

ITEM 5. PUBLIC EXHIBITION - PLANNING PROPOSAL - SERVICED APARTMENTS- AMENDMENTS TO SYDNEY LOCAL ENVIRONMENTAL PLAN 2012 - SYDNEY LOCAL ENVIRONMENTAL PLAN 2005 - SYDNEY LOCAL ENVIRONMENTAL PLAN-GREEN SQUARE TOWN CENTRE-2013 AND SYDNEY LOCAL ENVIRONMENTAL PLAN-GREEN SQUARE TOWN CENTRE STAGE 2-2013

FILE NO: X006784

SUMMARY

Following discussion at its meeting on 11 August 2016, the Central Sydney Planning Committee deferred consideration of this proposed serviced apartment Local Environmental Plan amendment, subject to further information and consultation. At its meeting on 15 August 2016, consistent with the Central Sydney Planning Committee resolution, Council also resolved to defer consideration of this amendment.

Amendments to clarify and update serviced apartment planning controls are proposed for:

- Sydney Local Environmental Plan 2012 (Sydney LEP 2012);
- Sydney Local Environmental Plan 2005;
- Sydney Local Environmental Plan (Green Square Town Centre) 2013; and
- Sydney Local Environmental Plan (Green Square Town Centre Stage 2) 2013.

The proposal seeks to continue the two decade practice of assessing serviced apartments proposals with amenity standards comparable to residential proposals. Changes made to SEPP 65 in 2015 specify that unless a Local Environmental Plan states otherwise (rather than say a DCP), the SEPP does not apply to serviced apartments, hence this proposal.

This report recommends that Council and the Central Sydney Planning Committee support moving the requirement from the DCP to the LEP. This involves approving a Planning Proposal amending the controls to apply *State Environmental Planning Policy 65 Design Quality of Residential Apartment Development* (SEPP 65) and the Apartment Design Guide to serviced apartments, consistent with the policy position established in *Central Sydney Development Control Plan 1996*.

Residential and serviced apartment buildings were specifically encouraged by the *Central Sydney LEP and DCP 1996 (CS DCP 1996)* through higher floor space ratios compared to other buildings. Clause 6.1 of *CS DCP 1996* required that “serviced apartments, which often cater for longer stay visitors, should have a comparable level of amenity to residential buildings so that any subsequent conversion of serviced apartments to permanent residential stock is not constrained by poor amenity”.

The provisions contained in Section 6 of CS DCP 1996 for residential and serviced apartments were a forerunner to State Environmental Planning Policy 65 and the Residential Flat Design Code. These included objectives for residential and serviced apartments in relation to daylight, side and rear setbacks, light wells and internal courtyards, sun access, natural ventilation, visual privacy, outlook, acoustic privacy, floor to ceiling heights, storage, mix of units within serviced apartment buildings, size of units, and maximum number of units from a common lobby.

The assessment of residential buildings and serviced apartments buildings to comparable amenity standards has been a continuous requirement in Central Sydney since at least 1996. The effect of this has been to ensure that buildings suitable for permanent, long stay and medium stay accommodation share similar levels of amenity as well as enabling the inherent flexibility for serviced apartment buildings to be strata subdivided into residential at a later date without inherent conflict.

The amendment represents no policy change and will provide clarity and certainty in amenity standards for serviced apartments, flexibility in the use of buildings and ensures later conversions do not result in substandard residential accommodation. This report requests approval of the attached planning proposal to be submitted for gateway determination and further public consultation. All views and comments submitted will be considered and addressed in a future report to Council and the Central Sydney Planning Committee prior to any final decision.

RECOMMENDATION

It is resolved that:

- (A) the Central Sydney Planning Committee approve the *Planning Proposal - Serviced Apartments*, 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 - Serviced Apartments* 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 10 October 2016 that Council seek authority from the Minister or the Greater Sydney Commission 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 10 October 2016, that authority be delegated to the Chief Executive Officer to make any minor variations to *Planning Proposal – Serviced Apartments* following receipt of the Gateway Determination and prior to public exhibition.

ATTACHMENTS

Attachment A: *Planning Proposal – Serviced Apartments*

BACKGROUND

1. 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 as responding to the changes imposed by the NSW Government.
2. This planning proposal recommends inserting a new clause into the Sydney Local Environmental Plan to ensure *State Environmental Planning Policy 65* (SEPP 65) and the *Apartment Design Guide* applies to serviced apartments.
3. This amendment was considered by Council on 15 August 2016 and the Central Sydney Planning Committee (CSPC) on 11 August 2016. Council and the CSPC resolved to defer the matter, following a representation made at the meeting of the CSPC on 11 August 2016, to enable further consultation and address the concerns raised.

KEY IMPLICATIONS

4. Under the former Living Sydney strategy, the *Central Sydney LEP and DCP 1996* encouraged residential and serviced apartments by introducing higher maximum floor space ratios compared to other uses. Section 6 of the 1996 DCP set out the amenity standards for residential and serviced apartments buildings. It required that both uses met comparable amenity standards so that “any subsequent conversion of serviced apartments to permanent residential stock is not constrained by poor amenity”. In the DCP, the definition of ‘dwelling unit’ refers to units in both residential and serviced apartments.
5. 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. The City continued to use the DCP to treat serviced apartments and residential as meeting comparable amenity standards.
6. In June 2015, amendments to SEPP 65 and a new *Apartment Design Guide* were brought in, updating the former Residential Flat Design Code. The SEPP amendment included a new provision that, unless the relevant Local Environmental Plan states otherwise, SEPP 65 does not apply to a boarding house or serviced apartments. This meant the City needed to move its longstanding provisions from the DCP to the LEP.
7. Under current planning controls, the City requires standards of design and construction for serviced apartments to be consistent with residential apartments. *Sydney Development Control Plan 2012* (Sydney DCP 2012) currently 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.*” Section 4.2 relates to amenity for residents in residential flat buildings and references the former Residential Flat Design Code.
8. The intent of this planning proposal is to ensure SEPP 65 and the *Apartment Design Guide* apply to serviced apartments, consistent with longstanding Council policy.

9. A representation by a submitter at the meeting of the CSPC in August 2016 raised concerns with the application of SEPP 65 and the *Apartment Design Guide* to serviced apartments, stating that the solar access and building separation requirements of the *Apartment Design Guide* would prevent serviced apartments being located at the lower levels of the building. All serviced apartment projects since 1996 by the submitter have satisfied the proposed control and therefore its relocation to the LEP would represent continuity rather than change.
10. Following representation at the meeting of the CSPC in August 2016, two discussions have occurred with the submitter. It was suggested that a property title instrument could be used to constrain conversion to residential, however, this would reduce flexibility for conversion according to the submitter.
11. This report recommends continuing with the existing policy of requiring the same standards for serviced apartments as for residential flat buildings. Section 4.2 of Sydney DCP 2012 contains controls addressing the principles of SEPP 65 and guidance in the *Apartment Design Guide*, including solar and daylight access and ventilation.
12. This approach provides continuity and clarity that residential minimum amenity provisions are to be considered as part of the assessment. It allows for the greatest flexibility in the future use of a building, as serviced apartments are very similar in layout to residential apartments if not identical. The approach allows conversion to occur at a later time without adverse amenity impact that would otherwise require significant structural changes and re-design of the building. Solar access and building separation are extremely difficult and costly to achieve retrospectively, should a building not already meet these requirements.
13. Since 2002, Council has received and approved over 1,900 serviced apartments units which adds significant supply and diversity to the tourist and visitor accommodation market, demonstrating no barrier to the supply of the serviced apartment market due to the application of Council's existing policy.
14. In the Land and Environment Court, Council relies on the residential amenity controls contained within Section 4.2 of Sydney DCP 2012 relating to residential flat developments. This approach would remove doubt as to the standard that is required for serviced apartments when considering these applications.
15. Alternative approaches, including only requiring strata subdivided serviced apartments or for serviced apartments of a particular size to meet amenity standards, cannot ensure that any future conversion to residential apartments will not be compromised or constrained by inadequate solar access, building separation or cross ventilation if significant structural and re-design of the building is required in order to comply. In addition, future strata subdivision could be approved by a private certifier without Council approval.
16. These alternatives are not recommended, because it will result in poorer amenity standards for visitors and the same difficulties occur in meeting amenity standards for later conversions which will be costly to achieve. The alternative approaches do not address the policy objective to ensure appropriate amenity of future residential apartment conversions.
17. For the above reasons, this option is recommended to:

- (a) provide clarity and certainty in amenity standards;
 - (b) continue a successful existing policy;
 - (c) allow flexibility in building use; and
 - (d) ensure residential amenity can be achieved through structural building design for any future conversions.
18. A detailed explanation and justification for the LEP amendment is included in the planning proposal at **Attachment A**.

Alternatives

19. Under Exempt and Complying, serviced apartment buildings can be strata subdivided by private certification; or through the lodgement of a DA. Once subdivided into individual ownership, it is extremely difficult to enforce non-residential use of the apartments by individual owners. The planning alternative is to require future serviced apartment approvals to be subject of a covenant/instrument on title constraining their future subdivision so that they remain on one title or in one stratum to prevent their conversion to permanent residential without meeting residential amenity requirements. This is not preferred, but is the alternative.

Strategic Alignment

20. *A Plan for Growing Sydney* is the State Government's strategic document that outlines a vision for Sydney's growth and must be addressed in any planning proposal.
21. The planning proposal is consistent with relevant goals, directions and actions of the Plan. By 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*.
22. *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 direction and objectives:
- (a) 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

23. *Environmental Planning and Assessment Act 1979*.

CRITICAL DATES / TIME FRAMES**Planning Proposal process**

24. 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.
25. 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.
26. 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

27. In October 2012, the Minister for Planning delegated plan-making functions to councils to improve the local plan-making process. In December 2012, Council resolved to accept the delegation.
28. 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.
29. 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

30. 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 section 56 of the *Environmental Planning and Assessment Act 1979*; and
 - (b) the *Environmental Planning and Assessment Regulation 2000*.
31. 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.
32. This report requests approval to consult with the wider community for the attached draft planning proposal through the public exhibition process. All views and comments submitted will be considered and addressed in a report to Council and the Central Sydney Planning Committee prior to any final decision.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

(Karen Judd, Specialist Planner)