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Plan finalisation report – PP-2021-3645

Sydney Local Environmental Plan Amendment
(Sustainable Buildings) 2023 – City of Sydney
Performance Standards for Net Zero Energy Buildings

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Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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1 Introduction

1.1 Overview

1.1.1 Name of draft LEP

Sydney Local Environmental Plan Amendment (Sustainable Buildings) 2023 which amends the State Environmental Planning Policy (Sustainable Buildings) 2022 and the following local environmental plans:

- Sydney Local Environmental Plan 2012;
- Sydney Local Environmental Plan (Green Square Town Centre) 2013; and
- Sydney Local Environmental Plan (Green Square Town Centre – Stage 2) 2013.

1.1.2 Site description

The planning proposal applies to all land in the City of Sydney Local Government Area (LGA) that is subject to the Sydney Local Environmental Plan (LEP) 2012, Sydney LEP (Green Square Town Centre) 2013 and Sydney LEP (Green Square Town Centre – Stage 2) 2013.

Collectively these LEPs cover the majority of the City of Sydney LGA.

1.1.3 Purpose of plan

The objectives of the planning proposal are to:

- reduce energy consumption and the associated greenhouse gas emissions of office, shopping centre and hotel developments;
- improve the resilience of office, shopping centre and hotel developments to the impacts of climate change; and
- facilitate net zero energy development by 2026 for development subject to the planning proposal.

The planning proposal, as exhibited, seeks to amend the Sydney Local Environmental Plan 2012, Sydney Local Environmental Plan (Green Square Town Centre) 2013 and Sydney Local Environmental Plan (Green Square Town Centre – Stage 2) 2013 by introducing a new local provision that will:

- set out the objective of the clause, which is to reduce greenhouse gas emissions and increase the resilience of buildings;
- identify the clause only applies to new development of and refurbishment and additions to office, shopping centre and hotel developments of certain sizes;
- require the consent authority to be satisfied that development is either highly efficient and reduces energy use through energy efficiency and the use of on-site renewables or is capable of achieving net zero energy prior to commencing use, depending on when the development application is lodged;
- require consideration be given to the relevant performance standards in the Development Control Plan when determining if a development is either highly efficient and reduces energy use through energy efficiency and the use of on-site renewables or is capable of achieving net zero energy prior to commencing use, depending on when the development application is lodged; and
- include definitions specific to the local provision for net zero energy, refurbishment and shopping centre development.

Development Control Plan (DCP) amendments

Council has prepared a draft DCP to support the intended outcomes of this planning proposal and the operation of the proposed LEP provisions (**Attachment E**). The proposed LEP provisions require consideration be given to the DCP. The draft DCP sets out the type of development, size thresholds, performance standards and application lodgement timing for development subject to the proposed LEP provision.

1.1.4 State electorate and local member

The site falls within the following state electorates:

- Sydney state electorate. Alex Greenwich MP is the State Member.
- Balmain state electorate. Jamie Thomas Parker is the State Member.
- Newtown state electorate. Jenny Leong is the State Member.
- Heffron state electorate. Ron Hoenig is the State Member.

The site falls within the following federal electorates:

- Sydney federal electorate. The Hon Tanya Plibersek MP is the Federal Member.
- Wentworth federal electorate. Allegra Spender MP is the Federal Member.
- Kingsford Smith federal electorate. The Hon Matt Thistlethwaite MP is the Federal Member.

To the team's knowledge, none of the MPs have made any written representations regarding the proposal.

There are no donations or gifts to disclose, and a political donation disclosure is not required.

There have been no meetings or communications with registered lobbyists with respect to this proposal.

2 Gateway determination and alterations

The Gateway determination issued on 1/10/2021 (**Attachment B**) determined that the proposal should proceed subject to conditions. Council has met all the Gateway determination conditions.

The Gateway determination was altered on 2/05/2023 to extend the timeframe to complete the LEP (**Attachment C**). In accordance with the Gateway determination (as altered) the proposal is due to be finalised on 30/06/2023.

3 Public exhibition and post-exhibition changes

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 18/11/2021 to 17/12/2021.

A total of 11 submissions were received, mostly from organisations including peak industry groups, not for profit sustainability organisations, environmental consultancies and two Councils (**Attachment D**). This includes the Property Council of Australia, Green Building Council of Australia, Australian Passive House Association, Investa, Ausgrid, University of Sydney, Randwick City Council, Strathfield Council and Atelier Ten.

3.1 Submissions during exhibition

There were submissions in favour of the proposal supported the planning proposal's sustainability outcomes and (in some instances) requested its application be extended even further to cover more emissions and to come into effect sooner.

Many submissions sought clarifications or additional information on aspects of the proposal. The key issues raised in submissions, Council's response and the Department's assessment of Council's response are summarised in **Table 1** below.

Table 1 Summary of Key Issues

| Issue raised | Council response and Department assessment of adequacy of response |
|---|--|
| <p><u>Limited opportunities for on-site renewables on office rooftops</u></p> <p>Concerns that there is limited space on office rooftops for on-site renewable energy generation. Clarity requested on the use of on-site renewable energy generation in meeting energy standards for offices.</p> | <p>Council Response:</p> <p>This matter has already been recognised and the proposed standards for office buildings do not mandate or rely upon any on-site renewable energy generation. The supporting project report to the proposal shows that office buildings can feasibly reach the performance standards through energy efficiency measures without using on-site renewable energy.</p> <p>For clarity, Council suggested the LEP control could be drafted to make it certain that on-site energy generation is not mandatory to avoid any unintended implications.</p> <p>Department Response:</p> <p>Council's response adequately addresses the issues raised.</p> |
| <p><u>Application of standards to existing office buildings</u></p> <p>Concerns with the ability of existing office buildings to meet the same stage one (pre 2026) energy efficiency standards as those required of new office buildings.</p> <p>The performance standards will be difficult for older and poorly performing buildings. Upgrades would be expensive and likely result in increased rents, thereby reducing availability of affordable office premises (B and C grade buildings).</p> | <p>Council Response:</p> <p>Post-exhibition, Council worked collaboratively with the stakeholders who raised this concern (Property Council of Australia and Investa).</p> <p>Council acknowledges different standards may be needed to improve the performance of existing buildings. Council has made post-exhibition amendments to the controls for existing office buildings to improve compatibility with older and lower grade offices whilst still reducing emissions.</p> <p>The proposed amendments provide an alternative pathway for existing buildings to transition to net zero with both efficiency improvements and active emissions reductions (discussed further in Section 3.3). Council considers the change removes unintended disincentives to upgrade poorly performing existing buildings.</p> <p>Council notes the controls for existing offices only apply when over 50% of the net lettable area is subject to a development application to ensure the requirements only apply when the office is being improved (rather than routine or necessary maintenance).</p> <p>Post-exhibition amendments are proposed to deliver on the intent of the proposal while avoiding unintended consequences.</p> |

| Issue raised | Council response and Department assessment of adequacy of response |
|--|--|
| | <p>Department Response:</p> <p>Council's response is adequate and the post-exhibition changes in response to these submissions are discussed in Section 3.3.</p> |
| <p><u>Trigger for alterations to existing buildings</u></p> <p>Request to clarify when the standards apply to existing buildings undergoing refurbishment. Works could be delayed to avoid the threshold applying, or conversely minor alteration works could trigger the controls.</p> | <p>Council Response:</p> <p>Council has amended the proposed LEP and DCP controls to provide further clarity on the thresholds for existing buildings. The threshold around refurbishments and alterations to existing buildings has been re-worded for further clarity and refers to alterations involving 50% of the existing Net Lettable Area for offices or 50% of the GFA for hotels. References in the exhibited proposal and DCP to the term "refurbishment" have been removed. This post-exhibition change is outlined in Section 3.3.</p> <p>Department Response:</p> <p>Noted. Further post-exhibition changes on the threshold for alterations to existing buildings are recommended to align the threshold in the planning proposal to those in the <i>State Environmental Planning Policy (Sustainable Buildings) 2022 (SB SEPP)</i>. These have been agreed to by Council staff. The changes are outlined in Section 4.</p> |
| <p><u>Feedback on term "net zero energy"</u></p> <p>Council should change the terminology from "net zero energy" to "net zero carbon" as net zero energy refers to meeting on-site energy demand with on-site generation, however the controls allow for off-site renewable energy procurement.</p> | <p>Council Response:</p> <p>Council has amended the terminology to refer to "net zero emissions from energy use" to better articulate the intent of the controls which is to reduce greenhouse gas emissions from energy use through a mix of energy efficiency, on-site renewable energy generation and off-site renewable energy procurement.</p> <p>Department Response:</p> <p>Noted. No objection, the terminology continues to reflect the planning proposals intent.</p> |
| <p><u>Requests for the controls to go further</u></p> <p><i>Embodied carbon inclusion</i></p> <p>The controls should include embodied carbon – the carbon emissions associated with construction and building materials.</p> <p><i>Natural gas connections</i></p> <p>The controls should not permit new natural gas connections and appliances.</p> | <p>Council Response:</p> <p>Embodied carbon is outside the scope of this planning proposal. The intent of the controls is to reduce carbon emissions associated with energy use.</p> <p>The controls purposely do not require specific initiatives or design outcomes to allow industry to respond to changes in design and technology in achieving the performance standards.</p> <p>The stage two (2026>) controls for net zero emissions from energy use will require gas to be accounted for in procuring off-site renewable energy which as a result will strongly discourage gas use in building services.</p> <p>Department Response:</p> <p>Council's response is adequate.</p> |

| Issue raised | Council response and Department assessment of adequacy of response |
|---|---|
| <p><u>Timing of the second stage (>2026) controls</u></p> <p>Request to bring forward the second stage controls for energy efficiency targets and renewable energy to apply immediately rather than from 2026.</p> | <p>Council Response:</p> <p>No timeframe changes are proposed, the 2026 timeframe is considered appropriate and was informed by consultation with industry.</p> <p>Department Response:</p> <p>Noted, no objection.</p> |

3.1.1 Other issues raised

All other issues and matters raised in the submissions are considered to have been resolved by the post-exhibition changes, adequately addressed by Council or are not considered to warrant further change to the plan.

3.2 Advice from agencies

In accordance with the Gateway determination, Council was required to consult with the NSW Environment, Energy and Science Group (now Environment and Heritage Group) of the Department of Planning and Environment and relevant utility and service providers.

A submission was received from the Environment and Heritage Group, outlined below.

Environment and Heritage Group of the Department

The Environment and Heritage Group (EHG) supported the proposal from an environmental performance perspective as it provided a robust evidence base, included well-articulated standards and has been informed by industry consultation.

EHG noted that implications with State policy and draft performance standards proposed in the then draft Design and Place SEPP (now in the Sustainable Buildings SEPP) should be considered and addressed. EHG considered Council should be permitted to implement energy performance standards above the minimums under the National Construction Code (NCC) and proposed SEPP as they have been demonstrated to be feasible, relevant and appropriate for the local economy and context.

Council Response:

Council noted EHG's submission and confirmed the proposed controls intentionally exceed the sustainability benchmarks in the NCC to set new standards for development that are appropriate to the local area.

Department Response:

EHG and Councils comments are noted. The performance standards in the Sustainable Buildings SEPP have been considered in **Section 4**.

3.3 Post-exhibition changes

3.3.1 Council resolved changes

At Council's Ordinary Meeting on 22/08/2022, Council resolved to proceed with the planning proposal with various post-exhibition changes.

A summary of Council's post exhibition changes, the reasoning and the Department's comments are provided in **Table 2** below.

Table 2 Assessment of Council's post exhibition changes

| Council's post exhibition changes | Council's reasons | DPE's comments |
|--|---|--|
| <p><u>Threshold for existing offices and hotels</u></p> <p>Change to the threshold for the controls to apply to existing offices and hotels from a refurbishment (as defined) to an alteration involving 50% or more of the Net Lettable Area (office premises) or 50% or more of the Gross Floor Area (hotels).</p> <p>The planning proposal as exhibited had set out a definition of refurbishment which referred to carrying out works to an existing building where the works affect at least half the total volume of the building and where there no increase in the GFA, and accounting for all works over a three year period.</p> | <p>The amendment was recommended to provide additional clarity in response to submissions. Council acknowledged that building volume is not a commonly used metric and the term "refurbishment" is not commonly applied in planning controls. Council removed the requirement to include works over a three year period following industry feedback that this control could be easily avoided and could have unintended consequences.</p> | <p>No objection to the removal of the refurbishment threshold.</p> <p>Note that subsequent post-exhibition changes agreed to by Council staff has amended the thresholds for existing office and hotel buildings to align with the SB SEPP. This is discussed in Section 4.</p> |
| <p><u>Alternative requirement for existing offices</u></p> <p>Introduction of an alternative pathway for existing office buildings to demonstrate reduced carbon emissions.</p> <p>Amend the requirement for applications involving alterations to existing office premises to result in development being "more efficient and less emissions intensive" rather than the requirement for them to be "highly efficient and reduce energy use through energy efficiency and on-site renewables."</p> <p>Amendments to the DCP to set out the options for demonstrating that alterations to existing development will result in improved efficiency and reduce emissions intensity. This will</p> | <p>This amendment responds to submissions from the Property Council of Australia and Investa (outlined in Section 3.1). The additional pathways are introduced to acknowledge that existing office buildings have varying abilities to meet energy efficiency standards through design and that electrification and renewable energy procurement are verifiable ways to demonstrate reduction of carbon emissions.</p> | <p>Noted. No objection. The majority of these proposed amendments are to the DCPs rather than the LEPs. The Department does not have an approval role for the content of a DCP, this is for Council.</p> |

| Council's post exhibition changes | Council's reasons | DPE's comments |
|---|---|---|
| provide an additional option of active reduction in greenhouse gas emissions through removal of gas services and/or procurement of off-site renewable energy. | | |
| <u>Terminology and definition changes</u> Terminology changes and clarifications replacing the phrase "net zero energy" with "net zero emissions from energy use", and "energy efficiency and on-site renewables" to "energy efficiency and/or on-site renewables" | The terminology amendments respond to submissions suggesting net zero energy may not be the most accurate term. Council agrees that the controls do not intend to refer to a net zero amount of energy used in building operations. Council believe the term net zero emissions from energy use more accurately describes the intent of the controls. | Noted. No objection to this clarification. The intent of the proposal remains the same. |

Council also resolved amendments to the DCP to reflect the above.

3.3.2 The Department's recommended changes

Following receipt of the revised planning proposal from Council, the Department has made further changes to the proposal as discussed further in **Section 4**.

To give effect to the intent of the planning proposal, the Department also recommends an amendment to the Sustainable Buildings SEPP to allow the proposal to proceed unhindered, in addition to amendments to the LEPs.

3.3.3 Justification for post-exhibition changes

The Department notes that these post-exhibition changes are justified and do not require re-exhibition. It is considered that the post-exhibition changes:

- Are a reasonable response to comments provided by the public authorities and community.
- Do not alter the intent of the planning proposal and are minor amendments to the planning proposal.

4 Department's assessment

The proposal has been subject to detailed review and assessment through the Department's Gateway determination and subsequent planning proposal processes. It has also been subject to a high level of public consultation and engagement.

The following reassesses the proposal against relevant Section 9.1 Directions, SEPPs, Regional and District Plans and Council's Local Strategic Planning Statement. It also reassesses any potential key impacts associated with the proposal (as modified).

As outlined in the Gateway determination report (**Attachment F**), the planning proposal submitted to the Department for finalisation:

- Remains consistent with the regional and district plans relating to the site.
- Remains consistent with the Council's Local Strategic Planning Statement.
- Remains consistent with all relevant SEPPs (except for the SB SEPP).

The following tables identify whether the proposal is consistent with the assessment undertaken at the Gateway determination stage. Where the proposal is inconsistent with this assessment, requires further analysis or requires reconsideration of any unresolved matters these are addressed in Section 4.1.

Table 3 Summary of strategic assessment

| | Consistent with Gateway determination report Assessment | |
|---|---|--|
| District Plan | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No, refer to section 4.1 |
| Local Strategic Planning Statement | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No, refer to section 4.1 |
| Local Planning Panel (LPP) recommendation | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No, refer to section 4.1 |
| Section 9.1 Ministerial Directions | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No, refer to section 4.1 |
| State Environmental Planning Policies (SEPPs) | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No, refer to section 4.1 |

Table 4 Summary of site-specific assessment

| Site-specific assessment | Consistent with Gateway determination report Assessment | |
|-----------------------------|---|---|
| Social and economic impacts | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No, refer to section 4.1 |
| Environmental impacts | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No, refer to section 4.1 |
| Infrastructure | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No, refer to section 4.1 |

4.1 Detailed assessment

The following section provides details of the Department's assessment of key matters and any recommended revisions to the planning proposal to make it suitable.

4.1.1 State Environmental Planning Policy (Sustainable Buildings) 2022

Overview

The *State Environmental Planning Policy (Sustainable Buildings) 2022 (SB SEPP)* was notified on 29 August 2022 and will commence on 1 October 2023. The SB SEPP sets out a framework for the delivery of sustainable buildings and contributes to NSW's target of achieving net zero by 2050. The SB SEPP was notified the same day that Council sent its planning proposal finalisation request to the Department so has not been considered in the planning proposal.

The SB SEPP includes new general sustainability provisions for non-residential development, energy, water and net zero provisions for certain large commercial development (including prescribed office premises, hotel or motel accommodation and serviced apartments).

Net zero provision also apply to state significant non-residential development types, no standards are set out for these developments. Instead, these state significant developments must demonstrate they can operate without fossil fuels by 2035.

All development impacted by the SB SEPP will also be required to report on the embodied emissions of construction materials.

To support the SB SEPP, there are also changes proposed to the *Environmental Planning and Assessment Regulation 2000* and the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021* through *Environmental Planning and Assessment Amendment (Sustainable Buildings) Regulation 2022* which are due to commence on 1 October 2023.

Consistency assessment

The SB SEPP has implications with the planning proposal including setting different energy performance standards for some uses and requiring different certification and reporting. In terms of overlap, the SB SEPP sets out energy performance standards for office premises and hotel/motel accommodation which apply from 1 October 2023. The SEPPs definition and thresholds for new office premises (net lettable area of at least 1,000m²) and hotel or motel accommodation (at least 100 rooms) align with those in the planning proposal.

The energy performance standards proposed by Council are mostly higher than those in the SB SEPP, as shown in **Table 5** below. As a result, from 1 October 2023, the energy standards in the SB SEPP would override any higher standards in local instruments.

Table 5 Development thresholds and performance standards in the SB SEPP and planning proposal

| Development type | SB SEPP | Net Zero planning proposal (DCP) | |
|-------------------------|--|---|---|
| Offices | Min. 5.5 star NABERS energy rating | <u>Stage 1 (from 1 October 2023)</u> <ul style="list-style-type: none"> • 5.5 star NABERS Energy CA + 25%, or • maximum 45 kWh/yr/m² of GFA, or • certified Green Star Buildings rating with a “credit achievement” in Credit 22: Energy Use, or • equivalent | <u>Stage 2 (from 1 January 2026)</u> <ul style="list-style-type: none"> • Same energy standards as Stage 1. and <ul style="list-style-type: none"> • renewable energy procurement equivalent to “net zero emissions from energy use” or a maximum 45 kWh/yr/m² of GFA |
| Shopping centres | <i>N/A: Shopping centres not included in SB SEPP</i> | <u>Stage 1 (from 1 October 2023)</u> <ul style="list-style-type: none"> • 4 star NABERS Energy CA, or • maximum 55 kWh/yr/m² of GFA, or • certified Green Star Buildings rating achieving the “minimum expectation” in Credit 22: Energy Use, or • equivalent | <u>Stage 2 (from 1 January 2026)</u> <ul style="list-style-type: none"> • 5 star NABERS Energy CA, or • maximum 45 kWh/yr/m² of GFA, or • certified Green Star Buildings rating with “exceptional performance” in Credit 22: Energy Use, or • equivalent and <ul style="list-style-type: none"> • renewable energy procurement equivalent to “net zero emissions from energy use” or a maximum 45 kWh/yr/m² of GFA |
| Hotels/motels | Min. 4 star NABERS energy rating | <u>Stage 1 (from 1 October 2023)</u> <ul style="list-style-type: none"> • 4 star NABERS Energy CA, or • maximum 245 kWh/yr/m² of GFA, or • certified Green Star Buildings rating achieving the “minimum expectation” in Credit 22: Energy Use, or • equivalent | <u>Stage 2 (from 1 January 2026)</u> <ul style="list-style-type: none"> • 4 star NABERS Energy CA + 10%, or • maximum 240 kWh/yr/m² of GFA, or • certified Green Star Buildings rating with a “credit achievement” in Credit 22: Energy Use, or • equivalent and <ul style="list-style-type: none"> • renewable energy procurement equivalent to “net zero emissions from energy use” or a maximum 240 kWh/yr/m² of GFA |

There is some common ground in the objectives of the planning proposal and SB SEPP in that the policies are both seeking improved sustainability outcomes through minimising energy consumption and reducing greenhouse gas emissions. The proposal and SB SEPP also have the same threshold for existing office premises and hotel or motel accommodation.

The other parts of the SB SEPP and related Regulations will continue to apply across the City of Sydney LGA including:

- water performance standards;
- energy performance standards for serviced apartments;
- requirements for embodied emissions reporting; and
- net zero statement.

4.1.2 Department's post exhibition changes

4.1.2.1 Amendment to the Sustainable Buildings SEPP

The Department proposes to amend section 3.3 of the SB SEPP through the *Sydney Local Environmental Plan Amendment (Sustainable Buildings) 2023*. This amendment will exempt development for prescribed office premises or hotel and motel accommodation, on land to which the Sydney LEP and the Green Square LEPs apply, from energy use performance standards in the SB SEPP.

The amendments are proposed to allow the planning proposal and its higher energy performance standards and net zero requirements to apply following 1 October 2023 when the SB SEPP and related Regulation amendments commence.

This amendment gives effect to the intent of the planning proposal as it means that energy standards higher than those in the SB SEPP can still operate in Council's DCPs. This additional instrument amendment is considered administrative in nature and responds to feedback during the legal drafting process. This approach also responds to the fact that there is now a state planning policy which includes sustainability measures for non-residential buildings.

This amendment allows building sustainability measures based on a strong evidence base to apply to the area of NSW with the greatest proportion of high-end office and hotel development which is poised to lead on sustainable building outcomes. The planning proposal is supported by cost benefit analysis which showed that the higher standards produced cost saving for building operation over a 15 to 25 year period. The standards have been subject to extensive industry consultation from 2018 onwards.

4.1.2.2 Amendment to the Sustainable Buildings Regulations

Through a separate process outside of this planning proposal finalisation, the Department proposes to amend the *Environmental Planning and Assessment Amendment (Sustainable Buildings) Regulation 2022* (SB Regulation) to exclude Council from certain sections related to energy use performance standards as they relate to prescribed office premises and hotel or motel accommodation.

The Regulation amendment will be made prior to 1 October 2023.

4.1.2.3 Amendments to the Sydney LEP and Green Square LEPs

The Department has recommended further changes to the proposal as a result of the drafting process and consultation with Council, as detailed below. Other changes that are not discussed below are minor, mechanical or administrative in nature that have arisen during the drafting process.

As outlined in **Section 1.1.3** the planning proposal seeks amendments to the Sydney LEP and Green Square LEPs to introduce local sustainability provisions. The Department has included

provisions in these LEPs which achieve the intent of the proposal. The provisions outline the development types and thresholds that the section applies to, outline matters the consent authority is to consider in deciding whether to grant development consent and provide definitions. The Department has recommended post-exhibition refinements as outlined below.

Thresholds for existing office and hotel and motel accommodation

Post-exhibition, Council proposed amendments to clarify that the proposal applies to existing:

- office of 1,000m² Net Lettable Area or more with an addition of 50% or more Net Lettable Area.
- hotel of 100 rooms or more with an addition of 50% or more hotel rooms.

The thresholds for alterations to existing office and hotel or motel accommodation as set out in the local sustainability provisions have been further amended to align with thresholds as defined in the SB SEPP. The local provisions therefore applies to alterations, enlargement or extension of prescribed office premises, prescribed hotel or motel accommodation, if the development has a capital investment value of \$10 million or more.

This post-exhibition amendment was agreed to by Council staff and put to the Department in March 2023. It was considered the change would largely capture the same development applications as the planning proposal thresholds for alterations and additions. This amendment creates better alignment and consistency with the SB SEPP and reduces complexity for industry and practitioners.

Commencement date

The Stage 1 sustainability requirements in the local provisions will apply to development applications made on or after 1 October 2023. This revised commencement date had been agreed to previously by Council staff. This is the same date that the SB SEPP commences on and will promote alignment between the proposal and SB SEPP and reduce complexity for industry and practitioners. It will be a matter for Council to finalise the amendments to the DCP, so the Stage 1 standards come into force at the same time.

Matters not included

There are aspects of the proposed local provisions in the planning proposal which are not considered necessary and have not been included for reasons including:

- the planning proposal sought to include a reference to the DCP in the local provisions to require consideration of the energy performance standards and detail in the DCP. Under section 4.15 of the EP&A Act, in determining a development application, a consent authority is already required to consider the contents of a DCP. It is therefore not necessary to specify in a LEP provision that the DCP must be considered and a reference to the DCP has not been included in the provisions.
- the proposal sought to include high level objectives for the local provisions. These are not considered necessary as there are already similar objectives in the SB SEPP around encouraging non-residential development to be sustainable which will still apply.

The amended DCPs will be the location for the performance standards and supporting information. Many of the post-exhibition amendments will be matters to be considered by Council in updating and finalising its DCP amendments.

5 Post-assessment consultation

The Department consulted with the following stakeholders after the assessment.

Table 1 Consultation following the Department's assessment

| Stakeholder | Consultation | The Department is satisfied with the draft LEP |
|-------------------------------|---|---|
| Council | Council was consulted on the terms of the draft instrument under clause 3.36(1) of the <i>Environmental Planning and Assessment Act 1979</i> (Attachment G). Council confirmed on 13/07/2023 that it approved the draft and that the plan should be made (Attachment H). | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details |
| Parliamentary Counsel Opinion | On 17/07/2023, Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at Attachment PC . | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details |

6 Recommendation

It is recommended that the Minister's delegate as the local plan-making authority determine to make the draft LEP under clause 3.36(2)(a) of the Act because:

- the draft LEP has strategic merit being consistent with the Eastern City District Plan and the City of Sydney Local Strategic Planning Statement
- it will allow higher sustainability outcomes in certain non-residential buildings and result in positive social and economic impacts
- it is consistent with the Gateway determination
- issues raised during consultation have been addressed, and there are no outstanding agency objections to the proposal.



13/07/2023

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