

# Planning Proposal – Serviced Apartments – Supporting information

## Purpose

To provide additional information to support the City of Sydney's Gateway determination request for Planning Proposal – serviced apartments.

## Background

In October 2016, Council and Central Sydney Planning Committee approved the planning proposal relating to serviced apartments for Gateway approval. In a meeting on 15 November 2016, representatives from the Department of Planning requested additional information, further explaining the City's approach in the planning proposal, with the Gateway request.

Since 1996, the City has had a DCP policy requiring serviced apartments to have the same amenity standards as residential apartments (Section 6, CSDCP1996). The rationale being serviced apartments should have a comparable level of amenity to residential buildings so that any subsequent conversion of serviced apartments to permanent residential stock is not constrained by poor amenity.

In June 2015, amendments to SEPP 65 and a new Apartment Design Guide, updated the former Residential Flat Design Code. The SEPP amendment included a new provision that, unless the relevant Local Environmental Plan states otherwise, SEPP 65 does not apply to a boarding house or serviced apartments. This meant the City needed to move its established provisions from the DCP to the LEP.

The City's intent of the planning proposal is to ensure SEPP 65 and the Apartment Design Guide apply to serviced apartments, consistent with longstanding Council policy.

## Merits of the planning proposal

The approach recommended in the planning proposal is the best means of achieving the intended outcome as:

1. It provides clarity and certainty on the assessment of serviced apartments. It provides clear information enabling informed decision making and site feasibility analysis. According to the City's June 2016 Visitor Accommodation Monitor there are 5,504 serviced apartments within the local government area. This proposal maintains the City's established and longstanding policy position.
2. Any subsequent conversion of serviced apartment to permanent residential stock is not constrained by poor amenity as they have the same amenity standards. Prior to the City's policy, there were a number of cases where serviced apartments being used as residences without consent. This led to lengthy and costly legal action by council and considerable uncertainty and anxiety to owners of apartments who sought to use their serviced apartments as long term residences. Applying the same amenity standards, means there is no substandard residential market opportunity. The City's experience shows that compliance action alone is not sufficient to resolve this issue and the alternative of a covenant on title is not supported by industry.
3. The approach allows flexible building use as serviced apartments that have the same layout as residential apartments are easier to convert.
4. The approach promotes sustainability by reducing unnecessary resource wastage, and allowing easy adaptability of serviced to residential apartments. Further, by

applying amenity standards such as cross ventilation and solar access, helps reduce mechanical ventilation and lower energy consumption.

Ensuring serviced apartments contain the same amenity standards as residential apartments, is a consistent approach to that taken in other capital cities such as Singapore and Melbourne. In addition, the planning proposal approach is not contrary with any state strategies, policies or plans. Rather SEPP 65 allows an LEP to state that the SEPP applies to serviced apartments.

Analysis of alternatives clarifies that alternative options do not achieve the desired outcome. A summary of these considerations is as follows.

### **Alternative Options**

#### *1. Apply SEPP65 and ADG only to strata subdivided serviced apartments*

Strata subdivision of serviced apartments impacts the ownership of the building and therefore the likelihood of change in a building. A single ownership structure provides some certainty the serviced apartments are commercially operated, however amenity is affected by the physical and structural design of a building.

It is extremely difficult to alter the structure of a building to comply with solar access requirements, building separation and the like, if not designed in from the outset.

#### *2. Require only when application to convert is lodged*

Under this option, serviced apartments that already comply with the ADG can submit an application to convert with minimal physical works and time delay. For other serviced apartments, a comprehensive redesign, or potential demolition and rebuild is required to ensure ADG compliance. This reduces the building life and contributes to the inefficient use of building resources and delays delivery of residential apartments. Requiring amenity consideration upfront when the building is designed is in the wider public benefit.

Since 2002, 69% of serviced apartment applications, representing 3221 apartments, related to conversions between residential and serviced apartments, demonstrating desire for flexibility between the two uses. Not requiring SEPP65 and the ADG principles to be considered upfront is not efficient or orderly development.

#### *3. Restrict subdivision and or conversions through a covenant or condition of consent*

A restriction through a covenant can be relatively easily extinguished or removed through s89 of the Conveyancing Act 1919 and similarly the Court may remove conditions of consent through a section 96 application. For example, 107-121 Quay Street, Haymarket (D/2009/2071/A), a Section 96 amendment application to the NSW Land and Environment Court sought to delete the condition requiring the registration of a restrictive covenant on the titles of serviced apartments on the site.

This option only serves to lengthen the time it would take to progress a redevelopment. It is not a solution to the design of the building and improving amenity for future occupants. Also, restrictive covenants are not supported by the City of Sydney

#### *4. Adopt similar provisions in other LEPs*

The City considered similar clauses in other LEPs relating to serviced apartments. The clause in Parramatta LEP 2011 requires applications to subdivide serviced apartments, satisfy the

design principles in SEPP 65 and the ADG in the B4 Mixed Use zone. This clause addresses Option 1 above. As stated, this approach cannot ensure that all serviced apartments achieve the City's intent.

Although the clause objectives in North Sydney LEP 2013 and Willoughby LEP 2012 addresses similar issues, both clauses require conversion of serviced apartments to consider or satisfy the design principles in SEPP65 and ADG. This clause responds to Option 2 above. As stated, this approach does not serve to achieve the City's intent.

## **Conclusion**

The planning proposal is the most appropriate and effective approach as:

1. It considers the wider public interest by:
  - providing clarity on how serviced apartments are to be assessed;
  - providing flexibility of use for developers;
  - ensuring the amenity for future occupants, whether permanent residents or visitors are assured;
  - allowing adaptability of a building reduces inefficient use of building resources and waste;
  - allowing subsequent conversions to easily take place; and
  - reduces reliance on mechanical ventilation and lowers energy consumption.
2. It will continue Council's longstanding policy. This planning proposal updates the reference and clarifies the requirements for assessing serviced apartments.
3. It is not contrary to any state, regional or local strategies, policies and plans. Clause 4 of SEPP 65 allows an LEP to state that it applies to serviced apartments.
4. Other options do not serve to achieve the City's intent.

The City intends to maintain its long standing standard for serviced apartments comparable to residential flat buildings and reduce barriers to conversions, which can lead to costly and time consuming non-compliant uses and uncertainty for investors and apartment owners.