

Planning Services

IRF19/2122

Gateway Determination Report

LGA	Inner West Council
PPA	Inner West Council
NAME	Planning proposal to amend clause 4.1A and Schedule 2 of Ashfield LEP 2013 affecting heritage conservation areas and heritage items
NUMBER	PP_2019_IWEST_001_00
LEP TO BE AMENDED	Ashfield LEP 2013
ADDRESS	The planning proposal makes changes to development standards that apply across all heritage conservation areas and heritage items within the Ashfield LEP 2013
RECEIVED	25 March 2019
FILE NO.	IRF19/2122
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required.
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal.

INTRODUCTION

Description of planning proposal

The Planning Proposal seeks to amend the Ashfield Local Environmental Plan 2013 (ALEP 2013) affecting heritage conservation areas and heritage items in the following manner:

- amend Clause 4.1A (2) - *Exceptions to minimum subdivision lot sizes for certain residential development* to include reference to heritage items; and
- amend Schedule 2 Exempt Development to remove an exemption to some 'minor' exterior building works within heritage conservation areas and to heritage items.

Summary of recommendation

It is recommended that the planning proposal proceed as submitted as it will assist in removing ambiguity of the definition of 'minor' building works for Exempt Development relating to heritage conservation areas and heritage items in the ALEP 2013.

It will also provide a clear understanding of the subdivision of land regarding buildings within heritage conservation areas and heritage items. This will ensure the subdivision configuration is consistent with the heritage significance of the site and setting in relation to heritage items.

PROPOSAL

Objectives or intended outcomes

This planning proposal seeks to amend the ALEP 2013 to address heritage conservation areas and heritage items. The outcome of this planning proposal is to:

- address omissions and anomalies in the written instrument relating to heritage conservation matters;
- facilitate better management of minor external alterations to buildings comprising heritage items or within heritage conservation areas;
- prohibit heritage items from being able to achieve Torrens title subdivision under the minimum lot size that would otherwise apply. This is consistent with Council's current approach; and
- ensure land subdivision provisions adequately respond to heritage items and their heritage significance.

There are 50 heritage conservation areas and 611 heritage items listed in the ALEP 2013 effected by this planning proposal.

Explanation of provisions

The intended outcome will be achieved by amending the following.

Schedule 2 – Exempt Development

Schedule 2 of the ALEP 2013 allows minor works to the exterior of buildings within heritage conservation areas and to heritage items to occur as exempt development.

Council has raised concern that there is some ambiguity in the interpretation of what is classed as 'minor' development.

Council advises there is no definition in the ALEP 2013 or in the *Environmental Planning and Assessment Act 1979* which defines 'minor work'. To ensure there is no misinterpretation of the clause that may negatively impact on building of heritage significance, it is proposed that in Schedule 2 – Exempt Development the following clause be removed:

Minor alteration (external) to buildings comprising heritage items or in a heritage conservation area

Must only involve one or more of the following:

- (a) painting, plastering or cement rendering,
- (b) the repair or replacement of a non-structural wall or roof cladding,
- (c) the replacement or maintenance of downpipes or roof guttering,
- (d) other non-structural alterations involving plumbing, electrical works, attaching fittings, restoration and decorative work.

Council states that Clause 5.10 (3) of the ALEP 2013 is available for future external minor alterations within heritage conservation areas and heritage items without development consent. Clause 5.10 (3) provides an exemption by way of a written

submission from the owner of a property to Council with supporting material. The clause states:

Heritage Conservation

(3) *When consent is not required*

However, development consent under this clause is not required if:

- (a) the applicant has notified the consent authority of the proposed development and the consent authority has advised the applicant in writing before any work is carried out that it is satisfied that the proposed development:*
 - (i) is of a minor nature or is for the maintenance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or archaeological site or a building, work, relic, tree or place within the heritage conservation area, and*
 - (ii) would not be adversely affect the heritage significance of the heritage item, Aboriginal object, Aboriginal place, archaeological site or heritage conservation area.*

Clause 4.1A (2) Exceptions to minimum subdivision lot size for certain residential development.

Clause 4.1 of the LEP specifies the minimum lot size for subdivision. The Lot Size Map indicates that in most of the area covered by the LEP the minimum lot size is 500sqm.

Clause 4.1A (2) of the ALEP 2013 allows for the subdivision of land less than the minimum subdivision lot size of 500sqm in certain circumstances. This clause excludes land in heritage conservation areas but does not specifically have an exclusion for heritage items.

Council is seeking to amend the clause to add a reference to heritage items as follows:

- (2) Despite clause 4.1 (3), development consent may be granted to the subdivision of land identified as "Area 1" on the Lot Size Map that is not within a heritage conservation area, **and that is not a heritage item**, if:*
 - a) each lot resulting from the subdivision will be at least 200 square metres; and*
 - b) a semi-detached dwelling is or will be located on each lot; and*
 - c) each lot will have a minimum street frontage of 7 metres.*

Mapping

No changes are required to the ALEP 2013 in relation to mapping.

NEED FOR THE PLANNING PROPOSAL

This planning proposal is not a result of a strategic study.

Council states that the planning proposal is in response to an anomaly first identified by Council officers in January 2014 relating to the Schedule 2 – Exempt Development of the ALEP 2013.

The planning proposal also addresses an omission in Clause 4.1A (2), which excludes sites in conservation areas, but not heritage items for subdivision less than the minimum allotment size.

The planning proposal is the best way of achieving the intended outcomes. It will remove ambiguity and misapplication in the wording of the current LEP relating to minor external alterations to buildings in heritage conservation areas and to heritage items. The proposal will assist in mitigating adverse environmental impacts to the building fabric and sensitive heritage significance in these areas.

The proposed amendments will protect the curtilage of heritage buildings by not allowing small lot subdivision. Subdivision of lots containing heritage items is still achievable, however the minimum lot sizes under Clause 4.1 will apply.

Given the sensitive nature of heritage conservation, the proposed amendments will assist in providing better guidance regarding conservation management in areas that the ALEP 2013 applies.

STRATEGIC ASSESSMENT

Greater Sydney Region Plan

In March 2018, the Greater Sydney Commission released the Greater Sydney Region Plan – A metropolis of Three Cities (The Region Plan), which aims to coordinate and manage the growth of Sydney. The Region Plan contains specific objectives for the region over the next 40 years and informs the actions and directions of the District Plans.

Of relevance in the plan is:

- “Objective 13 - Environmental heritage is identified, conserved and enhanced”. This objective seeks to protect the environmental heritage for its social, aesthetic, economic, historic and environmental values.
- Strategy 13.1 - Identify conserve and enhance environmental heritage by: managing and monitoring the cumulative impact of development on the heritage values and character of places.

The proposal is consistent with the Region Plan as it seeks to protect and improve the conservation of properties within heritage conservation areas and heritage item buildings by addressing the ambiguity and omissions in clauses within the ALEP 2013 relating to exterior works and subdivision.

The planning proposal is consistent with Objective 13 as it facilitates better management of heritage conservation areas and heritage item buildings.

The proposal is consistent in relation to the Greater Sydney Region Plan.

Sydney Eastern City District Plan

The Eastern City District Plan was released on 18 March 2018. The plan contains planning priorities and actions to guide the growth of the Eastern City District while improving the district's social, economic and environmental assets. It contains the planning priorities and actions for implementing the Greater Sydney Region Plan at a district level and is a bridge between regional and local planning. The planning proposal is consistent with the actions of the Eastern City District Plan in relation to:

- Planning Priority E6: creating and renewing great place and local centres and respecting the District's heritage.
 - Objective 13 – Environmental heritage is identified, conserved and enhanced
 - Action 20 - Identifying, conserving and enhancing the environmental heritage of the local area by managing and monitoring the cumulative impact of development on heritage values and character of places.

The planning proposal is consistent with Objective 13 and Action 20. This will allow the necessary level of management of heritage conservation areas and heritage items.

Local

There are no endorsed strategies that apply, however the following local plans have been considered.

Our Inner West 2036

In June 2018 Council's Inner West Strategic Community Strategic Plan – *Our Inner West 2036* was endorsed and contains the vision, long-term goals and strategies for the LGA.

The Strategic Direction and Outcome relevant to this planning proposal is:

Strategic Direction 2: Unique, liveable, networked neighbourhoods

2.2 The unique character and heritage of neighbourhoods is retained and enhanced

- 1. Provide clear and consistent planning frameworks and processes that respect heritage and the district characters of urban villages*
- 2. Manage change with respect for place, community history and heritage*

The proposal is considered to be consistent with Council's strategic plan.

Ashfield Urban Planning Strategy 2010

Ashfield Urban Planning Strategy 2010 was adopted by the former Ashfield Council in August 2010 and supports the Ashfield LEP 2013 which now applies to the inner West Council area. The Strategy highlights a number of heritage conservation principles and actions that the planning proposal appropriately responds to.

Section 9.1 Ministerial Directions

The proposal is consistent with the following relevant section 9.1 Ministerial Direction:

2.3 Heritage Conservation

The planning proposal is consistent with this direction as it will assist in the conservation and preservation of items, areas, objects and places of heritage significance.

3.1 Residential Zones

This proposal will not affect permissible residential density of land and will not affect any land use zoning. The proposal is consistent with the requirements of this direction.

State environmental planning policies (SEPPs)

The planning proposal is consistent with the following State Environmental Planning Policies:

SEPP (Exempt and Complying Development Codes) 2008

Part 2 of this SEPP contains a number of exempt development types that apply across NSW. The existing exempt provisions under Schedule 2 of the ALEP 2013 are additional to those listed under this SEPP. The proposed deletion of part of Schedule 2 of ALEP 2013 will have no impact on the exempt provisions under this SEPP.

SITE-SPECIFIC ASSESSMENT

Social and Economic

The planning proposal will provide the community with greater certainty on development affecting sites and buildings of heritage significance. Provisions remain in the ALEP 2013 under Clause 5.10 for minor works to occur with Council approval.

The proposal will not result in any adverse social or economic impacts.

Environmental

The proposal is unlikely to result in any environmental effects. The ALEP 2013 contains controls to manage the protection of environmental heritage. The proposed LEP amendments would remove ambiguity and strengthen the application of these controls.

Infrastructure

No significant infrastructure demand will result from the planning proposal.

CONSULTATION

Community

The planning proposal suggests an exhibition period of 28 days, which is adequate.

Agencies

Consultation with the Office of Environment and Heritage is recommended as a condition of the Gateway determination.

TIME FRAME

The planning proposal includes a Project Timeline of approximately 6 months which is considered reasonable for the nature of the plan. A Gateway condition is included requiring updated dates to be included in the Project Timeline referencing the Gateway determination date.

LOCAL PLAN-MAKING AUTHORITY

The planning proposal does not require amendments to maps for the Ashfield LEP 2013. Given the extent of amendments seek to refine and clarify Council's assessment of minor assessment matters and ensure land subdivision provisions adequately respond to heritage items and their heritage significance, these matters are considered to be local matters. For this reason it is appropriate that Council is the Local Plan Making Authority.

CONCLUSION


The planning proposal is supported to proceed as:

- it will ensure the subdivision configuration of sites containing heritage items is consistent with the heritage significance of the site;
- it will remove ambiguity with regard to exempt development and ensure there is no misinterpretation of the of external building works in heritage conservation areas and to heritage items; and
- it will facilitate better management of minor external alterations to buildings comprising heritage items or within a heritage conservation area.

RECOMMENDATION

It is recommended that the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. The project timeline is to be updated to clarify the dates anticipated for the plan making process.
2. The planning proposal should be made available for community consultation for a minimum of 28 days.
3. Consultation is required with the Office of Environment and Heritage.
4. The time frame for completing the LEP is to be 6 months from the date of the Gateway determination.



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