

ITEM 3. STATUS REPORT - 108-120 PITT STREET SYDNEY - COMMONWEALTH BANK MONEY BOX**FILE NO: S063506****SUMMARY**

In June 2008, the Central Sydney Planning Committee (CSPC) considered a Stage 1 development application lodged by Colonial First State Global Management to redevelop the heritage listed Commonwealth Bank "Money Box" site located at Martin Place (108-120 Pitt Street Sydney). Following consideration of the Planner's report, which recommended refusal of the application, the CSPC resolved that consideration of the matter be deferred. The CSPC did not support the proposal and resolved that, in order to reach an "appropriate solution", the issues raised in the planning report should be considered as advice to the Proponent.

The Proponent has engaged JPW Architects to develop a "preferred concept" for the site and has requested that the City consider this revised proposal. The Proponent considers that the revised scheme mostly complies with existing controls in the *Sydney Local Environmental Plan 2005* (Sydney LEP 2005), with the exception of the height control. In discussions with Council officers, the Proponent has indicated that if the new scheme is supported then an amendment to Sydney LEP 2005 may be required which would allow the City to progress the proposal, and that this could run parallel to the preparation of the City Plan LEP.

Since the commencement of the City Plan Review in 2005, LEP amendments have been discouraged, as they are considered to be antipathetic to the "holistic" approach that has been taken in the preparation of the City Plan and divert the City's resources from completing it. The approach informing the City Plan gives regard to wider strategic matters when preparing new planning controls rather than considering individual sites in isolation of their context. The Department of Planning has a similar view, and has an objective to reduce the number of LEP amendments. The Department's position on LEP amendments is that councils should be able to justify a proposal for consideration and that justification should take account of the public interest and explain the implications of not proceeding.

Due to the Money Box site's uniqueness, it is acknowledged that an LEP amendment may be appropriate in this case. A potential way forward is that the Proponent be afforded the opportunity to lodge a detailed "justification report" that will assist City officers to assess whether to proceed with an LEP amendment for the site. The justification report requirements are outlined in this report and can assist the City to determine the suitability of an LEP amendment for the site.

Consideration has also been given to two alternative options to review controls for the site. These include: incorporating the proposal into the City Plan Review process; or utilising the new LEP "Gateway" process proposed in the *Environmental Planning and Assessment Amendment Act 2008*. Due to timing, it is doubtful that new planning controls for the Money Box site can be incorporated into the broader City Plan work, and it would be ill advised to delay the progress of the City Plan for the sake of a single site. The Gateway option is also a possible way forward but it is uncertain when guidelines will be available and when the process will be in effect. However, it is considered appropriate for the City to apply a "de facto" process similar to the proposed Gateway approach if evaluating an LEP amendment proposal for the site.

RECOMMENDATION

It is resolved that:

- (A) the proponent be advised that should an LEP Amendment Request be submitted that this be accompanied by a justification report that addresses the matters raised in this report and the criteria in the *Department of Planning Circular No. PS 06-015 – Spot Rezoning* and that the justification report be supported by a Heritage Impact Assessment Report and an Urban Design Assessment Report; and
- (B) prior to Council considering a request to amend *Sydney Local Environmental Plan 2005*, it be requested that *Development Application: 108-120 Pitt Street Sydney - Commonwealth Bank 'Money Box' (S2008/520)* be withdrawn.

ATTACHMENTS

Attachment A: Resolution of the Central Sydney Planning Committee of 26 June 2008

Attachment B: Report to the Central Sydney Planning Committee on 26 June 2008 for Development Application: 108-120 Pitt Street Sydney (Commonwealth Bank 'Money Box') (D2008/520)

Attachment C: Department of Planning: Planning Circular PS 06-015 & Pro-forma evaluation criteria from Planning Circular PS 06-005

Attachment D: Heritage Committee – Pre-DA Advice (21 May 2008)

Attachment E: Heritage Committee – Stage 1 DA Advice (13 June 2008)

BACKGROUND

1. In June 2008, the Central Sydney Planning Committee (CSPC) considered a Stage 1 development application (DA) lodged by Colonial First State Global Management (the Proponent) to redevelop the heritage listed Commonwealth Bank “Money Box” site located at Martin Place at address:108-120 Pitt Street Sydney.
2. Following consideration of the planner’s report, which recommended refusal of the application, the CSPC resolved that consideration of the matter be deferred. The CSPC did not support the proposal and, in order to reach an “appropriate solution”, resolved that issues raised in the planning report should be considered as advice to the Proponent. In addition to this, the applicant was invited to consult with relevant committees, the Design Advisory Panel and City officers. The CSPC resolution is at **Attachment A** to this report.
3. In response to the CSPC’s resolution, the Proponent has prepared a revised scheme for the site. It should be noted that the Proponent has yet to withdraw the earlier development application, pending consideration by the CSPC of this revised scheme.

Stage 1 DA

4. The “Money Box” site is occupied by a single building constructed in three phases, comprising the former head office of the Commonwealth Banking Corporation. This includes a 10 storey building constructed in two parts known as the original 1916/1933 building, and a 12 storey building constructed known as the 1968 addition.
5. Although not included on the State Heritage Register, statements of significance identify the building as being of historic and aesthetic significance at a state level.
6. The Stage 1 DA proposed the demolition of the existing 1968 addition and construction of a new building within the eastern section of the site. The proposal included a vertical extension of the original 1916/1933 building and the creation of a 105 metre tower within the south east corner of the site. A copy of the planner’s report is at **Attachment B**.
7. The proposal was recommended for refusal because it failed to comply with floor space, height and setback controls, was considered excessive and would significantly impact upon the heritage item and its setting. It was considered that the envelope would be visible from the public domain, in particular, the historically significant settings of Martin Place and Rowe Street, and would have an irreversible and significant impact on an iconic heritage item.
8. The DA also failed to demonstrate the physical impact that the new structure would have on the heritage fabric of the existing building and it conflicted with advice provided by Council’s Heritage Committee, Design Advisory Panel and Heritage and Urban Design Unit. The proposal was also not considered to be in the public interest.

Proponent’s response

9. The Proponent has engaged JPW Architects to develop a “preferred concept” for the site and, in discussions with Council officers, has requested that the City consider this proposal.

10. The preferred concept has been distributed internally to Council officers for information. Due to timing, the merits of the revised scheme have yet to be evaluated by City officers. The Proponent has requested that Richard Johnson from JPW Architects brief the CSPC regarding the revised scheme in order to demonstrate its relative merits.
11. The Proponent considers that the revised scheme mostly complies with existing controls in the Sydney LEP 2005, with the exception of the height control. In discussions with Council officers, the Proponent has indicated that, if the new scheme is supported, an amendment to Sydney LEP 2005 may be required which would allow the City to progress the proposal. If progressed, this process would run separate to the City Plan process.

KEY IMPLICATIONS

Progressing the revised scheme

12. Due to its non-compliance with planning controls in Sydney LEP 2005, consideration has been given to the revised scheme.
13. Three options are considered in this report:
 - Option A: Amend *Sydney Local Environmental Plan 2005* (i.e. a site specific LEP amendment);
 - Option B: Integrate the revised scheme into the City Plan; and
 - Option C: Utilise the “Gateway” plan making process in the *Environmental Planning and Assessment Amendment Act 2008* (N.B. this process is yet to come into effect).

Option ‘A’ – LEP Amendment

14. Since the commencement of the City Plan Review in 2005, LEP amendments have been discouraged, as they are antipathetic to the “holistic” approach underlying the preparation of the City Plan. The approach taken in the City Plan gives regard to wider strategic matters when preparing new planning controls, rather than considering individual sites in isolation of their context.
15. In July 2005, Council and the CSPC considered a report which outlined the key projects that would be undertaken to inform the preparation of the new City Plan. In this report two reasons were outlined why individual LEP amendments were considered inappropriate and why City Plan projects should make no allowance for “spot” requests.
16. Firstly, it was considered that progressing spot changes to planning controls is a resource-intensive exercise that diverts resources from the City Plan. Secondly, it was considered that whilst “spot” changes to planning controls are thoroughly researched and analysed prior to their completion, they are by their very nature focused on individual sites, with limited regard for the wider context.
17. The matters outlined above continue to be relevant and, in most cases, it is considered that LEP amendments are contrary to the strategic basis that has informed the preparation of City Plan. Most stand alone amendments cannot be properly assessed in isolation and it is preferred to handle any proposals for zoning change through the overall City Plan process.

18. Given the above reasons, and that the City Plan is currently at an advanced stage (with an aim to exhibit in 2009), undertaking an LEP amendment in isolation of the broader City Plan Review would be considered an appropriate solution only if exceptional circumstances can be demonstrated by a proponent.

Consideration of LEP amendment requests

19. To date, the City's process has been that should any person seek an LEP amendment, or changes to planning controls, it is recommended that they write to Council Officers, explaining in detail which LEP or DCP that they seek a change to, and what that change is, and the matter has been evaluated as part of the comprehensive single City Plan process.
20. A number of written submissions have been received and have been reviewed as the City Plan has progressed. Those requests that have been found to have merit are being progressed and incorporated into the City Plan.
21. However, it should be noted that requests have primarily been for smaller sites and properties of lesser significance than the Money Box site. Individual LEP amendments for these sites have been considered unwarranted since they are contrary to the contextual approach informing the City Plan. It is also at odds with NSW Department of Planning (the Department) advice which is discussed at length below.

Department of Planning position on LEP amendments

22. In Planning Circular PS 06-015 released in June 2006, the Department outlined its current position on LEP amendments. In the Circular the Department states that it has an objective to reduce the number of LEP amendments. The reasons for this are to encourage a planning approach that is fair and transparent, deals with all like cases consistently, provides for planning decisions that have a clear strategic basis, and to reduce the administrative burden on councils, the Department and Parliamentary Counsel. A copy of the Circular and related Circular PS 06-005 LEP evaluation criteria are at **Attachment C** to this report.
23. All proposed draft LEPs are now subject to review by the Department's LEP Review Panel so that the Department is able to scrutinize a Council's LEP making process. Circular PS 06-015 states that Councils should be able to justify a proposal for consideration by the Department.
24. Importantly, the Circular states:

"Justification should take account of the public interest and explain the implications of not proceeding at that time."
25. All requests are assessed on merit, and a number of evaluation criteria prepared by the Department must be considered. Arguably, the Department is discouraging Councils from considering requests so that they take a more strategic approach to planning, rather than a piecemeal one. The implication is that the result of an LEP amendment may be achieved by other planning means, such as incorporating the site into a broader plan including similar sites or uses (eg. the City Plan LEP).

26. The Circular lists the criteria to be addressed when considering an LEP amendment. Unless positive responses are given to most of these criteria, a Council is unlikely to find suitable justification for submitting a draft LEP amendment to the Department's LEP Review Panel.

The criteria, as listed on page 1 of the Circular at **Attachment C** are:

- Will the LEP be compatible with agreed State and regional strategic direction for development in the area (eg land release, strategic corridors, development within 800 metres of a transit node)?
- Will the LEP implement studies and strategic work consistent with State and regional policies and Ministerial (section 117) directions?
- Is the LEP located in a global/regional city, strategic centre or corridor nominated within the Metropolitan Strategy or other regional/subregional strategy?
- Will the LEP facilitate a permanent employment generating activity or result in a loss of employment lands?
- Will the LEP be compatible/complementary with surrounding land uses?
- Is the LEP likely to create a precedent; or create or change the expectations of the landowner or other landholders?
- Will the LEP deal with a deferred matter in an existing LEP?
- Have the cumulative effects of other spot rezoning proposals in the locality been considered? What was the outcome of these considerations?

Justifying the proposal

27. Due to the Money Box site's uniqueness, it is acknowledged that an LEP amendment may be appropriate, subject to the submission of a detailed "justification report" that will assist City officers to assess whether an LEP amendment meets the Department's Circular PS06-015 criteria.
28. It is up to the Proponent to prepare detailed documentation that clearly demonstrates that an LEP amendment is justifiable. This should be done prior to the City making any determination to progress (or not progress). As mentioned above, the City must provide a convincing argument to the Department that an LEP amendment is justifiable and it is therefore in the Proponent's interests to prepare a strong case.
29. It is important that submitted documentation addresses a range of matters. This would include the evaluation criteria outlined in Departmental Circulars; issues raised throughout the assessment of the initial DA; and other material that may support the proposal.
30. In summary, if the Proponent decides to proceed with an LEP amendment request, it is considered appropriate that they lodge a "justification report" to support the proposal that:

- (a) addresses in detail each evaluation criteria outlined in the NSW Department of Planning – Planning Circular PS 06-015, using the pro forma from Planning Circular PS 06-005, a copy of which is at **Attachment C**;
- (b) addresses in detail each issue raised in the recommendation for refusal contained in the *Central Sydney Planning Committee Report of 26 June 2008 for Development Application: 108-120 Pitt Street Sydney (Commonwealth Bank 'Money Box')* (D2008/520);
- (c) demonstrates in detail compliance with all of the design principles outlined in *Heritage and Urban Design Report relating to Design Principles for Alterations and Additions for the Commonwealth Bank Building, 120 Pitt Street & Martin Place, Sydney "The Money Box"* – Report of the Sydney City Council Design Panel (21 May 2008);
- (d) responds to all matters raised in Section 2(ii) of the *Heritage and Urban Design Post-Lodgement Report relating to a Development Application for a Stage 1 DA for the Commonwealth Bank Building, 120 Pitt Street & Martin Place, Sydney "The Money Box"* - Report of the Sydney City Council Design Panel (13 June 2008);
- (e) provides an analysis of planning controls that currently apply to the site and justification for their variation;
- (f) demonstrates that the proposal is in the public interest;
- (g) explains the implications of not proceeding with the LEP amendment at this time;
- (h) provides an analysis of how the proposal would comply with any relevant aims and objectives contained in Sydney LEP 2005;
- (i) demonstrates that the proposal is consistent with the Sustainable Sydney 2030 Vision and the City of Sydney Subregional Strategy;
- (j) includes site details, location plan, surrounding land uses, etc;
- (k) identifies the opportunities and constraints of the site;
- (l) provides an urban design analysis;
- (m) identifies the potential impacts of the amendment and the subsequent development of the site on the surrounding environment, in terms of:
 - (i) amenity issues, such as privacy and overshadowing on adjoining development;
 - (ii) demand for infrastructure and utility services;
 - (iii) compatibility with surrounding zoning and land use patterns;
 - (iv) traffic conditions and parking generation;
 - (v) heritage impacts;
 - (vi) economic and retail impacts; and

- (vii) environmental impacts;
- (n) includes a set of concept plans (this may include floor plans, elevations, sections, perspectives and landscape plans), with supporting written information, that indicates the nature and scale of the proposal. This will include, but not be limited to, the following issues:
 - (i) proposed land use(s) of the site;
 - (ii) density or floor space ratio (FSR) of the development proposed for the site;
 - (iii) building envelopes, layout of building blocks and built form design;
 - (iv) details of car parking, access and traffic arrangements; and
 - (v) initiatives to improve energy efficiency and water conservation.
- 31. A Heritage Impact Assessment Report and Urban Design Assessment Report prepared by suitably qualified consultants will be required as supporting documentation to the justification report.
- 32. In addition to the information required in paragraphs 30 and 31 above, further information may be requested by the City that may support the proposal.

Note: Refer to **Attachments D and E** for (c) and (d) above.

Option 'B' - Integrate the revised scheme into the City Plan

- 33. It is anticipated that the City Plan will be recommended for public exhibition in 2009. The draft City Plan is currently at an advanced stage and its provisions are currently being finalised following several years of preparation.
- 34. Considering this time-frame, it is doubtful that new planning controls for the Money Box site can be incorporated into the broader City Plan work, and it would be ill advised to delay the progress of the City Plan in order to accommodate a review of controls for the site, particularly as the time-frame for an LEP amendment of this type is likely to be between six and twelve months.
- 35. In any case, following the public exhibition of the City Plan LEP, there is likely to be an extended review period and it is probable that this review process would exceed the period required to finalise an LEP amendment of the site. Therefore, any new planning controls for the site may be integrated into the City Plan prior to gazettal.

Option 'C' - Utilise the "Gateway" plan making approach

- 36. Division 4 of the *Environmental Planning and Assessment Amendment Act 2008* will introduce a new process for the preparation and finalisation of LEPs called the "Gateway" system. This process provides for an upfront assessment of the suitability of an LEP against clearly established criteria. Prior to the commencement of the gateway process, councils will need to prepare a planning proposal and forward it to the Department for review. The planning proposal will require justification for the preparation of an LEP.

37. According to the Department's Discussion Paper *"Improving the NSW Planning System"* released in November 2007, the operation of the gateway system will be governed by a set of guidelines that will identify the level of detail required to satisfy different gateway tests for different types of LEPs. The guidelines informing the preparation of a "justification report" would aim to ensure that the assessment process is focussed and not a protracted one.
38. The Discussion Paper states that:
- "The guidelines for the gateway process are likely to identify the need for the proposal to address strategic context, infrastructure and environmental considerations, public benefit and investment certainty. The assessment would be based on typical economic appraisal principles and cover all private and external costs associated with the site, weighing these against the community benefits and environmental impacts of the development."*
39. The Gateway process is yet to commence and is subject to the finalisation of a timetable which will stage the introduction of various aspects of new planning legislation. It is uncertain at this stage when the gateway process will become effective. Therefore, in the short term it is unlikely to be an option that can be used to quickly progress a variation to controls in Sydney LEP 2005 that apply to the site.
40. Despite the absence of Gateway guidelines, it may be appropriate for the City to apply a "de facto" process similar to the gateway process when considering an LEP amendment for the site. By doing so, this will enable the City to justify the amendment to both the community and the Department's LEP Review Panel. In essence, the "justification report" requirements outlined in paragraph 30 of this report parallel the proposed Gateway system because they provide clear upfront criteria to inform the assessment of a proposal.

BUDGET IMPLICATIONS

41. If an LEP amendment proposal is submitted, then significant Council staff resources will need to be allocated towards the review and determination. Furthermore, there are likely to be high administrative costs if an amendment is publicly exhibited.
42. If a proposal to amend the LEP is made, then a legal agreement would need to be made, setting out terms where the Proponent will pay for Council's costs involved in the consideration of the LEP amendment. At a minimum, this would reflect the fees set out in Council's Fees and Charges Schedule. LEP amendments relating to a development site incur a base fee of \$11,221, a review fee of \$168 per hour, and a review fee by senior staff of \$382 per hour. If Council refuses the proposal, then fees would be non-refundable and the proponent has no right of appeal.

RELEVANT LEGISLATION

43. *Environmental Planning and Assessment Act 1979.*
44. *Environmental Planning and Assessment Amendment Act 2008.*
45. *Sydney Local Environmental Plan 2005.*

OPTIONS

46. As discussed in this report, the following options are available to the Proponent to reach an appropriate solution:
- (a) submit an LEP amendment request, prepared in accordance with the “justification report” requirements set out in paragraphs 30 and 31 of this report. Depending on the timing of the rollout of the amending legislation, the revised scheme may be assessed by the City in accordance with Department of Planning “Gateway” guidelines when they are made available;
 - (b) integrate the proposed LEP amendment into the City Plan, however, due to timing, it is doubtful that new planning controls for the Money Box site can be incorporated at this late stage; or
 - (c) existing controls in Sydney LEP 2005 may be considered appropriate.

PUBLIC CONSULTATION

47. If a site specific LEP is endorsed by Council and approved by the Department’s LEP panel, it will be publicly exhibited in accordance with the requirements of the *Environmental Planning and Assessment Act 1979*.

MICHAEL HARRISON

Director City Strategy and Design

(Nicholas Knezevic, Specialist Planner)

ITEM 6. 108-120 PITT STREET SYDNEY (COMMONWEALTH BANK 'MONEY BOX') - STATUS REPORT**FILE NO: S063506****SUMMARY**

In June 2008, the Central Sydney Planning Committee (CSPC) considered a Stage 1 development application lodged by Colonial First State Global Management to redevelop the heritage listed Commonwealth Bank "Money Box" site located at Martin Place (108-120 Pitt Street Sydney). Following consideration of the Planner's report which recommended refusal of the application, the CSPC resolved that consideration of the matter be deferred. The CSPC did not support the proposal and resolved that in order to reach an "appropriate solution" that the issues raised in the planning report should be considered as advice to the Proponent.

The Proponent has engaged JPW Architects to develop a "preferred concept" for the site and has requested that the City consider this revised proposal. The Proponent considers that the revised scheme mostly complies with existing controls in the *Sydney Local Environmental Plan 2005* with the exception of the height control. In discussions with Council officers the Proponent has indicated that if the new scheme is supported then an amendment to Sydney LEP 2005 may be required which would allow the City to progress the proposal, and that this could run parallel to the preparation of the City Plan LEP.

Since the commencement of the City Plan Review in 2005, LEP amendments have been discouraged, as they are considered to be antipathetic to the "holistic" approach that has been taken in the preparation of the City Plan and divert the City's resources from completing it. The approach informing the City Plan gives regard to wider strategic matters when preparing new planning controls rather than considering individual sites in isolation of their context. The Department of Planning has a similar view, and has an objective to reduce the number of LEP amendments. The Department's position on LEP amendments is that councils should be able to justify a proposal for consideration and that justification should take account of the public interest and explain the implications of not proceeding.

Due to the Money Box site's uniqueness, it is acknowledged that a LEP amendment may be appropriate in this case. A potential way forward is that the Proponent be afforded the opportunity to lodge a detailed "justification report" that will assist City officers to assess whether to proceed with a LEP amendment for the site. The justification report requirements are outlined in this report and can assist the City to determine the suitability of a LEP amendment for the site.

Consideration has also been given to two alternative options to review controls for the site. These include: incorporating the proposal into the City Plan Review process; or utilising the new LEP "Gateway" process proposed in the *Environmental Planning and Assessment Amendment Act 2008*. Due to timing, it is doubtful that new planning controls for the Money Box site can be incorporated into the broader City Plan work, and it would be ill advised to delay the progress of the City Plan for the sake of a single site. The Gateway option is also a possible way forward but it is uncertain when guidelines will be available and when the process will be in effect. However, it is considered appropriate for the City to apply a "de facto" process similar to the proposed Gateway approach if evaluating a LEP amendment proposal for the site.

RECOMMENDATION

It is resolved that:

- (A) the proponent be advised that should an LEP Amendment Request be submitted that this be accompanied by a justification report that addresses the matters raised in this report and the criteria in the *Department of Planning Circular No. PS 06-015 - Spot Rezoning* and that the justification report be supported by a Heritage Impact Assessment Report and an Urban Design Assessment Report; and
- (B) prior to the Central Sydney Planning Committee considering a request to amend *Sydney Local Environmental Plan 2005*, it is requested that *Development Application: 108-120 Pitt Street Sydney - Commonwealth Bank 'Money Box'* (S2008/520) be withdrawn.

ATTACHMENTS

Attachment A: Central Sydney Planning Committee Resolution - 26 June 2008.

Attachment B: Central Sydney Planning Committee Report of 26 June 2008 for Development Application: 108-120 Pitt Street Sydney (Commonwealth Bank 'Money Box') (D2008/520).

Attachment C: Department of Planning: Planning Circular PS 06-015 and Pro-forma evaluation criteria from Planning Circular PS 06-005.

Attachment D: Heritage Committee - Pre-DA Advice (21 May 2008).

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BACKGROUND

1. In June 2008, the Central Sydney Planning Committee (CSPC) considered a Stage 1 development application (DA) lodged by Colonial First State Global Management (the Proponent) to redevelop the heritage listed Commonwealth Bank “Money Box” site located at Martin Place at address: 108-120 Pitt Street Sydney.
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3. In response to the CSPC’s resolution the Proponent has prepared a revised scheme for the site. Note that the Proponent has yet to withdraw the earlier development application pending consideration by the CSPC of this revised scheme.

Stage 1 DA

4. The “Money Box” site is occupied by a single building constructed in three phases, comprising the former head office of the Commonwealth Banking Corporation. This includes a 10 storey building constructed in two parts known as the original 1916 /1933 building, and a 12 storey building constructed known as the 1968 addition.
5. Although not included on the State Heritage Register, statements of significance identify the building as being of historic and aesthetic significance at a state level.
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Proponent’s response

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KEY IMPLICATIONS

Progressing the revised scheme

12. Due to its non-compliance with planning controls in Sydney LEP 2005, consideration has been given to the revised scheme.
13. Three options are considered in this report:
 - Option A. Amend *Sydney Local Environmental Plan 2005* (i.e. a site specific LEP amendment);
 - Option B. Integrate the revised scheme into the City Plan;
 - Option C. Utilise the “Gateway” plan making process in the *Environmental Planning and Assessment Amendment Act 2008* (N.B. this process is yet to come into effect).

Option ‘A’ - LEP Amendment

14. Since the commencement of the City Plan Review in 2005, LEP amendments have been discouraged, as they are antipathetic to the “holistic” approach underlying the preparation of the City Plan. The approach taken in the City Plan gives regard to wider strategic matters when preparing new planning controls rather than considering individual sites in isolation of their context.
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26. The Circular lists the criteria to be addressed when considering a LEP amendment. Unless positive responses are given to most of these criteria, a Council is unlikely to find suitable justification for submitting draft LEP amendment to the Department's LEP Review Panel.

The criteria, as listed on page 1 of the Circular at **Attachment C** are:

- Will the LEP be compatible with agreed State and regional strategic direction for development in the area (eg land release, strategic corridors, development within 800 metres of a transit node)?
- Will the LEP implement studies and strategic work consistent with State and regional policies and Ministerial (section 117) directions?
- Is the LEP located in a global/regional city, strategic centre or corridor nominated within the Metropolitan Strategy or other regional/subregional strategy?
- Will the LEP facilitate a permanent employment generating activity or result in a loss of employment lands?
- Will the LEP be compatible/complementary with surrounding land uses?
- Is the LEP likely to create a precedent; or create or change the expectations of the landowner or other landholders?
- Will the LEP deal with a deferred matter in an existing LEP?
- Have the cumulative effects of other spot rezoning proposals in the locality been considered? What was the outcome of these considerations?

Justifying the proposal

27. Due the Money Box site's uniqueness, it is acknowledged that a LEP amendment may be appropriate, subject to the submission of a detailed "justification report" that will assist City officers to assess whether an LEP amendment meets the Department's Circular PS06-015 criteria.
28. It is up to the Proponent to prepare detailed documentation that clearly demonstrates that a LEP amendment is justifiable. This should be done prior to the City making any determination to progress (or not progress). As mentioned above, the City must provide a convincing argument to the Department that a LEP amendment is justifiable and it is therefore in the Proponent's interests to prepare a strong case.
29. It is important that submitted documentation addresses a range of matters. This would include the evaluation criteria outlined in Departmental Circulars; issues raised throughout the assessment of the initial DA; and other material that may support the proposal.
30. In summary, if the Proponent decides to proceed with an LEP amendment request it is considered appropriate that they lodge a "justification report" to support the proposal that:

- (a) Addresses in detail each evaluation criteria outlined in the NSW Department of Planning - Planning Circular PS 06-015 using the pro forma from Planning Circular PS 06-005, a copy of which is at **Attachment C**;
- (b) Addresses in detail each issue raised in the recommendation for refusal contained in the *Central Sydney Planning Committee Report of 26 June 2008 for Development Application: 108-120 Pitt Street Sydney (Commonwealth Bank 'Money Box')* (D2008/520);
- (c) Demonstrates in detail compliance with all the design principles outlined in *Heritage and Urban Design Report relating to Design Principles for Alterations and Additions for the Commonwealth Bank Building, 120 Pitt Street & Martin Place, Sydney "The Money Box"* - Report of the Sydney City Council Design Panel (21 May 2008);
- (d) Responds to all matters raised in Section 2(ii) of the *Heritage and Urban Design Post-Lodgement Report relating to a Development Application for a Stage 1 DA for the Commonwealth Bank Building, 120 Pitt Street & Martin Place, Sydney "The Money Box"* - Report of the Sydney City Council Design Panel (13 June 2008);
- (e) Provides an analysis of planning controls that currently apply to the site and justification for their variation;
- (f) Demonstrates that the proposal is in the public interest;
- (g) Explains the implications of not proceeding with the LEP amendment at this time;
- (h) Provides an analysis of how the proposal would comply with any relevant aims and objectives contained in Sydney LEP 2005;
- (i) Demonstrates that the proposal is consistent with the Sustainable Sydney 2030 Vision and the City of Sydney Subregional Strategy;
- (j) Includes site details, location plan, surrounding land uses etc.
- (k) Identifies the opportunities and constraints of the site;
- (l) Provides an urban design analysis;
- (m) Identifies the potential impacts of the amendment and the subsequent development of the site on the surrounding environment, in terms of:
 - (i) Amenity issues, such as privacy and overshadowing on adjoining development;
 - (ii) Demand for infrastructure and utility services;
 - (iii) Compatibility with surrounding zoning and land use patterns;
 - (iv) Traffic conditions and parking generation;
 - (v) Heritage Impacts;
 - (vi) Economic and retail impacts;

- (vii) Environmental impacts.
- (n) Includes a set of concept plans (this may include floor plans, elevations, sections, perspectives and landscape plans), with supporting written information that indicates the nature and scale of the proposal. This will include, but not be limited to, the following issues:
 - (i) Proposed land use(s) of the site;
 - (ii) Density or floor space ratio (FSR) of the development proposed for the site;
 - (iii) Building envelopes, layout of building blocks and built form design;
 - (iv) Details of car parking, access and traffic arrangements;
 - (v) Initiatives to improve energy efficiency and water conservation.
- 31. A Heritage Impact Assessment Report and Urban Design Assessment Report prepared by suitably qualified consultants will be required as supporting documentation to the justification report.
- 32. In addition to the information required in paragraphs 28 and 29 above, further information may be requested by the City that may support the proposal.

Note: Refer to **Attachments D and E** for 'c' and 'd' above.

Option 'B' - Integrate the revised scheme into the City Plan

- 33. It is anticipated that the City Plan will be recommended for public exhibition in 2009. The draft City Plan is currently at an advanced stage and its provisions are currently being finalised following several years of preparation.
- 34. Considering this time-frame it is doubtful that new planning controls for the Money Box site can be incorporated into the broader City Plan work, and it would be ill advised to delay the progress of the City Plan in order to accommodate a review of controls for the site, particularly as the time-frame for a LEP amendment of this type is likely to be between six and twelve months.
- 35. In any case, following the public exhibition of the City Plan LEP there is likely to be an extended review period and it is probable that this review process would exceed the period required to finalise an LEP amendment of the site. Therefore any new planning controls for the site may be integrated into the City Plan prior to gazettal.

Option 'C' - Utilise the "Gateway" plan making approach

- 36. Division 4 of the *Environmental Planning and Assessment Amendment Act 2008* will introduce a new process for the preparation and finalisation of LEPs called the "Gateway" system. This process provides for an upfront assessment of the suitability of an LEP against clearly established criteria. Prior to the commencement of the gateway process councils will need to prepare a planning proposal and forward it to the Department for review. The planning proposal will require justification for the preparation of an LEP.

37. According to the Department's Discussion Paper *"Improving the NSW Planning System"* released in November 2007, the operation of the gateway system will be governed by a set of guidelines that will identify the level of detail required to satisfy different gateway tests for different types of LEPs. The guidelines informing the preparation of a "justification report" would aim to ensure that the assessment process is focussed and not a protracted one.
38. The Discussion Paper states that:
- "The guidelines for the gateway process are likely to identify the need for the proposal to address strategic context, infrastructure and environmental considerations, public benefit and investment certainty. The assessment would be based on typical economic appraisal principles and cover all private and external costs associated with the site, weighing these against the community benefits and environmental impacts of the development."*
39. The Gateway process is yet to commence and is subject to the finalisation of a timetable which will stage the introduction of various aspects of new planning legislation. It is uncertain at this stage when the gateway process will become effective. Therefore, in the short term it is unlikely to be an option that can be used to quickly progress a variation to controls in Sydney LEP 2005 that apply to the site.
40. Despite the absence of Gateway guidelines, it may be appropriate for the City to apply a "de facto" process similar to the gateway process when considering a LEP amendment for the site. By doing so, this will enable the City to justify the amendment to both to the community and the Department's LEP Review Panel. In essence, the "justification report" requirements outlined in paragraph 28 of this report parallel the proposed Gateway system because they provide clear upfront criteria to inform the assessment of a proposal.

BUDGET IMPLICATIONS

41. If an LEP amendment proposal is submitted then significant Council staff resources will need to be allocated towards the review and determination. Furthermore, there are likely to be high administrative costs if an amendment is publicly exhibited.
42. If a proposal to amend the LEP is made then a legal agreement would need to be made, setting out terms where the Proponent will pay for Council's cost involved in the consideration of the LEP amendment. At a minimum this would reflect the fees set out in Council's Fees and Charges Schedule. LEP amendments relating to a development site incur a base fee of \$11,221, a review fee of \$168 per hour, and a review fee by senior staff of \$382 per hour. If Council refuses the proposal then fees would be non-refundable and the proponent has no right of appeal.

RELEVANT LEGISLATION

43. *Environmental Planning and Assessment Act 1979*
44. *Environmental Planning and Assessment Amendment Act 2008*
45. *Sydney Local Environmental Plan 2005*

OPTIONS

46. As discussed in this report, the following options are available to the Proponent to reach an appropriate solution:
- (a) Submit a LEP amendment request, prepared in accordance with the “justification report” requirements set out in paragraph 28 and 29 of this report. Depending on the timing of the rollout of the amending legislation, the revised scheme may be assessed by the City in accordance with Department of Planning “Gateway” guidelines when they are made available;
 - (b) Integrate the proposed LEP amendment into the City Plan, however due to timing it is doubtful that new planning controls for the Money Box site can be incorporated at this late stage;
 - (c) Existing controls in Sydney LEP 2005 may be considered appropriate.

PUBLIC CONSULTATION

47. If a site specific LEP is endorsed by Council and approved by the Department’s LEP panel, it will be publicly exhibited in accordance with the requirements of the *Environmental Planning and Assessment Act 1979*.

MICHAEL HARRISON

Director - City Strategy and Design

(Nicholas Knezevic, Specialist Planner)