

ITEM 5. PLANNING PROPOSAL - SYDNEY LOCAL ENVIRONMENTAL PLAN 2012 - DESIGN EXCELLENCE INCENTIVE**FILE NO: S116203****SUMMARY**

Well-designed buildings contribute to the urban and public domain character of a city and its liveability, particularly in densely developed areas. *Sustainable Sydney 2030* outlines Sydney's aspirations for design excellence to be achieved across the City.

The *Sydney Local Environmental Plan 2012* promotes design excellence to achieve high quality architectural, urban and landscape design, particularly in prominent development and across large sites.

An important mechanism to ensure development demonstrates design excellence is through a competitive design process, intended to facilitate a variety of design options for a site.

Clause 6.21(7) of *Sydney Local Environmental Plan 2012* establishes an incentive for undertaking a competitive design process, namely up to an additional 10% height or floor space. This incentive is in recognition of the additional cost of undertaking such a process and achieving design excellence.

Under *Sydney Local Environmental Plan 2012*, which came into effect on 14 December 2012, clause 6.21(7)(b) calculates the 10% floor space ratio bonus available for demonstrating design excellence prior to the award of any applicable accommodation floor space in Central Sydney or community floor space in Green Square.

The same control exhibited under *draft Sydney Local Environmental Plan 2011* allowed a design excellence bonus of up to 10% of both the floor space ratio shown in the Floor Space Ratio Map and of any eligible accommodation or community floor space.

Application of the clause in accordance with *Sydney Local Environmental Plan 2012* has meant that the 10% design excellence bonus produces comparatively less floor space for sites eligible for accommodation or community floor space.

This reduction in total redevelopment capacity was an unintended effect and it is proposed to amend the wording of the clause to be consistent with the application of the design excellence incentive prior to 14 December 2012.

A planning proposal, which appears at Attachment A to this report, has been prepared to address the issue. It proposes to amend the relevant clause in *Sydney Local Environmental Plan 2012* so that the floor space bonus which may be awarded for successfully demonstrating design excellence includes up to 10% of any applicable accommodation and community floor space.

For clarity, the proposed amendment will only affect the way in which the design excellence incentive is calculated relative to any eligible accommodation floor space in Central Sydney or community floor space in Green Square. It will not affect the way in which the additional design excellence floor space is applied in relation to any other type of floor space incentive available under *Sydney Local Environmental Plan 2012*.

RECOMMENDATION

It is resolved that:

- (A) the Central Sydney Planning Committee endorse *Planning Proposal: Sydney Local Environmental Plan 2012 Design Excellence Incentive*, shown at Attachment A to the subject report, for submission to the Minister for Planning and Infrastructure with a request for a Gateway Determination;
- (B) authority be delegated to the Chief Executive Officer to make any minor variations to the Planning Proposal following receipt of the Gateway Determination, to enable commencement of public exhibition;
- (C) the Central Sydney Planning Committee approve *Planning Proposal: Sydney Local Environmental Plan 2012 Design Excellence Incentive* for public exhibition of at least 14 days, in accordance with the Gateway Determination; and
- (D) the Central Sydney Planning Committee note that following consideration of any submissions, and refinements as necessary, *Planning Proposal: Sydney Local Environmental Plan 2012 Design Excellence Incentive* will be reported back to Council and the Central Sydney Planning Committee for final approval.

ATTACHMENTS

Attachment A: *Planning Proposal: Sydney Local Environmental Plan 2012 Design Excellence Incentive* dated June 2013

BACKGROUND

1. Well-designed buildings enhance the urban and public domain character of a city, contributing to its liveability, particularly in densely developed areas. High quality design is also essential to the image and market attractiveness of centres with design excellence acting as a catalyst for further investment. It is therefore important that design excellence is a key consideration in the assessment of development proposals.
2. The demonstration of design excellence through a competitive process was introduced into the Central Sydney planning controls in 2000, with the gazettal of Central Sydney Local Environmental Plan 1996 Amendment No. 8. This amendment introduced a staged approval process for development over 55 metres in height or on sites greater than 1,500 square metres in area. A 'development plan' or Stage 1 DA was to be prepared which established a building envelope, floor space ratio and height appropriate for a site and its context, and included a requirement for design excellence to be exhibited.
3. The amendment provided that the consent authority, in considering whether a development exhibited design excellence, was to consider whether it was the result of a competitive design process. Where an applicant demonstrated design excellence through a competitive process, the consent authority was able to award an incentive as part of the approved development application. These provisions were carried forward into *Sydney Local Environmental Plan 2005*.
4. *Sydney Local Environmental Plan 2012* (Sydney LEP 2012) includes similar design excellence provisions and extends their application across the entire Local Government Area (LGA) to ensure that significant new development contributes positively to the overall architectural quality of the City. This contribution may be as an iconic or landmark building, but more typically it is as a well-designed building that fits sensitively into the streetscape and responds to the public domain.
5. An important mechanism to ensure development demonstrates design excellence is through a competitive design process. The process is intended to achieve the highest quality urban design outcomes and facilitate a variety of design options for a site. The procedural steps involved in undertaking a competitive design process are outlined in the City of Sydney Competitive Design Policy which was adopted by Council on 12 March 2012.
6. Clause 6.21(7) of Sydney LEP 2012 establishes an incentive for undertaking a competitive design process, namely the potential for the consent authority to grant up to an additional 10% height or floor space ratio (FSR). This incentive is in recognition of achieving design excellence and of the additional cost of undertaking such a process.
7. The design excellence provisions operate alongside various other provisions in Sydney LEP 2012 which aim to encourage specific development outcomes by offering additional floor space. These include floor space incentives for certain land uses in Central Sydney, such as hotel accommodation and retail premises, and for the provision of community infrastructure in Green Square, such as public streets and open spaces.
8. More than one type of additional floor space may be pursued by an applicant at any one time. Clause 6.21(7) states:

“If the design of a new building, or an external alteration to an existing building, on land is the winner of a competitive design process and the consent authority is satisfied that the building or alteration exhibits design excellence, it may grant development consent to the erection of the new building, or the alteration to the existing building, with:

- (a) a building height that exceeds the maximum height shown for the land on the Height of Buildings Map by up to 10%, or*
 - (b) an amount of floor space that exceeds the amount permitted as a result of the floor space ratio shown for the land on the Floor Space Ratio Map by up to 10%, or, if the building or alteration is eligible for any accommodation floor space or community floor space under Division 1 or 2, by up to 10% plus the sum of that accommodation floor space and community floor space.”*
9. As currently worded in Sydney LEP 2012, this means the 10% design excellence bonus is to be calculated on the FSR shown on the Floor Space Ratio Map, *prior* to the award of any applicable accommodation or community floor space bonus.
 10. However, at the time of drafting the design excellence provisions of Sydney LEP 2012, the 10% design excellence bonus was to be calculated on top of any applicable accommodation or community floor space. The clause as exhibited allowed a development which successfully demonstrated design excellence to secure up to 10% of both the FSR shown in the Floor Space Ratio Map *and* of any eligible accommodation or community floor space.
 11. The City’s urban design analysis and feasibility testing, undertaken to determine appropriate planning controls in Sydney LEP 2012 for renewal sites such as Epsom Park in Green Square and the APDG site in Central Sydney, also applied the design excellence bonus following, rather than prior to, the addition of accommodation or community floor space bonuses.
 12. Calculating the design excellence bonus in accordance with the current wording of the clause has meant that the 10% design excellence bonus produces comparatively less floor space for eligible sites. This reduction in total redevelopment capacity was an unintended effect of amendments made to the draft Sydney LEP 2011 and may result in there being insufficient incentive to undertake a competitive design process.
 13. Furthermore, it is intended that any accommodation or community floor space bonus awarded to a development be designed as part of the competitive design process for that site. In this respect, the design excellence incentive needs to cover the design of the additional floor space.
 14. Proposed amendments to Sydney LEP 2012 are also being progressed which include eligible accommodation or community floor space in the calculation of the design excellence incentive. These include revised planning controls for the North Rosebery Precinct in Green Square, which is subject to an endorsed planning proposal, and the AMP Precinct at Circular Quay, which is the subject of a planning proposal being reported to Council and Central Sydney Planning Committee in this reporting round.

15. The Planning Proposal, shown at **Attachment A** to this report, proposes to amend Clause 6.2.1(7)(b) in Sydney LEP 2012 so that, where a site is eligible for additional accommodation or community floor space, the potential 10% design excellence bonus is calculated based on the combined total FSR of that site.
16. It is noted, the proposed amendment is not intended to affect the way in which the potential additional design excellence floor space is calculated in relation to any other type of floor space incentive available under Sydney LEP 2012.
17. Subject to Council and the Central Sydney Planning Committee endorsing the Planning Proposal, at **Attachment A** to this report, for exhibition, it will be forwarded to the Minister for Planning and Infrastructure in accordance with Section 56 of the Environmental Planning and Assessment Act, 1979 to seek a Gateway Determination for public exhibition.
18. The outcomes of the exhibition will be reported back to Council and the Central Sydney Planning Committee to finalise the Planning Proposal.

KEY IMPLICATIONS

Strategic Alignment - Sustainable Sydney 2030 Vision

19. *Sustainable Sydney 2030* is a vision for the sustainable development of the City to 2030 and beyond. It includes 10 strategic directions to guide the future of the City, as well as 10 targets against which to measure progress. The Planning Proposal is aligned with the following *Sustainable Sydney S2030* strategic directions and objectives:
 - (a) Direction 1 - A Globally Competitive and Innovative City – The design excellence provisions in Sydney LEP 2012 encourage innovative and sustainable development of the highest standards in architectural, urban and landscape design. High quality design is essential to the image and market attractiveness of Sydney. The Planning Proposal will facilitate design excellence.
 - (b) Direction 2 provides a road map for the City to become A Leading Environmental Performer – In order to demonstrate design excellence a development proposal must address the principles of ecologically sustainable development. The Planning Proposal supports the application of the city-wide design excellence provisions.
 - (c) Direction 8 - Housing for a Diverse Population – Sydney LEP 2012 design excellence provisions seek a variety of design outcomes and building typologies, which should support the achievement of a diverse and sustainable mix of development over time. The Planning Proposal will facilitate design excellence to improve the quality of new housing development and urban renewal.

- (d) Direction 9 - Sustainable Development, Renewal and Design – *Sustainable Sydney 2030* recognises Sydney's objectives for urban design to make a positive contribution to the liveability of the City, particularly in higher density urban renewal areas. Strategic Direction 9 specifically outlines Sydney's aspirations for design excellence across the City and promotes the use of competitive design processes. The Planning Proposal will provide clarity on the application of the floor space incentive offered for demonstrating design excellence.

Environmental

20. The detailed testing undertaken by the City prior to extending the application of the design excellence provisions across the LGA examined the ability to accommodate the floor space bonus on land within several key areas of the City without unacceptable environmental and amenity impacts. This testing incorporated the additional bonus associated with calculating the 10% on top of any applicable accommodation or community floor space, rather than prior to the award of other floor space incentives.
21. The proposed amendment to Sydney LEP 2012 is unlikely to result in negative environmental impacts. All environmental impacts, including sustainable design, overshadowing, solar access, visual privacy, acoustic privacy, noise, wind and reflectivity, must be considered by the consent authority in determining whether a proposed development demonstrates design excellence.
22. The design excellence bonus floor space is not absolute. The relevant provision offers *up to* 10% additional height or FSR for design excellence. The consent authority has discretion to award less than 10% should site constraints prevent the full floor space incentive being appropriately accommodated. The incentive may be withheld in the event that a development fails to demonstrate design excellence.
23. The design excellence provisions are intended to deliver the highest standard of architectural, urban and landscape design, and as such there should be no unacceptable environmental impacts as a result of the Planning Proposal.

Economic

24. As noted in the current metropolitan strategy, the *Metropolitan Plan for Sydney 2036*, high quality design is essential to the image and market attractiveness of centres. Design excellence can act as a catalyst for investment and will contribute to the global positioning of Sydney.
25. In 2011, the City commissioned a feasibility assessment of the impact of a competitive design policy on redevelopment in urban renewal areas. The study found that the typical uplift in residual land value is higher than the cost of undertaking a competitive process and that the potential for additional floor space is a key incentive for pursuing design excellence. A floor space incentive can offset the cost of undertaking a competitive design process.

26. The Sydney LEP 2012 design excellence provisions express the floor space incentive as a proportion of the floor space before any additional accommodation or community floor space is added. This produces a smaller amount of floor space compared with the provisions as exhibited in the draft Sydney LEP 2011 and applied prior 14 December 2012 when Sydney LEP 2012 came into effect. The unintended effect of the Sydney LEP 2012 provision is to reduce both the development capacity of eligible sites and the incentive for undertaking a competitive process.
27. The Planning Proposal seeks to address this by re-instating the higher potential floor space achievable for demonstration of design excellence.

BUDGET IMPLICATIONS

28. There are no budget implications resulting from the recommended endorsement of the Planning Proposal for submission to the Department of Planning and Infrastructure and subsequent public exhibition.

RELEVANT LEGISLATION

29. *Environmental Planning and Assessment Act 1979* and *Environmental Planning and Assessment Regulation 2000*.

CRITICAL DATES / TIME FRAMES

30. It is important that this amendment progresses as quickly as possible so as to ensure the correct interpretation and application of the design excellence incentive provisions of Sydney LEP 2012. Several recently endorsed and forthcoming Planning Proposals have been prepared which allow for the design excellence incentive calculated on the total FSR of a site *including* any applicable accommodation or community floor space, which is inconsistent with the current wording of Clause 6.21(7)(b) of Sydney LEP 2012.

PUBLIC CONSULTATION

31. If issued by the Minister for Planning and Infrastructure, the Gateway Determination will set out the requirements for both public and State agency consultation.
32. It is anticipated that the Gateway Determination will require a public exhibition period of at least 14 days, in accordance with the section 4.5 of the Department of Planning Guideline *A Guide to Preparing Local Environmental Plans*.

GRAHAM JAHN, AM

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