

ITEM 7. POST EXHIBITION - PLANNING PROPOSAL - STREET ART AS EXEMPT DEVELOPMENT - AMENDMENTS TO SYDNEY AND SOUTH SYDNEY LOCAL ENVIRONMENTAL PLANS

FILE NO: X007826

SUMMARY

The City recognises the artistic and social value of street art. Supporting lawfully created street art works in appropriate locations ensures creativity is visible and accessible, and is consistent with the City's *Creative City Cultural Policy and Action Plan 2014-2024* and the *City Art Public Art Strategy*. It provides young and emerging artists opportunities for artistic expression and property owners opportunities to support, participate and contribute to a lively, creative and engaged city.

This report details the outcomes of the recent public exhibition of the Planning Proposal and recommends Council and the Central Sydney Planning Committee approve the planning proposal for finalisation and making as a local environmental plan.

This Planning Proposal allows street art to be exempt development outside of conservation areas and special character areas, as well as excluding heritage items, and circumstances in which street art:

- a) is not advertising;
- b) has land owners consent;
- c) does not discriminate against or vilify a person or section of the community;
- d) is not sexually exploitative or degrading;
- e) does not use language or depict material contrary to prevailing community standards; and
- f) does not infringe the intellectual property rights of any person; or
- g) does not project from a surface.

The Planning Proposal was placed on public exhibition from 26 April to 23 May 2017. Two submissions were received, one submission from a resident and one from the Office of Environment and Heritage.

No changes are recommended to the Planning Proposal following public consultation.

RECOMMENDATION

It is resolved that:

- (A) the Central Sydney Planning Committee note the submissions in response to the public exhibition of *Planning Proposal - Street Art as Exempt Development – Amendments to Sydney and South Sydney Local Environmental Plans* as shown at **Attachment A** to the subject report;

- (B) the Central Sydney Planning Committee approve the *Planning Proposal – Street Art as Exempt Development - Amendments to Sydney and South Sydney Local Environmental Plans*, as shown at **Attachment B** to the subject report, to be made as a local environmental plan under section 59 of the *Environmental Planning and Assessment Act 1979*; and
- (C) the Central Sydney Planning Committee note the recommendation to Council’s Planning and Development Committee on 19 June 2017 that authority be delegated to the Chief Executive Officer to make any minor variations to *Planning Proposal - Street Art as Exempt Development - Amendments to Sydney and South Sydney Local Environmental Plans* to correct drafting errors prior to finalisation of the local environmental plan.

ATTACHMENTS

Attachment A: Summary of submissions

Attachment B: Planning Proposal – Street Art as Exempt Development – Amendments to Sydney and South Sydney Local Environmental Plans

BACKGROUND

1. On 28 July 2014, Council, when considering a Notice of Motion on Graffiti Spaces, noted the increased opportunities for street art offered by the *Creative City Cultural Policy and Action Plan 2014-2024*, and finalisation of street art guidelines. The guidelines include initiatives for street art and commissioned murals whereby property owners and artists can work together to install artwork on private property.
2. In February 2017, Council considered the Street Art Review Report. The report outlined the review of the City's Street Art Policies and Procedures, providing a summary of current legislative and policy frameworks, and the City's current practices. The report identified areas for improvement, proposing a number of actions and pilot projects.
3. At the same meeting on 27 February 2017, Council, and separately the Central Sydney Planning Committee (CSPC) on 23 February 2017, resolved to approve *Planning Proposal – Street Art as Exempt Development Amendments to Sydney and South Sydney Local Environmental Plans*, for submission to the Minister for Planning with a request for a Gateway Determination.
4. The Greater Sydney Commission's delegate issued a Gateway Determination for the *Planning Proposal – Street Art as Exempt Development Amendments to Sydney and South Sydney Local Environmental Plans* on 30 March 2017 allowing community and public authority consultation.
5. The Planning Proposal was placed on public exhibition from 26 April to 23 May 2017. Documents were made available for viewing at all of the City's neighbourhood serviced centres and the One Stop Shop, as well as on the City's website. A public notice was placed in The Sydney Morning Herald, the Central Courier and Wentworth Courier on 26 April 2017, and Inner West Courier and Southern Courier on 2 May 2017. The results of the public exhibition are discussed in this report.
6. The plan making functions of the Greater Sydney Commission have been delegated to the Council for this Planning Proposal. If the Council and the CSPC approve the planning proposal as recommended in this report, the City has delegation to amend the Sydney and South Sydney local environmental plans and to make the changes bringing them into effect.

The Planning Proposal

7. The Planning Proposal at **Attachment B** seeks to amend various Sydney and South Sydney local environmental plans by allowing street art to be exempt development, if it is not located within a conservation area, special character area or on a heritage item, and meets specified criteria.
8. To be exempt development, street art must:
 - (a) be inscriptions, words, figures or word designs that are marked, scratched, drawn sprayed, painted, pasted, applied or otherwise affixed to a surface of an asset, including murals and graffiti, but does not include an advertisement, advertising structure or signage;
 - (b) have written evidence of the building or premises owner's consent to which the work is applied;

- (c) comply with all Commonwealth and State legislation, including:
 - (i) not discriminate against or vilify a person or section of the community;
 - (ii) not be sexually exploitative or degrading;
 - (iii) not use language or depict material contrary to prevailing community standards; and
 - (iv) not infringe the intellectual property rights of any person;
 - (d) not be located on a heritage item, in a heritage conservation area or special character area; and
 - (e) not project from a surface.
9. Where street art is proposed on a heritage item, in a heritage conservation area or in a special character area or cannot meet the specified criteria, a development application under the Environmental Planning and Assessment Act 1979 will be required. Street art that includes an advertisement or signage will not be exempt development under the local environmental plans.

KEY IMPLICATIONS

Outcomes of public exhibition and public authority consultation

- 10. Public exhibition and public authority consultation was carried out in accordance with the Gateway Determination. The Gateway required consultation with the Office of Environment and Heritage.
- 11. Two submissions were received. The Office of Environment and Heritage did not object but raised concern about street art in the vicinity of heritage items. A letter of support was received from a resident.
- 12. Key issues raised are discussed below and in the submissions table at Attachment A.

Key issues raised in submissions

- 13. The Office of Environment and Heritage did not object but noted concern that street art in the vicinity of a heritage item would not require consent. The office stated street art may impact on the visual curtilage of an item and may be visually intrusive.

Response

- 14. Street art that is exempt development will not have an impact on heritage items in the vicinity due to the nature of street art and the character of the inner city.
- 15. Street art that is exempt development cannot project from a surface and therefore will not visually obscure any views to or from a heritage item.

16. Outside of heritage conservation areas and special character areas, modern buildings with a variety of styles, materials and colours surround heritage items. In this inner city setting, the heritage significance of an item can still be maintained. Street art that is exempt development will not materially change the setting of an item in an inner city area, even in the vicinity of a heritage item.
17. Street art by its nature is ephemeral and reversible, unlike heritage items and buildings in the vicinity of items. The proposal continues to protect heritage by requiring development consent on heritage items, heritage conservation areas and special character areas, while providing opportunities for creative expression in our city. It is reasonable for street art to be exempt development outside of conservation areas and special character areas.

Existing Street Art

18. The planning proposal clarifies when development consent is required for street art, and when it is not required. There may be existing street art that required, but did not obtain, development consent. The exempt provisions will not apply retrospectively to remove the requirement for consent. Further, retrospective applications cannot be made. However, the new provisions will be taken into account in relation to any complaints received regarding street art which will meet the criteria for exempt development following the making of the amendment outlined in the Planning Proposal.
19. While Council has legislative power to deal with non-compliances, under the Environmental Planning and Assessment Act 1979, Council has discretion and policies to guide decisions.
20. Any matters which come to the City's attention relating to existing street art in conservation areas, special character areas, or on heritage items, without development consent will be considered by senior council officers following technical advice from planning, heritage and other relevant staff.
21. A decision to either remove the artwork or to not pursue compliance action will be made by senior council officers in accordance with existing procedures and obligations under Council's *Compliance Policy*.

Strategic Alignment - A Plan for Growing Sydney, draft Central District Plan and Sustainable Sydney 2030

22. *A Plan for Growing Sydney* is the NSW Government's 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 the regional plan for the Greater Sydney Region and must be given effect in any planning proposal applying to land within the region.
23. The planning proposal is consistent with relevant goals, directions and actions of *A Plan for Growing Sydney*. By supporting creative expression, the proposal will support *Goal 3: A great place to live with communities that are strong, healthy and well connected*.

24. The recently exhibited draft Central District Plan provides detailed planning priorities and actions for each District. The planning proposal is consistent with *Liveability Priority 8: Foster the creative arts and culture*. Allowing street art as exempt development, where appropriate, nurtures “a culture of art in everyday local spaces and enhance access to the arts in all communities” and fulfils the planning priority.
25. *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 aligns with the following strategic direction:
 - (a) Direction 7 - A Cultural and Creative City – Allowing street art as exempt development 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*.

RELEVANT LEGISLATION

26. Environmental Planning and Assessment Act 1979.
27. Graffiti Control Act 2008.

CRITICAL DATES / TIME FRAMES

Planning Proposal process

28. If Council and the CSPC approve the Planning Proposal, it will be submitted to NSW Parliamentary Counsel for drafting. The LEP can be made by the Chief Executive Officer, under delegation. Once finalised, the plan will be submitted to the Department of Planning and Environment for notification on the New South Wales legislation website.
29. The Gateway Determination set the completion date for the Planning Proposal as December 2017.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

(Karen Judd, Specialist Planner)