

ITEM 4. PREPARATION OF AN AMENDMENT TO SYDNEY LOCAL ENVIRONMENTAL PLAN 2005 UNDER SECTION 73A OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 TO CORRECT A MINOR ERROR

FILE NO: S062501-05

**SUMMARY**

This report details a proposed minor amendment to *Sydney Local Environmental Plan 2005* (SLEP2005) under section 73A of the *Environmental Planning & Assessment Act 1979* (EP&A Act) to correct an obvious error in the description of a lot within the site bound by Alfred, Pitt, Dalley and George Streets in Central Sydney (the 'APDG' site).

The error is that a small parcel of land which is located within 'development block 2' within the APDG site has been omitted from the description of block 2 in clause 52A(8) of SLEP2005.

The error potentially affects the determination of a development application (D/2012/893) currently being assessed by the City, which proposes a 37 storey tower building on block 2 within the APDG site. Unless the error is rectified the development application cannot be determined favourably under SLEP2005.

This report recommends that the Central Sydney Planning Committee endorse a section 73A submission to the Department of Planning and Infrastructure for a minor amendment to clause 52A(8) of SLEP2005 to correct the obvious error.

Section 73A of the EP&A Act is a mechanism to quickly and simply rectify minor errors in local environmental plans. It is considered to be the most efficient and timely way to correct the error, and therefore avoid unnecessary complications in the determination of the current development application.

**RECOMMENDATION**

It is resolved that the Central Sydney Planning Committee:

- (A) endorse the submission of a *Section 73A Environmental Planning & Assessment Act Submission* to the Department of Planning and Infrastructure for a minor amendment to clause 52A(8) of *Sydney Local Environmental Plan 2005* to correct an obvious error, for the following reasons:
  - (i) The meaning of block 2 in clause 52A(8) of *Sydney Local Environmental Plan 2005* erroneously omits Lot 1 DP 913005;
  - (ii) The omission of Lot 1 DP 913005 from block 2 negatively affects the favourable determination of development application D/2012/893, which, in part, seeks additional height permitted by clause 52A of *Sydney Local Environmental Plan 2005* within the site bound by Alfred, Pitt, Dalley and George Streets (the 'APDG' Block);

- (iii) The minor amendment will correct the meaning of block 2 in clause 52A(8) of *Sydney Local Environmental Plan 2005*, and falls within the ambit of section 73A(1)(a) of the *Environmental Planning & Assessment Act 1979* as it aims to correct an obvious error consisting of a misdescription in the principal instrument; and
- (B) endorse a section 73A amendment to insert Lot 1 DP 913005 into the meaning of block 2 in clause 52A(8) of *Sydney Local Environmental Plan 2005*;

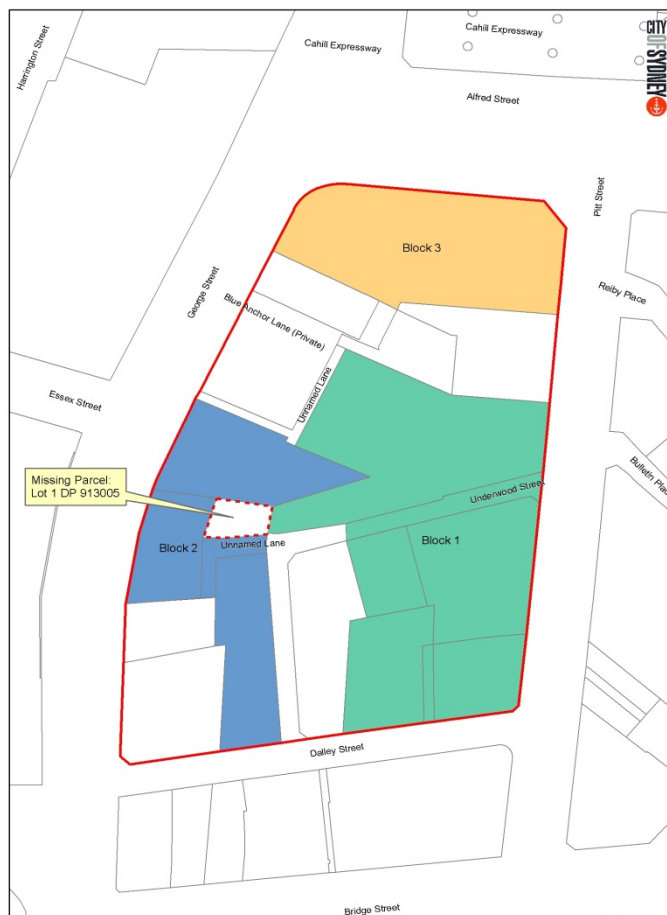
## **ATTACHMENTS**

**Attachment A:** Blank Pro-forma Section 73A EP&A Act submission form

**BACKGROUND**

1. This report details a proposed amendment to *Sydney Local Environmental Plan 2005* (SLEP2005) under section 73A of the *Environmental Planning & Assessment Act 1979* (EP&A Act) to correct an obvious error in the description of land in Clause 52A of SLEP2005.
2. Clause 52A in SLEP2005 allows for building heights on three defined 'development blocks' within the site bound by Alfred, Pitt, Dalley and George Streets in Central Sydney (the APDG site) to exceed the heights prescribed on the building height map in SLEP2005, as long as certain public benefits are delivered. The development blocks are described by individual land title descriptors; that is - by 'Lot' and 'DP' numbers.
3. The City has received correspondence from JBA Planning on behalf of Mirvac which identifies an error in the description of development 'block 2' in clause 52A(8) of SLEP2005, and requests that the SLEP2005 be amended under section 73A to correct the description.
4. The error is that a small parcel of land which is located within block 2 has been omitted from the description of block 2 in SLEP2005. This missing parcel is known as Lot 1 DP 913005 and has an area of 189.3 square metres. Diagram 1 below shows the missing lot within the context of the three APDG site development blocks.

**Diagram 1 – APDG site and missing lot within development block 2 (Lot1 DP913005)**



5. This error is repeated in the provisions for the APDG site in clause 6.20(8) of *Draft Sydney Local Environmental Plan 2011* (draft SLEP2011), which is expected to be gazetted soon. However, there is no requirement for a separate LEP amendment process in this case, as final drafting of draft SLEP2011 will simply correct the error.

## **KEY IMPLICATIONS**

### **Effect of the error**

6. Correcting the error is a matter of urgency because it negatively impacts the determination of a major development application (D/2012/893) that has been lodged by Mirvac, which seeks the additional height allowed by the APDG controls on block 2.
7. The development application proposes a 37 storey commercial building within block 2 - with an estimated development cost of \$250 million. Prior to lodgement of the development application, a competitive design process was undertaken by Mirvac, where Francis-Jones Morehen Thorp (FJMT) Architects were nominated as the successful entrants.
8. Lot 1 DP 913005 is a critical component of the development application because it sits directly under a tower element proposed in D/2012/893. Unless this error is rectified the development application cannot be determined favourably under SLEP2005 and is likely to delay its determination.
9. A further complication arises due to the imminence of draft SLEP2011 coming into effect. Clause 1.8A of draft SLEP2011 is a 'savings and transitional' provision which requires development applications lodged before the commencement of the new LEP to be determined as if the LEP had been exhibited but had not commenced. This means that development applications already lodged will be assessed on the basis of controls in place when they were lodged. As a result D/2012/893 does not comply with the APDG controls in SLEP2005.
10. Other than affecting the favourable determination of D/2012/893, the erroneous exclusion of Lot 1 DP 913005 also jeopardises the realisation of the City's overall vision for the APDG site, as each development block is critical to the delivery of public benefits such as publicly accessible space and pedestrian connections. Block 2 potentially contributes a sizeable portion of a public square envisioned at the centre of the APDG Block.
11. Further correspondence has been received from Mirvac requesting that the savings and transitional provision in draft SLEP2011 is changed to enable D/2012/893 to be assessed entirely on the basis of draft SLEP2011. However, this option is not preferred because the assessment of D/2012/893 is at an advanced stage. To date, the development application has been assessed entirely against SLEP2005 controls.

### **Section 73A Amendment Process**

12. Section 73A of the EP&A Act is a mechanism to quickly and simply rectify minor errors in local environmental plans. It is therefore considered to be the most efficient and timely way to correct the error, and therefore avoid unnecessary delays in the determination of D/2012/893.

13. Amendments can be made using Section 73A without complying with the usual process for planning proposals/making LEPs under the EP&A Act, such as public consultation.
14. Section 73A may be used to prepare an LEP to amend or repeal another LEP to, amongst other things:

*“correct an obvious error in the principal instrument consisting of a misdescription, the inconsistent numbering of provisions, a wrong cross-reference, a spelling error, a grammatical mistake, the insertion of obviously unnecessary words, the removal of obviously unnecessary words or a formatting error.”*
15. It is considered that the omission of Lot 1 DP 913005 is a misdescription and clearly falls within the ambit of section 73A(1)(a) above.
16. A process for making LEP amendments under 73A is not outlined in the EP&A Act or Regulations. However *Planning Circular PS 06-014: Minor amendments to local environmental plans using section 73A* requires that council submit a pro-forma *Section 73A EP&A Act submission* to support the amendment. A blank pro-forma submission form is shown at Attachment A to this report. The amendment will be described as *Draft Sydney Local Environmental Plan 2005: Amendment No. 4*.
17. Should the Central Sydney Planning Committee endorse the recommendation of this report, a completed submission form will be forwarded to the Minister for Planning and Infrastructure in accordance with the requirements of Planning Circular PS 06-014.

**Justification for an amendment to SLEP2005 under Section 73A of the EP&A Act**

18. Throughout the planning process informing the LEP controls for the APDG Block it was clear that the missing lot was intended to comprise part of block 2. This is evidenced by the following studies and documents, all of which included maps that clearly identified the land comprising Lot 1 DP 913005 as part of block 2:
  - (a) The configuration of block 2 recommended in the 2009 urban design study prepared for the APDG site by the Government Architect's Office;
  - (b) *Draft Sydney Local Environmental Plan 2005 - Amendment No. 2* (Amendment 2) as endorsed for public exhibition by the Council and the Central Sydney Planning Committee in March 2010 - which proposed LEP controls for the APDG site;
  - (c) Public exhibition material from July/August 2010 accompanying Amendment 2 included a 'non statutory' map showing block 2 to include Lot 1 DP 913005. The inclusion of this map was agreed to in the letter accompanying the Section 65 certificate to exhibit Amendment 2, issued by the then Department of Planning in July 2010; and
  - (d) Draft and current development control plan provisions adopted by the Council for the APDG site include a 'development block' map that that clearly illustrates that Lot 1 DP 913005 forms part of block 2.
19. Therefore the inclusion of Lot 1 DP 913005 in the description of block 2 will have no material effect, as it simply describes block 2 as always intended.

**RELEVANT LEGISLATION**

20. The *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000*.

**CRITICAL DATES / TIME FRAMES**

21. Due to procedures required prior to the making of a section 73A amendment, there is a possibility that the gazettal of draft SLEP2011 will be delayed slightly. However, it is not expected that the delay will exceed a week or two.

**PUBLIC CONSULTATION**

22. Given that the proposed amendment to SLEP2005 is to correct an obvious error in SLEP2005, it is considered that there is no need for the exhibition of the draft amendment.

**GRAHAM JAHN**

Director City Planning, Development and Transport

(Nicholas Knezevic, Specialist Planner)