



URBAN PLANNING COMMITTEE

MINUTES

MEETING DATE: 27 JANUARY 2016

TIME: 8.45AM

URBAN PLANNING COMMITTEE

The Urban Planning Committee met in the Council Chambers, Mosman Square on 27 January 2016 from 8:45am to 9:24am.

PRESENT

The Chairperson (Councillor P Abelson) in the Chair, Councillor Roy Bendall, Councillor Carolyn Corrigan, Director Environment and Planning, Manager Urban Planning, Senior Strategic Planner and Administration Officer.

APOLOGIES

No apologies were received from Councillors or Senior staff.

DISCLOSURES OF PECUNIARY INTERESTS

No disclosures of pecuniary interests were raised by Councillors or Senior Staff.

DISCLOSURES OF NON-PECUNIARY INTERESTS

No disclosures of non-pecuniary interests were raised by Councillors or Senior Staff.

Items **RESOLVED** pursuant to authority delegated to the Committee:

Item No.	Item
PR/2	Draft Mosman Planning Agreements Policy

EXECUTIVE SUMMARY

Report on a Planning Proposal lodged in relation to 7 Spit Road (former cinema site), which seeks to amend Mosman Local Environmental Plan 2012 to increase the maximum permitted height and floor space ratio on the site, and facilitate a bus bay.

OFFICER'S RECOMMENDATION

The Manager Urban Planning recommends that:

1. The Planning Proposal lodged by Robinson Urban Planning Pty Ltd to amend Mosman Local Environmental Plan 2012 (MLEP 2012) in respect of 7 Spit Road – to increase the maximum permitted building height to 29 metres (8 storeys) and floor space ratio to 3.5:1, and facilitate a bus bay – not be supported for the following reasons:
 - a. The Planning Proposal is inconsistent with the desired future character of Spit Junction reflected in MLEP 2012. The proposal does not adequately consider Spit Junction's identity and character, or the 'fit' of such development within the centre and streetscape. It seeks a substantial change in density in isolation of other sites in the centre, contrary to planning for growth in Spit Junction in a coordinated manner, and would set an undesirable precedent for the centre.
 - b. The Planning Proposal does not demonstrate that the current standards in MLEP 2012 cannot be reasonably complied with. Increased housing supply, employment uses and a bus bay could be achieved on the site within the current limits applying under the LEP.
 - c. The Planning Proposal does not adequately consider design, capacity, traffic and other issues associated with the provision of a bus bay. Further, the proposal is not supported by Transport for NSW on the basis that the site is designated for acquisition under the *Land Acquisition (Just Terms Compensation) Act 1991* as part of the Northern Beaches Bus Rapid Transit project, nor has the concurrence of the Roads and Maritime Services (RMS) been obtained.
 - d. The Planning Proposal is inconsistent with *MOSPLAN Community Strategic Plan 2013-2023*, specifically to "*maintain the special local character of Mosman with effective planning strategies in place*" and "*improve safety and accessibility in local streets through appropriate traffic management and increased opportunities for active transport*".
 - e. The Planning Proposal is inconsistent with Ministerial Directions 1.1 *Business and Industrial Zones* and 6.2 *Reserving Land for Public Purposes* under section 117(2) of the *Environmental Planning and Assessment Act 1979*, and this inconsistency is not addressed.
 - f. The Planning Proposal would facilitate a scale of development which would have an adverse impact on surrounding residential properties in terms of overshadowing and amenity.
 - g. The Planning Proposal contains insufficient detail in respect of the public benefits offered to adequately assess this component of the proposal.

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- h. The Planning Proposal does not adequately address traffic, transport and pedestrian safety issues.
 2. Council advise the applicant in writing of its decision as soon as practicable pursuant to clause 10A of the *Environmental Planning and Assessment Regulation 2000*.

Recommendation endorsed by Director Environment and Planning.

Mr Bowra, Mr Richards, Mr Falk and Ms MacFarlane addressed the Committee on this item.

COMMITTEE RECOMMENDATION

Motion Bendall/Corrigan

That the Committee supports the Officer's recommendation and notes the submissions by the Applicant and objectors. The Committee is of the view that the Applicant's request for a deferral is not required as the Applicant has the opportunity to address a full Council meeting on 1 February 2016.

CARRIED UNANIMOUSLY

Proposal

A Planning Proposal has been lodged to amend Mosman Local Environmental Plan 2012 (MLEP 2012) in respect of 7 Spit Road (former cinema site) to:

1. Increase the maximum permitted building height from 15 metres (5 storeys) to 29 metres (8 storeys), and floor space ratio (FSR) from 3:1 to 3.5:1 (with a gross floor area (GFA) of 5,454m²)*;
2. Provide public domain improvements such as road widening, public transport infrastructure, footpath widening, pedestrian infrastructure and the like; and
3. Apply a land reservation along the site frontage to Spit Road (3.5m wide; 146m² in area) to enable road widening to accommodate a bus bay and other transport facilities that will form part of the Northern Beaches Bus Rapid Transit (NBBRT) project.

The Planning Proposal was lodged on 2 November 2015 by Robinson Urban Planning Pty Ltd on behalf of the landowner and proponent, The Greater Union Organisation Pty Limited.

This change to MLEP 2012 would facilitate a 'benchmark design' up to 8 storeys in height comprising 52 residential apartments, 404m² of ground floor retail use, basement parking accessed from Clifford Street, and bus bay along the Spit Road frontage. The final design would be the subject of a future development application.

The landowner is willing to enter into a voluntary planning agreement with Council to provide public benefits in return for increased density on the site. The public benefits suggested in the Planning Proposal include:

- footpath widening to Spit Road;
- monetary contribution towards public domain improvements such as Clifford Street Plaza and Civic Lane upgrades; and/or
- public art.

The justification for the Planning Proposal by the proponent is on the basis that:

1. Draft studies and Council resolutions demonstrate a consistent and long-term recognition of the potential for growth and development at Spit Junction;

2. The proposal is consistent with relevant State and Subregional Strategies, including *A Plan for Growing Sydney* (2014), *Northern Beaches Transport Action Plan* (2014), and *Draft Inner North Subregional Strategy* (2007).

*Note - The applicant bases this FSR calculation on the entire site, omitting that part of the site is proposed to be acquired for a bus bay. The current site area is 1,558m². Excluding 146m² to be acquired for a bus bay, the reduced site area is 1,412m². The proposed GFA of 5,454m² would therefore result in an FSR of 3.86:1, not 3.5:1.

The Site

The subject site, 7 Spit Road, is located within the Spit Junction Business Centre on the north-eastern corner of Spit Road and Clifford Street. The site has an overall area of 1,558m², with a frontage of 47 metres to Spit Road and 57 metres to Clifford Street.

The existing building on the site operated as a cinema until its closure in early 2011. Temporary retail uses now operate on the ground floor of the building. Vehicular access to the site is from Clifford Street.

The site is zoned B2 Local Centre under MLEP 2012, with a maximum permitted building height of 15 metres (5 storeys) and FSR of 3:1.

Surrounding development consists of The Garrison Aged Care facility to the immediate north, an office building and multiple dwellings to the east in Clifford Street (generally 3 storeys in height), and a mix of retail, commercial and residential uses to the south and west.



The Site: 7 Spit Road, Mosman.

Relevant History – Local

On 1 February 2012 a new comprehensive LEP applying to all land in Mosman commenced. This LEP, known as MLEP 2012, increased the maximum permitted FSR on land in the Spit Junction Business Centre from 2:1 to 3:1 to encourage the redevelopment of large sites to facilitate better built form and urban design, and in the case of 7 Spit Road, to facilitate a bus bay. The maximum permitted building height of 15 metres (5 storeys) was unchanged.

Subsequently, during 2012-2013 the Spit Junction Masterplan was drafted recommending a range of public domain improvements in the centre and further increase in density limits, up to 6 to 10 storeys and FSR 3.5:1 to 5.5:1 on certain sites (and in respect of 7 Spit Road: up to 31 metres (9 storeys) and FSR 5.5:1). The Masterplan was ultimately not supported by Council, chiefly because of concerns about the extent of density increases and traffic issues. On 3 June 2014 Council instead resolved to:

- a) reaffirm existing controls within MLEP 2012, and
- b) give consideration to Planning Proposals submitted for individual sites in Spit Junction to increase the maximum permitted building height and FSR applying under the LEP on sites where a public benefit forms part of the proposal.

On 4 August 2015 Council resolved to prepare a Guidance Document for Spit Junction, Mosman Junction and land along the Spit and Military Road corridors to guide development and improvements in these key locations, including to:

- a) identify land upon which a density increase may be appropriate, to be informed by economic feasibility analysis; and
- b) articulate public benefits or improvements that are desirable on certain land, such as pedestrian connections, building setbacks to provide wider footpaths, public plazas and community facilities.

The first part of this – a Guidance Document for Spit Junction – is currently being drafted and will be reported to Council later in 2016.

Relevant History – State

In 2014 the NSW Government released the *Northern Beaches Transport Action Plan* which includes a \$125 million investment for a Northern Beaches Bus Rapid Transit (NBBRT) Corridor (also known as B-Line). The plan identifies improvements along the Spit/Military Roads corridor in Mosman including “a new public transport interchange at Mosman” and “indenting bus bays in Spit Junction to improve travel times and reduce congestion”.

Transport for NSW (TfNSW) has not released detailed designs for the public transport interchange in Mosman, however advice has been provided to Council that 7 Spit Road is designated for acquisition for this public purpose (refer to ‘Notification’ in this report).

Notification

The Planning Proposal was notified between 12 and 26 November 2015.

36 submissions were received from or on behalf of:

- Landowners/residents in surrounding streets, particularly Clifford and Punch Streets
- Pedestrian Council of Australia
- Transport for NSW

Most submissions raised objection to the Planning Proposal for reasons of:

- Excessive height/FSR: overshadowing/amenity impacts on residential units in Clifford Street; precedent for similar development; loss of Mosman's village character;
- Traffic and pedestrian safety: on-street parking demand and traffic in surrounding streets increased; risk to pedestrians crossing Spit Road / Clifford Street intersection;
- Bus bay: limited capacity and inadequate to make a difference in alleviating traffic hold ups; will create more noise, traffic and pollution;
- Ad hoc: represents poor planning; a co-ordinated plan for Spit Junction is needed.

Transport for NSW (TfNSW) also raised objection (see attachment), advising the following:

"The above mentioned site subject to the planning proposal is affected by the NBBRT Project, as the land in question is designated for acquisition for this public purpose under the provisions of the Land Acquisition (Just Terms Compensation) Act 1991, and will need to be acquired imminently to facilitate the construction and operation of a bus interchange. Construction of the NBBRT Project is scheduled to commence in 2016....

TfNSW therefore objects to the planning proposal to amend the existing LEP, given the potential implications it has on the NBBRT Project. "

These issues are addressed in more detail below (refer to 'Assessment' in this report).

Of the submissions, two supported the proposal citing it as a positive change for Spit Junction, with an acceptable increase in building height as a "trade-off" for transport benefits that would improve the flow of traffic on Spit Road.

Submissions received are summarised in an attachment to this report.

Assessment

The following assessment responds to relevant questions outlined in *A Guide to Preparing Planning Proposals*, by the former NSW Department of Planning and Infrastructure (2012).

Is the Planning Proposal a result of any strategic study or report?

The Planning Proposal is not the result of any strategic study or report adopted by Council, however it has been submitted in response to the Council's resolution of 3 June 2014 inviting Planning Proposals for individual sites in Spit Junction (see detail earlier in report under 'Relevant History – Local').

The main components of the Planning Proposal are:

1. A change to the planning controls applying to 7 Spit Road
2. Facilitation of a bus bay on the Spit Road frontage of 7 Spit Road
3. Public domain improvements

A change to planning controls

The current adopted desired future character for Spit Junction is reflected in MLEP 2012, with density limits set at 15 metres (5 storeys) and FSR of 3:1. These planning controls are based on considered planning and community consultation undertaken during 2007-2011 when the new comprehensive LEP for Mosman was drafted, and reflects the role of Spit Junction as a 'village', as the centre is identified in the NSW Government's draft *Inner North Subregional Strategy* (2007).

The Planning Proposal seeks a significant change to these planning controls – to facilitate development up to 29 metres (8 storeys) in height and with an FSR up to 3.86:1 (see earlier comments in report under ‘Proposal’). This is almost double the current maximum permitted height limit, and considerably greater than the existing built form within the centre which is generally 2 to 3 storeys.

Significant change to planning controls in Spit Junction was recently considered by Council – and ultimately not supported – as part of the Spit Junction Masterplan. An increase up to 31 metres (9 storeys) and FSR 5.5:1 on 7 Spit Road was suggested in the Masterplan, however concern raised by the Council and in community feedback was that such a height increase was a major departure from the ‘village atmosphere’ of Mosman. Council has since resolved to prepare a new Guidance Document for Spit Junction, cognisant of this feedback.

The Planning Proposal is inconsistent with the desired future character of Spit Junction reflected in MLEP 2012, and reinforced through recent Council and community feedback on the Masterplan. The proposal does not adequately consider Spit Junction’s identity and character, or the ‘fit’ of such development within the centre and streetscape. It seeks a substantial change in density in isolation of other sites in the centre, contrary to planning for growth in Spit Junction in a coordinated manner.

Facilitation of a bus bay

Whilst the site has been identified as being important to the NSW Government’s *Northern Beaches Transport Action Plan*, the support of the State Government for this Planning Proposal has not been obtained. TfNSW has raised objection to the proposal on the basis that the site is designated for acquisition under the *Land Acquisition (Just Terms Compensation) Act 1991*, and the concurrence of the Roads and Maritime Services (RMS) has not been obtained as required under clause 10 of the *Environmental Planning and Assessment Regulation 2000* for the proposed land reservation.

Further, the Planning Proposal does not adequately consider design, capacity, traffic and other issues associated with the provision of a bus bay. For example:

- it is not demonstrated that the proposed 3.5m wide section of land (146m²) along the Spit Road frontage of the site is sufficient to accommodate a bus bay for the purposes of the NBBRT – indeed the benchmark design outlined in the proposal would be incapable of accommodating double decker buses which the State has announced would be used on the NBBRT;
- whether or not the bus bay is to extend across the western end of Clifford Street and close all or part of this street is not addressed in the proposal.

Public domain improvements

The increase in density in the Planning Proposal is sought in return for the provision of public domain improvements. These are noted by the proponent to be:

- a) road widening and public transport infrastructure – as part of the NBBRT bus bay;
- b) footpath widening to Spit Road; monetary contribution towards improvements such as Clifford Street Plaza and Civic Lane upgrades; and/or public art – as part of a voluntary planning agreement with Council.

The first group a), relates to the NSW Government’s *Northern Beaches Transport Action Plan*. The landowner would be compensated by the State Government for the acquisition of land for the bus bay. Therefore it is not justified to seek a further increase in density on the site in return for the provision of a bus bay.

In respect of b), there is insufficient detail provided in the Planning Proposal regarding these public benefits to adequately assess their benefit to the Mosman community.

Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

No, there is a better way.

The objective of this Planning Proposal noted by the proponent is to provide:

- a) increased housing supply and employment uses; and
- b) transport facilities that will form part of the NBBRT.

Increased housing supply and employment uses

With regard to housing supply, increased housing could be achieved on the site through a development within the current limits of MLEP 2012, as the existing building is not built to the allowable limit and contains no residential dwellings.

While it is true that increasing density limits would provide opportunities for more housing – the increase sought in this Planning Proposal is substantial and unnecessary to fulfil Mosman’s housing obligations set by the NSW Government under the draft *Inner North Subregional Strategy* (2007). The current planning framework set by MLEP 2012 provides sufficient opportunity for additional housing to meet Mosman’s current targets. Figures from the Australian Bureau of Statistics and NSW Department of Planning and Environment indicate that the capacity of existing zoned land in the northern subregion (district) – within which Mosman is located – has the capacity to provide nearly 90% of implied dwelling projections to 2036.

With regard to employment uses, the current building ceased operation as a cinema in 2011 and now only the ground floor of the building is used by a furniture retailer. The current building occupies the entire site. The benchmark design submitted as part of the Planning Proposal indicates that retail use on the site would be reduced to only a portion of the ground floor level (404m² or 25% of the site area), with the remainder of the ground floor occupied by residential apartments, bus bay, waste, parking and loading areas. The increase in employment would likely be nil, or minimal only.

Transport facilities that will form part of the NBBRT

TfNSW has provided a submission objecting to the Planning Proposal on the basis that the site is designated for acquisition under the *Land Acquisition (Just Terms Compensation) Act 1991* as part of the NBBRT project. Further, approval from the RMS has not been obtained for the proposed land reservation on the site. Refer to comments above.

Is the Planning Proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy?

Objectives and actions in *A Plan for Growing Sydney* (2014) and draft *Inner North Subregional Strategy* (2007) include:

- to increase housing supply close to jobs and transport;
- increase employment opportunities; and
- revitalise existing suburbs.

Whilst the Planning Proposal is generally consistent with these strategies, as noted above it far exceeds the density limits set by Council to fulfil Mosman's obligations in respect of these strategies.

Is the Planning Proposal consistent with Council's local strategy or other local strategic plan?

No. The Planning Proposal is inconsistent with the following strategies outlined in *MOSPLAN Community Strategic Plan 2013-2023*:

- *Maintain the special local character of Mosman with effective planning strategies in place.*

Comment: The Planning Proposal exceeds the density limits set in MLEP 2012 with an almost doubling of the maximum permitted building height, and is contrary to planning for growth in Spit Junction in a coordinated manner. Submissions received from surrounding landowners and residents raise concern about "the loss of Mosman's village character" and the "precedent for similar development".

- *Improve safety and accessibility in local streets through appropriate traffic management and increased opportunities for active transport.*

Comment: Traffic and pedestrian safety issues have not been adequately addressed by the applicant. (Refer to traffic assessment later in this report).

Is the Planning Proposal consistent with applicable State Environmental Planning Policies (SEPPs)?

Most SEPPs are not relevant to this Planning Proposal or would be a consideration at the development application stage, for example:

- *SEPP 65-Design Quality of Residential Apartment Development* – A benchmark design with 52 residential apartments and ground floor retail use, designed to comply with SEPP 65 and the *Apartment Design Guide* (2015) is outlined in the Planning Proposal;
- *SEPP (Infrastructure) 2007* (traffic and acoustic)
- *SEPP (Building Sustainability Index: BASIX) 2004*.

Is the Planning Proposal consistent with applicable Ministerial Directions?

No. The Planning Proposal is inconsistent with the following Ministerial Directions under section 117(2) of the *Environmental Planning and Assessment Act 1979* (the Act):

- *1.1 Business and Industrial Zones: Planning Proposal must not reduce the total potential floor space area for employment uses and related public services in business zones.*

Comment: Whilst the Planning Proposal does not change the land zoning (or permissible development), the benchmark design submitted with the Planning Proposal shows a reduction in floor space area for employment uses (refer to comments above). This has not been addressed by the applicant.

- *6.2 Reserving Land for Public Purposes: Planning Proposal must not create reservations of land for public purposes without the approval of the relevant public authority and the Director-General of the Department of Planning.*

Comment: Approval from the Roads and Maritime Services (RMS) has not been obtained for the proposed land reservation on the site. The RMS is identified in clause 5.1 of MLEP 2012 as the relevant public authority for the widening of land zoned SP2 Classified Road in Mosman. Obtaining the concurrence of the RMS for the proposed land reservation is also a requirement under clause 10 of the *Environmental Planning*

and Assessment Regulation 2000. It is unlikely this approval would be granted given the objection to the proposal raised by TfNSW.

Environmental, social and economic impacts resulting from the Planning Proposal?

An assessment of the Planning Proposal in respect of the following issues is provided below:

1. Bulk and scale
2. Built form, overshadowing and amenity
3. Traffic, access, parking and pedestrian safety
4. Ad hoc development vs coordinated planning for Spit Junction

Bulk and scale

The Planning Proposal includes an Urban Design Report by architects AJ+C justifying how the proposed height and FSR increase on the site were derived in key actions:

- Action 1: building envelope generally conforming with MLEP 2012 – height 15 metres (5 storeys) and FSR 3:1, without provision of a bus bay.
- Action 2: increase height to 6 storeys as an incentive for provision of bus bay. FSR unchanged.
- Action 3: increase height to 7 storeys to facilitate articulation of the building envelope and minimise the impacts of overshadowing on neighbouring residential properties in Clifford Street. FSR unchanged.
- Action 4: increase height to 8 storeys and FSR to 3.5:1, again as an incentive for provision of the bus bay, and for provision of other public benefits - footpath widening to Spit Road; monetary contribution towards public domain improvements such as a Clifford Street Plaza and Civic Lane upgrades; and/or public art. (Note: FSR would actually be 3.86:1. See earlier comment).

Several issues are raised here.

First, this justification fails to take into account that an incentive for provision of a bus bay on the site has already been provided to the landowner through an increase in the maximum permitted FSR in 2012. As noted above, when the current MLEP 2012 commenced, the maximum permitted FSR on the site was increased from 2:1 to 3:1. When drafting the LEP during 2007-2011, Council identified the site as being suitable for a bus bay and sought to encourage this with a FSR increase to 2.5:1; later increased to 3:1 by the former Department of Planning and Infrastructure. The applicant has not adequately demonstrated that the current standards in MLEP 2012 cannot be reasonably complied with.

Second, the landowner would be compensated by the State Government for the acquisition of land for the bus bay which will form part of the NBBRT. Therefore it is not justified to seek a further increase in density on the site in return for the provision of a bus bay.

Third, what remains then is a significant increase in density sought in return for the provision of footpath widening to Spit Road; monetary contribution towards public domain improvements such as a Clifford Street Plaza and Civic Lane upgrades; and/or public art. However there is insufficient detail provided in the Planning Proposal to adequately assess the public benefit of these improvements to the Mosman community.

Built form, overshadowing and amenity

Submissions received from residents in Clifford Street raise loss of sunlight, daylight, outlook and amenity as primary concerns. Residential dwellings are located to the south and east of the site in Clifford Street, as part of mixed use developments within the Spit Junction business centre, and within The Garrison Aged Care centre to the north.

Development to the scale sought by this Planning Proposal would result in additional overshadowing of these residential properties and amenity impacts (such as privacy loss). The applicant has sought to minimise the impact of the development through articulation of the building envelope, however there would still be an impact – a shadow diagram submitted with the Planning Proposal shows considerable additional overshadowing of 11-17, 19 and 23 Clifford Street. An objection submitted in respect of 19 Clifford Street notes that the Planning Proposal fails to adequately consider the shadow impact on a proposed residential flat building comprising 5 dwellings on this site (approved at MDAP December 2015).

Development built within the current controls of MLEP 2012 up to 5 storeys would have a lesser impact on neighbouring properties.

Traffic, access, parking and pedestrian safety

The Planning Proposal includes a Transport Report by Colston Budd Hunt & Kafes Pty Ltd outlining the transport aspects of a benchmark future development with 52 residential apartments, retail space and bus bay. It notes that:

- Existing basement parking areas on site (90 spaces) would be retained and extended for use in future development with vehicular access to remain from Clifford Street.
- On-site parking would be provided as per the Mosman Business Centres DCP (rate to be determined at the Development Application stage). A lower visitor and non-residential parking requirement would be appropriate given the location.
- Based on RMS traffic generation rates, development would result in an additional 10 to 35 vehicles per hour two-way at peak times. This is low to modest generation.

This report is insufficient to adequately consider the traffic implications of the Planning Proposal. The following issues are raised:

- a) Potential road closure / upgrades – A public benefit of monetary contribution towards a Clifford Street Plaza and Civic Lane upgrades is offered by the applicant in return for the substantial increase in height and FSR in this Planning Proposal. The Clifford Street Plaza referred to would close part or whole of the western end of Clifford Street at its intersection with Spit Road. This would have a significant effect on the traffic volume and movement in Clifford Street and surrounding streets, yet this is not addressed in the traffic study. The study is based on traffic in Clifford Street remaining two-way.
- b) Bus bay design / bus routes – The applicant has not provided approval from the RMS or TfNSW for the design of the bus bay in this Planning Proposal (3.5 metre wide along Spit Road frontage). Issues such as the use and function of the bus bay, its relationship with Clifford Street, whether other land would be affected, visibility and safety for motorists and pedestrians, whether or not Clifford Street would be partially or entirely closed, and the effect on existing bus routes and layovers in Clifford and Punch Streets have not been considered. Submissions have raised concern regarding these issues.
- c) Pedestrian safety – Submissions also raise concern regarding existing pedestrian safety issues crossing Clifford Street at the Spit Road intersection. Council's Pedestrian Access and Mobility Plan (2012) identifies the need for a pedestrian refuge at the western end of

Clifford Street. Development on 7 Spit Road would increase pedestrian activity in this location, however pedestrian safety has not been addressed.

Ad hoc development vs coordinated planning for Spit Junction

A change to MLEP 2012 to allow development up to 29 metres (8 storeys) in height with an FSR increase on this site would set a precedent for other landowners in Spit Junction to seek similar increases in density on their land.

With such substantial increase in density, issues such as streetscape, amenity, traffic, pedestrian safety and the like should be planned for and considered cumulatively throughout the business centre – rather than on an ad hoc basis.

A Guidance Document is currently being drafted by Council to consider density increases and improvements in Spit Junction, as noted earlier in this report.

Statutory Framework

Section 55 of the Act provides that to amend an LEP, the Council (as “relevant planning authority”) must first prepare a Planning Proposal as an explanation of, and justification for, the LEP amendment. Often an applicant may draft a Planning Proposal and seek the Council’s endorsement of this for the purposes of section 55 of the Act – as is the case in this instance.

If Council decides not to support the Planning Proposal, or if Council fails to make a decision within 90 days of lodgement, the applicant may request a Pre-Gateway Review of the Council’s decision. This review would be undertaken by the regional panel or Planning Assessment Commission which would provide advice to the Minister for Planning on whether or not to overturn Council’s decision.

Conclusion

The Planning Proposal to amend MLEP 2012 in respect of 7 Spit Road is not supported for the following reasons:

- a. The Planning Proposal is inconsistent with the desired future character of Spit Junction reflected in MLEP 2012. The proposal does not adequately consider Spit Junction’s identity and character, or the ‘fit’ of such development within the centre and streetscape. It seeks a substantial change in density in isolation of other sites in the centre, contrary to planning for growth in Spit Junction in a coordinated manner, and would set an undesirable precedent for the centre.
- b. The Planning Proposal does not demonstrate that the current standards in MLEP 2012 cannot be reasonably complied with. Increased housing supply, employment uses and a bus bay could be achieved on the site within the current limits applying under the LEP.
- c. The Planning Proposal does not adequately consider design, capacity, traffic and other issues associated with the provision of a bus bay. Further, the proposal is not supported by Transport for NSW on the basis that the site is designated for acquisition under the *Land Acquisition (Just Terms Compensation) Act 1991* as part of the Northern Beaches Bus Rapid Transit project, nor has the concurrence of the Roads and Maritime Services (RMS) been obtained.
- d. The Planning Proposal is inconsistent with *MOSPLAN Community Strategic Plan 2013-2023*, specifically to “maintain the special local character of Mosman with effective

planning strategies in place” and “improve safety and accessibility in local streets through appropriate traffic management and increased opportunities for active transport”.

- e. The Planning Proposal is inconsistent with Ministerial Directions *1.1 Business and Industrial Zones* and *6.2 Reserving Land for Public Purposes* under section 117(2) of the *Environmental Planning and Assessment Act 1979*, and this inconsistency is not addressed.
- f. The Planning Proposal would facilitate a scale of development which would have an adverse impact on surrounding residential properties in terms of overshadowing and amenity.
- g. The Planning Proposal contains insufficient detail in respect of the public benefits offered to adequately assess this component of the proposal.
- h. The Planning Proposal does not adequately address traffic, transport and pedestrian safety issues.

Recommended Action

It is recommended that the Planning Proposal lodged by Robinson Urban Planning Pty Ltd for 7 Spit Road not be supported by Council for the reasons outlined in this report, and that pursuant to clause 10A of the Regulation Council advise the applicant in writing of its decision as soon as practicable.

Recommendation endorsed by Director Environment and Planning

ATTACHMENTS

Minute Book Attachments

- Submission from Transport for NSW dated 26 November 2015
- Submissions received in response to notification – summary table

Circulations

- Planning Proposal – 7 Spit Road

RESPONSIBLE OFFICER: Manager Urban Planning

EXECUTIVE SUMMARY

Council has resolved that a draft policy be prepared which sets out the process for entering into a Planning Agreement with Council under section 93F of the *Environmental Planning and Assessment Act 1979*, to ensure transparency, probity, certainty of roles and process.

The draft Mosman Planning Agreements Policy has now been prepared – with revisions post Council Meeting 1 December 2015 – and is attached for Council's consideration, prior to being placed on public exhibition.

OFFICER'S RECOMMENDATION

The Manager Urban Planning recommends that:

1. The revised draft Mosman Planning Agreements Policy be publicly exhibited for a minimum period of 28 days.
2. Following exhibition, a further report on the draft policy be submitted to Council.

Recommendation endorsed by Director Environment and Planning.

RESOLVED BY THE COMMITTEE UNDER DELEGATED AUTHORITY

Motion Abelson/Bendall

That the Officer's Recommendation be adopted.

CARRIED UNANIMOUSLY

Background

At the Council Meeting held on 1 December 2015 Council considered a report on the draft Mosman Planning Agreements Policy and resolved:

1. *That Council delegate authority to the Urban Planning Committee to make amendments to the draft Mosman Planning Agreements Policy before public exhibition with the concurrence of the General Manager*
2. *If concurrence of the amendments cannot be reached in (1) the matter will be reported back to Council for determination*
3. *Following public exhibition a further report on the draft policy be submitted to Council*

Mayor Abelson, Councillor Bendall and Councillor Corrigan of the Urban Planning Committee subsequently suggested amendments to the draft Mosman Planning Agreements Policy. On 16 December 2015 Council staff considered these amendments in consultation with Mayor Abelson and Councillor Bendall, and unanimous agreement was reached for some change to the draft policy to be made, as outlined in the table below.

Part	Suggested Amendments to Draft Policy	Outcome of 16 December 2015 Meeting
Principles Governing Council's Use of Planning Agreements	Amend points 2, 3 and 5 to reduce word content, but not change the intent of the principles.	Agreed to amendments.
Public notice	Include a clause that covers the possibility of an extension to the minimum period of public notification?	The minimum notification period of 28 days can be extended at the discretion of Council as necessary. This commonly occurs now with the notification of more complex or sensitive planning proposals. Agreed that it is unnecessary to amend content to refer to this.
Probity	Omit reference to corruption, and achieving maximum public awareness of planning agreements, and amend content regarding independent assessment to ameliorate conflicts of interest.	Agreed to omit reference to corruption, as this does not change the intent of the draft policy as Council is bound by the Code of Conduct. Agreed to omit reference to achieving maximum public awareness of planning agreements, as consultation would occur in keeping with the Mosman Community Engagement Strategy. Agreed to make minor wording changes in relation to conflict of interest, and reflect that an independent assessment of a planning agreement would occur where Council has a conflict of interest, not in all instances.
Responsibility and Accountability	Amend wording re Councillors involvement in planning agreements, and independent assessment of planning agreements where Council has a commercial interest.	Agreed to make no change to this part. Councillors can be involved in initial discussions with a landowner/developer, but once an offer for a planning agreement is made, the draft policy would apply, and Councillors could not be involved in the face to face negotiation of the planning agreement. A request for a planning agreement would be reported to the Urban Planning Committee in accordance with the Urban Planning Committee Charter.
Dispute resolution	Insert compulsory standard mediation clauses in draft policy.	Agreed to include compulsory standard mediation clauses in the template planning agreement which is contained in Appendix A of the draft policy. The standard mediation clauses will be sourced from the Law Society or equivalent.
Methodology for Valuing Public Benefits under a Planning Agreement	Council to engage a valuer then pass these costs to the developer.	Agreed to make no change to this part. Council will retain some control in this process, with the scope of works for the valuer to be prepared by Council. The valuation will be not accepted unless carried out in accordance with this scope of works. All costs of the independent valuer in carrying out such a valuation will be borne by the Developer
Appendix C Potential Public Benefits in Mosman	Add art gallery and accessible public toilets	Agreed to amendments.
Throughout	Correction of minor grammatical and typographical errors.	Minor, not discussed at meeting. Errors will be corrected.

Comment

The draft Mosman Planning Agreements Policy has been amended to reflect the agreed outcomes identified above. The revised draft policy is attached to this report.

Recommended Action

It is recommended that the revised draft Mosman Planning Agreements Policy attached to this report be publicly exhibited for a minimum period of 28 days, and following exhibition a further report be submitted to Council.

Recommendation endorsed by Director Environment and Planning.

ATTACHMENTS

Minute Book Attachments

- Revised Draft Mosman Planning Agreements Policy