

Planning Proposal

Design Excellence Incentive

June 2013

Sydney 2030 Green Global Connected

Introduction

This Planning Proposal explains the intent of, and justification for, amending the incentive offered for design excellence under *Sydney Local Environmental Plan 2012* (Sydney LEP 2012). The recommended change will allow the design excellence incentive to be calculated on top of, rather than prior to, the additional floor space that may be awarded in connection with the provision of accommodation floor space in Central Sydney or community infrastructure in Green Square.

The proposal has been prepared in accordance with Section 55 of the *Environmental Planning and Assessment Act 1979* (the Act) and the relevant Department of Planning Guidelines, including *A Guide to Preparing Local Environmental Plans* and *A Guide to Preparing Planning Proposals*.

Background

The demonstration of design excellence through a competitive process was introduced into the Central Sydney planning controls in 2000, with the gazettal of *Central Sydney Local Environmental Plan 1996 Amendment No. 8*. This amendment introduced a two stage approval process for development over 55 metres in height or on sites greater than 1,500 square metres in area. A 'development plan' or Stage 1 development application was to be prepared which established a building envelope, floor space ratio (FSR) and height appropriate for a site and its context, and included a requirement for design excellence to be exhibited.

The amendment provided that the consent authority, in considering whether a development exhibited design excellence, was to consider whether it was the result of a competitive design process. Where an applicant demonstrated design excellence through a competitive process, the consent authority was able to award an incentive as part of the approved development application. These provisions were carried forward into *Sydney Local Environmental Plan 2005*.

Sydney LEP 2012 includes similar design excellence provisions and extends their application across the entire Local Government Area (LGA) to ensure that significant new development contributes positively to the overall architectural quality of the City. This contribution may be as an iconic or landmark building, but more typically it is as a well-designed building that fits sensitively into the streetscape and responds to the public domain.

An important mechanism to ensure development demonstrates design excellence is through a competitive design process. The process is intended to achieve the highest quality urban design outcomes and facilitate a variety of design options for a site.

Clause 6.21(7) of Sydney LEP 2012 establishes an incentive for undertaking a competitive design process, namely the potential for the consent authority to grant up to an additional 10% height or floor space ratio. This incentive is in recognition of the additional cost of undertaking such a process.

The design excellence provisions operate alongside various other provisions in Sydney LEP 2012 which aim to encourage specific outcomes by offering additional floor space. These include floor space incentives for certain land uses in Central Sydney, such as hotel accommodation and retail premises, and for the provision of community infrastructure in Green Square, such as public streets and open spaces.

More than one type of additional floor space may be pursued by an applicant at any one time.

As the design excellence incentive is expressed as a percentage, the order in which this incentive and the other types of additional floor space are combined can have significant implications for the total amount of floor space permissible on a site. Calculating the 10% design excellence floor space incentive prior to adding the community floor space, for example, results in a reduced total amount of permissible floor space compared with calculating the 10% on top of the community floor space incentive.

The manner in which Sydney LEP 2012 allows the design excellence incentive to be combined with other eligible floor space incentives is the subject of this Planning Proposal.

The Planning Controls

Clause 6.2.1(7) of Sydney LEP 2012 allows for consent to be granted for building heights that exceed the maximums shown on the Height of Buildings Map by up to 10% or for an amount of floor space that exceeds the FSR shown on the Floor Space Ratio Map by up to 10%. This is subject to design excellence being demonstrated.

Clauses 6.4 and 6.14 of Sydney LEP 2012 also allow for development to exceed the FSR shown on the Floor Space Ratio Map for the provision of accommodation floor space in Central Sydney and community floor space in Green Square respectively.

Clause 6.2.1(7)(b) establishes that the potential 10% design excellence floor space bonus is to be calculated prior to the addition of that accommodation or community floor space bonus – i.e. it is to be calculated as 10% of the FSR shown on the Floor Space Map, not as 10% of the combined FSR resulting from that shown on the Floor Space Map plus the accommodation or community floor space bonus.

The current wording of the Clause 6.2.1(7) and accompanying note, as stated in Sydney LEP 2012, are shown below:

“(7) If the design of a new building, or an external alteration to an existing building, on land is the winner of a competitive design process and the consent authority is satisfied that the building or alteration exhibits design excellence, it may grant development consent to the erection of the new building, or the alteration to the existing building, with:

- (a) a building height that exceeds the maximum height shown for the land on the Height of Buildings Map by up to 10%, or*
- (b) an amount of floor space that exceeds the amount permitted as a result of the floor space ratio shown for the land on the Floor Space Ratio Map by up to 10% or, if the building or alteration is eligible for any accommodation floor space or community floor space under Division 1 or 2*, by up to 10% plus the sum of that accommodation floor space and community floor space.*

Note. *Development may exceed the amount permitted by clause 4.4 by more than 10% only in relation to accommodation floor space or community floor space but not in relation to any other form of additional floor space under Division 1 or 2.”*

[* the words “or 2” are to be added following the making of Sydney LEP 2012 Amendment 2, see Planning Proposal/Gateway Determination Ref PP_2013_SYDNE_002_00.]

However, at the time of drafting the design excellence provisions of Sydney LEP 2012, it was intended that the 10% design excellence incentive was to be calculated on top of any applicable accommodation or community floor space. The clause as exhibited allowed a development which successfully demonstrated design excellence to secure up to 10% of both the FSR shown in the Floor Space Ratio Map and of any eligible accommodation or community floor space. The wording of the clause as exhibited is shown below:

“(7) The consent authority may grant consent to the erection or alteration of a building on land that exceeds, by the following amounts, the maximum height or floor space ratio allowed for the land under clauses 4.3 and 4.4, but only if the design of the building or alteration is the result of a competitive design process and the concurrence of the Director-General has been obtained to the development application:

- (a) up to 10 per cent of the maximum floor space ratio shown for the land on the Floor Space Ratio Map, and*

- (b) up to 10 per cent of the sum of any accommodation floor space or community floor space to which the building is eligible under this Part, and
- (c) up to 10 per cent of the maximum height shown for the land on the Height of Buildings Map."

Calculating the design excellence incentive in accordance with the current wording of the clause has meant that the 10% design excellence bonus produces comparatively less floor space for eligible sites. This reduction in total redevelopment capacity was an unintended effect of amendments made to the draft Sydney LEP 2011 and may result in there being insufficient incentive to undertake a competitive design process.

Part 1 – Objectives or Intended Outcomes

The Planning Proposal will enable the amendment of Clause 6.2.1(7)(b) in Sydney LEP 2012 so that, where a site is eligible for additional accommodation or community floor space, the potential 10% design excellence incentive is calculated based on the combined total FSR of that site.

Part 2 – Explanation of the Provisions

This Planning Proposal proposes to amend Clause 6.2.1(7)(b) of Sydney LEP 2012 so that the floor space incentive which may be awarded for successfully demonstrating design excellence includes up to 10% of any applicable accommodation floor space under Division 1 of the LEP or community floor space under Division 2 of the LEP, rather than only as a percentage of the FSR shown on the Floor Space Ratio Map.

The proposed amendment is shown below, in which text to be inserted is shown as underlined and text to be deleted is shown as ~~strikethrough~~.

"(7) If the design of a new building, or an external alteration to an existing building, on land is the winner of a competitive design process and the consent authority is satisfied that the building or alteration exhibits design excellence, it may grant development consent to the erection of the new building, or the alteration to the existing building, with:

- (a) a building height that exceeds the maximum height shown for the land on the Height of Buildings Map by up to 10%, or
- (b) an amount of floor space that exceeds the amount permitted as a result of the floor space ratio shown for the land on the Floor Space Ratio Map by up to 10% or, if the building or alteration is eligible for any accommodation floor space or community floor space under Division 1 or 2, by up to 10% plus the sum of that accommodation floor space and community floor space of the sum of that accommodation floor space or community floor space and the floor space permitted as a result of the floor space ratio shown for the land on the Floor Space Ratio Map.

Note. Development may exceed the amount permitted by clause 4.4 by more than 10% only in relation to accommodation floor space or community floor space but not in relation to any other form of additional floor space under Division 1 or 2."

The result of this amendment will be to ensure that the potential 10% design excellence bonus floor space is calculated based on the larger, combined total of permissible floor space.

Part 3 – Justification

Section A – Need for the planning proposal

In testing the potential to extend the Sydney LEP 2005 design excellence provisions across the wider LGA, urban design analysis was undertaken to explore their application in the City's urban renewal areas, including precincts in Green Square, the Green Square Town Centre and Central Sydney.

This work examined whether there was capacity within development sites to accommodate the 10% additional floor space which may result from a competitive design process. Economic feasibility was also assessed to ensure viable redevelopment of sites could be achieved, both from the perspective of total redevelopment potential and a consideration of whether the bonus floor space incentive offered would outweigh the cost of undertaking a competitive design process.

The City's testing demonstrated that it was appropriate to extend the design excellence provisions across the entire Local Government Area. The additional design excellence floor space can be accommodated in several key areas of the City without unacceptable environmental or amenity impacts.

The testing was undertaken calculating the 10% design excellence bonus on top of any applicable accommodation floor space in Central Sydney or community floor space in Green Square. The relevant clause as drafted and exhibited for public comment as part of the then draft Sydney LEP 2012 allowed a development which successfully demonstrated design excellence to secure up to 10% of both the FSR shown in the Floor Space Ratio Map plus the sum of any eligible accommodation or community floor space.

Calculating the design excellence incentive as is currently worded in Clause 6.21(7)(b) reduces the total redevelopment capacity for eligible sites and may result in there being insufficient incentive to undertake a competitive design process.

Furthermore, it is intended that any accommodation or community floor space bonus awarded to a development be designed as part of the competitive design process for that site. In this respect, the design excellence incentive needs to cover the design of the additional floor space.

Proposed amendments to Sydney LEP 2012 are also being progressed which include eligible accommodation or community floor space in the calculation of the design excellence incentive. These include revised controls for the North Rosebery precinct in Green Square and the AMP precinct at Circular Quay.

A planning proposal is the most effective way of addressing the issue.

Section B – Relationship to strategic planning framework

Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy?

The proposed change relates to key metropolitan and sub-regional policy objectives to improve the quality of design and renewal across Sydney and its region.

The *Metropolitan Plan for Sydney 2036* recognises that "promotion of design excellence, including through competitions, can act as a catalyst for investment and demonstrates commitment by the private sector and Government to high quality urban renewal". Achieving excellence in urban design, architecture and renewal continues to be a key theme in the draft *Metropolitan Strategy for Sydney to 2031*.

Specifically, Action C5.1.1 of the *Sydney City Draft Subregional Strategy* calls on the City of Sydney Council to continue to encourage a high standard of design, including through the design competition process. Objective D4.2 of the current Metropolitan Strategy also encourages the instigation of design competitions to promote excellence, world-class design and sustainability.

The Sydney LEP 2012 design excellence provisions are consistent with these strategic policy objectives, recognising the importance of achieving design excellence across the LGA. The proposed change in wording is not inconsistent with these overall objectives. It seeks to ensure sufficient incentive is offered to cover the cost of undertaking a competitive design process and as such will facilitate design excellence.

Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?

The City's *Sustainable Sydney 2030* Strategic Plan is the 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 targets against which to measure progress.

Sustainable Sydney 2030 recognises that good urban design makes a positive contribution to the liveability of the City, particularly in higher density urban renewal areas. Strategic Direction 9, Sustainable Development Renewal and Design, specifically outlines Sydney's aspirations for design excellence across the City and promotes the use of competitive design processes.

This Planning Proposal is consistent with these strategic directions.

Is the planning proposal consistent with applicable state environmental planning policies?

The consistency of the Planning Proposal with applicable State Environmental Planning Policies (SEPPs) is outlined in Table 1. Those SEPPs which have been repealed or were not finalised are not included in this table.

Table 2 shows the consistency of the Planning Proposal with former Regional Environmental Plans (REPs) for the Sydney and Greater Metropolitan Regions, which are deemed to have the weight of SEPPs.

Table 1 - Consistency with State Environmental Planning Policies (SEPPs)

State Environmental Planning Policy (SEPP)	Comment
SEPP No 1—Development Standards	Not applicable
SEPP No 4—Development Without Consent and Miscellaneous Exempt and Complying Development	Not applicable.
SEPP No 6—Number of Storeys in a Building	Consistent - The Planning Proposal will not contradict or hinder application of this SEPP.
SEPP No 10—Retention of Low Cost Rental Accommodation	Not applicable.
SEPP No 14—Coastal Wetlands	Not applicable.
SEPP No 15—Rural Landsharing Communities	Not applicable.
SEPP No 19—Bushland in Urban Areas	Not applicable.
SEPP No 21—Caravan Parks	Not applicable.
SEPP No 22—Shops and Commercial Premises	Not applicable.
SEPP No 26—Littoral Rainforests	Not applicable.
SEPP No 29—Western Sydney Recreation Area	Not applicable.
SEPP No 30—Intensive Agriculture	Not applicable.
SEPP No 32—Urban Consolidation (Redevelopment of Urban Land)	Consistent - The Planning Proposal will not contradict or hinder application of this SEPP.
SEPP No 33—Hazardous and Offensive Development	Not applicable.
SEPP No 36—Manufactured Home Estates	Not applicable.
SEPP No 39—Spit Island Bird Habitat	Not applicable.
SEPP No 41—Casino Entertainment Complex	Not applicable.
SEPP No 44—Koala Habitat Protection	Not applicable.
SEPP No 47—Moore Park Showground	Not applicable.
SEPP No 50—Canal Estate Development	Not applicable.

State Environmental Planning Policy (SEPP)	Comment
SEPP No 52—Farm Dams and Other Works in Land and Water Management Plan Areas	Not applicable.
SEPP No 53—Metropolitan Residential Development	Not applicable.
SEPP No 55—Remediation of Land	Consistent - The Planning Proposal will not contradict or hinder application of this SEPP.
SEPP No 59—Central Western Sydney Regional Open Space and Residential	Not applicable.
SEPP No 60—Exempt and Complying Development	Not applicable.
SEPP No 62—Sustainable Aquaculture	Not applicable.
SEPP No 64—Advertising and Signage	Not applicable.
SEPP No 65—Design Quality of Residential Flat Development	Consistent – The Planning Proposal supports the operation of design excellence provisions which aim to achieve high quality design across the LGA.
SEPP No 70—Affordable Housing (Revised Schemes)	Consistent - The Planning Proposal will not contradict or hinder application of this SEPP.
SEPP No 71—Coastal Protection	Not applicable.
SEPP (Building Sustainability Index: BASIX) 2004	Consistent - The Planning Proposal supports the operation of design excellence provisions which encourage the incorporation of Ecologically Sustainable Design principles in new development.
SEPP (Housing for Seniors or People with a Disability) 2004	Consistent - The Planning Proposal supports the operation of design excellence provisions which seek a variety of design outcomes and building typologies. The provisions should help to provide a more sustainable mix of development over time.
SEPP (Major Development) 2005	Consistent - The Planning Proposal will not contradict or hinder application of this SEPP.
SEPP (Sydney Region Growth Centres) 2006	Not applicable.
SEPP (Infrastructure) 2007	Consistent - The Planning Proposal will not contradict or hinder application of this SEPP.
SEPP (Kosciuszko National Park—Alpine Resorts) 2007	Not applicable.
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	Not applicable.
SEPP (Temporary Structures) 2007	Not applicable.
SEPP (Exempt and Complying Development Codes) 2008	Not applicable.
SEPP (Rural Lands) 2008	Not applicable.
SEPP (Western Sydney Parklands) 2009	Not applicable.
SEPP (Affordable Rental Housing) 2009	Consistent - The Planning Proposal will not contradict or hinder application of this SEPP.
SEPP (Western Sydney Employment Area) 2009	Not applicable.
SEPP (Development on Kurnell Peninsula) 2005	Not applicable.

Table 2 - Consistency with former Sydney and Greater Metropolitan Regional Environmental Plans (REPs)

Regional Environmental Plan (REPs)	Comment
Sydney REP No 5—(Chatswood Town Centre)	Not applicable.
Sydney REP No 8 (Central Coast Plateau Areas)	Not applicable.
Sydney REP No 9—Extractive Industry (No 2—1995)	Not applicable.
Sydney REP No 11—Penrith Lakes Scheme	Not applicable.
Sydney REP No 13—Mulgoa Valley	Not applicable.
Sydney REP No 16—Walsh Bay	Not applicable.
Sydney REP No 17—Kurnell Peninsula (1989)	Not applicable.
Sydney REP No 18—Public Transport Corridors	Not applicable.

Regional Environmental Plan (REPs)	Comment
Sydney REP No 19—Rouse Hill Development Area	Not applicable.
Sydney REP No 20—Hawkesbury- Nepean River (No 2—1997)	Not applicable.
Sydney REP No 24—Homebush Bay Area	Not applicable.
Sydney REP No 25—Orchard Hills	Not applicable.
Sydney REP No 26—City West	Not applicable.
Sydney REP No 28—Parramatta	Not applicable.
Sydney REP No 29—Rhodes Peninsula	Not applicable.
Sydney REP No 30—St Marys	Not applicable.
Sydney REP No 33—Cooks Cove	Not applicable.
Sydney REP (Sydney Harbour Catchment) 2005	Consistent - The Planning Proposal will not contradict or hinder application of this REP. It will support high quality built form and design.
Drinking Water Catchments REP No 1	Not applicable.
Greater Metropolitan REP No 2— Georges River Catchment	Not applicable.

Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

The Planning Proposal has been assessed against each Section 117 Direction. The consistency of the Planning Proposal with these directions is shown in Table 3 below.

Table 3 - Consistency with applicable Ministerial Directions under Section 117

No.	Title	Comment
1. Employment and Resources		
1.1	Business and Industrial Zones	Not applicable
1.2	Rural Zones	Not applicable
1.3	Mining, Petroleum Production and Extractive Industries	Not applicable
1.4	Oyster Aquaculture	Not applicable
1.5	Rural Lands	Not applicable
2. Environment and Heritage		
2.1	Environment Protection Zones	Not applicable
2.2	Coastal Protection	Not applicable
2.3	Heritage Conservation	Consistent. The Sydney LEP 2012 design excellence provisions will continue to require consideration of any heritage issues and streetscape constraints when determining whether design excellence is demonstrated.
2.4	Recreation Vehicle Areas	Not applicable
3. Housing Infrastructure and Urban Development		
3.1	Residential Zones	Consistent. The Planning Proposal will continue to secure design excellence, particularly for prominent developments and across large sites.
3.2	Caravan Parks and Manufactured Home Estates	Not applicable
3.3	Home Occupations	Not applicable
3.4	Integrating Land Use and Transport	Consistent. The Planning Proposal is consistent with this s.117 direction. The design excellence provisions will continue to seek the highest quality urban structures, building forms and development designs to encourage appropriate integration of land use and transport.

3.5	Development Near Licensed Aerodromes	Not applicable
3.6	Shooting Ranges	Not applicable
4. Hazard and Risk		
4.1	Acid Sulfate Soils	Consistent. The Planning Proposal does not contradict or hinder application of acid sulphate soils provisions in Sydney LEP 2012.
4.2	Mine Subsidence and Unstable Land	Not applicable
4.3	Flood Prone Land	Consistent. The Planning Proposal does not contradict or hinder application of flood prone land provisions in Sydney LEP 2012.
4.4	Planning for Bushfire Protection	Not applicable
5. Regional Planning		
5.1	Implementation of Regional Strategies	Not applicable
5.2	Sydney Drinking Water Catchments	Not applicable
5.3	Farmland of State and Regional Significance on the NSW Far North Coast	Not applicable
5.4	Commercial and Retail Development along the Pacific Highway, North Coast	Not applicable
5.8	Second Sydney Airport, Badgerys Creek	Not applicable
6. Local Plan Making		
6.1	Approval and Referral Requirements	Consistent. The Planning Proposal does not include any concurrence, consultation or referral provisions nor does it identify any development as designated development.
6.2	Reserving Land for Public Purposes	Consistent. The Planning Proposal will not affect any land reserved for public purposes.
6.3	Site Specific Provisions	Not applicable
7. Metropolitan Planning		
7.1	Implementation of the Metropolitan Plan for Sydney 2036	Consistent. The Planning Proposal does not contradict or hinder achievement of the vision, land use strategy, policies, outcomes or actions of the <i>Metropolitan Plan for Sydney 2036</i> .

Section C – Environmental, social and economic impact

Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

The Planning Proposal is unlikely to adversely affect any critical habitat or threatened species, populations or ecological communities or their habitats. In considering whether a development which pursues additional floor space under the design excellence provisions demonstrates design excellence, the consent authority must have regard to the suitability of the land for development and any environmental impact which may be generated by the development.

Are there any other likely environmental effects as a result of the Planning Proposal and how are they proposed to be managed?

The detailed testing undertaken by the City prior to extending the application of the design excellence provisions across the LGA examined the ability to accommodate the floor space incentive on land within several key areas of the City without unacceptable environmental and amenity impacts. This

testing incorporated the additional floor space associated with calculating the 10% design excellence incentive on top of any applicable accommodation or community floor space, rather than prior to the award of these other floor space incentives.

The proposed amendment to Sydney LEP 2012 is unlikely to result in negative environmental effects that cannot be mitigated. All potential environmental impacts, including sustainable design, overshadowing, solar access, visual privacy, acoustic privacy, noise, wind and reflectivity must be considered by the consent authority in determining whether a proposed development demonstrates design excellence.

The design excellence floor space incentive is not absolute. Sydney LEP 2012 offers *up to* 10% additional height or FSR for the demonstration of design excellence. The consent authority has discretion to award less than 10% should site constraints prevent the full incentive floor space being appropriately accommodated. The incentive may be withheld in the event that a development fails to demonstrate design excellence.

The design excellence provisions are intended to deliver the highest standard of architectural, urban and landscape design, and as such there should be no unacceptable environmental impacts which occur as a result of the Planning Proposal.

How has the planning proposal adequately addressed any social and economic effects?

As noted in the current *Metropolitan Plan for Sydney 2036*, high quality design is essential to the image and market attractiveness of centres. Design excellence can act as a catalyst for investment and will contribute to the global positioning of Sydney.

In 2011, the City commissioned a feasibility assessment of the impact of a competitive design policy on redevelopment in urban renewal areas. The study found that the typical uplift in residual land value is higher than the cost of undertaking a competitive process and that the potential for additional floor space is a key incentive for pursuing design excellence. A floor space incentive can offset the cost of undertaking a competitive design process.

The Sydney LEP 2012 design excellence provisions express the floor space incentive as a proportion of the floor space before any additional accommodation or community floor space is added. This produces a smaller amount of floor space compared with the provisions as exhibited in the draft Sydney LEP 2011 and applied prior to 14 December 2012 when Sydney LEP 2012 came into effect. The unintended effect of the Sydney LEP 2012 provision is to reduce both the development capacity of eligible sites and the incentive for undertaking a competitive process.

The Planning Proposal seeks to address this by re-instating the higher potential floor space achievable for demonstration of design excellence.

Part 4 – Community Consultation

Public Exhibition

This Planning Proposal is to be exhibited in accordance with the Gateway Determination once issued by the Minister for Planning and Infrastructure. It is anticipated the Gateway Determination will require a public exhibition for a period of not less than 14 days in accordance with section 4.5 of *A Guide to preparing Local Environmental Plans*.

Notification of the public exhibition will be via:

- the City of Sydney website; and
- in newspapers that circulate widely in the area (the Sydney Morning Herald and relevant local newspaper(s)).

Information relating to the Planning Proposal will be on display at the following City of Sydney customer service centres:

- CBD – Level 2, Town Hall House, 456 Kent Street, Sydney NSW 2000
- Glebe – 186 Glebe Point Road, Glebe NSW 2037
- Green Square – 100 Joynton Avenue, Zetland NSW 2017
- Kings Cross – 50-52 Darlinghurst Road, Kings Cross NSW 2011
- Redfern – 158 Redfern Street, Redfern NSW 2016

Consultation with relevant NSW agencies and authorities and other relevant organisations will be undertaken in accordance with the Gateway Determination.