

ITEM 7. POST EXHIBITION - 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 infrastructure 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 infrastructure 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 infrastructure 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.

In June 2013, Council and the Central Sydney Planning Committee endorsed a Planning Proposal to amend Clause 6.21(7)(b) 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 infrastructure floor space.

The Planning Proposal was submitted to the Department of Planning and Infrastructure with a request for a Gateway Determination in accordance with Section 56(1) of the *Environmental Planning and Assessment Act 1979*. The Gateway Determination to proceed with public exhibition was issued on 21 August 2013 and is at **Attachment B** to this report.

The Planning Proposal was publicly exhibited from 8 October to 25 October 2013. The exhibition generated one submission which raises concerns about the relationship between the design excellence incentive and the Central Sydney heritage floor space controls. The concerns are not directly related to this Planning Proposal and the issues raised are being considered as part of a broader review of the planning controls in Central Sydney. As such, no revisions to the exhibited Planning Proposal are proposed.

To improve the plan making process, the Minister for Planning and Infrastructure delegated his plan making powers under Section 59 of the Act to Council in December 2012. The Gateway Determination authorises Council to exercise its delegation and liaise directly with Parliamentary Counsel to draft and make the local environmental plan, giving effect to the Planning Proposal.

It is recommended that the Planning Proposal at **Attachment A** to this report be approved for submission to the Office of Parliamentary Counsel for legal drafting and making as a local environmental plan.

RECOMMENDATION

It is resolved that:

- (A) the Central Sydney Planning Committee note the submission received in response to the public exhibition of *Planning Proposal: Sydney Local Environmental Plan 2012 Design Excellence Incentive*, as outlined in the subject report;
- (B) the Central Sydney Planning Committee approve *Planning Proposal: Sydney Local Environmental Plan 2012 Design Excellence Incentive*, shown at Attachment A to the subject report, for finalisation and making as a local environmental plan under section 59 of the *Environmental Planning and Assessment Act 1979*;
- (C) authority be delegated to the Chief Executive Officer to make any minor variations to the Planning Proposal necessary to correct minor drafting errors prior to submission to Parliamentary Counsel for legal drafting; and
- (D) the Central Sydney Planning Committee note that authority is delegated to the Chief Executive Office to make the local environmental plan and request its notification on the New South Wales Legislation website following finalisation of drafting by Parliamentary Counsel.

ATTACHMENTS

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

Attachment B: Gateway Determination from the Department of Planning and Infrastructure dated 13 August 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 development application was to be prepared which established a building envelope, floor space ratio (FSR) and height appropriate for a site and its context, with 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* (Sydney LEP 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 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 under Division 1 or any community infrastructure floor space under Division 2, by up to 10% plus the sum of that accommodation floor space or community infrastructure 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 infrastructure 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 infrastructure 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 infrastructure 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 Precinct 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 infrastructure 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 the drafting of Sydney LEP 2012 and results in there being less incentive than intended to undertake a competitive design process.
 13. Furthermore, it is intended that any accommodation or community infrastructure 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 for specific sites which include eligible accommodation or community infrastructure floor space in the calculation of the design excellence incentive. These include revised planning controls for the North Rosebery Precinct in Green Square and the AMP Precinct at Circular Quay, which are subject to exhibited planning proposals.

The Planning Proposal

15. In June 2013, Council and the Central Sydney Planning Committee (CSPC) approved a planning proposal which seeks to amend Clause 6.21(7)(b) in Sydney LEP 2012 so that, where a site is eligible for additional accommodation or community infrastructure floor space, the potential 10% design excellence bonus is calculated based on the combined total FSR of that site.
16. The Planning Proposal, at **Attachment A** to this report, was submitted 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.
17. The Gateway Determination to proceed with the public exhibition was issued on 21 August 2013, as shown at **Attachment B**. The Gateway Determination required the Planning Proposal be made publicly available for a minimum of 14 days and consultation with the Sydney Harbour Foreshore Authority as a relevant agency or public authority.
18. The Planning Proposal was exhibited from 8 to 25 October 2013 and consultation letters were sent to the Australian Institute of Architects and the Property Council of Australia, as well as to the Sydney Harbour Foreshore Authority. One submission was received from The Astor, a heritage building at 123-125 Macquarie Street, Sydney. Details of the submission are discussed below.

Public Exhibition and Consideration of Submissions

19. The Astor submission questions the appropriateness of the proposed change for heritage sites. The submission considers that receiving a design excellence bonus on such sites should require an equivalent allocation of heritage floor space. It also suggests that the design excellence incentive not be calculated on top of other applicable incentives for heritage sites to ensure an equitable approach between heritage sites regardless of whether or not they are able to undertake significant redevelopment.
20. Clause 6.11 of Sydney LEP 2012 contains controls requiring the allocation of heritage floor space where certain floor space incentives offered under the LEP are utilised. Subclause (d) currently requires 50% of the additional design excellence floor space utilised to be allocated as heritage floor space.
21. It is acknowledged that this represents a reduction in heritage floor space allocation compared with the heritage floor space controls in Sydney LEP 2005, which effectively required allocation of heritage floor space equivalent to 100% of the design excellence bonus. The City is currently considering the impact of the heritage floor space controls on the operation of the heritage floor space market as part of a broader review of the planning controls in Central Sydney. This will be reported to Council and the Central Sydney Planning Committee in 2014.
22. In the meantime, the effect of this Planning Proposal, which increases the amount of design excellence floor space for sites that seek accommodation floorspace, will in turn result in an increase in the amount of heritage floor space to be allocated, given that both will be calculated as a percentage of a higher floorspace.

23. Clause 6.21 of Sydney LEP 2012 offers the design excellence incentive for sites undertaking new building or external alterations. Whilst The Astor submission believes this to discriminate against owners of heritage items not undertaking significant development, and who are therefore unable to access the design excellence incentive, it is appropriate that the design excellence incentive is linked to a competitive design process to be undertaken when significant redevelopment is proposed on a site.
24. The Planning Proposal does not seek to amend which sites may be eligible for a design excellence incentive. Rather it seeks amendment to the way in which the incentive is calculated. It is appropriate that this is calculated on top of any additional accommodation or community infrastructure floor space incentive as that floor space will need to form part of the competitive design process for that site.
25. As a result of the exhibition process, no changes are proposed to the Planning Proposal. The key heritage floor space issues raised in the submission will be considered as part of the Central Sydney planning review, to be reported in 2014.

Amendment to the Planning Proposal

26. Minor refinements to the Planning Proposal are incorporated to reflect a change in wording of Clause 6.21(7) following the commencement of Sydney LEP 2012 (Amendment No 2) in September 2013. Amendment No 2 addressed an ambiguity in wording of the design excellence clause, specifically ensuring a clear reference to community infrastructure floor space. It did not change the intent of the design excellence clause. The Planning Proposal has been amended to ensure terminology consistent with Amendment No 2 is used throughout, as shown at **Attachment A** to this report.

Next Steps

27. If Council and the Central Sydney Planning Committee approve the Planning Proposal at **Attachment A** to this report, it will be submitted to the Office of Parliamentary Counsel requesting the plan be legally drafted. It will then be made under Section 59 of the *Environmental Planning and Assessment Act 1979*, with final sign-off by the Chief Executive Officer under powers delegated by the Minister for Planning and Infrastructure. This is the final step in the plan making process. Once finalised, the plan will be submitted to the Department of Planning and Infrastructure for notification on the New South Wales Legislation website, giving effect to the proposed amendment.

KEY IMPLICATIONS

Strategic Alignment - Sustainable Sydney 2030 Vision

28. *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

- 29. 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 infrastructure floor space, rather than prior to the award of other floor space incentives.
- 30. 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.
- 31. 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.
- 32. 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

33. 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.
34. 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.
35. 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 infrastructure 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 to 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.
36. The Planning Proposal seeks to address this by re-instating the higher potential floor space achievable for demonstration of design excellence.

RELEVANT LEGISLATION

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

CRITICAL DATES / TIME FRAMES

38. It is important that this amendment progresses in a timely manner so as to ensure the correct interpretation and application of the design excellence incentive provisions of Sydney LEP 2012. Several recently exhibited 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 infrastructure floor space, which is inconsistent with the current wording of Clause 6.21(7)(b) of Sydney LEP 2012.

PUBLIC CONSULTATION

39. The exhibition of the Planning Proposal was subject to the conditions of the Gateway Determination issued by the Minister for Planning and Infrastructure, as shown at **Attachment B** to this report.
40. The Planning Proposal was exhibited for a minimum 14 days, from 8 to 25 October 2013. Public notice of the exhibition was given in the *Sydney Morning Herald* on 8 October 2013 and the City of Sydney website. Details of the Planning Proposal were placed in all five of the City's Neighbourhood Service Centres.
41. Consultation letters were also sent to the Australian Institute of Architects, the Property Council of Australia and the Sydney Harbour Foreshore Authority, as relevant agencies, giving 21 days for comment.

42. One submission was received from The Astor building, a heritage site at Macquarie Street in Sydney, as detailed earlier in this report. It raises concerns about the relationship between the design excellence incentive and the Central Sydney heritage floor space controls. The concerns are not directly related to this Planning Proposal and the issues raised are being considered as part of a broader review of the planning controls in Central Sydney. As such, no revisions to the Planning Proposal are proposed.

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