



Attachments

Planning and Strategy Committee

Notice is hereby given that an Planning and Strategy Committee of Council will be held at Council Chambers, 1 Belgrave Street, Manly, on:

Monday 2 November 2009

Commencing at 7:30pm for the purpose of considering items included on the Agenda.

Persons in the gallery are advised that the proceedings of the meeting are being taped. However, under the Local Government Act 1993, no other tape recording is permitted without the authority of the Council or Committee. Tape recording includes a video camera and any electronic device capable of recording speech.

*Copies of business papers are available at the Customer Services Counter at Manly Council, Manly Library and Seaforth Library and are available on Council's website:
www.manly.nsw.gov.au*

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The Plan of Management and Sydney Harbour National Park

The purpose of national parks

Sydney Harbour National Park (SHNP) is formally gazetted as a national park under the *NSW National Parks and Wildlife Act 1974* (NPW Act).

The declaration of national parks is an internationally recognised means of protecting areas of outstanding natural and cultural heritage significance. The NPW Act states the reasons for declaring national parks in NSW as:

Section 30E (1) The purpose of reserving land as a national park is to identify, protect and conserve areas containing outstanding or representative ecosystems, natural or cultural features or landscapes or phenomena that provide opportunities for public appreciation and inspiration and sustainable visitor use and enjoyment so as to enable those areas to be managed in accordance with subsection (2).

The NPW Act also defines a series of management principles that apply to all NSW national parks:

Section 30E (2) A national park is to be managed in accordance with the following principles:

- (a) the conservation of biodiversity, the maintenance of ecosystem function, the protection of geological and geomorphological features and natural phenomena and the maintenance of natural landscapes,***
- (b) the conservation of places, objects, features and landscapes of cultural value,***
- (c) the protection of the ecological integrity of one or more ecosystems for present and future generations,***
- (d) the promotion of public appreciation and understanding of the national park's natural and cultural values,***
- (e) provision for sustainable visitor use and enjoyment that is compatible with the conservation of the national park's natural and cultural values,***
- (f) provision for the sustainable use (including adaptive reuse) of any buildings or structures or modified natural areas having regard to the conservation of the national park's natural and cultural values,***
- (g) provision for appropriate research and monitoring.***

These management principles have been further refined in the park management policies which are documented in the NPWS's *Park Management Policy Manual*.

The courts have also had a role in determining how national parks are managed, particularly in regard to the permissibility of certain activities on park. The core of the permissibility concept is that activities should only be permitted to take place within a national park if they are consistent with the reasons for which that specific park was originally gazetted.

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NPWS Fact Sheet_PoM_and_SHNP.docx

The statutory management principles, NPWS Park Management Policies and the permissibility concept all apply to every national park in NSW. However, of themselves, none of these sources provided sufficient direction for the management of an individual national park.

The plan of management

The document which captures these general principles and applies them in the context of a specific national park is the plan of management (POM).

The POM documents the management objectives for an individual national park and details the strategies and actions which will be used to achieve those objectives. The POM provides the opportunity to respond to the unique combination of community aspirations and conservation challenges which confront each national park.

The preparation of a POM begins with a review of the physical characteristics, the conservation, social and economic values and existing uses of the reserve. It assesses the significance of the conservation, social and economic values and identifies any current or potential threats to those values. The next step is the development of a series of strategies and actions to protect the core values of the park while providing for an appropriate level of community use and enjoyment.

Section 72AA of the NPW Act stipulates topics which must be considered during the preparation of a POM (www.legislation.nsw.gov.au).

Why do a new plan of management?

The critical role of POM in determining the activities that are permissible and appropriate means that it is essential that the document remains relevant. Periodic review is required to ensure that a POM is responsive to any emerging issues.

The current SHNP POM was approved in 1998, while the sections of the POM relating to the issue of leases and licences were amended in 2003.

There have been many changes around Sydney Harbour, at a state and national level and globally, which have a bearing on the future of SHNP. Some of the factors which influenced the decision to review of the Sydney Harbour National Park (SHNP) POM were:

- Legislative changes regarding the issue of leases and licences;
- Resolution of land uses for some of the neighbouring lands, notably those managed by the Sydney Harbour Federation Trust;
- Increasing consolidation of urban development adjacent to the park;
- The crash of certain native fauna or flora populations and their subsequent identification as threatened species, populations and communities;
- The completion of some precinct based plans which identify new opportunities for the conservation, interpretation and public access to sections SHNP which had limited public access (eg. Goat Island);
- A renewed focus at a state wide level of the provision of high quality, sustainable visitor experiences in national parks. This includes enhancements to basic infrastructure such as the walking track network as well as increased opportunities for commercial partners to offer visitor and tourism related services; and
- The recognition of the impending impacts of sea level rise on some of the natural, cultural and visitor assets of SHNP.

Other plans which guide the management of SHNP

The Plan of Management (POM) has a dominant role in determining how a park is managed and what activities may take place within it. However, there are a range of other plans and strategies which also exert influence over park management and use. Some apply to the entire park, while others relate to the management of specific park attributes or issues.

These plans tend to fall into four broad categories:

1. Plans prepared in accordance with statutory obligations;

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NPWS Fact Sheet_PoM_and_SHNP.docx

The main statutory plans which apply to SHNP are recovery plans prepared under the Threatened Species Conservation Act or Environment Protection and Diversity Conservation Act; conservation management plans prepared under the Heritage Act; and bushfire management risk plans and bushfire management operations plans prepared under the Rural Fires Act.

Whilst NPWS has input and liaises with local government in the preparation of Local Environment Plans prepared under the EP&A Act, these plans generally do not impact on the management of national parks. The list of permissible uses for areas zoned as national park in the LEP are approved under the NPW Act.

2. Plans prepared in accordance with the NPWS park management policies

These include reserve fire management strategies, conservation management plans, event management plans, business plans, regional operations plans and branch visitor management plans.

3. Plans which have been developed to address particular issues or precincts within a park

These include master plans, fortifications management plan and precinct plans.

4. Plans which address issues at the regional, state or national level and which have particular relevance to (SHNP)

These include NSW Tourism Taskforce Report on Sustainable Tourism and, if declared, the 'National Landscapes' Program

A summary of relevant plans is provided in the attachment. The list includes both finalised plans and advanced drafts which are scheduled for public exhibition in 2009.

Relationships to the POM

A major task in preparing a new POM for SHNP is to review all of the relevant plans in order to determine what elements of their information content, assessment and conclusions needs to be incorporated into the POM.

The review of other plans is not simply a matter of adopting their conclusions into the POM. Part of the role of the POM is to identify and reconcile the potential synergies and conflicts which may arise between plans which have been prepared for different purposes. For example, a recovery plan for a threatened plant may propose measures to increase its extent on park. This objective might conflict with the maintenance of asset protection zones for adjacent heritage buildings. The challenge for the POM is to find the appropriate balance point between competing objectives.

Many of these plans include recommendations that, if accepted for implementation, would involve changes in how the park is managed. The POM has the central role in determining the permissibility of particular activities within SHNP. The implementation of proposals from these other plans is largely dependant upon their ratification within the POM.

ATTACHMENT 1

Planning And Strategy Division Report No. 40 - Manly Local Environmental Plan 1988 – draft Amendment 81

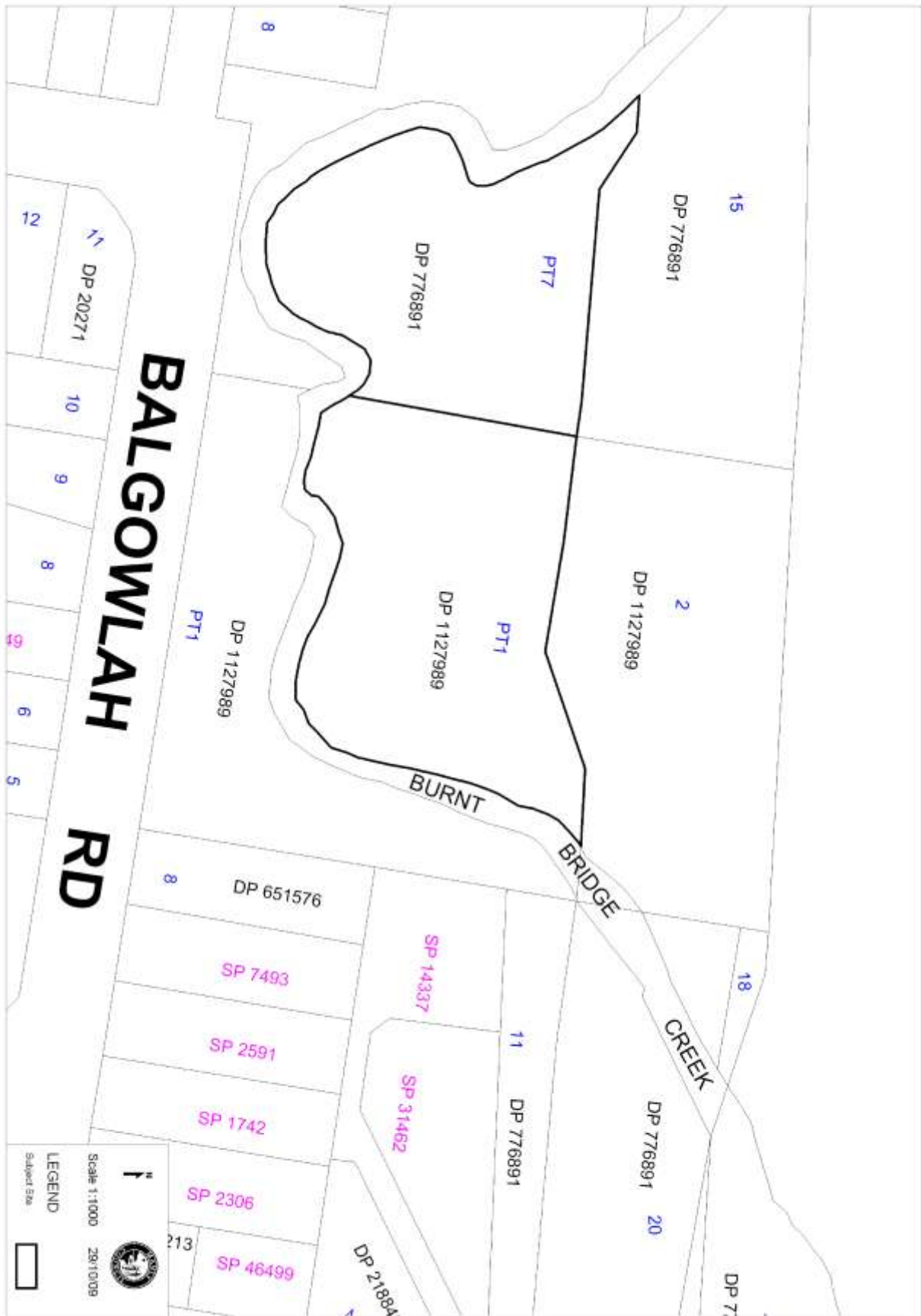
Locality Maps for Burnt Creek, Condamine Street and Kenneth Rd unzoned land



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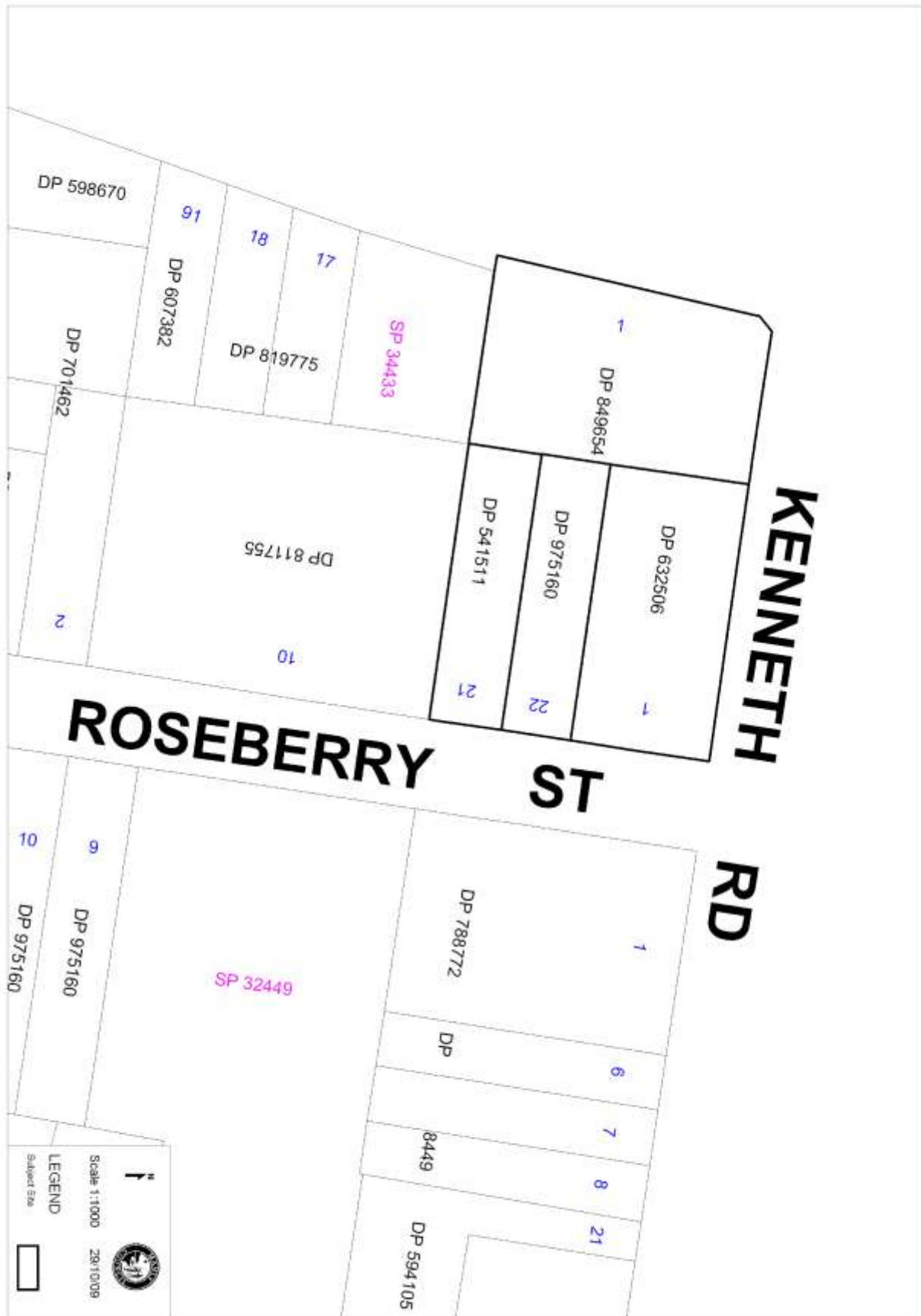
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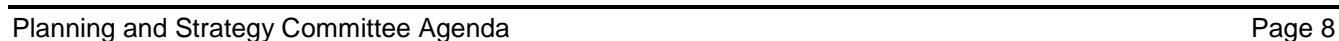
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Locality Maps for Burnt Creek, Condamine Street and Kenneth Rd unzoned land



**Planning And Strategy Division Report No. 40 - Manly Local Environmental Plan 1988 – draft
Amendment 81
Locality Map for Peronne Ave and Gordon Street unzoned Land**



ATTACHMENT 3

Planning And Strategy Division Report No. 40 - Manly Local Environmental Plan 1988 – draft Amendment 81

Proposed New Heritage Items in Manly LGA

Proposed New Heritage Items in Manly Council's LEP

Edinboro, 297 Sydney Road, Balgowlah



Meets criteria: historical, aesthetic/ technological, representativeness, rarity. Believed to be the oldest house in Balgowlah (1874).

Statement of Significance: *Edinboro*, 297 Sydney Road, is of significance for the local area as one of the oldest surviving houses in Balgowlah, as well as for its aesthetic values and for its ability to interpret the basic elements of Colonial style residences in the local area. The house, built c. 1874 by local stonemason and builder Andrew Mercer, is rare in the local context as an example of an early (pre-1880s) tradesman's cottage.

Recommended Management Guidelines: Conserve surviving original historic features of the house. Limited additions may be considered to the rear, as part of an approved adaptive reuse project.

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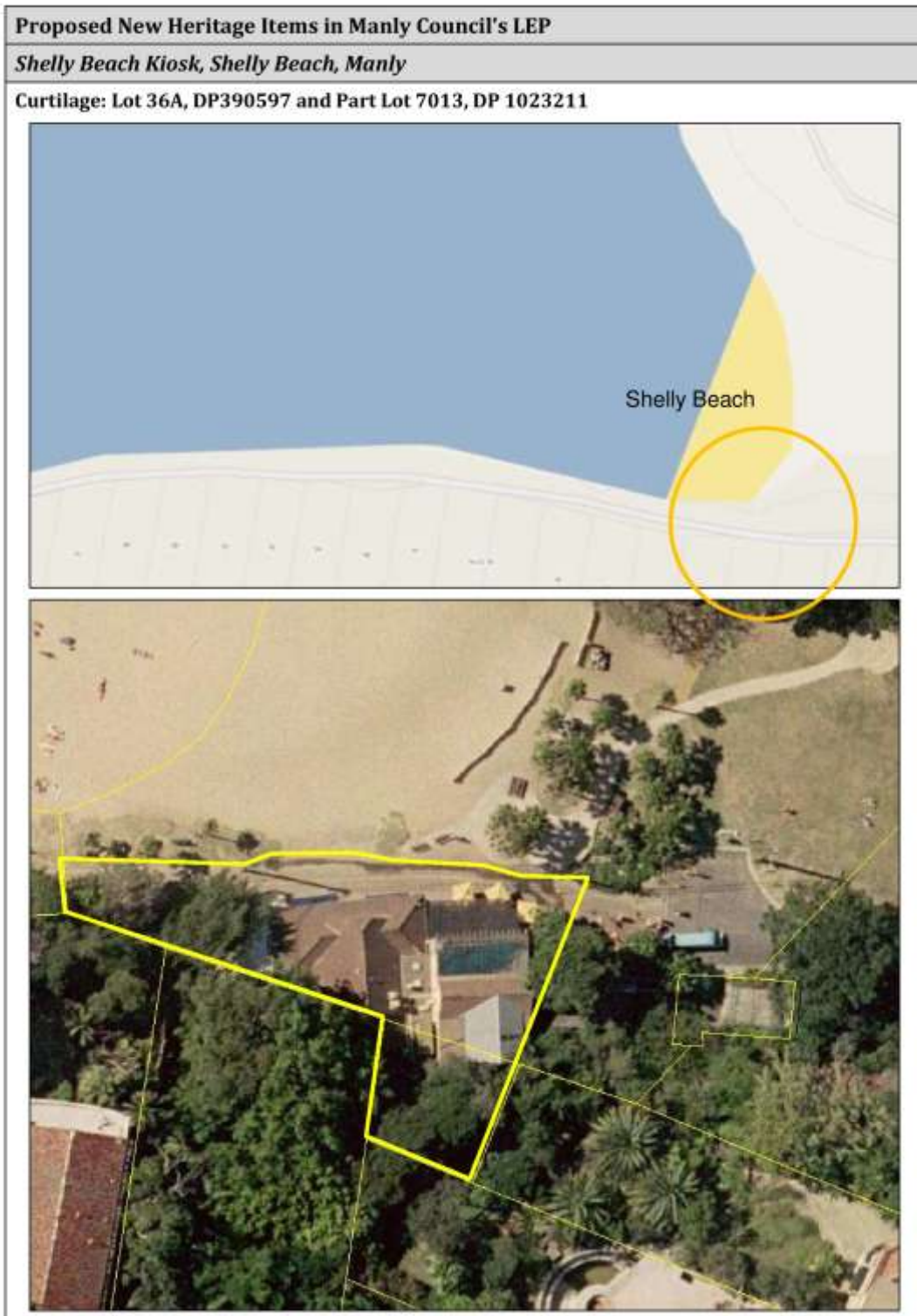
Proposed New Heritage Items in Manly Council's LEP
<i>Shelly Beach Kiosk, Shelly Beach, Manly</i>

Meets criteria: historic, aesthetic, community association, rarity. High integrity.
Statement of Significance: Shelly Beach Kiosk is of significance for historic, aesthetic and associative reasons, and as a rare example of its style and type. The Kiosk, created in 1927, has been in ongoing use as refreshment rooms, café and restaurant since that date and is appreciated in the wider community. The Kiosk is the oldest example of this type of building in the local area, and the only one from the 1920s. High integrity, interesting craftwork elements. Zoned Open Space.
Recommended Management: Conserve surviving original features including scale, elevation to the beach, elements of lateral elevations, roof form and historic elements and materials. Any potential additions and alterations should be single storey, located at the rear (potentially as a separate pavilion) and without impact on the roof form as visible to the general public.

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Proposed New Heritage Items in Manly LGA

Proposed New Heritage Items in Manly Council's LEP
3 Arthur Street, Fairlight

Meets criteria: historic, associative, rarity, representativeness
Statement of Significance: The house at 3 Arthur Street is of heritage significance for historic, aesthetic and associative reasons, and being rare (additionally rare as a pair with No.1). The houses Nos. 1 and 3 are the oldest in the street and among the oldest in the area, being created before 1900. They were built by the known local stonemason William Nicol, who resided in one and then the other from c. 1896 to after WWI. It is presumed that they were created from locally quarried stone, and have the ability to demonstrate that important theme in Manly's history. They are also locally distinctive in aesthetic terms and act as landmarks to some local residents.
Recommended Management: Conserve the stone. If an opportunity arises, reconstruct missing details including roofing. There may be some scope for additions to No. 3, while No. 1 has apparently achieved planning outcome. In any future adaptive reuse, the stone façades to both houses and the fence to No. 1 should be protected, and potential additions limited to the space within existing roof cavities (and preferably with any new openings to the rear).

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Proposed New Heritage Items in Manly LGA

Proposed New Heritage Items in Manly Council's LEP
Electricity Substation 15151, Condamine Street, Balgowlah Heights (Energy Australia)

<p>Meets criteria: historic, associative, rarity, representativeness. High integrity, sensitive façades. Note: Built by Manly Council.</p>
<p>Statement of Significance: <i>An unusual example of a combined electricity substation and public toilet block, located in a public park. The building was originally constructed by the Municipal Council of Manly c. 1940 as a part of the council-operated electricity network.</i></p> <p><i>Substation no 15151 was built by the Municipal Council of Manly c. 1940. At that time the Council operated the local electricity network, with the Municipal Council of Sydney supplying bulk high voltage power. The location of the substation in a park and its dual use as a substation and public toilet exemplifies its original status as a local council asset.</i></p>
<p>Recommended Management: <i>This item contributes to local character and should be conserved. Original details should be maintained including doors, windows and original signage. New materials should be sympathetic to the nature and character of the original building. In the event of major proposed changes, prepare a Conservation Management Strategy and undertake an archival recording. Wherever possible, changes should be restricted to the interior of the building. Routine maintenance of existing fabric is essential.</i></p>

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Proposed New Heritage Items in Manly LGA

Proposed New Heritage Items in Manly Council's LEP
Electricity Substation 16124, Ashburner Street, Manly (Energy Australia)

<p>Meets criteria: historic, associative, rarity, representativeness. High integrity, sensitive façades, built by Manly Council.</p>
<p>Statement of Significance: <i>Substation no 16124 is a well-detailed example of a distribution substation with Art Deco elements built by the Municipal Council of Manly in 1937. It is one of a very few substations still in operation for the early period of electricity distribution in the area.</i></p> <p><i>Substation no 16124 was built by the Municipal Council of Manly Electricity Undertaking in 1937. It was one of a number of council-operated distribution substation supplying power to the local area. The substation was taken over by the Mackellar County Council in 1957 and subsequently transferred to the Sydney County Council in 1980.</i></p>
<p>Recommended Management: <i>This item contributes to local character and should be conserved. Original details should be maintained including doors, windows and original signage. New materials should be sympathetic to the nature and character of the original building. In the event of major proposed changes, prepare a Conservation Management Strategy and undertake an archival recording. Wherever possible, changes should be restricted to the interior of the building. Routine maintenance of existing fabric is essential.</i></p>

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Proposed New Heritage Items in Manly Council's LEP

Electricity Substation 16453, Krui Street, Fairlight (Energy Australia)



Meets criteria: historic, associative, rarity, representativeness. High integrity, sensitive façades, built by Manly Council.

Statement of Significance: *Substation no 16453 is a modest example of electricity infrastructure built by the Municipal Council of Manly in the 1920s. It is one of a small number of substations remaining from this period of electrical development in this area of Sydney.*

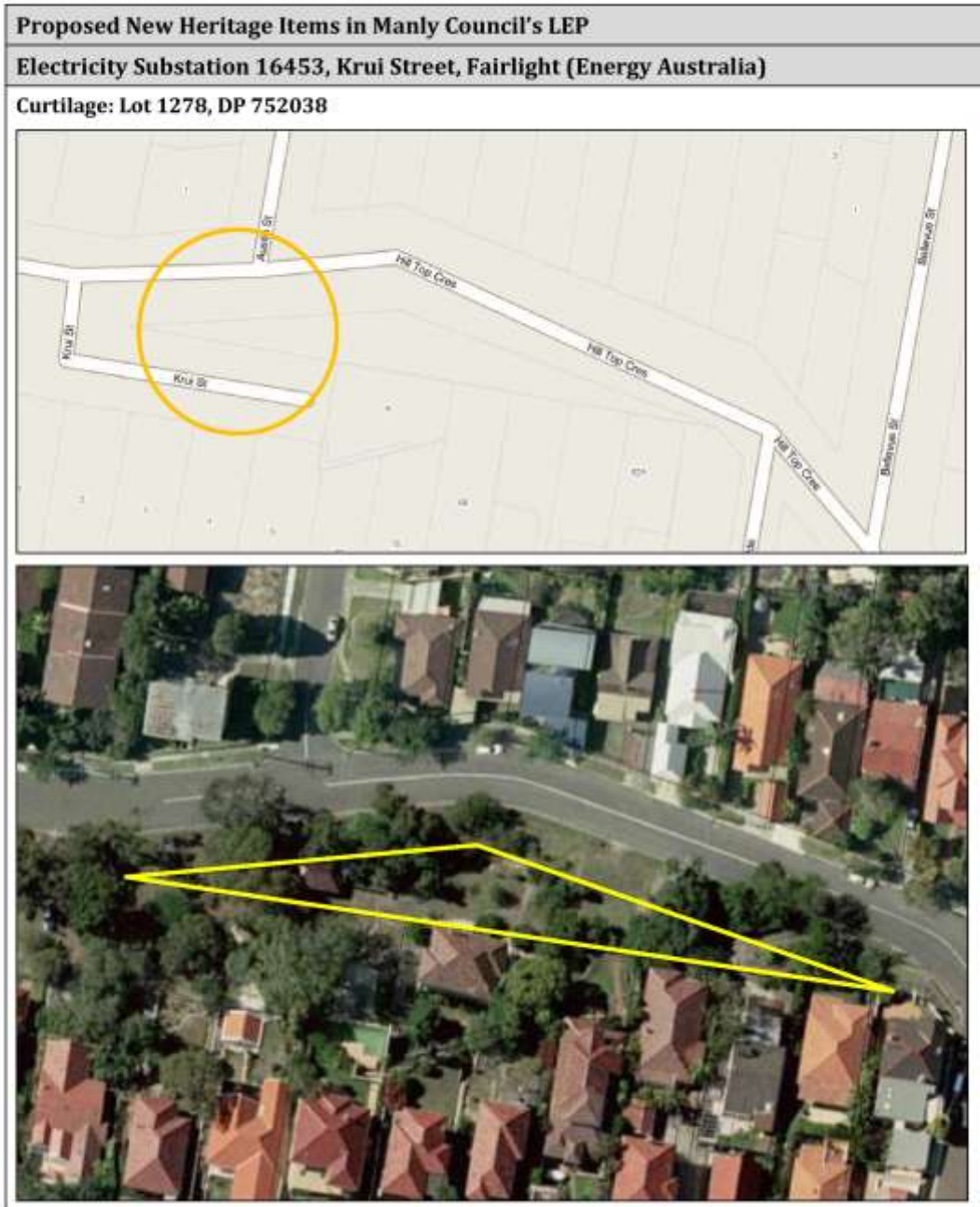
Substation no 16453 was commissioned in 1927 by the Municipal Council of Manly as a part of the local electricity distribution network. It was subsequently taken over by Mackellar County Council in 1957 and Sydney County Council in 1980. The site was previously known as "Substation #15121 Krui St" and was decommissioned in 1994. It was re-established later that year under its present substation number.

Recommended Management: *This item contributes to local character and should be conserved. Original details should be maintained including doors, windows and original signage. New materials should be sympathetic to the nature and character of the original building. In the event of major proposed changes, prepare a Conservation Management Strategy and undertake an archival recording. Wherever possible, changes should be restricted to the interior of the building. Routine maintenance of existing fabric is essential.*

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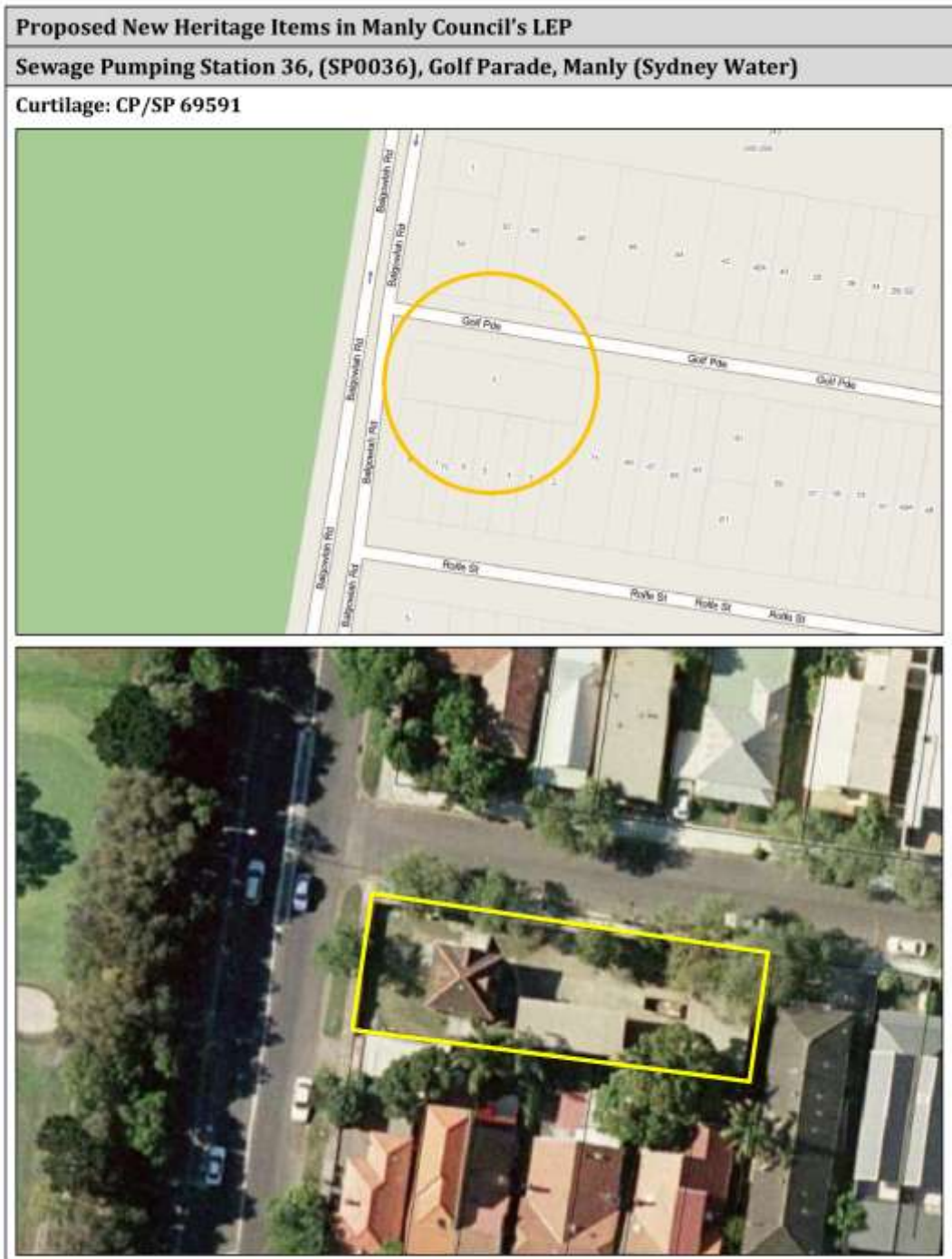
Proposed New Heritage Items in Manly Council's LEP
Sewage Pumping Station 36, (SP0036), Golf Parade, Manly (Sydney Water)

Meets criteria: historical, aesthetic, rarity, representativeness
Statement of Significance: <i>SP0036 Manly is of historic, aesthetic and technical/research significance. Commissioned in 1916, it was among a small group of low level sewage pumping stations which served the Manly Sewerage System and later Northern Suburbs Ocean Outfall Sewer (NSOOS). The station along with the construction of the NSOOS formed a part of the major advance in the development of municipal services in the Manly district in the early part of the 20th century. Aesthetically it is a good example of a robust and well proportioned small scale Federation Free Style industrial building generating aesthetic appeal through the use of contrasting materials, colours and textures. Prominently located on a corner block in Manly, the station has considerable streetscape significance. Technically, SP0036 still fulfils its role over 85 years after its introduction as a low level sewage pumping station as originally designed and constructed apart from mechanical and electrical upgrading.</i>
Recommended Management: <i>Where no Conservation Management Plan, Heritage Assessment or Statement of Heritage Impact is in place, or where works are outside the scope existing heritage documentation, assess heritage impacts of proposed works in accordance with Sydney Water Environment Impact Assessment procedures. Undertake a Heritage Assessment and/or Statement of Heritage Impact as required.</i> <i>Liaise with the Sydney Water Heritage Manager when major changes are planned for the item.</i> <i>Undertake archival and photographic recording before major changes, in accordance with Heritage Council guidelines. Lodge copies of the archival record with the Sydney Water Archives and the NSW Heritage Office.</i>

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Proposed New Heritage Items in Manly LGA



ATTACHMENT 1

Planning And Strategy Division Report No. 41 - Manly Development Control Plan for the Business Zone 1989, Amendment 7, and the Manly Development Control Plan for The Corso 2005, Amendment 1.
Exhibited material



MANLY COUNCIL

EXHIBITION OF DCP AMENDMENTS

DRAFT DEVELOPMENT CONTROL PLAN FOR THE BUSINESS ZONE – AMENDMENT 7 and DRAFT DEVELOPMENT CONTROL PLAN FOR THE CORSO – AMENDMENT 1

This exhibition comprises:

- Existing Development Control Plans for the Business Zone and The Corso;
- Draft Amendment 7 to Development Control Plan for the Business Zone;
- Draft Amendment 1 to Development Control Plan for The Corso including The Corso Landscape Masterplan;
- Explanatory Note;
- Copy of the report to Council's Planning and Strategy Committee and Council's resolution.

SUBMISSIONS ON DRAFT DCP AMENDMENT

Submissions are being received by Manly Council from 31 August 2009 up to 5pm 28 September 2009.

Unless specifically advised to the contrary, any submissions received will be treated as a public document and may be viewed by any interested party under the Freedom of Information Act 1989 and Council's Open File Policy and may be reproduced in whole or in part in Council reports and in Court proceedings.

Submissions can be:
lodged at the Customer Service Centre, 1 Belgrave St Manly; OR
posted to the General Manager, Manly Council, PO Box 82, Manly 1655; OR
Faxed to 9976 1400; OR Emailed to records@manly.nsw.gov.au

ENQUIRIES SHOULD BE REFERRED TO:
Planning and Strategy Group, T: 9976 1614.

THE DRAFT LEP AMENDMENT WILL BE EXHIBITED AT:
The Council Offices, 1 Belgrave Street, Manly between the hours of 8.30am to 5.00pm; and
the Information Desk, 1st Floor, Manly Library during library hours; and
on the Council's website www.manly.nsw.gov.au.

NOTE: The draft DCP is exhibited in accordance with Part 3, Division 6 of the *Environmental Planning and Assessment Act 1979* and clause 18 of the *Environmental Planning and Assessment Regulation 2000*.

ATTACHMENT 1

Planning And Strategy Division Report No. 41 - Manly Development Control Plan for the Business Zone 1989, Amendment 7, and the Manly Development Control Plan for The Corso 2005, Amendment 1. Exhibited material

DETAILS OF PROPOSED EXHIBITED DRAFT DCP AMENDMENTS

DRAFT DEVELOPMENT CONTROL PLAN (DCP) FOR THE BUSINESS ZONE – AMENDMENT 7

The Business DCP is proposed to be amended to clarify that residential development within the Business Zone must satisfy the objectives in the Residential DCP by inserting at Preliminary, Part C- Relationship to other DCP's and Policies, (p.2) and after clause 3 the following:

Part A- Relationship to other DCP's and Policies, clause 4
"Council and applicants must have regard to the objectives and relevant controls of Council's DCP for the Residential Zone for residential development within the Business Zone."

This proposed amendment broadens the application of the Residential DCP objectives to ensure residential development is adequately assessed and deals more fully with issues such as residential amenity. Furthermore the existing partial extract from the Residential DCP at Attachment 2 will be deleted, being replaced by the above statement.

DRAFT DEVELOPMENT CONTROL PLAN (DCP) FOR THE CORSO – AMENDMENT 1

The Corso DCP is proposed to be amended by insert a new clause under part 5- Special Provisions and to insert Map 1- Landscape Master Plan as follows:

Clause 5.19: The location of specific activities (including outdoor eating) in accordance with The Corso Landscape Master Plan.

The Landscape Master Plan at Map 1 of this DCP identifies the location for specific activities such as outdoor dining areas, stage and a playground as well as lighting and tree locations. The detailed features of the Master Plan provide an important physical representation of the policies and objectives for The Corso. The location of specific activities proposed or associated with a development proposal must consider the Master Plan.

The Corso Landscape Master Plan deals with the location of specific activities (including outdoor eating) and facilities along The Corso. This amendment will give the Master Plan appropriate weight as a DCP policy consideration in relation to certain development proposals.

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Exhibited material

Explanatory Note

Exhibition of draft Manly Development Control Plans

- **Manly DCP for the Business Zone 1989 ('Business DCP')**
- **Manly DCP for The Corso 2005 ('The Corso DCP')**

This exhibition deals with an amendment to both the Business DCP (i.e. Amendment 7) and The Corso DCP (i.e. Amendment 1) and seeks public comment on both of these amendments prior to any further consideration by Council. The need for both of these amendments arises from considerations in the Development Assessment process including Land and Environment Court appeals.

Draft Amendment 7 to the Business DCP will provide some clarification to applicants and Council of the applicable controls for residential development in the Business Zone. In this regard, the DCP amendment will clarify the extent to which the Residential DCP applies in respect of the preparation and assessment of development applications for residential development in the Business Zone. The amendment to the Business DCP will strengthen its links with the objectives of the Residential DCP in dealing with residential development in the Business Zone.

Draft Amendment 1 to The Corso DCP is proposed following legal advice in a recent Land and Environment Court matter. The Corso DCP will incorporate The Corso Landscape Master plan into The Corso DCP to ensure the Master plan is given appropriate weight where relevant, as DCP policy in development assessment. This report supports the amendment in accordance with legal advice.

What land is affected by the proposed amendments?

The amendments to the Business DCP are sought to apply to residential development proposed within the business zone.

The amendments to The Corso DCP are sought to apply to any development associated with the location of specific activities and features detailed in The Corso Master plan.

Why is Council amending these Plans?

At its meeting dated 3 August 2009 Council's Planning and Strategy Committee resolved that:

1. Council prepare Amendment 7 to the Manly Business DCP and Amendment 1 of The Corso DCP in accordance with Sec. 74C(1)(a) of the EP&A Act 1979.
2. Council exhibit the amendments to the Manly Business DCP and The Corso DCP in accordance with clause 18 of the EP&A Regulation 2000.
3. A further report be presented to Council in respect of the DCP amendments being exhibited.

Business DCP Amendment 7 (relationship to the Residential DCP)

Council's Development Assessment staff requested that the reference to the Residential DCP within the Business DCP be clarified. At present the Business DCP contains extracts from the Residential DCP at Attachment 2 relating to objectives and performance criteria for building height and setback. These extracted sections of the Residential DCP are intended to apply to residential development in the Business zone and is referred to at various clauses throughout

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Exhibited material

the DCP. The proposed amendment is also consistent with existing clauses in the Residential DCP which states in the Preamble that it '... applies to all forms of residential development in the zone with the objectives of this Plan also applying to residential development in other zones ...' (page 10).

Manly Development Control Plan for The Corso

The Corso Master plan was initially reported to Council at much the same time as The Corso DCP and appears to have been instrumental in the preparation of The Corso DCP. The Master plan identifies the location for specific activities such as outdoor dining areas, entertainment stage and a playground as well as seating, lighting and tree locations. The detailed features of the Master plan provide an important physical representation of the policies and objectives for The Corso. The Master plan has since been significant in the assessment of various developments in the locality as well as in Land and Environment Court Appeals.

It is proposed to incorporate The Corso Landscape Master plan into The Corso DCP to provide more detailed planning guidelines for The Corso in relation to the design and layout of The Corso precinct including the appropriate location of outdoor dining areas.

What do the Plans do?

Business DCP Amendment 7 (relationship to the Residential DCP)

This amendment clarifies that residential development within the Business Zone must satisfy the objectives in the Residential DCP by inserting at Preliminary, Part C- Relationship to other DCP's and Policies, (p.2) and after clause 3 the following:

Part A- Relationship to other DCP's and Policies, clause 4

"Council and applicants must have regard to the objectives and relevant controls of Council's DCP for the Residential Zone for all forms of residential development within the Business Zone."

This proposed amendment broadens the application of the Residential DCP objectives to ensure residential development is more adequately assessed and deals more fully with issues such as residential amenity. Furthermore the existing partial extract from the Residential DCP at Attachment 2 may be deleted being replaced by the above statement.

Manly Development Control Plan for The Corso

It is proposed that The Corso DCP be amended to incorporate The Corso Landscape Master plan dealing with the location of specific activities (including outdoor eating). This amendment will give the Master plan appropriate weight as a DCP policy consideration in relation to certain development proposals and is recommended in accordance with legal advice arising in recent development approvals.

In detail it is proposed to insert a new clause under part 5- Special Provisions and to insert Map 1- Landscape Master Plan as follows:

Clause 5.19: The location of specific activities (including outdoor eating) in accordance with The Corso Landscape Master plan.

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Exhibited material

The Landscape Master plan at Map 1 of this DCP identifies the location for specific activities such as outdoor dining areas, stage and a playground as well as lighting and tree locations. The details features of the Master plan provide an important physical representation of the policies and objectives for The Corso. The location of specific activities proposed or associated with a development proposal must consider the Master plan.

This DCP amendment seeks to ensure improved local amenity, pedestrian safety and accessibility in future redevelopment at the rear boundary of certain properties adjoining Lane 34. Lane 34 was recently redeveloped and widened in conjunction with the Stockland Development and provides some opportunity for the proposed DCP amendments in the future development of certain adjoining retail properties. The existing DCP controls do not currently deal with rear boundary setbacks including setbacks to lanes

Proposed Exhibition of DCP Amendment

Under clause 18 of EP&A Regulation 2000, once a draft development control plan has been prepared, the council must give public notice in a local newspaper of the places, dates and times for inspection of the draft plan and publicly exhibit the draft plan at the places, on the dates and during the times set out in the notice. The Regulations require that the exhibition contain a copy of the draft plan and a copy of any relevant local environmental plan (i.e. Manly LEP 1988). The amended development control plan must be publicly exhibited for at least 28 days.

Makings submission in relation to this Plan

Unless specifically advised to the contrary, any submissions received will be treated as a public document and may be viewed by any interested party under the Freedom of Information Act 1989 and Council's Open File Policy and may be reproduced in whole or in part in Council reports and in Court proceedings.

Should you require any further information please contact Council's Planning and Strategy Branch on 9976 1614.

This draft plan will be exhibited from 31 August 2009 to 28 September 2009 and will be available for viewing at:

- Manly Council Chambers, Belgrave Street Manly between 8.30 a.m. and 5.00 p.m.
- Manly Library, 1st floor information desk, Market Lane, Manly during the Library's usual opening hours.
- The Council web site www.manly.nsw.gov.au.

Submissions addressed to the General Manager, Manly Council, PO Box 82, Manly 1655 should be lodged by 5.00 pm on 28 September 2009.

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PLANNING AND STRATEGY COMMITTEE

3 AUGUST 2009

TO: Planning and Strategy Committee - 3 August 2009
REPORT: Planning And Strategy Division Report No. 28
SUBJECT: Manly Development Control Plan for the Business Zone 1989 and the Manly Development Control Plan for The Corso 2005 Draft Amendments
FILE NO:

SUMMARY

This report proposes two (2) Development Control Plan (DCP) amendments be prepared and exhibited in relation to the Manly Business Zone.

Manly DCP for the Business Zone 1989 (Business DCP) is proposed to be amended to clarify the extent to which the Residential DCP applies to residential development in the business zone.

Manly DCP for The Corso 2005 (The Corso DCP) is also proposed to be amended following legal advice arising from a recent matter in the Land and Environment Court. In this regard it is proposed to incorporate The Corso Masterplan into The Corso DCP to ensure the Masterplan is given appropriate weight in development assessment.

It is recommended that, in relation to both DCP amendments, Council resolve to prepare and publicly exhibit these DCP amendments.

REPORT

Background and Introduction

The purpose of this report is to recommend in relation to an amendment to both Council's Business DCP and The Corso DCP, as follows:

Business DCP Amendment 7 (relationship to the Residential DCP)

It is proposed to amend the Manly Business DCP to clarify references made to the Residential DCP relating to the assessment of residential development within the Business Zone. The Business DCP currently contains extracts from the Residential DCP relating to objectives and performance criteria for building height and setback. However, Council's Development Assessment Team request that a statement be inserted into the Business DCP requiring applicants/Council to have more general and broader regard to the objectives and controls of the Residential Zone DCP for all residential development within the Business Zone.

The extent to which the objectives and controls of the Residential Zone DCP should apply in the Business Zone are considered in this report and will be further reviewed during a recommended exhibition and consultation phase prior to reporting back to Council.

Manly Development Control Plan for The Corso (The Corso DCP)

It is proposed that The Corso DCP be amended to incorporate The Corso Landscape Masterplan dealing with the location of specific activities (including outdoor eating). This

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amendment will provide this Masterplan with appropriate weight as a DCP consideration in relation to certain development proposals and is recommended in accordance with legal advice arising in recent development approvals.

The Corso Masterplan identifies the location for specific activities such as outdoor dining areas, entertainment stage and a playground as well as seating, lighting and tree locations. The detailed elements of the Masterplan provide an important physical representation of the adopted policies and objectives for The Corso. The Masterplan has been significant in the assessment of various developments in the locality, and in Land and Environment Court Appeals.

Statutory Provisions and Planning Policy

Environmental Planning and Assessment Act 1979

In relation to the preparation of development control plans, clause 74C of the Environmental Planning and Assessment Act 1979 ('the Act') states that

- "(1) The relevant planning authority may prepare a development control plan (or cause such a plan to be prepared) if it considers it necessary or desirable:*
(a) to make more detailed provision with respect to development to achieve the purpose of an environmental planning instrument applying to the land concerned,..."

The proposed DCP amendments will be prepared in accordance with the Act.

Finally, Clause 21A of the Act is relevant in respect of development control plans relating to residential flat development. As the proposed amendments to the Business DCP will apply to the development of residential flat buildings, consideration is given to Clause 21A as follows:

Clause 21A (1): The council must not approve a draft development control plan (including an amending plan) containing provisions that apply to residential flat development unless the council:

- (a) has referred the provisions of the draft development control plan that relate to design quality to the design review panel (if any) constituted for the council's area (or a region that includes the council's area) under [State Environmental Planning Policy No 65—Design Quality of Residential Flat Development](#), and*
(b) has taken into consideration any comments made by the design review panel concerning those provisions.

While a design review panel is not constituted for referral of these DCP amendments, the proposed amendment to the Business DCP seeks to apply Residential DCP objectives and controls with particular regard to residential amenity and are considered to be generally consistent with the design principles of [State Environmental Planning Policy No 65—Design Quality of Residential Flat Development](#).

Manly Local Environmental Plan (LEP) 1988

Manly Local Environmental Plan (LEP) 1988 has the following objectives:

Manly LEP 1988 clause 3(1)(e) under general aims and objectives states: *"to increase the availability and variety of dwellings to enable population growth without having adverse effects on the character and amenity of the Municipality".*

Manly LEP 1988 clause 3(1)(i) under general aims and objectives states:

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"to preserve and enhance the amenity of defined environmentally sensitive areas, public places and areas visible from public places or from navigable waters around the Municipality".

Manly LEP 1988 clause 3(1)(l) under general aims and objectives states:
"to increase safety and amenity of residential, commercial and industrial precincts without downgrading accessibility".

Manly LEP 1988 clause 3(2)(b) under particular aims states:
"to enable the council to make development control plans regulating the carrying out of development in any zone –
(i) *by restricting the carrying out of that development to a specified area within the zone, or*
(ii) *by fixing standards or specifying requirements for that development."*

Manly LEP 1988 clause 4(a)(i) and (v) under Policies and Strategies states:
"in relation to residential and community life:
(i) *to maintain, protect and increase the Municipality's permanent residential population, and*
(v) *to provide for a broad range of housing types to cater for all socio-economic groups without adverse effects on the character and amenity of the Municipality."*

The proposed DCP amendments meet the abovementioned LEP objectives. Furthermore the proposed DCP amendments are not inconsistent with any environmental planning instrument including Manly LEP 1988.

Manly Development Control Plan for the Business Zone 1989

The Business DCP has been subject to six amendments since its initial adoption and applies to all land in the Business Zone in the Manly LEP 1988. The DCP is divided into four sections comprising specific provisions for each centre comprising Manly Town Centre, Balgowlah, Seaforth and other neighbourhood centres. There are 7 attachments to the DCP including Attachment 2- extracts from the Residential DCP.

The Business DCP adopts the 'planning principles' of the Residential DCP in relation to considerations of certain variations/exceptions to setback and height at particular clauses of the Business DCP as follows:

- clause 1.3.3 (p11) BDCP provides exceptions to the setback control in the Manly Town Centre that may be considered regarding residential amenity (for adjoining or proposed residential uses) in which case the principles of the Residential DCP apply.
- clause 2.3.i (p18) BDCP provides exceptions to the setback control in Balgowlah where the development adjoins residential zoned land in which case the principles of the Residential DCP applies.
- 4.2 (p37) BDCP adopts the Residential DCP height principles of adjoining land for development in Neighbourhood centres except where the local townscape principles prevail and given consideration of sunlight, views and privacy.
- 4.3.2 (p38) BDCP provides exceptions to the setback control in Neighbourhood centres where the development adjoins residential zoned land and where there are residential amenity issues (for adjoining or proposed development).

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- In addition to the above adoption of principles, clause 2.3.iii (p19) seems to go further and adopt the setback standards (rather than just principles) in the Residential DCP for development in Balgowlah where the development adjoins residential zoned land and where there are residential amenity issues (for adjoining or proposed development).
 - NB: the lack of any references to the RDCP for Seaforth above can be explained by the Seaforth DCP controls being a lot more site specific.

Manly Development Control Plan for the Residential Zone 2007

Manly Development Control Plan for the Residential Zone ('the Residential DCP') provides detailed controls for development in the residential zone but its objectives are also a consideration in relation to residential development in other zones including the Business Zone. In particular, the Preamble of the Residential DCP, states:

"This Plan provides controls, considerations and requirements for development in the Residential Zone under Manly LEP 1988. It applies to all forms of residential development in the zone with the objectives of this Plan also applying to residential development in other zones and non-residential development in the Residential Zone."

Manly Development Control Plan for The Corso

The Manly Development Control Plan for The Corso ('The Corso DCP') applies to all land in The Corso Manly and sets out, for the assistance of potential applicants, the matters that Council sees as important in the maintenance of The Corso. Specifically, The Corso DCP:

- i. establishes criteria for new development; and
- ii. seeks the reversal of unsympathetic development via either replacement buildings or the reinstatement and repair of earlier fabric and detailing.

Rationale and Details of Amendments

Business DCP Amendment 7 (relationship to the Residential DCP)

Council's Development Assessment staff have requested that the reference to the Residential DCP within the Business DCP be clarified. At present the Business DCP contains extracts from the Residential DCP at Attachment 2 relating to objectives and performance criteria for building height and setback. These extracted sections of the Residential DCP are intended to apply to residential development in the Business zone as referred to at various clauses throughout the DCP and as detail above (see 'Statutory Provisions and Planning Policy'). This approach is reinforced under in the Residential DCP which states in the Preamble that it '... applies to all forms of residential development in the zone with the objectives of this Plan also applying to residential development in other zones ...' page 10. A similar provision in the Business DCP is recommended to clarify that residential development within the Business Zone must satisfy the objectives in the Residential Zone DCP.

In detail it is proposed to insert at Preliminary, Part C - Relationship to other DCPs and Policies, (p.2) and after clause 3, the following:

Part A- Relationship to other DCPs and Policies, clause 4

"Council and applicants must have regard to the objectives and relevant controls of Council's DCP for the Residential Zone for all forms of residential development within the Business Zone."

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This proposed amendment significantly broadens the application of the Residential DCP objectives to ensure residential development is more adequately assessed and deals more fully with issues such as residential amenity. In this regard the partial extract from the Residential DCP at Attachment 2 may be deleted being replaced by the above statement. In relation to the application of 'relevant controls', referred to in the abovementioned proposed insert, the Business DCP currently contains references to residential setback and height controls in particular clauses throughout the Business DCP as previously discussed. Further refinement and amendment in relation to these relevant controls is being discussed with the Development Approvals team which will continue during the recommended exhibition and consultation phase and will be reported back to Council.

Manly Development Control Plan for The Corso

It is proposed to incorporate The Corso Landscape Masterplan into The Manly Development Control Plan for The Corso ('The Corso DCP'). The Landscape Masterplan provides detailed planning guidelines for The Corso in relation to the design and layout of The Corso precinct including the appropriate location of outdoor dining areas. The Landscape Masterplan was instrumental in the preparation of The Corso DCP and has been significant in the assessment of various developments in the locality as well as in certain Land and Environment Court Appeals. In this regard Council's legal representatives have recommended that the Masterplan be incorporated into the DCP.

In detail it is proposed to insert a new clause under part 5- Special Provisions and to insert Map 1: Landscape Masterplan (refer to Attachment 1) as follows:

Clause 5.19: The location of specific activities (including outdoor eating) in accordance with The Corso Landscape Masterplan.

The Landscape Master plan at Map 1 of this DCP identifies the location for specific activities such as outdoor dining areas, stage and a playground as well as lighting and tree locations. The Masterplan provides an important physical representation of the adopted policies and objectives for The Corso. The location of specific activities proposed or associated with a development proposal must take into consideration the location of activities included in the Masterplan.

Conclusion

This report details amendments to both the Business DCP (Amendments 7) and The Corso DCP (Amendment 1) and recommends Council resolve to prepare and exhibit the amended DCPs. The need for both of these amendments arises from considerations in the Development Assessment process including Land and Environment Court appeals.

Draft Amendment 7 to the Business DCP will clarify the application of the Residential DCP in relation to Development Applications for residential development in the Business Zone. This report supports the amendment to Business DCP which strengthens its links with the objectives of the Residential DCP in dealing with residential development in the business zone.

Draft Amendment 1 to The Corso DCP will incorporate The Corso Landscape Masterplan into the DCP giving the Masterplan appropriate weight where relevant, as DCP planning policy. This report supports the amendment in accordance with legal advice.

Both these amendments are recommended to proceed to the exhibition phase and will be reported back to Council following exhibition.

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Exhibited material

RECOMMENDATION

It is recommended that Council:

1. Prepare both Amendment 7 to the Manly Business DCP and Amendment 1 of The Corso DCP in accordance with Sec. 74C(1)(a) of the EP& A Act 1979;
2. Exhibit the amendments to both the Manly Business DCP and The Corso DCP in accordance with clause 18 of the EP&A Regulation 2000; and
3. A further report be presented to Council in respect of the two DCP amendments being exhibited.

ATTACHMENTS

AT- 1 Map 1 The Corso Masterplan 1 Page

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***** End of Planning And Strategy Division Report No. 28 *****

ATTACHMENT 1

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Exhibited material

Map 1 : The Corso Masterplan



Legend:



Outdoor Eating Area

NTS