

ITEM 14. PUBLIC EXHIBITION - PLANNING PROPOSAL - HOUSEKEEPING AND MINOR POLICY AMENDMENTS TO SYDNEY LOCAL ENVIRONMENTAL PLAN 2012 - AUGUST 2016**FILE NO: X006012****SUMMARY**

Minor amendments are recommended to Sydney Local Environmental Plan 2012 (Sydney LEP 2012) to clarify, remove duplicated unnecessary provisions and consolidate several planning controls. This report recommends that Council and the Central Sydney Planning Committee endorse a Planning Proposal amending the controls to:

- include public art as permissible with consent in the SP2 Infrastructure and RE1 Public Recreation zones;
- allow demolition consent to be granted if a site-specific development control plan has been approved or as part of a staged development application;
- apply the requirements of *State Environmental Planning Policy 65 Design Quality of Residential Apartment Development* (SEPP 65) and the Apartment Design Guide (ADG) to serviced apartments;
- remove “use of footpath by food and drink premises” as exempt development as the provisions duplicate those in the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*;
- amend Clause 6.11 and Clause 6.11A to specify that Heritage Floor Space is to be allocated to the site, rather than to the building; and
- amend Clause 7.22 to specify that it applies to existing non-residential buildings rather than land in the R1 General Residential zone.

The City recognises the artistic and social value of public art. Supporting creative practices to make creativity visible and accessible by promoting public art is consistent with the *City's Draft Creative City Cultural Policy and Action Plan 2014-2024* and the *City Art Public Art Strategy*.

Public art is currently permissible in all zones, except in the R2 Low Density Residential, SP1 Special Activities, SP2 Infrastructure, and RE1 Public Recreation zones. It is proposed to allow public art as a permissible use with consent in the SP2 Infrastructure and RE1 Public Recreation zones, as these zones include parks, plazas and roadways, where public art is suitable due to the public nature of the land.

Under existing controls, demolition consent requires that the consent authority be satisfied that the land will be comprehensively redeveloped under the development consent or under an existing development consent. This clause was introduced to minimise unsightly “holes in the ground”, common in the 1990s as unfavourable market conditions stalled construction activity.

To streamline the development process and enable timely delivery of complex development projects, it is recommended to allow demolition consent to be granted if a site-specific development control plan has been approved or it is part of a staged development application. Potential impacts are already managed by a condition of consent which enables Council to carry out site rectification without costs. In uncertain market conditions, the risk of projects stalling after demolition exists.

Under current planning controls, the City requires standards of design and construction for serviced apartments to be consistent with residential apartments. Changes made to SEPP 65 in 2015 specify that, unless a local environmental plan states otherwise, the SEPP does not apply to serviced apartments. This planning proposal will ensure SEPP 65 and the ADG apply to serviced apartments. This means that serviced apartments will be designed and constructed to the same standard as residential flat buildings as intended in Council's existing policy.

Since the making of SLEP 2012, the use of the footpath by food and drink premises has been exempt development. In 2014, *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (SEPP) identified the use of a footway or public open space as an outdoor dining area associated with lawful food and drink premises to be exempt development, with similar criteria to be met as in SLEP2012. As SLEP 2012 does not apply to development specified in the SEPP as exempt, this provision is now unnecessary and is recommended to be removed to avoid duplication and possible confusion.

The City's Heritage Floor Space scheme is set out in SLEP 2012 and Sydney Development Control Plan 2012 (Sydney DCP 2012). SLEP 2012 controls set the framework under which owners of heritage buildings in Central Sydney may be awarded Heritage Floor Space after completing conservation works on the heritage item. Owners may then sell that Heritage Floor Space to developers who, as a condition of using additional floor space, are required to allocate Heritage Floor Space to their development site.

SLEP 2012 specifies the amount of Heritage Floor Space required to be allocated based on the type of additional floor space utilised in a building and the location of the development. The clause requires Heritage Floor Space to be allocated "to the building".

Where the building occupies the entire site, as is common in Central Sydney, there is no issue with using "building" and "site" interchangeably, as they are one and the same. Developments that involves an entire block with multiple buildings on one site are now more common. Reference to "building" has caused some lack of clarity in the calculation of Heritage Floor Space to be allocated in particular circumstances.

This recommended amendment will clarify how Heritage Floor Space is calculated and be consistent with the intent of the Heritage Floor Space scheme.

Clause 7.22 of SLEP 2012 relates to the use of existing non-residential buildings in the R1 General Residential zone. The objective is to provide for the reuse of buildings for non-residential purposes. Clause 7.22(2) is recommended to be amended to specify that the clause applies to existing non-residential buildings rather than "land" to avoid uncertainty.

RECOMMENDATION

It is resolved that:

- (A) the Central Sydney Planning Committee approve the *Planning Proposal - Housekeeping and Minor Policy Amendments to Sydney Local Environmental Plan 2012 - August 2016*, shown at **Attachment A** to the subject report, for submission to the Greater Sydney Commission with a request for a Gateway determination;
- (B) the Central Sydney Planning Committee approve the *Planning Proposal - Housekeeping and Minor Policy Amendments to Sydney Local Environmental Plan 2012 - August 2016* for public authority consultation and public exhibition in accordance with any conditions imposed under the Gateway determination;
- (C) the Central Sydney Planning Committee note the recommendation to Council's Planning and Development Committee on 9 August 2016, that Council confirmation from the Minister or the Greater Sydney Commission whether it has the delegation to exercise the plan making functions of the Greater Sydney Commission under section 59 of the *Environmental Planning and Assessment Act 1979* to make the amending local environmental plan; and
- (D) the Central Sydney Planning Committee note the recommendation to Council's Planning and Development Committee on 9 August 2016, that authority be delegated to the Chief Executive Officer to make any minor variations to *Planning Proposal - Housekeeping and Minor Policy Amendments to Sydney Local Environmental Plan 2012 - August 2016* following receipt of the Gateway Determination and prior to public exhibition.

ATTACHMENTS

Attachment A: *Planning Proposal - Housekeeping and Minor Policy Amendments to Sydney Local Environmental Plan 2012 – August 2016*

BACKGROUND

1. The *Sydney Local Environmental Plan 2012 (SLEP 2012)* came into operation on 14 December 2012 and was the product of a comprehensive program of review and rationalisation of the City's previous controls and development policies.
2. Through the assessment of development applications, the City monitors and reviews the controls to deliver the long term visions of *Sustainable Sydney 2030*, and must respond to the economic, social, and cultural challenges and opportunities, as well responding to the changes imposed by the NSW Government.
3. The minor policy and housekeeping amendments recommended to SLEP 2012 include:
 - (a) allowing Public Art as permissible development in the SP2 Infrastructure and RE1 Public Recreation zones;
 - (b) allowing demolition consent to be granted if a site-specific development control plan has been adopted or as part of a Stage 1 development application;
 - (c) inserting new clause to require serviced apartments to comply with *State Environmental Planning Policy 65 (SEPP 65)* and the *Apartment Design Guide (ADG)*;
 - (d) removing use of footpath by food and drink premises as exempt development;
 - (e) amending wording to explain the allocation of heritage floor space to be consistent with intent and *Sydney Development Control Plan 2012 (SDCP 2012)*; and
 - (f) amending wording to clarify Clause 7.22 applies to existing non-residential buildings to be consistent with the intent of the clause.

KEY IMPLICATIONS

4. The key considerations for the proposed controls and their rationale are explained below. A detailed explanation and justification for each LEP amendment is included in the planning proposal at **Attachment A**.

Public Art as permissible use in SP2 Infrastructure and RE1 Public Recreation zones

5. As part of consultation to inform *Sustainable Sydney 2030*, the community requested more public art in the City. This was incorporated in *Sustainable Sydney 2030* as Strategic Direction 7 'A Cultural and Creative City'. In addition, the City's Aboriginal and Torres Strait Islander communities and the broader community requested more representation and celebration of our First People's culture in the public spaces of the City. This was included as a project idea in *Sustainable Sydney 2030* 'Idea 4, The Eora Journey'.
6. In 2011, responding to community request and a key action of *Sustainable Sydney 2030*, Council endorsed the *City Art Public Art Strategy*. The strategy outlines the City's commitment to a dynamic public art program.

7. Public art is currently permissible in all zones under SLEP 2012, except in the R2 Low Density Residential, SP1 Special Activities, SP2 Infrastructure, and RE1 Public Recreation zones.
8. It is proposed to allow public art as permissible development with consent in the SP2 Infrastructure and RE1 Public Recreation zones, as these zones include parks, plazas and roadways, where public art is suitable due to the public nature of the land. Public art in the R2 Low Density Residential zone or the SP1 Special Activities zone may be exempt development under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (SEPP).

Demolition

9. Existing Clause 7.19 of SLEP2012 allows demolition consent to be granted provided the Council and Central Sydney Planning Committee are satisfied that the land will be comprehensively redeveloped under the development consent or under an existing development consent.
10. This clause was introduced to minimise unsightly “holes in the ground”, common in the 1990s as unfavourable market conditions stalled construction activity.
11. Currently, a standard condition is imposed on demolition consents for site rectification to require the owner of the site to enter into a legal obligation with Council providing for a bank guarantee, rights for Council to carry out works to make the building safe, if necessary, and for the ground level to be landscaped (including for any hole to be covered and land above to be of acceptable appearance), as well as for the completion of the ground floor of a building if constructed to a tenable stage.
12. To streamline the development process and enable timely delivery of development, it is recommended to allow development consent to be granted if a site-specific development control plan has been approved for the site or it is part of a staged development application. Given the conditions of consent for demolition would require entry into a site rectification deed to mitigate against visual impacts, the proposal would help support timely delivery of urban renewal in line with *A Plan for Growing Sydney* and *Sustainable Sydney 2030*.

Serviced Apartments

13. In 2002, *State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65)* was made to improve the design quality of residential apartment development in NSW.
14. In June 2015, a review resulted in amendments to the SEPP 65 and a new *Apartment Design Guide*. The amendment included a new provision that, unless a local environmental plan states otherwise, SEPP 65 does not apply to a boarding house or serviced apartment.
15. Under current planning controls, the City requires standards of design and construction for serviced apartments to be consistent with residential apartments. Changes made to SEPP 65 in 2015 specify that, unless a local environmental plan states otherwise, the SEPP does not apply to serviced apartments as they are permitted to be converted to residential apartments following simple Section 96 modification development application.

16. This planning proposal will ensure SEPP 65 and the ADG apply to serviced apartments. This means that serviced apartments will be designed and constructed to the same standard as residential flat buildings as intended in Council's existing policy. In the relatively high volume Sydney CBD apartment market, this provides two primary benefits: it provides property owners flexibility in the bringing their apartments to market; and provides another source of tourist and visitor accommodation supply.
17. SDCP 2012 already contains this objective at Section 4.4.8(b) which states: "Ensure serviced apartment developments provide a level of health and amenity for residents to ensure any future conversion to residential flats is not compromised by poor amenity." This planning proposal gives effect to SEPP 65 and the ADG for serviced apartments.
18. A serviced apartment is a building or part of a building providing self-contained accommodation to tourists or visitors on a commercial basis and that is regularly serviced or cleaned by the owner or manager of the building or part of the building or the owner's or manager's agents.
19. Clause 4(4) of SEPP 65 specifies that, unless a local environmental plan states otherwise, SEPP 65 does not apply to serviced apartments.
20. The intent of the planning proposal is to ensure SEPP 65 and the ADG apply to serviced apartments. Consistent with Council's existing controls, this means that serviced apartments will continue to be designed and constructed to the same standard as residential flat buildings.

Use of footpath by food and drink premises

21. Schedule 2 Exempt Development in SLEP 2012 exempts the use of the footpath by food and drink premises. Development must be on public land or a public road, be associated with lawful food and drink premises, must not be associated with a pub, must not provide seating for more than 20 persons and must not be used before 7am or after 10pm.
22. The use recently has been identified as exempt development in the NSW Government's *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (SEPP) since the making of SLEP 2012 in December 2012.
23. In February 2014, the SEPP identified the use of a footway or public open space as an outdoor dining area associated with a lawful food and drink premises to be exempt development. For it to be exempt, development must not be associated with a pub or a small bar, be carried out in accordance with an approval granted under section 125 of the *Roads Act 1993*, including in accordance with any hours of operation, and be carried out in accordance with any approval granted under section 68 of the *Local Government Act 1993*. These standards are generally broader than those in the SLEP2012, other than in relation to small bars.
24. Clause 1.9(1) of the SEPP states that a local environmental plan does not apply to development that is specified in the SEPP as exempt development. Therefore SLEP 2012 would not apply to the use of the footpath by food and drink premises, as it is exempt development under the SEPP. Outdoor dining associated with a pub or small bar is not exempt development in the SEPP, and so Sydney LEP 2012 continues to apply.

25. The provision is recommended to be removed to avoid duplication and confusion. Council may regulate footway dining under the Roads Act and Local Government Acts, for example hours of use and footpath area. Council's draft policy for footway dining was approved for public exhibition and will be reported back to Council and the Central Sydney Planning Committee later in 2016.

Heritage Floor Space

26. The City's Heritage Floor Space scheme is set out in SLEP 2012 and Sydney DCP 2012. SLEP 2012 controls set the framework under which owners of heritage buildings in Central Sydney may be awarded Heritage Floor Space after completing conservation works on the heritage item. Owners may sell that Heritage Floor Space to developers who, as a condition of using additional floor space, are required to allocate Heritage Floor Space to their development site.
27. Clause 6.11 of SLEP 2012 specifies the amount of Heritage Floor Space is required to be allocated based on the type of additional floor space utilised in a building and the location of the development. The clause requires Heritage Floor Space to be allocated "to the building". Clause 6.11A also refers to heritage floor space allocated to the building.
28. Where the building occupies the entire site, as is common in Central Sydney, there is no issue with using "building" and "site" interchangeably, as they are one and the same. Developments that involve an entire block with multiple separate buildings are now more common. Reference to "building" led to a lack of certainty in the calculation of Heritage Floor Space in particular circumstances.
29. The intent of the allocation is that if a development exceeds the base Floor Space Ratio (FSR) for the site, then Heritage Floor Space will need to be allocated for the additional floor space. As FSR and additional floor space are calculated across the entire site, so too should Heritage Floor Space. It is proposed to amend the clause so that Heritage Floor Space is allocated for the whole site to avoid confusion and be consistent with the intent of the Heritage Floor Space scheme.

Use of existing non-residential buildings in R1 General Residential Zone

30. Clause 7.22 of SLEP 2012 specifies when food and drink premises, shops and business premises, office premises or light industry may be granted consent in the R1 General Residential zone.
31. Clause 7.22(1) clearly states the objective of the clause "to provide for the reuse of buildings for non-residential purposes" while Clause 7.22(2) specifies that it applies to "land in Zone R1 General Residential".
32. The proposal amends the clause to specify that it applies to "existing non-residential buildings", rather than "land" to avoid uncertainty and be consistent with the objective of the clause.

Strategic Alignment

33. *A Plan for Growing Sydney* is the State Government strategic document that outlines a vision for Sydney over the next 20 years. Under amendments to the *Environmental Planning and Assessment Act 1979* that took effect on 27 January 2016, it is taken to be the regional plan for the Greater Sydney Region and must be given effect in any planning proposal applying to land within the region.

34. *A Plan for Growing Sydney* identifies key challenges facing Sydney, including a population increase of 1.6 million by 2034, 689,000 new jobs by 2031, and a requirement for 664,000 new homes. *A Plan for Growing Sydney* sets out the following four goals for Sydney, which are supported by 22 directions and numerous associated actions:
- (a) a competitive economy with world-class services and transport;
 - (b) a city of housing choice with homes that meet our needs and lifestyles;
 - (c) a great place to live with communities that are strong, healthy and well connected; and
 - (d) a sustainable and resilient city that protects the natural environment and has a balanced approach to the use of land and resources.
35. The planning proposal is consistent with relevant goals, directions and actions of the Plan. By supporting creative expression, ensuring residential amenity standards for serviced apartments, enabling timely delivery of development and clarifying LEP provisions, the proposal will support *Goal 2: A city of housing choice, with homes that meet our needs* and *Goal 3: A great place to live with communities that are strong, healthy and well connected*.
36. *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 SS2030 strategic directions and objectives:
- (a) Direction 7 - A Cultural and Creative City – Allowing public art as permissible with consent in the SP2 Infrastructure and RE1 Public Recreation zones will support cultural activity, participation and interaction, in particular, *Action 7.2.3 Use Sydney's streets, laneways and public spaces to showcase different forms of art*.
 - (b) Direction 8 – Housing for a Diverse Population – By requiring the same development standards as residential apartments, conversions of serviced apartments will need to consider the design principles, such as diversity and adaptability, consistent with *Action 8.2.3 Ensure new residential development is well designed for people with a disability or limited mobility, the elderly and is adaptable for use by different household types*.

RELEVANT LEGISLATION

37. *Environmental Planning and Assessment Act 1979*.

CRITICAL DATES / TIME FRAMES

Planning Proposal process

38. Should Council and the Central Sydney Planning Committee endorse the attached planning proposal for exhibition and consultation, it will be forwarded to the Greater Sydney Commission in accordance with section 56 of the Environmental Planning and Assessment Act 1979. The Greater Sydney Commission will then provide a Gateway determination to either proceed to consultation, with or without variation, or to resubmit the planning proposal.

39. The typical timeframe, once a Gateway determination is made, is 21 days for public authority consultation and 28 days public exhibition. The Gateway will also determine the timeframe for the completion of the Local Environmental Plan amendment.
40. Following public authority consultation and public exhibition, the outcomes will be reported to Council and the Central Sydney Planning Committee.

Delegation of plan-making functions

41. In October 2012, the Minister for Planning delegated plan-making functions to council s to improve the local plan-making process. In December 2012, Council resolved to accept the delegation.
42. Council needs to receive an authorisation on a case-by-case basis to exercise the delegation. The authorisation is given through the Gateway process. Exercising the delegation means a faster plan-making process with less involvement of the Department of Planning and Environment.
43. This report recommends Council seek confirmation of its delegated authority to exercise the plan-making functions of the Greater Sydney Commission (as part of an amended Gateway determination) under section 59 of the *Environmental Planning and Assessment Act 1979* to make the local environmental plan.

PUBLIC CONSULTATION

44. The minimum exhibition period for the planning proposal will be determined by the Greater Sydney Commission. The consultation would take place in accordance with the requirements of:
 - (a) the Gateway determination to be issued by the Greater Sydney Commission under s.56 of the *Environmental Planning and Assessment Act 1979*; and
 - (b) the *Environmental Planning and Assessment Regulation 2000*.
45. This public exhibition would most likely be a minimum of 28 days, with notification:
 - (a) on the City of Sydney website;
 - (b) in newspapers that circulate widely in the City of Sydney Local Government Area; and
 - (c) in writing to the owners, adjoining and nearby landowners, relevant community groups and stakeholders, and the community in the immediate vicinity of the site.

GRAHAM JAHN, AM

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