

Section 73A - correct minor errors in Sydney LEP 2012 and South Sydney LEP 1998

Proposal Title : **Section 73A - correct minor errors in Sydney LEP 2012 and South Sydney LEP 1998**

Proposal Summary : **To rectify minor errors in Sydney Local Environmental Plan 2012 and South Sydney LEP 1998 under section 73A of the Environmental Planning and Assessment Act 1979.**

PP Number : **PP_2013_SYDNE_002_00**

Dop File No : **13/04783**

Proposal Details

Date Planning : **28-Feb-2013**

LGA covered : **Sydney**

Proposal Received :

Region : **Sydney Region East**

RPA : **Council of the City of Sydney**

State Electorate : **SYDNEY**

Section of the Act : **73A - Minor Matter**

LEP Type : **73A**

Location Details

Street : **Land bounded by Lachlan Street, Bourke Street, O'Dea Avenue and South Dowling Street**

Suburb : **waterloo**

City : **sydney**

Postcode : **2017**

Land Parcel :

DoP Planning Officer Contact Details

Contact Name : **Daniel Cutler**

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RPA Contact Details

Contact Name : **Francesca O'Brien**

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Contact Email : **fobrien@cityofsydney.nsw.gov.au**

DoP Project Manager Contact Details

Contact Name : **Daniel Cutler**

Contact Number : **9228641500**

Contact Email : **Daniel.Cutler@planning.nsw.gov.au**

Land Release Data

Growth Centre :

Release Area Name :

Regional / Sub : **Metro Sydney City subregion**

Consistent with Strategy : **Yes**

Regional Strategy :

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MDP Number :

Date of Release :

Area of Release (Ha)

Type of Release (eg

:

Residential /

Employment land) :

No. of Lots : 0

No. of Dwellings : 0

(where relevant) :

Gross Floor Area : 0

No of Jobs Created : 0

The NSW Government Yes

Lobbyists Code of

Conduct has been

complied with :

If No, comment :

The Department of Planning's Code of Practice in relation to communications and meetings with Lobbyists has been complied with. Sydney Region East has not met any lobbyist in relation to this proposal, nor has the Regional Director been advised of any meetings between other departmental officers and lobbyists concerning this proposal.

Have there been No

meetings or

communications with

registered lobbyists? :

If Yes, comment :

Supporting notes

Internal Supporting

Notes :

The proposed section 73A amendments will generally have no impacts on the housing and job creation for Sydney LGA. However, if the amendment to South Sydney LEP 1998 to re-instate affordable housing provisions does not proceed it is likely to have a negative impact on the Green Square affordable housing scheme.

The proposed amendments relate to minor wording changes in the heritage floor space and design excellence clauses and the operation of affordable housing provisions for certain land in Green Square.

Council advises that:

>> the amendments to the design excellence provisions are required to ensure clarity around the calculation of additional floor space that is available in both Central Sydney and Green Square when a development proposes certain uses,

>> the amendments to the heritage floor space provisions are required to ensure that the long standing heritage floor space scheme operating in central Sydney can continue to operate as intended, and

>> the amendment to South Sydney LEP 1998 to re-insert the affordable housing provision is required to ensure that affordable housing contributions can continue to be levied in areas where the Sydney LEP 2012 does not apply. This includes an area in Green Square known as the Lachlan Precinct which was deferred from Sydney LEP 2012 in order to resolve late submissions relating to height and density controls received during the exhibition of the LEP.

External Supporting

Notes :

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? Yes

Comment :

Council advises that the objective of the proposed 73A amendment to Sydney LEP 2012 is

to ensure that the LEP's design excellence and heritage floor space provisions achieve their intended outcomes.

The proposed amendment to South Sydney LEP 1998 is to re-instate the affordable housing provisions which were inadvertently deleted as a consequence of making Sydney LEP 2012.

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? Yes

Comment : Council's explanation of the proposed amendments to Sydney LEP 2012 under section 73A of the EP&A Act include:

(1)

Subclause 6.10(2)(d) incorrectly refers to 'total gross floor space area'. The insertion of the word space is inconsistent with the Standard Instrument dictionary definition of Gross Floor Area and may cause the clause to be misinterpreted and should be deleted.

The amendment can be considered a minor error consisting of the removal of obviously unnecessary words as per section 73A(1)(a) of the EP&A Act and is supported.

(2)

In subclause 6.11 (1)(a),(b),(c),(d) and (e) and 2(a) and (b)the word "or" has been incorrectly inserted at the end of each subclause.

The intent of subclause 6.11(1) is that each relevant amount of heritage floor space is to be allocated with the total allocation being the sum of (a)(b)(c)(d) and (e), less any discount as relevant. The addition of the word 'or' after subclauses (a) to (d) may infer choice and is therefore incorrect. To ensure subclause 6.11(1) reflects Council's policy intent, the word 'or' after each subclause needs to be deleted.

The amendment is to clarify the intent of Council's provision and may be considered by the Minister to deal with matters that do not warrant compliance with the conditions precedent for the making of the instrument because they will not have any significant adverse impact on the environment or adjoining land as per section 73A(1)(c) of the EP&A Act.

(3)

Council proposes to delete entire subclause 6.11 (2)(c)(shown above)which allows a discount on heritage floor space for existing buildings under certain circumstances.

Council argues that this subclause goes beyond what was intended by Council and may exempt some developments from the heritage floor space scheme unintentionally. If this is the case, some developers who currently do not have to participate in the heritage floor space scheme under Sydney LEP 2012 would have to if the subclause was deleted.

Therefore, the removal of subclause 6.11(2)(c) is considered a significant change to Sydney LEP 2012 and should be exhibited for public comment and not proceed as a section 73A amendment.

This amendment is not supported under section 73A of the EP&A Act and Council should be advised that it should proceed as a future planning proposal.

(4)

Clause 6.21(7)(b) references the additional floor space that is available to certain developments in Central Sydney and Green Square – namely, 'accommodation floor space' and 'community floor space' respectively. The clause references Division 1 (which details accommodation floor space in Central Sydney) but omits a reference to Division 2 (which details community floor space in Green Square). The note below the subclause contains the correct reference to Division 2, but the words 'or 2' need to be added to the clause for consistency.

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This proposed amendment is to rectify an error consisting of obviously missing words and is consistent with section 73A(1)(a) of the EP&A Act. This proposed amendment is supported.

Council's explanation of the proposed amendment to South Sydney LEP 1998 under section 73A of the EP&A Act:

Council's submission also requests an amendment to the South Sydney LEP 1998 to reinsert Part 4 Division 3 'Affordable housing at Green Square' which was deleted as a consequential amendment resulting from the making of Sydney LEP 2012.

Schedule 6, 6.2[3] Consequential amendment of other planning instruments - of Sydney LEP 2012 repealed the South Sydney LEP 1998 affordable housing provisions as the Sydney LEP 2012 was to replace South Sydney LEP 1998 for land in Green Square. However, the fact that the Lachlan Precinct in Green Square was deferred from Sydney LEP 2012 as a result of submissions was overlooked. This means that the affordable housing scheme for Green Square does not currently apply to the Lachlan Precinct.

The deleted affordable housing provisions in South Sydney LEP are intended to provide housing for a mix of income groups and require all development in Green Square to make a contribution towards affordable housing.

The proposed amendment is to rectify an error in South Sydney LEP 1998 that was an unintended consequence of making Sydney LEP 2012. This is consistent with the provisions of section 73A(1)(b) of the EP&A Act which allows an amendment to be made without complying with the normal plan making provisions if that amendment addresses matters in the principal instrument that are of a consequential, transitional, machinery or other minor nature.

If the amendment to South Sydney LEP 1998 to reinstate affordable housing provisions does not proceed it is likely to have a negative impact on the Green Square affordable housing scheme. The proposed amendment is supported.

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **No**

b) S.117 directions identified by RPA :

* May need the Director General's agreement

Is the Director General's agreement required? **No**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

e) List any other matters that need to be considered : **Nil**

Have inconsistencies with items a), b) and d) being adequately justified? **N/A**

If No, explain :

Mapping Provided - s55(2)(d)

Is mapping provided? **No**

Comment : **There are no maps required for these amendments.**

Community consultation - s55(2)(e)

Has community consultation been proposed? **No**

Comment :

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment : **Council has submitted all the required information to allow the Department to assess its proposal as an amendment under section 73A of the EP&A Act.**

Proposal Assessment

Principal LEP:

Due Date : **December 2012**

Comments in relation to Principal LEP : **The Sydney LEP 2012 was notified on 14 December 2012.**
Council were provided a copy of the final draft and PC Opinion on 20 November 2012.
Council did not raise any issues with the final draft and no changes were made after the PC Opinion was issued.

Assessment Criteria

Need for planning proposal : **Council advises that there is a need to make minor amendments to wording in relation to the heritage floor space clause and design excellence clause under Sydney LEP 2012 and to re-insert affordable housing provisions for certain land in Green Square under South Sydney LEP 1998.**

The wording amendments will ensure that the Sydney LEP 2012 provisions reflect Council's original intent and the re-insertion of the South Sydney LEP 1998 provisions will ensure that affordable housing contributions can continue to be levied in areas where the Sydney LEP 2012 does not apply. This includes an area in Green Square known as the Lachlan Precinct which was deferred from the operation of Sydney LEP 2012.

Council proposes to delete entire subclause 6.11 (2)(c) which allows a discount on heritage floor space for existing buildings under certain circumstances.

Council argues that this subclause goes beyond what was intended by Council and may exempt some developments from the heritage floor space scheme unintentionally. If this is the case, some developers who currently do not have to participate in the heritage floor space scheme under Sydney LEP 2012 would have to if the subclause was deleted.

Therefore, the removal of subclause 6.11(2)(c) is considered a significant change to Sydney LEP 2012 and should be exhibited for public comment and not proceed as a section 73A amendment.

Council considers these proposed amendments to be of a minor nature and capable of being made under section 73A of the EP&A Act.

Apart from the proposed deletion of subclause 6.11 (2)(c) of Sydney LEP 2012, the proposed changes to Sydney LEP 2012 and South Sydney LEP 1998 are supported as amendments under section 73A of the EP&A Act. The identified errors are considered relatively minor

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and rectifying them quickly is important to ensure that adverse and unintended planning outcomes are avoided.

Consistency with strategic planning framework :

These proposed amendments are consistent with Council's strategic vision for the City of Sydney local government area.

Environmental social economic impacts :

The proposed amendments will not create an adverse environmental, social or economic impact.

If the affordable housing provisions are not reinserted into South Sydney LEP 1998 as proposed, opportunities to provide affordable housing in Green Square may be lost.

Assessment Process

Proposal type : **Minor** Community Consultation Period : **Nil**

Timeframe to make LEP : **3 Month** Delegation : **Nil**

Public Authority Consultation - 56(2)(d)

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons : **This section 73A application should proceed with the exception of the request to delete subclause 6.11 (2)(c). The deletion of this subclause is not considered to be a minor amendment and should be pursued as a planning proposal. Council officers have informally agreed with this approach.**

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
council letter.pdf	Proposal Covering Letter	Yes
Council report.pdf	Proposal	Yes
Council Resolution.pdf	Proposal	Yes
s73a application.pdf	Proposal	Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions:

Additional Information : It is recommended that this proposal for a s73A amendment proceed with the condition that the request to delete subclause 6.11 (2)(c) not proceed.

The deletion of this subclause is not considered to be a minor amendment and Council should pursue this as a planning proposal.

Supporting Reasons : With the exception of deleting subclause 6.11(2)(c), the proposed amendments to Sydney LEP 2012 are supported as they will correct minor errors and ensure that Council's provisions operate as intended.

The proposed amendment to South Sydney LEP 1998 is supported as it will rectify an error that was an unintended consequence of making Sydney LEP 2012, and ensure that Council's affordable housing scheme continues to operate in parts of Green Square not covered by Sydney LEP 2012.

Signature:



Printed Name:

Lin Archer Date: 15/3/13