

Post Exhibition - Planning Proposal - Dwelling Retention - Sydney Local Environmental Plan 2012 Amendment

File No: X101840

Summary

The City of Sydney's long term housing target under Sustainable Sydney 2030-2050: Continuing the Vision is for 156,000 private dwellings in the City by 2036. In addition to the City's target, in May 2024 the NSW Government issued 5-year private dwelling completion targets to councils, requiring 18,900 dwellings be provided in the City between 1 July 2024 to 30 June 2029.

Development applications in the local area have resulted in the redevelopment of existing apartment buildings, particularly in the eastern suburbs, that have or will, result in a net loss of dwellings in those buildings. This occurs through consolidation of 2 or more apartments, or in some cases the conversion of an entire apartment building into a single dwelling. The resulting housing is larger and significantly more expensive to rent or buy than the existing dwellings. Ultimately, the loss of smaller, older and relatively low-cost housing stock from the local area presents a challenge for maintaining community diversity by pricing many people out of the local housing market.

The City has proposed changes to its planning controls to support housing diversity and affordability by discouraging the replacement of smaller apartments with fewer larger apartments when a site is redeveloped. This is critical to maintaining the City's housing supply, ensuring dwellings are increased and not reduced.

The City's Planning Proposal - Dwelling Retention (the planning proposal) proposes to amend Sydney Local Environmental Plan 2012 (the LEP) to introduce a maximum dwelling reduction rate of 15% in any redevelopment of multi-unit residential or mixed-use buildings. The 15% maximum dwelling reduction rate allows some flexibility for redevelopment, to ensure it can occur where it is appropriate or necessary.

On 7 December and 11 December 2023, the Central Sydney Planning Committee and Council respectively endorsed the planning proposal to be submitted to the Minister for Planning and Public Spaces with a request for gateway determination and to be placed on public exhibition.

A gateway determination was issued in April 2024 and the planning proposal was amended in accordance with its conditions before it was publicly exhibited from 11 July 2024 to 23 August 2024 (32 days). A total of 390 submissions have been received.

About 64% of submissions supported the proposal or supported the proposal with some changes being suggested to further reduce the loss of dwellings. These submissions generally offered support for the objective and intended outcomes of the proposal and consider it to be an appropriate response to the housing crisis.

About 23% of submissions opposed the proposal, predominantly citing concerns about the impacts on development viability, the lack of flexibility and the potential limitations it would place on redeveloping older buildings. They requested exemptions, particularly for seniors housing, and suggested increasing building height and floor space ratios to incentivise the retention of the same number of dwellings in any redevelopment.

The remaining submissions (13%) either did not express a position or supported a modified version of the proposal which enabled greater dwelling loss.

Following consideration of submissions, no amendment to the planning proposal, as publicly exhibited, is proposed.

It is recommended that Council approve the planning proposal, shown at Attachment B, to be sent to the Department of Planning, Housing and Infrastructure with a request to make the changes to the LEP.

Recommendation

It is resolved that:

- (A) Council note the issues raised during the public exhibition of Planning Proposal - Dwelling Retention as provided in the Summary of Submissions, shown at Attachment A to the subject report;
- (B) Council approve the Planning Proposal - Dwelling Retention, as amended following public exhibition, shown at Attachment B to the subject report, to be sent to the Department of Planning, Housing and Infrastructure to be made 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 minor amendments to the Planning Proposal - Dwelling Retention to correct any minor errors prior to finalisation by the Department of Planning, Housing and Infrastructure.

Attachments

- Attachment A.** Summary of Submissions
- Attachment B.** Planning Proposal - Dwelling Retention (post exhibition amendments in red)
- Attachment C.** Resolutions of Council and the Central Sydney Planning Committee
- Attachment D.** Gateway Determination - Dated 5 April 2024

Background

1. Sustainable Sydney 2030-2050: Continuing the Vision incorporates the housing target in the City of Sydney Local Housing Strategy: Housing for All that by 2036 there will be 156,000 private dwellings in the City of Sydney (the 'City'). In addition to the City's target, in May 2024 the NSW Government issued 5-year private dwelling completion targets to councils, requiring 18,900 dwellings be provided in the City between 1 July 2024 and 30 June 2029.
2. While the City generally expects to meet its housing targets, given its current development pipeline, the loss of dwellings resulting from redevelopment of existing apartment dwellings, particularly in suburbs such as Potts Point, Rushcutters Bay, and Elizabeth Bay, is making it more difficult to grow our housing supply and provide the diversity of housing needed for the community. Most of this dwelling loss is the result of demolition/redevelopment of existing apartment buildings with relatively affordable studios and one-bedroom apartments, which are being effectively consolidated to provide larger luxury apartments. There are also examples of small but entire apartment building being converted into a single dwelling.
3. The housing resulting from redevelopment is generally larger and more expensive to rent or buy. Ultimately, the net loss of smaller and relatively low-cost housing stock from the local area presents a challenge for maintaining community diversity by pricing many people out of the local housing market.
4. Since 2018, a loss of at least 91 dwellings from the City's housing supply has occurred because of this type of redevelopment, and there are a further 6 development applications currently under consideration (as at October 2024) that, if approved, could result in the further loss of 132 existing dwellings.
5. As this type of redevelopment is permitted under planning controls, it is difficult for the City to successfully refuse development applications on the grounds that it reduces the number of dwellings in our LGA.
6. On 7 December and 11 December 2023, the Central Sydney Planning Committee (CSPC) and Council respectively approved Planning Proposal - Dwelling Retention (the planning proposal) to be submitted to the Minister for Planning and Public Spaces with a request for gateway determination and to be placed on public exhibition. The Council and CSPC resolutions are provided at Attachment C.
7. The planning proposal seeks to amend Sydney Local Environmental Plan 2012 (the LEP) to:
 - (a) introduce a new development standard into the LEP, limiting the reduction of dwellings in any redevelopment of a residential or mixed-use building to 15% (rounded to the nearest whole number). For example, if a block of 22 units is redeveloped, the minimum number of units required in the new development is 19. The 15% maximum dwelling reduction rates allows some flexibility for redevelopment, to ensure it can occur where it is appropriate or necessary, while also acting to prevent significant loss of current dwelling numbers.
 - (b) include a 'savings provision' that exempts development applications (DAs) or concept DAs made but not finally determined, as well as DAs lodged after these amendments come into effect that relate to a concept DA approved before the commencement of these amendments.

- (c) include a subclause that exempts any residential floor space that is to be converted to a non-residential use. This is to provide flexibility for the ongoing provision of services and businesses, particularly in mixed-use and local centre zones, and to avoid those zones transforming into residential-only precincts over time.

The proposal has been updated to meet gateway conditions prior to public exhibition

8. The Department of Planning, Housing and Infrastructure (Department) issued a gateway determination for the planning proposal on 5 April 2024, provided at Attachment D. It determined the City will not be the local plan-making authority and set a timeframe for the LEP amendment to be completed by 28 March 2025.
9. The Department also required some changes to the planning proposal prior to it being publicly exhibited, specifically inclusion of:
 - (a) a provision for savings and transitional arrangements for applications lodged prior to the provision coming into effect
 - (b) further explanation of how the 15% rate of maximum dwelling reduction was identified rather than another rate and how it is the most appropriate standard to achieve the proposal objectives
 - (c) multiple worked examples to demonstrate its application in various scenarios and development types
 - (d) further explanation on how the proposed provision allows a mix of dwelling sizes for a range of households can be achieved, and
 - (e) discussion of how the proposed provision will apply to zones predominately characterised by employment or mixed-use.
10. The City amended the planning proposal in accordance with the gateway determination prior to public exhibition.

The City exhibited the planning proposal and received 390 submissions

11. The planning proposal was placed on public exhibition from 11 July 2024 to 23 August 2024. Over 30,500 letters were sent to property owners in Pyrmont, Ultimo, Potts Point, Woolloomooloo, Elizabeth Bay, Rushcutters Bay, Kings Cross and Darlinghurst. These areas were issued letters because they have the highest concentration of units closest to the city centre and/or currently experience the most dwelling loss.
12. Other public consultation included:
 - (a) the Sydney Your Say webpage with a copy of the planning proposal and other key information about the consultation
 - (b) inclusion in the Sydney Your Say e-newsletters in July and August 2024 which was sent to 6,650 subscribers

- (c) directly notifying 23 community groups and five key development industry stakeholders by email
 - (d) posting directly on the City's Instagram, LinkedIn and Facebook pages including a video promoting the consultation
 - (e) advertising on Instagram, LinkedIn and Facebook with a combined reach of 90,000 people, and
 - (f) advertising on 36 QMS community panels throughout the City.
13. The City has received a total of 390 submissions to the planning proposal, including:
- (a) 374 from individuals
 - (b) 7 from industry
 - (c) 4 from community groups
 - (d) 4 from building management bodies, and
 - (e) one from a government agency.
14. A detailed summary of submissions and responses to matters raised is provided at Attachment A. The numbers of submissions in support of, or in objection to the proposal are as follows:
- (a) 186 (48%) of submissions support the proposal without changes
 - (b) 61 (16%) of submissions support the proposal, but with greater restrictions
 - (c) 12 (3%) of submissions support the proposal, but with reduced restrictions
 - (d) 91 (23%) of submissions oppose the proposal, and
 - (e) 40 (10%) of submissions provided comment but did not have a clear position.
15. Following consideration of submissions, no change to the publicly exhibited planning proposal is recommended.
16. A detailed response to the key issues arising from the submissions is provided below.

Support for the planning proposal

17. Two hundred and forty seven (64%) submissions supported the proposal or supported the proposal with some numeric changes (such as reducing the 15%). These submissions generally offered support for the objective and intended outcomes of the proposal and consider it to be an appropriate response to the housing crisis.
18. Key reasons for support included how the proposal would benefit key workers, students, and long-term residents, while preserving the dynamic atmosphere of neighbourhoods, with Potts Point frequently mentioned. Many submissions also emphasised that the loss of housing diversity poses a threat to this balance. Retaining dwellings is seen as essential for maintaining affordability and diversity, which are distinctive features of the area. The proposed control is viewed as crucial for achieving the planning proposal's goals.
19. Support for the planning proposal was closely tied to concerns about the housing affordability crisis, with 42 submissions specifically referencing this issue. Housing was widely regarded as a fundamental right. Submissions emphasised that development reducing housing stock exacerbates the crisis and displaces long-term residents. Many viewed this as part of a broader debate on whether the city should serve only the wealthy or remain inclusive for all.
20. **Response:** The reasons provided in support of the planning proposal are noted. It is noted the objective in the detailed drafting appended to the planning proposal has been further refined to provide clarity that the clause is intended to ensure redevelopment does not lead to a significant reduction in dwelling numbers.

Opposition to the planning proposal

21. Thirty-one individuals, 3 industry and one submission from a community group raised concerns the proposal would have a negative impact on development feasibility.
22. **Response:** The planning proposal supports housing diversity and affordability by discouraging the replacement of smaller apartments with fewer large apartments. Limiting the loss of smaller, lower cost apartments, in favour of larger, higher value apartments, may have some impact on the relative profit that can be achieved in any redevelopment. Notwithstanding the above, it does not mean that redevelopment is unfeasible.
23. The planning proposal provides adequate flexibility to allow for redevelopment. While opportunities and constraints differ across sites, redevelopment will be most attractive where there is potential for unrealised capacity in existing planning controls to be used to provide larger apartments. Where buildings are already close to or exceed existing built form controls, further intensification of built form on the site is limited in general, but this is not due to this planning proposal.
24. Thirty-three submissions from individuals and 2 submissions from industry groups raised concerns the proposal requires the retention of apartments that no longer meet contemporary design requirements.

25. **Response:** The proposal does not require the retention of existing apartments, only that the new development does not significantly reduce the number of apartments. A new development under the proposed controls will be expected to meet current amenity standards.
26. The same submissions raised similar concerns that the proposal requires the retention of apartments that require significant investment in upkeep or repairs, which is an unfair financial burden on current owners and strata corporations who should be free to redevelop their buildings.
27. **Response:** The planning proposal does not require the retention of existing apartments. It provides flexibility to ensure owners can refurbish, maintain or redevelop their properties. The intention and effect of the planning proposal is only to ensure that this does not lead to a significant reduction in dwelling numbers.
28. Twenty-nine individual, 3 industry and one submission from a building management body raised concerns the proposal limit the future supply apartments for families, seniors and group households.
29. **Response:** The planning proposal provides adequate flexibility to ensure that any redevelopment can provide some larger apartments as part of its overall dwelling size mix. Sydney Development Control Plan 2012 (DCP) requires 10% of apartments to have 3 or more bedrooms and soon to be exhibited controls proposed increasing this 20%. Testing of the proposed controls demonstrated that the current and draft dwelling mix controls can be achieved.
30. Seventeen submissions from individuals and one from industry raised concerns the proposal will unduly interfere with the market, going against consumer demand.
31. **Response:** The proposal addresses a negative effect of the market, being the loss of dwellings and loss of smaller more affordable dwellings, which contribute to housing diversity. New larger dwellings favoured by the market can still be developed under the proposed controls.
32. Five individual and one submission from a building management body raised concerns the proposal would have a negative impact on innovation and design flexibility.
33. **Response:** The planning proposal does not restrict innovation and design flexibility.

Requested changes to the planning proposal

34. Around 58 submissions from individuals and one from a community group called for amendments to the planning proposal, seeking stricter limits on housing loss, including reducing the maximum 15% loss standard, while others recommended stricter limits in specific zones or geographic areas.
35. **Response:** Lower rates of dwelling loss are not supported. The tipping point analysis undertaken in the planning proposal demonstrates that the proposed maximum 15% reduction rate best balances the need to ensure that buildings are not completely prevented from redevelopment with the intention to protect the stock of smaller dwellings. This ensures any redevelopment will be able to meet contemporary design standards, such as those set out in the NSW Government's Apartment Design Guide, and also achieve minimum requirements for larger apartments as proposed in the draft Sydney DCP amendment.

36. Eight submissions from individuals, one each from a community group and a building management body, called for the removal of the draft savings and transitional provisions from the proposal.
37. **Response:** The removal of the transitional provisions is not possible as it would be in contradiction of the gateway determination by the Department that specifically requested that the City update the planning proposal prior to exhibition to include provisions for savings and transitional arrangements for applications lodged before the new provisions come into effect. The City does have the power to make the LEP amendment as it must go back to the Department.
38. A submission from Pymont Action opposes the proposal's allowance for the conversion of residential buildings to non-residential buildings, with reference to a specific site affected by the Pymont Peninsula Strategy.
39. **Response:** The conversion of the residential building to a non-residential building can already occur under the mixed-use zoning of the site. The planning proposal only excludes the proposed requirement to limit the loss of residential dwellings when the building is redeveloped for residential dwellings.
40. Some submissions called for a relaxation of the draft control, particularly from those opposing the planning proposal. Twenty-two submissions from individuals requested changes to permit additional housing loss, with some advocating for the provision to address 'net-bedroom loss' rather than 'net-dwelling loss.' submissions from individuals, one submission from a community group and one submission from an industry group sought exemptions for older buildings, smaller developments, buildings that do not meet modern design standards, or those with lower than average apartment sizes.
41. **Response:** The proposed maximum 15% rate of dwelling loss is considered the most balanced solution. It meets the objectives and intended outcomes of the planning proposal while allowing for sufficient development flexibility and the ability to meet other controls for a mix of dwelling types. A detailed justification is provided within the planning proposal.

Renewal challenges for older apartment buildings

42. Submissions were received from and on behalf of residents in existing residential flat buildings on the impacts of the proposal on owners considering a collective sale of their building to a developer. Those opposed to the planning proposal, highlighted the financial impact that it may have due to reduced developer interest in their buildings. Those supporting the planning proposal prefer not to collectively sell their buildings and would like owners to prioritise maintenance and upkeep instead of seeking or being forced into collective sales.
43. **Response:** The planning proposal aims to protect against the significant loss of dwellings and help maintain a diversity of dwellings. It still enables buildings to be redeveloped. The sharing of value between owners and developers when buildings are redeveloped is a matter for those parties.

44. Eight submissions were received from individuals, one from industry and one from a building management body requesting an exemption for seniors housing development. A senior housing operator is currently considering the option of purchasing and redeveloping a residential flat building at 51-59 Roslyn Gardens, Elizabeth Bay (the Tor Building), for seniors housing. They argue that retirement living, aged care, and over-55s housing require more space for mobility, carers and communal areas. The submissions propose an amendment to exempt seniors housing developments would require that the building is owned and controlled by one entity and operated by a single managing agent, ensuring these exemptions cannot be used for private market dwellings.
45. **Response:** The planning proposal does not prevent the redevelopment of residential flat buildings or shop-top housing for seniors housing, as long as the loss of dwellings does not exceed 15%. Introducing an exemption for seniors housing would be inconsistent with the objectives of this proposal, as it could lead to significant dwelling loss through redevelopment for residential purposes. While there are acknowledged strategic and social benefits in providing certain forms of seniors housing, these can still be achieved should the planning proposal be implemented. The proposal's aim is to maintain housing diversity and availability, and exempting seniors housing would undermine that objective.
46. A specific concern was raised that Council might consider heritage listing of the Tor Building and that this may further impact on its redevelopment potential.
47. **Response:** The City is currently undertaking a heritage assessment of post war residential flat buildings in the Potts Point area. The City has met with owners of the Tor Building about the assessment. A planning proposal for any future heritage listings is planned to be reported to Council in the near future. Owners will be notified if the building is proposed to be listed and will have further opportunity to provide feedback.

Requests for other measures to make housing more affordable

48. Submissions requested changes to planning controls in the City's planning framework as well as other measures at a local, state and federal government level to respond to the ongoing housing crisis. This includes 44 submissions from individuals, five submissions from industry groups and one from a building management body specifically requesting increased density within the City's planning controls.
49. **Response:** These submissions are noted but are outside the scope of this planning proposal. The City has a number of current and recently completed planning proposals to boost housing supply. This includes adding incentives for build-to-rent housing in Central Sydney, adjustments to floor space and height limits to encourage affordable housing in the Botany Road Corridor and North Alexandria and capacity for another 4,000 homes under the Pymont Peninsula Review. In addition, the City makes significant contributions to the delivery of affordable housing for lower income earners in the local area. This includes using its planning levers to levy contributions and provide incentives, selling land to community housing providers below cost, and providing grants to increase the amount of affordable housing in the City. The response to submissions table provides more information on the City's response to housing issues.

Consistency with gateway determination

50. Two industry submissions raised concerns that the planning proposal is inconsistent with the gateway determination issued by the Department. They say the planning proposal lacks a clear evidence base, includes insufficient justification for the 15% standard and fails to explore alternative options. Additionally, the submissions argued the proposal is misaligned with Council's draft 20% minimum requirement for 3-bedroom units and did not account for scenarios with already low average apartment sizes or provide detailed worked examples.
51. **Response:** The changes made to the planning proposal prior to public exhibition thoroughly address the requirements of the gateway determination. The changes include:
- (a) A comprehensive explanation of how the 15% maximum dwelling reduction rate was recommended. This included further detailed analysis on alternative maximum dwelling reduction rates to test the sensitivity of the proposed dwelling standard. The analysis showed future redevelopment of buildings could still be achieved while maintaining compliance with current minimum dwelling size requirements, as well as draft Sydney DCP requirements to provide 3-bedroom apartments in any new development. The testing included 5%, 10% and 15% options. It found:
 - (i) the 5% and 10% maximum dwelling reduction rate was demonstrated as too low as it was unable to achieve the required dwelling mix while ensuring that 20% of the units were 3-bedroom apartments; and
 - (ii) the 15% maximum dwelling reduction rate successfully balanced both objectives, aligning with dwelling size and mix requirements while minimising the loss of apartments.
 - (b) Dwelling reduction rates beyond 15% would meet dwelling size and mix requirements, but it is considered that they would result in an increasingly unacceptable negative housing supply, undermining the proposal's intended outcomes.
52. Multiple worked examples to illustrate how the maximum dwelling reduction rate applies across various development scenarios, including buildings with mixed residential and non-residential uses are included in the planning proposal.

Consistency with the Housing SEPP

53. Two industry submissions are concerned about the planning proposal's alignment with the Housing SEPP. They argue that the proposal does not adequately consider its interface with provisions in the Housing SEPP for the retention of existing affordable rental housing. Additionally, the proposal's limited reference to the Housing SEPP and its inflexibility are seen as inconsistent with the Housing SEPP aims to promote housing diversity and prevent the loss of affordable housing.

54. **Response:** There are very limited instances where both the retention of existing affordable rental housing provisions in the Housing SEPP and the dwelling retention controls would apply, specifically on buildings held in single title that are not strata or company title. In such cases, there is no conflict as the Housing SEPP focuses on retaining affordable rental housing, while the planning proposal addresses overall housing supply, irrespective of affordability. The gateway determination confirms the planning proposal's consistency with the Housing SEPP, as demonstrated in the determination report prepared by the Department.
55. The submissions were also concerned that the dwelling retention control could reduce opportunities for using the in-fill affordable housing provisions in the Housing SEPP, which allows up to 30% additional floor space and height if 10% to 15% of apartments are used for affordable housing for 15 years. The submissions suggest development be exempt from the proposed dwelling retention requirements should the Housing SEPP's infill provisions be applied to the development.
56. **Response:** The planning proposal does not impede the use of the in-fill affordable housing provision in the SEPP. Rather, this provision can assist developers in maintaining existing dwelling numbers while offering more flexibility in redevelopment.

Concerns about the engagement process

57. Nineteen submissions from individuals and 2 submissions from industry groups raised concerns about the engagement process, stating there has not been enough industry engagement. One submission from an individual raised that developers' employees were lodging submissions without disclosing their interests and that a pro-forma in support of the proposal was also being circulated. It was implied that these strategies would interfere with the transparency of the engagement process.
58. **Response:** The planning proposal was exhibited in line with the gateway determination requirements. It was accessible on the City of Sydney website, in accordance with the City's Community Engagement Strategy and Participation Plan 2023. The opportunity to make submissions was open to all. The City has reviewed all submissions and addressed the relevant issues.

Key Implications

Strategic Alignment - Sustainable Sydney 2030-2050 Continuing the Vision

59. Sustainable Sydney 2030-2050 Continuing the Vision renews the communities' vision for the sustainable development of the city to 2050. It includes 10 strategic directions to guide the future of the city, as well as 10 targets against which to measure progress. This planning policy is aligned with the following strategic directions and objectives:
- (a) Direction 1 - Responsible governance and stewardship - this planning proposal will ensure the City of Sydney's planning framework reflects current policies and strategies and delivers on balancing the needs of a global city.
 - (b) Direction 5 - A city for walking, cycling and public transport - this planning proposal will protect existing housing in the City that is well connected and encouraged the use of public transport and walking and cycling.
 - (c) Direction 6 - An equitable and inclusive city - this planning proposal maintains the diversity of housing available in the City of Sydney, ensuring a range of different housing types that to meet the needs of a diverse community.

- (d) Direction 7 - Resilient and diverse communities - this planning proposal includes provisions to support and strengthen our community and maintain its diversity.
- (e) Direction 9 - A transformed and innovative economy - this planning proposal supports Central Sydney as a global business centre by supporting the retention of housing for a diverse workforce close to the city centre.
- (f) Direction 10 - Housing for all - this planning proposal directly responds to the current housing crisis. It ensures that housing supply is not being reduced by redevelopment and maintains the limited availability of smaller, relatively low cost, dwellings to meet the needs of a diverse community and workforce.

Relevant Legislation

- 60. Environmental Planning and Assessment Act 1979.
- 61. Environmental Planning and Assessment Regulation 2021.

Critical Dates / Time Frames

- 62. The gateway determination requires the planning proposal be made by 28 March 2025.
- 63. The amendment to the Sydney Local Environmental Plan 2012 will come into effect when published on the NSW Legislation website.

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