

Item 8.

Post 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

Sydney hosts over 14 million domestic and international overnight visitor stays annually. Serviced apartments are an important part of the range and variety of tourist and visitor accommodation in Australia's most visited and most global city. The central Sydney market requires the flexibility to convert serviced apartments to residential apartments to respond to changing market needs. Applying the same amenity standards to both serviced apartments and residential apartments allows building owners and investors to respond efficiently, with minor additional costs and a more straight forward planning assessment.

Since 1996, the City has required serviced apartments to have the same amenity standards as residential apartments. Serviced apartments 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 not being designed to meet the Apartment Design Guide amenity standards. Over that period there have been a number of examples where serviced apartment building owners have sought to convert their building to residential apartments.

In June 2015, amendments to State Environmental Planning Policy 65 and a new Apartment Design Guide, updated the former Residential Flat Design Code. The SEPP amendments included a new provision that, unless the relevant Local Environmental Plan states otherwise, SEPP 65 does not apply to a boarding house or serviced apartment. This triggered the need for the City to move its established provisions requiring compliance by serviced apartments with SEPP 65 from the Development Control Plan to the Local Environmental Plan. The assessment of residential buildings and serviced apartments buildings to comparable amenity standards has been a continuous requirement. The effect of this has been to ensure flexibility for serviced apartment buildings to be strata subdivided into residential at a later date with confidence that an adequate level of amenity will be provided.

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.

The planning proposal is to ensure SEPP 65 and the Apartment Design Guide apply to serviced apartments, consistent with long standing Council policy.

It was placed on public exhibition from 16 July to 13 August 2018. Public consultation was carried out in accordance with the Gateway Determination including writing to 28 major serviced apartments' owners and providers in the local government area.

One submission was received from a serviced apartment provider, and one submission from the Housing Industry Association.

No changes are recommended to the intent of the planning proposal, however, following consultation, it is recommended the planning proposal be updated to include additional explanation of the need for the planning proposal and rationale for the amendment.

Recommendation

It is resolved that:

- (A) Council note matters raised in response to the public exhibition of Planning Proposal - Serviced Apartments, as shown in Attachment A to the subject report;
- (B) Council approve Planning Proposal - Serviced Apartments, as shown in Attachment B to the subject report, and Council request the Greater Sydney Commission to make as a local environmental plan under section 3.36 of the Environmental Planning and Assessment Act 1979; and
- (C) authority be delegated to the Chief Executive Officer to make any minor amendments to the Planning Proposal - Serviced Apartments to correct any minor errors or omissions prior to finalisation.

Attachments

Attachment A. Summary of Submissions

Attachment B. Planning Proposal - Serviced Apartments dated September 2018

Background

1. The City monitors and reviews planning controls to deliver the long term vision of Sustainable Sydney 2030, and to 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 local environmental plans which apply across the City's local government area to ensure State Environmental Planning Policy 65 (SEPP 65) and the Apartment Design Guide applies to serviced apartments.
3. The proposal is in response to the SEPP 65 and the Apartment Design Guide amendment in 2015, which allows SEPP 65 to apply to serviced apartments only if this is stated in a local environmental plan.
4. Since 1996, the City has had a Development Control Plan policy requiring serviced apartments to have the same amenity standards as residential apartments. The assessment of residential buildings and serviced apartments buildings to comparable amenity standards has been a continuous requirement. The effect of this has been to ensure flexibility for serviced apartment buildings to be strata subdivided into residential at a later date with an appropriate level of amenity.
5. The proposal 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 consideration.
6. On 10 October 2016 and 13 October 2016, Council and the CSPC respectively approved the proposal to seek a Gateway Determination and public exhibition. After a number of meetings with the Department, further supporting information was submitted along with the request for a Gateway determination in January 2017.
7. On 12 June 2018, the Department of Planning and Environment issued a Gateway Determination requiring amendment to the planning proposal to demonstrate consistency with the Greater Sydney Region Plan and Eastern City District Plan, update the project timeline, removing the example clause, and consult with all owners of serviced apartments and major serviced apartment providers in the City of Sydney local government area.
8. The plan making functions of the Minister for Planning have not been delegated to the Council for this planning proposal.
9. The proposal was exhibited for a minimum of 28 days from 16 July to 13 August 2018.

Key Implications

Outcomes of public exhibition and public authority consultation

10. Public consultation was carried out in accordance with the Gateway Determination including giving notice to 28 major serviced apartments owners and providers in the local government area. One submission was received from a serviced apartment provider, and one submission from the Housing Industry Association.

11. Key issues raised are discussed below. All matters raised in submissions are addressed in detail in the table at Attachment A.

Flexibility required

Submission

12. Both submissions express concern that the provisions will be "elevated" to an LEP, becoming a statutory requirement and requests flexibility when assessing serviced apartment applications.
13. The submissions argue that the Apartment Design Guide is often applied in a very literal and prescriptive way, contrary to the way it was intended. Elevating SEPP 65 and the Apartment Design Guide from their current status into mandatory matters for consideration will prevent Council planners from exercising a reasonable and pragmatic approach to the consideration of development applications for serviced apartments.
14. The design quality principles identified in Schedule 1, should not be used as a mechanism to refuse development consent or modification of development consent.

Response

15. The planning proposal is necessary in response to the State Environmental Planning Policy 65 (SEPP65) and the ADG amendment in 2015, which allows SEPP65 to apply to serviced apartments, but only if this is stated in a local environmental plan.
16. In June 2017, the Department of Planning and Environment issued a planning circular (PS 17-001) providing guidance on the application of the Apartment Design Guide. It states that, apart from the non-discretionary development standards in SEPP65, the Apartment Design Guide is not intended to be and should not be applied as a set of strict development standards.
17. Similarly, the design quality principles in Schedule 1 are not development standards. Both are inherently flexible in the way that they are expressed allowing alternate solutions to address the objectives, criteria and principles.
18. The degree of flexibility when assessing these applications against SEPP65 and the Apartment Design Guide is the same whether an LEP or DCP provision states that SEPP65 and the Apartment Design Guide apply.

Economic Impacts

Submission

19. Even though the proposal does not impose a new policy, it does alter the approach taken during the assessment of development applications and imposes a more formal regulatory regime than what currently exists. This is in effect a change of policy that should be fully costed and its economic impacts understood.

Response

20. The approach taken responds to the requirement of the SEPP65 amendment. There is no change in Council's policy. The LEP amendment refers to the need to consider SEPP 65 and Apartment Design Guide requirements.

21. The proposal will not impose additional construction costs because the Rawlinson's Australian construction guide shows that building costs for residential apartment buildings and serviced apartment buildings are equivalent at up to \$3000 per square metre.
22. The Gateway Determination specifically requested that all owners and major serviced apartment providers be notified. One submission was received from a serviced apartment provider, claiming that the proposal is unreasonable. The submission does not detail how it is unreasonable or raise specific concerns on the proposal's economic impact, noting that the proposal reflects existing Council policy, within which many serviced apartment businesses continue to operate and expand.
23. The economic impact of not implementing this proposal places uncertainty on the ability for serviced apartments to be converted into residential accommodation, resulting in significant time, resources and money spent on the merits of this issue in the future.

Unreasonable and unnecessary

Submission

24. One submission claims it is unreasonable and unnecessary for serviced apartments to provide the same level of amenity as residential flat buildings because serviced apartments are defined as a short term form of commercial accommodation and are not residential accommodation.
25. The other submission states there has been no consideration of how effective the DCP provisions have been in delivering good planning outcomes.

Response

26. Sydney hosts over 14 million domestic and international overnight visitor stays annually. Serviced apartments are an important part of the range and variety of tourist and visitor accommodation in Australia's most visited and most global city. The central Sydney market requires the flexibility to convert serviced apartments to residential apartments to respond to changing market needs. Applying the same amenity standards to both serviced apartments and residential apartments allows building owners and investors to respond efficiently, with minor additional costs and more straight forward planning assessment.
27. The proposal does not introduce a new policy position. It has been Council's policy since 1996 to require serviced apartment buildings to be constructed to the same level of amenity as a residential flat building.
28. In addition, Clause 4(4) of SEPP 65 allows the policy to apply to serviced apartments, which demonstrates that this proposal, contemplated by the NSW Government is therefore not unreasonable.
29. Since 2002, 69% of serviced apartment applications, representing 3221 apartments, related to conversions between serviced and residential apartments, demonstrating desire for flexibility between the two uses. The City has over 5000 serviced apartments with approximately 750 apartments in the pipeline to date.
30. An LEP amendment is necessary because the SEPP 65 amendments in 2015 requires an LEP to state that the SEPP applies to serviced apartments for it to have effect.

Purpose to prevent oversupply of apartments

Submission

31. One submission claims the underlying objective and purpose of the planning proposal is to formalise Council's existing policy and prevent the oversupply of apartments in the Sydney CBD which have risen due to the increase in conversions of serviced apartments.

Response

32. The objective and purpose of the proposal is to formalise Council's existing policy position. It is not to prevent an oversupply of apartments. Rather, the proposal allows for easier conversions because the building would already comply with SEPP65 and the Apartment Design Guide. It facilitates flexibility between the two uses for orderly and sustainable development. It also supports efficient use of resources and timely delivery of residential apartments.

Conversion of serviced apartments to residential apartments

Submission

33. A submission states that where an applicant seeks to convert an existing serviced apartment development into a residential flat building, a development application must take into consideration SEPP 65.

Response

34. If a serviced apartment does not currently comply and is to be converted to residential apartments, a comprehensive redesign or potential demolition and rebuild may be required to ensure SEPP65 and Apartment Design Guide compliance. This reduces the building life and contributes to the inefficient use of building resources and delays delivery of residential apartments. Alternatively, an applicant seeking to convert an existing serviced apartment building which did not comply with SEPP 65 and Apartment Design Guide would be likely to claim that it was unreasonable or unnecessary for Council to require physical amendments to achieve compliance, given the high costs likely to be involved. Requiring amenity consideration upfront when the building is designed provides clarity and certainty while building in flexibility. Serviced apartments that already comply with the Apartment Design Guide can submit an application to convert with minimal physical works and time delay.

Lacks justification

Submission

35. A submitter does not support transfer of current DCP provisions into Council's LEPs because the proposal lacks justification for the change. Part 3 of the proposal document is required to explain the need for the planning proposal and set out the rationale for the amendment.

Response

36. Part 3 of the planning proposal has been amended. The planning proposal is required to update and provide clarity and certainty for serviced apartments.
37. Clause 4.4.8.5 of Sydney DCP 2012 currently requires serviced apartments to be designed so that the level of amenity within each serviced apartment is equivalent to the requirements of a residential flat building.

38. Section 4.2 of Sydney DCP 2012 relates to residential flat, commercial and mixed use developments. It states that in addition to the provisions within the DCP, the NSW Residential Flat Design Code 2002 (RFDC) is adopted by this DCP for residential flat development.
39. In June 2015, amendments to SEPP65 and a new Apartment Design Guide were made, updating the former Residential Flat Design Code. Council could not simply update the DCP reference to refer to the Apartment Design Guide, however the SEPP amendment also included a new provision that, unless the relevant LEP states otherwise, SEPP 65 does not apply to a boarding house or serviced apartment.
40. Clause 28 of SEPP65 requires a consent authority to take into consideration the Apartment Design Guide. This meant the City needs a planning proposal to amend the LEP to enable SEPP 65 and the Apartment Design Guide to apply to serviced apartments.
41. In response to this submission, Part 3 of the planning proposal is amended to provide justification outlining the existing controls, the SEPP65 amendment, and relationship to the Apartment Design Guide, further supporting the objectives and intended outcomes in Part 1. The amendments are marked up in the revised planning proposal at Attachment B.

Key benefits of the proposal

42. In summary, the key benefits are:
 - (a) providing clarity on how serviced apartments are to be assessed;
 - (b) providing flexibility of use for developers and future investors;
 - (c) ensuring the amenity for future occupants, whether permanent residents or visitors are assured;
 - (d) allowing adaptability of a building reduces inefficient use of building resources and waste;
 - (e) allowing subsequent conversions to take place efficiently; and
 - (f) reduces reliance on mechanical ventilation and lowers energy consumption.
43. The proposal promotes good design and amenity of the built environment including the protection of the health and safety of occupants in line with the objects of the Environmental Planning and Assessment Act.
44. The City intends to maintain its long standing benchmarks for serviced apartments comparable to residential flat buildings and reduce barriers to conversions, which can lead to costly and time consuming non-compliant uses and uncertainty for investors and apartment owners. Requiring SEPP 65 and the Apartment Design Guide principles to be considered upfront is efficient and orderly development.
45. The proposal is consistent with all state, regional or local strategies, policies and plans. Clause 4 of SEPP 65 allows an LEP to state that it applies to serviced apartments.

Strategic Alignment

46. The Greater Sydney Region Plan is the state government strategic document that outlines a vision for Greater Sydney over the next 40 years. The Plan outlines how Greater Sydney will manage growth and change and guide infrastructure delivery, and is to be implemented at a local level by District Plans.
47. It identifies key challenges facing Greater Sydney, which is forecast to grow from 4.7 million people to 8 million people by 2056. Greater Sydney must provide for an additional 817,000 jobs by 2036 and will need to provide 725,000 more homes over the next 20 years.
48. The planning proposal is consistent with the following relevant objectives and planning priorities of the Greater Sydney Region Plan:
 - (a) Objective 18: Harbour CBD is stronger and more competitive by providing a diversity of activity including high amenity tourist facilities and residential accommodation.
 - (b) Objective 24: Economic sectors are targeted for success by allowing flexible use of land and buildings to service the tourism and residential accommodation sectors.
 - (c) Objectives 33, 34 and 35: A low carbon city contributes to net-zero emissions by 2050 and mitigates climate change.
49. The Eastern City District Plan sets the local planning context for the City of Sydney local government area. It provides a 20-year plan to manage growth and achieve the 40-year vision of the Greater Sydney Region Plan.
50. The planning proposal is consistent with the following relevant planning priorities and actions of the Eastern City District Plan:
 - (a) Planning Priority E7: Growing a stronger and more competitive Harbour CBD.
 - (b) Planning Priority E13 Supporting growth of targeted industry sectors.
 - (c) Planning Priority E19: Reducing carbon emissions and managing energy, water and waste efficiently.
51. This planning proposal supports the above key objectives and priorities as it will: provide for quality serviced apartments for visitors commensurate with a global city, enabling timely delivery of development, clarifying LEP provisions and allowing efficient use of land by maximising the adaptability of buildings.
52. 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. This proposal is aligned with the following strategic directions and objectives:
 - (a) Direction 1 - A Globally Competitive and Innovative City - the proposal will provide high quality serviced apartments for visitors commensurate with a global city.

- (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.
- (c) Direction 9 - Sustainable Development, Renewal and Design - the proposal promotes sustainability by reducing unnecessary resource wastage and allows easy adaptability of serviced to residential apartments. By applying amenity standards such as cross ventilation and solar access, mechanical ventilation is reduced and energy consumption lowered.

Relevant Legislation

- 53. Environmental Planning and Assessment Act 1979.

Critical Dates / Time Frames

- 54. The gateway determination requires that the amendments to the Sydney local environmental plans are completed by June 2019. The Greater Sydney Commission may take action under section 3.32(2)(d) of the Environmental Planning and Assessment Act 1979 if this timeframe is not met.
- 55. The Gateway Determination states that the Council is not authorised to exercise delegation to make the local environmental plans. If approved by Council, the planning proposal will be forwarded to the Department of Planning and Environment with a request to draft and publish the LEPs.

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