of the draft Comprehensive LEP, to demonstrate Council's genuine commitment to community consultation in all major decisions.

These matters are outlined and discussed below, for the Councillors' consideration.

Wall height control

Council's current LEP has a maximum building height control and an external wall height control for residential development in the 2B, 2C and 2D zones (the 2A zone controls are in the DCP). The draft LEP includes maximum building heights for all residential zones, with the wall height or similar control as well as many other controls to be included in the comprehensive DCP.

Council officers have advised me that this is consistent with the Standard Instrument (SI) and NSW Department of Planning and Infrastructure (DOPI) Practice Notes. These direct that any height control in an LEP must be a maximum height only and external wall height cannot be included as an additional or alternative LEP height control.

The DOPI has confirmed this advice in the attached email (see Attachment 1).

Residents have raised concerns that the external wall height as a DCP rather than an LEP control, coupled with proposed FSR adjustments, will result in flats with an additional floor and greater urban densities. Council officers have confirmed that this is not the case. A DCP is an important plan that supplements the LEP and provides

further detailed controls and guidance that are crucial for assessing DAs. The LEP height control cannot operate in isolation to achieve a good design outcome and residential amenity, and needs to work with other LEP measures such as FSR and with DCP measures such as external wall height. The residential FSRs have been adjusted in the draft LEP to realistically reflect existing and suitable development. Other important DCP measures that must work in conjunction with height limits include sunlight access, overshadowing, setbacks, visual and acoustic privacy, floor to ceiling heights, etc.

Nevertheless, I note that this is the time for the community to raise any issues or ideas with Council, so that these can be thoroughly assessed by the Council officers and reported back to Council.

Draft Comprehensive LEP and DCP – process and timing

The draft comprehensive LEP is on exhibition until Monday 2 April 2012.

I am advised that the next step is to hold a reclassification public hearing, to be advertised for late April (a minimum 21 days notice is required following the exhibition). This is a legislative requirement for the proposed reclassification of Council owned land at 13-21 Rainbow Street, Kingsford.

The draft final LEP will then be reported back to Council around May, including a detailed review of all submissions and suggested LEP changes. Subject to Council's endorsement, the draft LEP would then be forwarded to the DOPI for final review and referral to the Minister for Planning for gazettal. As part of the finalisation process, the NSW Parliamentary Counsel must review the legal wording of the LEP, which can take some months. Given these processes, the LEP gazettal is anticipated for late 2012.

The draft comprehensive DCP is also now in preparation based on the discussion papers and community feedback. The Act requires that comprehensive DCPs are finalised within 6 months of the comprehensive LEP gazettal. The draft DCP is expected to be reported to Council and exhibited in October/November 2012, for finalisation within or shortly after the LEP gazettal. In the unlikely event of any gaps in applicable planning controls, Council can adopt the DCP as an interim Council policy.

There is no requirement for councils to exhibit draft comprehensive LEP and DCP either together or separately, and half of those Sydney councils at the same stage as Randwick are taking the same approach of exhibiting the draft LEP first, followed by the draft DCP.

Community Consultation and a Public Hearing

While the proposed hearing on the land reclassification is required by the legislation, some residents have also requested a public hearing on other issues.

By way of addition to the public consultation process, I would like to propose that a hearing also be undertaken as part of the current consultations, to be conducted by an independent planning consultant, and in respect of the entire draft comprehensive LEP.

I consider that this is consistent with our community's continued interest in the planning of our City's future and it would assist in facilitating the community's involvement in what is a major Council decision. I suggest that the hearing be held on an evening or evenings immediately following the exhibition period, with people being invited now to register their intention to attend and present at the hearing. I will ask the General Manager to expedite arrangements and details/timing of the process.

Relationship of the draft LEP to the Planning Act review

The speed and timing of the draft LEP has been queried given the current major Review of the NSW Planning Act.

The various steps for preparation of the comprehensive LEP commenced in 2006. Significant council resources have been committed since then to reach this point of LEP exhibition, including background research, the consolidation LEP and the discussion papers and their extensive consultations over 2010 and 2011.

While the Planning Review is welcomed, state and local planning cannot grind to a halt in the meantime. The Review of the Act is a separate process from the preparation of the LEP. The Act deals with improving, simplifying and streamlining the planning system. I note that the Standard Instrument is not part of this Review and that a separate Local Planning Panel, established by the Minister in 2011, reviews and seeks to improve the delivery of the Standard Instrument across local government.

DA Assessment process during the draft LEP exhibition

Now that the draft LEP is on public exhibition, it is a 'matter for consideration' for assessing DAs under S79C of the Act. This applies to DAs under assessment by Council on or after the 21 February, when the exhibition commenced. On the question of its weight in decision making, the draft LEP has lesser weight than the current LEP, as has been confirmed in court decisions. If a proposal is permissible in the draft LEP but currently prohibited, it cannot be considered in a current DA.

A DCP is also a matter for consideration under S79C, however a draft DCP is not such a matter for consideration.

Conclusion

The draft LEP exhibition is an important time for community feedback and I encourage all residents, businesses and other stakeholders in our City to visit our web site, exhibition venues and attend the open days commencing this week to speak directly to a Council planner and ask any questions about the draft LEP.

Recommendation

That Council note this report and endorse an additional consultation process to hold a public hearing immediately following the public exhibition in respect of the draft comprehensive LEP.

Attachment/s:

1. Advice from Department of Planning and Infrastructure re external wall height controls