

Planning Proposal

Street Art as Exempt Development

February 2017

Sydney 2030 Green/Global/Connected

city of villages

Introduction

This planning proposal explains the intent of, and justification for, the proposed amendment to Sydney and South Sydney local environmental plans to include street art as exempt development.

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

Street art is inscriptions, words, figures or word designs that are marked, scratched, drawn sprayed, painted, pasted, applied or otherwise affixed to a surface of an asset, including murals and graffiti, that has been commissioned with the consent of the premises owner.

The City recognises the artistic and social value of Street Art. It is a highly accessible form with increasing acceptance in the public domain. Museums around the world exhibit street art. It is becoming more widely considered as part of mainstream art.

The City supports creative practices and aims to make creativity visible and accessible. Street art is a visible and accessible art form and the City supports lawfully created works in appropriate locations.

Street art is a form of development which currently requires development consent. To remove barriers to creative expression, it is proposed to allow street art to be exempt development subject to meeting specific criteria.

Where street art is proposed on a heritage item, in a heritage conservation area or a special character area, or cannot meet the specified criteria, a development application will continue to be required.

Part 1 – Objectives or Intended Outcomes

The objectives or intended outcome of the planning proposal is to enable street art to be exempt development in appropriate locations across the local government area, subject to certain criteria.

Part 2 – Explanation of the Provisions

The proposed outcome will be achieved by introducing street art as exempt development. Street art must:

- Be inscriptions, words, figures or word designs that are marked, scratched, drawn sprayed, painted, pasted, applied or otherwise affixed to a surface of an asset including murals and graffiti but does not include advertisement, advertising structure or signage;
- have written evidence of the building or premises owner's consent to which the work is applied;
- Comply with all Commonwealth and State legislation including:
 - Not discriminate against or vilify a person or section of the community;
 - Not be sexually exploitative or degrading;
 - Not use language or depict material contrary to prevailing community standards; and
 - Not infringe the intellectual property rights of any person.
- Not be located on a heritage item, in a heritage conservation area or special character area;
- Not project from a surface.

It is proposed to amend the following instruments:

- Sydney Local Environmental Plan 2012 (Sydney LEP 2012);
- Sydney Local Environmental Plan 2005;
- Sydney Local Environmental Plan (Green Square Town Centre) 2013;
- Sydney Local Environmental Plan (Green Square Town Centre Stage 2) 2013;
- Sydney Local Environmental Plan (Glebe Affordable Housing Project) 2011;
- Sydney Local Environmental Plan (Harold Park) 2011;
- South Sydney Local Environmental Plan 1998; and
- South Sydney Local Environmental Plan No. 114.

The planning proposal does not seek to amend any other controls.

Part 3 – Justification

This section of the planning proposal provides the rational for the amendment and responds to questions set out in the document entitled *A guide to preparing planning proposals*, published by the Department of Planning and Infrastructure in October 2012.

Section A – Need for the planning proposal

Is the planning proposal a result of any strategic study or report?

The Street Art Review, prepared by Council, provides clarity on the City's position, practices and responsibilities relating to street art and propose improvements to the current processes. It identified amendments to clarify planning requirements and suitable locations for street art. This planning proposal supports the street art review report by allowing street art to be exempt development.

The review is based on research, plans and policy that identify increased opportunities for street art and management of unlawful graffiti including Creative City Cultural Policy and Action Plan 2014-2024; Sustainable Sydney 2030; Graffiti Management Policy 2013; and Aerosol Art Guidelines 2006.

Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Yes. The best way to remove barriers and provide greater efficiency to support street art is to make it exempt development where appropriate.

Section B – Relationship to strategic planning framework

Is the planning proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies?)

In December 2014 the NSW Government published *A Plan for Growing Sydney*. Consistency with *A Plan for Growing Sydney* and the draft Sydney City Subregional Strategy is discussed below.

A Plan for Growing Sydney

The Plan for Growing Sydney is a State Government strategic document that outlines a vision for Sydney over the next 20 years. It identifies key challenges facing Sydney including a population increase of 1.6 million by 2034, 689,000 new jobs by 2031 and a requirement for 664,000 new homes.

In responding to these and other challenges, the Plan for Sydney sets out four goals:

1. a competitive economy with world-class services and transport;
2. a city of housing choice with homes that meet our needs and lifestyles;
3. a great place to live with communities that are strong, healthy and well connected; and
4. a sustainable and resilient city that protects the natural environment and has a balanced approach to the use of land and resources.

The planning proposal is consistent with relevant goals, directions and actions of the plan. By supporting creative expression, the proposal will support *Goal 3. A great place to live with communities that are strong, healthy and well connected.*

The draft *Towards our Greater Sydney 2056* outlines an amendment to *A Plan for Growing Sydney*. It identifies the City of Sydney to be part of the Eastern City. The proposal is not inconsistent with this amendment.

The draft Central District Plan, currently on public exhibition, provides detailed planning priorities and actions for each District. The planning proposal is consistent with the Liveability Priority 8: Foster the creative arts and culture. Allowing street art as exempt development, where appropriate, nurtures “a culture of art in everyday local spaces and enhance access to the arts in all communities” and fulfils the planning priority.

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

Sustainable Sydney 2030 is the vision for sustainable development of the City of Sydney to 2030 and beyond. It includes 10 strategic directions to guide the future of the City of Sydney. *Sustainable Sydney 2030* (SS2030) outlines the City's vision for a 'green', 'global' and 'connected' City of Sydney and sets targets, objectives and actions to achieve that vision.

The planning proposal will identify street art as exempt development. Where it is to be located on a heritage item, within a heritage conservation area or special character area, or does not meet the specified criteria, a development application will be required.

As such, the Planning Proposal is consistent with *Sustainable Sydney 2030*, particularly Strategic Direction 7 – A Cultural and Creative City as it will remove barriers and capture opportunities for creative expression through street art.

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

The consistency of the planning proposal with applicable State Environmental Planning Policies (SEPPs) and Regional Environmental Plans (deemed SEPPs) is outlined in Table 2.

State Environmental Planning Policy (SEPP)	Comment
SEPP No 1—Development Standards	Consistent – The planning proposal will not contradict or hinder application of this SEPP.
SEPP No 14—Coastal Wetlands	Not applicable.
SEPP No 19—Bushland in Urban Areas	Not applicable.
SEPP No 21—Caravan Parks	Not applicable.
SEPP No 26—Littoral Rainforests	Not applicable.
SEPP No 30—Intensive Agriculture	Not applicable.
SEPP No 33—Hazardous and Offensive Development	Not applicable.
SEPP No 36—Manufactured Home Estates	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.
SEPP No 52—Farm Dams and Other Works in Land and Water Management Plan Areas	Not applicable.
SEPP No 55—Remediation of Land	Consistent – The planning proposal does not propose to rezone land. The planning proposal will not contradict or hinder the application of this SEPP.
SEPP No 62—Sustainable Aquaculture	Not applicable.
SEPP No 64—Advertising and Signage	Consistent – The planning proposal will not contradict or hinder application of this SEPP.
SEPP No 65—Design Quality of Residential Flat Development	Consistent - The planning proposal will not contradict or hinder application of this SEPP.
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 will not contradict or hinder application of this SEPP.
SEPP (Housing for Seniors or People with a Disability) 2004	Consistent - The planning proposal will not contradict or hinder application of this SEPP.
SEPP (State Significant Precincts) 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 (Miscellaneous Consent Provisions) 2007	Consistent - The planning proposal will not contradict or hinder application of this SEPP.
SEPP (Exempt and Complying Development Codes) 2008	Consistent - The planning proposal will not contradict or hinder application of this SEPP.
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.

State Environmental Planning Policy (SEPP)	Comment
SEPP (Kurnell Peninsula) 1989	Not applicable.
SEPP (Penrith Lakes Scheme) 1989	Not applicable
SEPP (Urban Renewal) 2010	Not applicable.
SEPP (Sydney Drinking Water Catchment) 2011	Not applicable.
SEPP (State and Regional Development) 2011	Consistent - The planning proposal will not contradict or hinder application of this SEPP.
SEPP (Three Ports) 2013	Not applicable
Regional Environmental Plan (REP)	Comment
Sydney REP No 9—Extractive Industry (No 2—1995)	Not applicable.
Sydney REP No 16 – Walsh Bay	Consistent - The planning proposal will not contradict or hinder application of this SEPP.
Sydney REP No 20—Hawkesbury- Nepean River (No 2—1997)	Not applicable.
Sydney REP No 24—Homebush Bay Area	Not applicable.
Sydney REP No 26 – City West	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 SEPP.

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 6 below.

Table 6 - Consistency with applicable Ministerial Directions under Section 117

No.	Title	Comment
1. Employment and Resources		
1.1	Business and Industrial Zones	Consistent. Street art as exempt development will not affect area, location or size of business and industrial zones.
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	Consistent. The planning proposal does not affect environmentally sensitive areas.
2.2	Coastal Protection	Not applicable
2.3	Heritage Conservation	Consistent. Street art will not be exempt development if it is on land containing a heritage item, within a heritage conservation area or special character area
2.4	Recreation Vehicle Areas	Consistent. The planning proposal does not relate to a recreation vehicle area.
2.5	Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	Not applicable
3. Housing Infrastructure and Urban Development		
3.1	Residential Zones	Consistent. Street art as exempt development will not affect the provision of housing.

3.2	Caravan Parks and Manufactured Home Estates	Consistent. The planning proposal does not relate to caravan parks or manufactured home estates.
3.3	Home Occupations	Consistent. The planning proposal does not relate to home occupations.
3.4	Integrating Land Use and Transport	Consistent. Street art as exempt development will not affect integrated land use and transport.
3.5	Development Near Licensed Aerodromes	Consistent. Street art as exempt development will not affect licensed aerodromes.
3.6	Shooting Ranges	Consistent. Street art as exempt development will not affect licensed aerodromes.
4. Hazard and Risk		
4.1	Acid Sulfate Soils	Consistent. Street art as exempt development will not affect acid sulfate soils.
4.2	Mine Subsidence and Unstable Land	Consistent. Street art as exempt development will not affect mine subsidence and unstable land.
4.3	Flood Prone Land	Consistent. The planning proposal does not relate to flood prone land.
4.4	Planning for Bushfire Protection	Consistent. The planning proposal does not relate to bushfire prone land.
5. Regional Planning		
5.1	Implementation of Regional Strategies	Consistent. Street art as exempt development will not affect implementation of regional strategies.
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
5.9	North West Rail Link Corridor Strategy	Not applicable
5.10	Implementation of Regional Plans	Street art as exempt development will not affect implementation of regional plans.
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 reservation of land for public purposes.
6.3	Site Specific Provisions	Consistent. The planning proposal does not include site specific provisions.
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, policies, outcomes or actions of the <i>Metropolitan Plan for Sydney 2036</i> .
7.2	Implementation of Greater Macarthur Land Release Investigation	Not applicable

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.

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

No - it is unlikely that the proposed amendments will result in development creating any environmental effects that cannot readily be controlled.

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

Allowing street art as exempt development offers social benefits by enabling creative expression and responds to the community wishes for a city with vibrant culture and entertainment, a sense of belonging and where different villages offer different specialties. It meets the needs of a diverse population, enhancing the distinctive character of the villages and ensuring all communities have an opportunity to participate.

There are strongly-held and often opposing views in the community concerning street art. The proposal to provide clear and accessible information about planning requirements, will reduce confusion.

The proposal requires street art to have the consent of the owner and cannot be exempt development if it is on a heritage item, within a heritage conservation area or special character area. In this way, the heritage significance of an item or area is not affected.

Section D: State and Commonwealth interests

Is there adequate public infrastructure for the planning proposal?

Yes. There is adequate public infrastructure to make street art exempt development.

What are the views of State and Commonwealth public authorities consulted in the gateway determination?

None. Consultation with other public authorities including the Heritage Office will be undertaken during public exhibition.

Part 4 – Mapping

This planning proposal does not amend any maps.

Part 5 – Community Consultation

Public Exhibition

This planning proposal is to be exhibited in accordance with the Gateway Determination once issued by the Greater Sydney Commission. 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

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

- All customer service centres.

PART 6 – PROJECT TIMELINE

The anticipated timeframe for the completion of the planning proposal is as follows:

Action	Anticipated Date
Commencement / Gateway determination	March 2017
Pre-exhibition government agency consultation	April – May 2017
Public Exhibition	April – May 2017
Consideration of submissions	May 2017
Post exhibition consideration of proposal	3 August 2017 (CSPC) 7 August 2017 (Council)
Draft and finalise LEP	September 2017
LEP made (if delegated)	October 2017
Plan forwarded to DoPI for notification	October 2017

Appendix 1 – Street Art Review

The report to the Cultural and Community Committee on 20 February 2017 on Street Art Review, and the Resolution of Council, to be inserted once determined by Council.