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Gateway determination report – PP-2023-2887

City of Sydney Conservation Areas Review

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Acknowledgment of Country

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

Contents

1	Planning proposal.....	1
1.1	Overview.....	1
1.2	Objectives of planning proposal	1
1.3	Explanation of provisions	1
1.3.1	Heritage Conservation Area Boundary Amendments.....	2
1.3.2	Maximum height of building	2
1.3.3	Savings provisions.....	3
1.3.4	Development Control Plan (DCP)	3
1.4	Site description and surrounding area.....	4
1.5	Mapping.....	5
2	Need for the planning proposal	5
	Q1. Is the planning proposal a result of any strategic study or report?/.....	5
	Q2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?	7
3	Strategic assessment	8
3.1	Regional Plan	8
3.2	District Plan	8
3.3	Local.....	8
3.4	Section 9.1 Ministerial Directions	9
3.5	State environmental planning policies (SEPPs)	11
4	Site-specific assessment	12
4.1	Environmental.....	12
4.2	Social and economic.....	12
4.3	Infrastructure	12
5	Consultation.....	13
5.1	Community	13
5.2	Agencies.....	13
6	Timeframe	13
7	Local plan-making authority	13
8	Assessment summary	13
9	Recommendation.....	14

Table 1 Reports and plans supporting the proposal

Relevant reports and plans
Attachment A Planning Proposal (City of Sydney, November 2023)
Attachment B Amended Justification for Adjustments to the Conservation Areas Boundaries (City of Sydney, April 2024)
Attachment C Heritage and Height Maps (City of Sydney, December 2023)
Attachment D Draft Sydney Development Control Plan 2012 (City of Sydney, December 2023)
Attachment E Draft Sydney Development Control Plan 2012 Maps (City of Sydney, December 2023)

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	City of Sydney
PPA	City of Sydney Council
NAME	Conservation Areas Review
NUMBER	PP-2023-2887
LEP TO BE AMENDED	<i>Sydney Local Environmental Plan 2012</i>
ADDRESS	Sydney LGA
RECEIVED	19/02/2024
FILE NO.	IRF24/1449
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

1.2 Objectives of planning proposal

The planning proposal contains objectives and intended outcomes that adequately explain the intent of the proposal.

The objectives of the planning proposal are to amend the *Sydney Local Environmental Plan 2012* (Sydney LEP 2012) to conserve the significance of conservation areas and provide for reasonable alterations and additions to buildings in conservation areas to meet contemporary amenity expectations.

The intended outcomes of the planning proposal are to:

- Support the retention and adaptation of buildings that contribute to the significance of an area
- Provide for equitable access to reasonable alterations and additions that meet contemporary amenity expectations
- Contribute to the range of housing types and business places for a diverse community and economy
- Reduce complexity and increase certainty in the planning controls
- Allow for appropriate infill development.

1.3 Explanation of provisions

The planning proposal (**Attachment A**) seeks to amend the Sydney LEP 2012 as outlined below:

1.3.1 Heritage Conservation Area Boundary Amendments

Amend the Heritage Map sheets to revise the boundaries of conservation areas as per the table below and as shown in Figure 2.

Amendment	Detail
Add	<ul style="list-style-type: none"> • Add 95-113A Commonwealth Street, Surry Hills to C66 • Add 8 Macleay Street, Potts Point to C20
Alter	<ul style="list-style-type: none"> • Move part of Moore Park from C59 to C36 • Move 247 Oxford Street, Paddington (Paddington Town Hall) and 2 Oatley Road, Paddington (Paddington Fire Station) from C49 to C48
Remove	<ul style="list-style-type: none"> • Remove 41-59 Young Street, Redfern from C53 • Remove part of 100 Bayswater Road and part of 1A Clement Place, Rushcutters Bay from C20 • Remove 82-94 Darlington Road, Potts Point from C51 • Remove part of 101-115 Victoria Street, Potts Point from C51 • Remove 2A Pyrmont Bridge Road, Camperdown from C33 • Remove 1-5 Rosebank Street, 12-20 Rosebank Street and 13 Kirketon Road, Darlington from C14 • Remove part of 394-404 Victoria Street, Darlington from C12 • Remove 219-241 Cleveland Street, 41 Pitt Street, 217-229 Chalmers Street, 43-43B Pitt Street, Redfern from C56 • Remove 13-61 Riley Street, 63 Crown Street and 75 Crown Street from C71 • Remove 156-188 Devonshire Street, 38-54 Waterloo Street and 1-25 Adelaide Street from C65.

1.3.2 Maximum height of building

Remove mapped height of building controls for small scale buildings (defined by Council as Attached houses (terrace houses), detached and semi-detached housing and traditional shops) in the R1 General Residential zone, R2 Low Density Residential zone, E1 Local Centre zone and MU1 Mixed Use zone and:

- Add a new site-specific provision to the above properties except those in Toxteth Estate (shown in Figure 1 below) that permits a maximum height of building of:
 - the maximum height of the existing building on the land or 7.5m, whichever is greater.
 - If there is no existing building on the site or if the height of the existing building is less than 3.6m, then the maximum height of building control is to be the height of the existing building on any adjoining site facing the same primary street, or 7.5m whichever is the highest.

- Add a new site-specific provision which applies to small scale buildings within the land in Toxteth Estate (shown in Figure 1 below) which sets the maximum height of building control for lots within that area as the maximum height of the existing building on the land or 6m, whichever is greater.

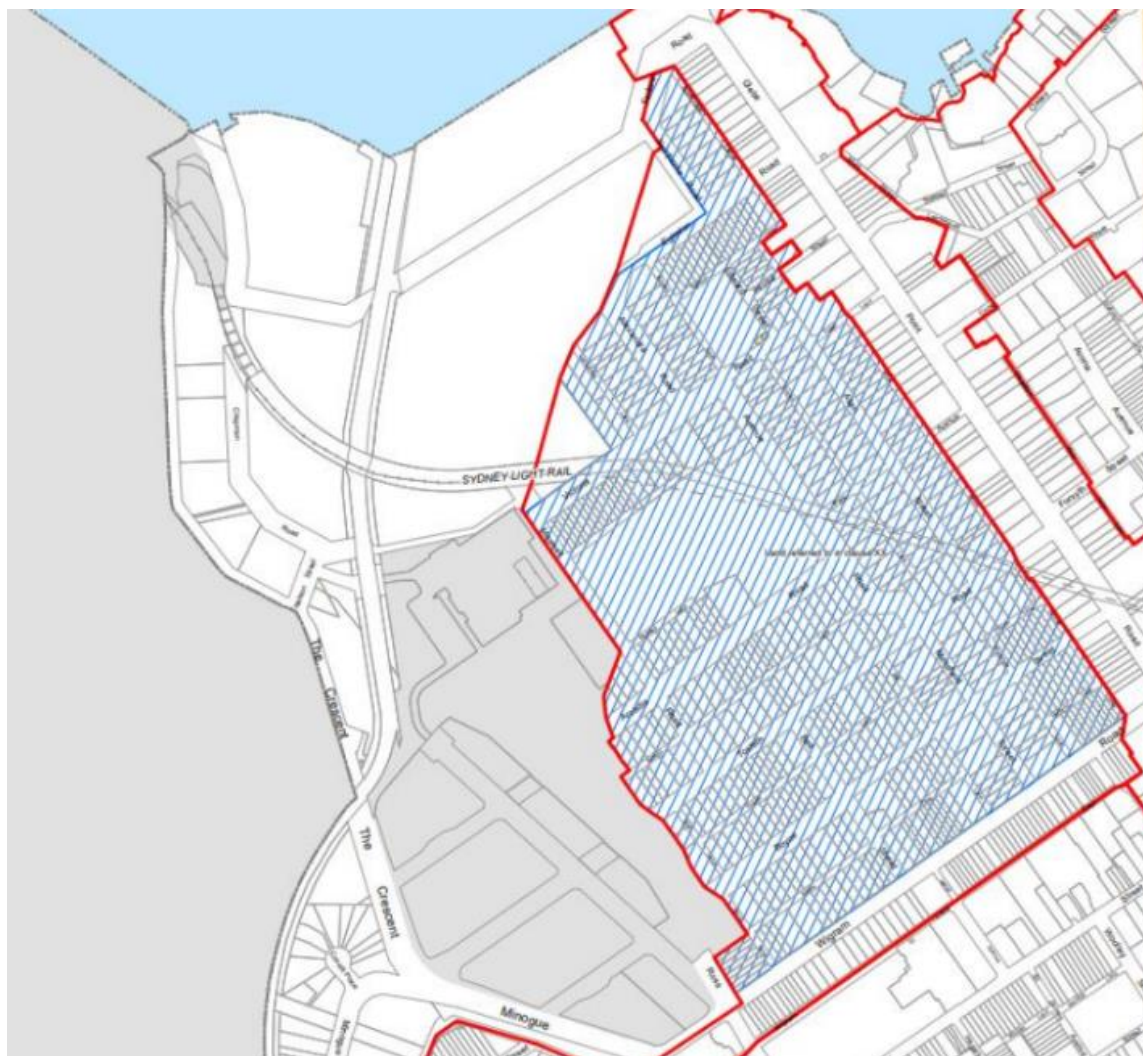


Figure 1: Toxteth Estate shown in blue hatch

1.3.3 Savings provisions

The planning proposal notes a savings provision should be included that protects the rights of sites with existing approvals. However, it is unclear why this provision is proposed when an existing development consent would prevail over a new provision in any case.

A Gateway condition has been included to require Council to clarify the proposed savings provisions, particularly in response to the other changes required as part of the Gateway determination..

1.3.4 Development Control Plan (DCP)

The planning proposal is accompanied by an amendment to the Sydney Development Control Plan 2012 (Sydney DCP 2012) to support the outcomes and objectives of the planning proposal.

1.4 Site description and surrounding area

The planning proposal relates to heritage conservation areas within the City of Sydney Local Government Area (LGA), except for Millers Point as shown in **Figure 2** below.

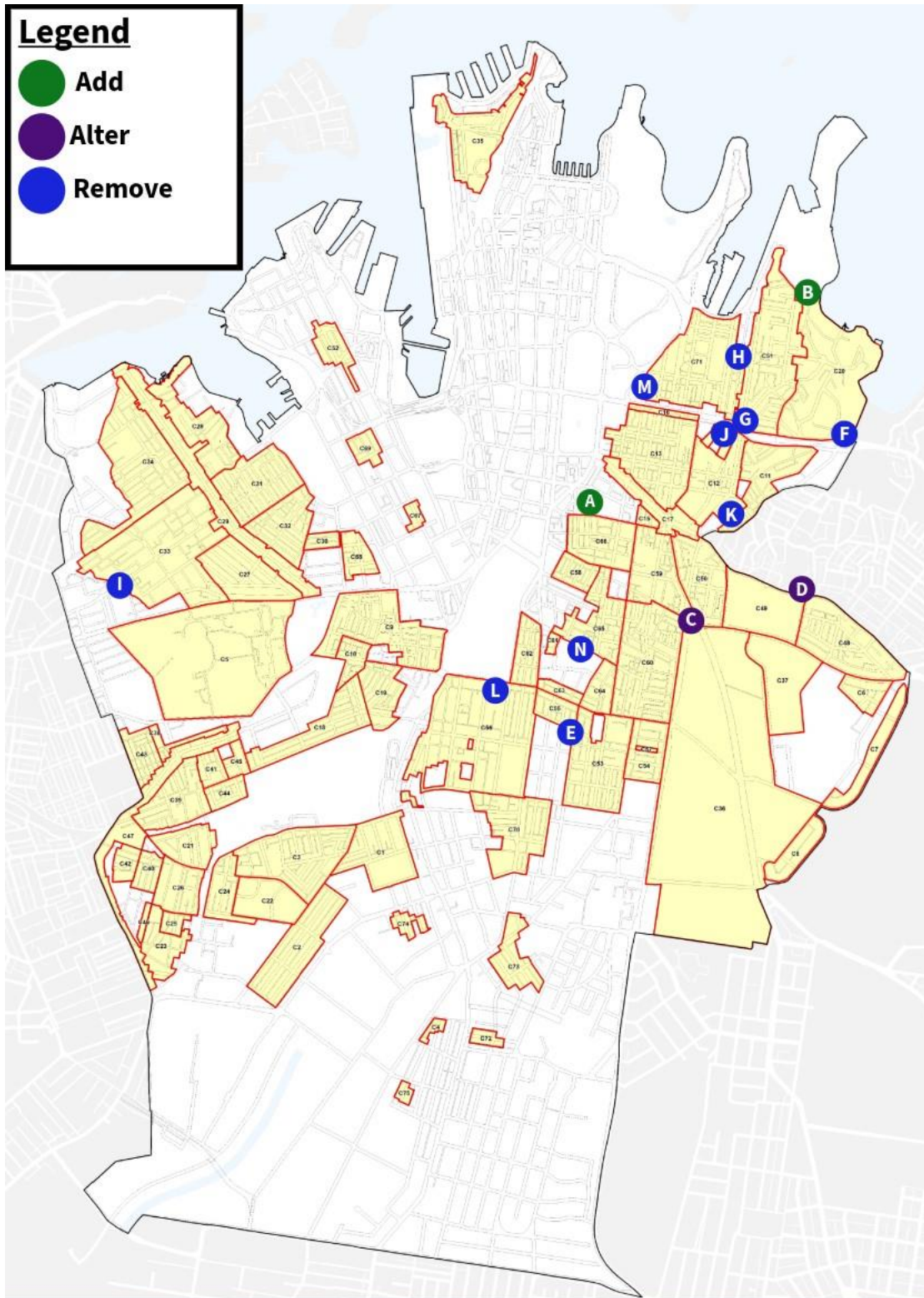


Figure 2: City of Sydney Heritage Conservation Areas (Source: City of Sydney with DPHI annotation)

1.5 Mapping

The planning proposal includes mapping showing the proposed changes to the Sydney LEP 2012 Height of Building and Heritage Conservation Area (HCA) maps, which are suitable for community consultation. Refer to **Attachment C** for the proposed LEP mapping changes.

2 Need for the planning proposal

Q1. Is the planning proposal a result of any strategic study or report?

The planning proposal implements the findings and recommendations of a review and field survey of the City of Sydney's HCAs. The aim of the review was to:

- Strengthen provisions on retaining buildings and those parts of buildings that contribute to the heritage significance of conservation areas;
- Ensure more equitable opportunity for alterations and additions based on the existing height of buildings;
- Promote housing diversity by allowing for appropriate additions to historic building forms which will allow families and larger households to grow and stay in the area;
- Meet modern amenity expectations of dwellings and ensuring historic buildings can be adapted to provide high amenity spaces;
- Reduce the reliance on exceptions to height through Clause 4.6 variation submissions to height development standards;
- Improve community understanding of what can be done on their land and neighbouring sites; and
- Ensure conservation area map boundaries reflect the heritage significance of the area to ensure conservation areas are robust and defensible.

The review was undertaken to develop a comprehensive knowledge base and data on the type of buildings and any relevant site characteristics or alterations, and a comprehensive photographic survey in HCAs across the City of Sydney. The review and field survey were not submitted with the planning proposal.

Two key findings of the review and field survey resulted in the need for this planning proposal as discussed below.

2.1.1 HCA Boundary Amendments

The field survey found that a number of amendments to HCA boundaries should be made because:

- 12 buildings that are not currently listed in a HCA should be added to HCAs where they are consistent with the significance of that HCA;
- two buildings are located in HCAs where they are better suited to the significance of the adjoining HCA and are proposed to be moved;
- 23 buildings in HCAs should be removed from HCAs because they are not consistent with the statement of significance for those HCAs.

Assessing Heritage Significance, prepared by the Department of Planning and Environment in June 2023 outlines how to assess a potential object or place against the seven criteria outlined in the *Heritage Act 1977* to establish heritage significance. The planning proposal does not include an assessment in accordance with the seven criteria for the 12 buildings that are proposed to be included in a HCA. A Gateway condition has been included requiring the planning proposal to be

updated prior to public exhibition to assess the additions to HCAs against the criteria for significance in *Assessing Heritage Significance* (Department of Planning and Environment, June 2023).

While the planning proposal doesn't provide an assessment against the seven criteria for heritage significance, the planning proposal is supported by a report (**Attachment B**) that provides a summary of the field survey and review, detailed justification for each conservation area boundary amendment, including a description of how the additions to HCAs are contributory and sympathetic to the heritage conservation area. During Gateway assessment, an amended justification for the conservation area boundary amendments was requested by the Department that included further detail and justification. The amended justification was submitted on the 13 May 2024 and it is considered adequate to justify the proposed amendments to the heritage conservation areas. A condition has been included requiring the planning proposal to be updated prior to public exhibition with the amended justification for the HCA boundaries as submitted on 13 May 2024.

2.1.2 Height of buildings in HCAs

The review found that additions to small scale buildings in HCAs are being undertaken that detract from the significance of the HCA. In some cases additions to buildings are being proposed that are considered not sympathetic to the HCA even though they comply with the maximum height of building control. There is also inconsistency between the maximum height of building permitted by the Sydney LEP 2012 and the maximum building height permitted by Sydney DCP 2012 for some sites. The review concluded that greater certainty on appropriate additions to small scale buildings in HCAs is required as follows:

2.1.2.1 Increased height of building LEP Control

There are many sites, particularly in Glebe, Forest Lodge, Erskineville and Newtown and other areas across City of Sydney LGA which currently have a mapped 6 metre maximum height of building control in Sydney LEP 2012 and a 1-storey height in storeys control in Sydney DCP 2012. It is proposed to increase the maximum height of building under the Sydney LEP 2012 for these sites to at least 7.5 metres, apart from those sites in the Toxteth Estate (which will be limited to the height of the existing building or 6 metres, whichever is greater).

2.1.2.2 Reduced height of building LEP Control

There are also many sites across the LGA that have height of building control of 9 metres under the Sydney LEP and are only permitted a single storey addition under the Sydney DCP 2012 height of building in storeys control. More broadly, the current DCP controls can be quite restrictive for rear additions and there are many locations where Council has refused development applications for two-storey rear additions. A reduced height of building control under the Sydney LEP 2012 is proposed for these properties to 7.5m, or the existing height. Amendments to the Sydney DCP 2012 will also be made to clarify that these small scale buildings are permitted to have a two storey rear addition.

The field survey also found there are sites where the LEP height of buildings control significantly exceeds the height of the contributory building on the site. This is resulting in development proposals which comply with height controls in the Sydney LEP, but with a built form which is inappropriate in the conservation area context. A reduced height of building control is proposed for these buildings.

Q2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The objectives and intended outcomes of the planning proposal include providing for reasonable alterations and additions to buildings in conservation areas to meet contemporary amenity expectations and increase certainty in planning controls. The planning proposal seeks to remove mapping that clearly illustrates the maximum height of buildings in metres and replace this with a clause which specifies the maximum height based on the height of the existing building or adjoining buildings. In practice this means that a proponent or community member will need to know the height of the existing building and potentially the height of adjoining buildings to determine what is the maximum building height permitted as opposed to having this clearly stated on a publicly available map.

The proposed provision does not provide certainty and adds complexity as it would not be clear from reading the site specific clause or height of building maps what the maximum height of building is for small scale buildings in HCAs. As such the proposed provision does not achieve the objectives and intended outcomes of the planning proposal because it doesn't increase certainty and simplify planning controls.

An alternative option would be to amend the height of building map to reflect the maximum height prescribed by the proposed provision. However, this would result in a height of building map that is complex to read because of the number of various heights that will be shown and therefore would not simplify planning controls as intended by the planning proposal. In addition, it is apparent from the planning proposal documentation that one of the reasons current height of building planning controls are complex is because of the contradictions between the LEP and DCP. This complexity could be resolved by amending the Sydney DCP 2012 alone to remove any inconsistencies between the two documents.

Clause 5.10 of the Sydney LEP contains provisions to conserve the significance of heritage conservation areas in the local government area. These provisions are considered adequate to enable appropriate consideration of any alterations and additions to buildings in conservation areas without the need to amend the approach to maximum height of building in the LEP. Given this, a Gateway condition is proposed, requiring the planned local provision to amend the maximum height of building for small scale buildings in HCAs to be deleted from the planning proposal.

The planning proposal also includes amendments to HCA boundaries as discussed above. It is considered amendments to the Sydney LEP are the most appropriate way to achieve the intended outcomes of this component of the planning proposal as it provides the statutory mechanism to recognise heritage conservation areas.

3 Strategic assessment

3.1 Regional Plan

The Greater Sydney Region Plan – A Metropolis of Three Cities (March 2018) was prepared by the former Greater Sydney Commission. Key objectives of the Region Plan are Infrastructure and Collaboration, Liveability, Productivity and Sustainability.

Under section 3.8 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) a planning proposal is to give effect to the relevant District Plan. By giving effect to the District Plan, the proposal is also consistent with the Regional Plan. Consistency with the District Plan is addressed in **Section** **Error! Reference source not found.** below.

3.2 District Plan

The site is within the Eastern City District and the former Greater Sydney Commission released the Eastern City District Plan on 18 March 2018. The plan contains planning priorities and actions to guide the growth of the district while improving its social, economic and environmental assets.

The planning proposal is consistent with the priorities for infrastructure and collaboration, liveability, productivity, and sustainability in the plan as outlined in the table below.

The Department is satisfied the planning proposal gives effect to the District Plan in accordance with section 3.8 of the *Environmental Planning and Assessment Act 1979*. Table 5 includes an assessment of the planning proposal against relevant actions.

Table 5 District Plan assessment

District Plan Priorities	Justification
Creating and renewing great places and local centres, and respecting the District's heritage (Planning Priority E6)	<p>The amendments to HCA boundaries are consistent with Planning Priority E6 as they seeks to identify and conserve buildings of heritage significance.</p> <p>The proposal will recognise and provide ongoing protection of the heritage significance of the buildings within the City of Sydney LGA and ensure HCAs retain their significance.</p>

3.3 Local

The proposal states that it is consistent with the following local plans and endorsed strategies as stated in the table below:

Table 6 Local strategic planning assessment

Local Strategies	Justification
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Local Strategic Planning Statement (City Plan 2036)	<p>The City Plan 2036 Local Strategic Planning Statement was completed in March 2020 and provides the 20-year vision for land use planning in the city. It aims to link the NSW State Government's strategic plans and the community strategic plans with the city's planning controls. This plan highlights that the unique heritage character of Sydney is a strong focus for local communities.</p> <p>The planning proposal states it is consistent with priority L2 Creating great places and Action L2.9 Conserve places of heritage significance.</p> <p>The amendments to HCA boundaries proposed will ensure heritage significance is conserved by ensuring the HCAs are consistent with their statement of significance.</p>
Sustainable Sydney 2030-2050	<p>The City's Sustainable Sydney 2030 Strategic Plan is the vision for the sustainable development of the City to 2050 and beyond. It includes 10 strategic directions to guide the future of the City, as well as 10 targets against which to measure progress. This amendments to the HCA boundaries are consistent with the key directions of Sustainable Sydney 2030 – 2050, particularly Direction 4 'Design excellence and sustainable development.'</p>

3.4 Section 9.1 Ministerial Directions

The planning proposal's consistency with relevant section 9.1 Directions is discussed below:

Table 7 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.15 Implementation of the Pyrmont Peninsula Place Strategy	Consistent	<p>The planning proposal involves removing the mapped height of building controls for small scale buildings for land subject to the Pyrmont Peninsula Place Strategy. As discussed in Section 2, a Gateway condition has been included to remove this component of the planning proposal.</p> <p>This amendments to HCA boundaries do not affect land subject to the Pyrmont Peninsula Place Strategy.</p>
3.2 Heritage Conservation	Consistent	<p>The planning proposal is informed by a review and field survey of the City of Sydney's HCAs. The field survey collected data about buildings in HCAs, including heights, period of construction, additions and changes to the original building to enable a comprehensive knowledge base of the conservation areas in the LGA.</p> <p>As noted previously, amended justification was submitted by Council to support the proposal and adequately justifies the proposed amendments to the heritage conservation areas. A condition has been included requiring the planning proposal to be updated prior to public exhibition with this amended justification as submitted on 13 May 2024.</p> <p>The amendments to HCA boundaries are consistent with the direction because they ensure places of</p>

		<p>environmental heritage significance are conserved. Those sites proposed to be removed from the HCA are considered to no longer meet the thresholds for significance.</p> <p>As discussed in Section 2 the proposed local provision to amend the maximum height of building for small scale buildings in HCAs seeks to conserve heritage and clarify appropriate additions to buildings in HCAs. However, the proposed provision will reduce certainty and a Gateway condition has been included to remove this component of the proposal. The Department is satisfied that the existing Clause 5.10 Heritage Conservation provides an appropriate mechanism to trigger consideration of any proposed development against heritage impacts.</p>
3.9 Sydney Harbour Foreshores and Waterways Area	Consistent	<p>The planning proposal involves amending heritage conservation area boundaries located in the Foreshores and Waterways area. However, the planning proposal does not amend the permissible land uses, height of building or floor space ratio controls on these sites. The proposal will ensure the natural assets and unique environmental, scenic and visual qualities of Sydney Harbour and its islands and foreshores are maintained.</p> <p>This planning proposal includes altering the maximum height of building for properties located within the Sydney Harbour Foreshores and Waterways Area. As discussed in Section 2, a Gateway condition has been included to remove this component of the planning proposal.</p>

6.1 Residential Zones	Consistent	<p>The planning proposal applies to certain land zoned R1 General Residential and R2 Low Density Residential within HCAs.</p> <p>The objectives and intended outcomes of the planning proposal include providing for reasonable alterations and additions to buildings in conservation areas to meet contemporary amenity expectations, increase certainty in planning controls and facilitate heritage conservation.</p> <p>The amendments to HCA boundaries are consistent with this direction as the amendments:</p> <ul style="list-style-type: none"> • Aim to promote good design through protection of buildings of heritage significance; and • Do not result in a reduction in permissible residential density because it does not amend the maximum Floor Space Ratio. <p>As discussed in Section 2, the proposed local provision for building height for small scale buildings in HCAs seeks to conserve heritage and clarify appropriate additions to buildings in HCAs. However, the Department is of the view the proposed provision will reduce certainty and a Gateway condition has been included to remove this component of the proposal.</p>
7.1 Employment Zones	Consistent	<p>The planning proposal applies to certain land in E1 Local Centre zone and MU1 Mixed Use zone.</p> <p>The objectives and intended outcomes of the planning proposal include providing for reasonable alterations and additions to buildings in HCAs to meet contemporary amenity expectations, increase certainty in planning controls and facilitating heritage conservation.</p> <p>As discussed in Section 2, the proposed local provision to amend the maximum height for small scale buildings in HCAs seeks to conserve heritage and clarify appropriate additions to buildings in HCAs. However, the Department is of the view the proposed provision will reduce certainty and a Gateway condition has been included to remove this component of the proposal.</p> <p>The amendments to HCA boundaries are consistent with this Direction as they will not result in a reduction in employment zoned land given there are no amendments to the development standards that apply to these sites.</p>

3.5 State environmental planning policies (SEPPs)

The planning proposal is consistent with all relevant SEPPs as discussed in the table below.

Table 8 Assessment of planning proposal against relevant SEPPs

SEPPs	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
SEPP (Exempt and Complying Development Codes) 2008	Consistent	The planning proposal does not contain any provisions which would contravene or hinder the application of the SEPP.
SEPP (Housing) 2021	Consistent	The planning proposal does not contain any provisions which would contravene or hinder the application of the SEPP.

The planning proposal documentation details that the planning proposal is consistent with SEPP (Building Sustainability Index: BASIX) 2004. However, the SEPP (Building Sustainability Index: BASIX) 2004 is no longer in force and has been replaced by State Environmental Planning Policy (Sustainable Buildings) 2022. A condition has been included in the recommendation requiring references to SEPP (Building Sustainability Index: BASIX) 2004 to be removed.

4 Site-specific assessment

4.1 Environmental

The planning proposal relates to adding, amending and removing properties from HCAs as well as including a local provision to amend the maximum permissible height for small scale buildings in HCAs. The planning proposal does not propose any changes to the LEP controls that would facilitate intensification of land uses.

The planning proposal states there are no critical habitat areas, threatened species, populations or ecological communities or their habitats present on the subject sites. Overall, there are no likely negative environmental impacts that would arise as a result of the planning proposal.

4.2 Social and economic

The planning proposal is unlikely to result in any significant adverse social and economic impacts. Minor adjustments to the boundaries of conservation areas, including the addition of 12 properties of significance to HCAs and removing 23 properties from HCAs that are not significant to the conservation area will provide the community with greater certainty regarding the heritage significance of sites across the LGA and facilitate their ongoing protection.

Through the community consultation process, the wider community will have an opportunity to provide feedback.

4.3 Infrastructure

There is no significant infrastructure demand resulting from the planning proposal as it would not result in an increase to the development potential of any land and the proposal does not include amendments to planning controls that would facilitate intensified development. The proposed HCA listings are unlikely to generate additional infrastructure requirements.

5 Consultation

5.1 Community

Council proposes a community consultation period of 20 days.

The exhibition period proposed is considered appropriate and forms the conditions of the Gateway determination.

5.2 Agencies

The proposal does not require consultation with any agencies or public authorities.

6 Timeframe

Council proposes a 9 month time frame to complete the LEP.

The LEP Plan Making Guidelines (August 2023) establishes maximum benchmark timeframes for planning proposal by category. This planning proposal is categorised as standard.

The Department recommends an LEP completion date of 7 November 2025. A condition to the above effect is recommended in the Gateway determination.

7 Local plan-making authority

Council has advised that it would like to exercise its functions as a Local Plan-Making Authority.

As the planning proposal relates to matters of local heritage significance, and the proposed new local provision relating to building heights is conditioned to be removed, the Department recommends that Council be authorised to be the local plan-making authority for this proposal.

8 Assessment summary

The proposed amendments to heritage conservation area boundaries are supported to proceed with conditions for the following reasons:

- The amendments are consistent with the Region Plan, District Plan and Council's Local Strategic Planning Statement because it will conserve the significance of heritage conservation areas; and
- An amendment to the Sydney LEP 2012 is the best means of achieving the objectives and intended outcomes of the planning proposal.

Based on the assessment outlined in this report, the proposal must be updated before consultation to:

- Remove the proposed local provision to amend the maximum height of building for small scale buildings in HCAs;
- Include the amended justification for the HCA boundaries as submitted to the Department on 13 May 2024;
- Confirm and clarify any savings provisions proposed;
- Assess the sites that are being added to heritage conservation areas against the criteria for significance in *Assessing Heritage Significance (Department of Planning and Environment, June 2023)*;
- Remove reference to *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*.

9 Recommendation

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

The following conditions are recommended to be included on the Gateway determination:

1. Prior to exhibition, the planning proposal is to be amended to:
 - a) Remove the proposed local provision to amend the maximum height of building for small scale buildings in HCAs;
 - b) Include the amended justification for the HCA boundaries as submitted to the Department on 13 May 2024;
 - c) Confirm and clarify any savings provisions proposed;
 - d) Assess the sites that are being added to heritage conservation areas against the criteria for significance in *Assessing Heritage Significance (Department of Planning and Environment, June 2023)*.
 - e) Remove reference to *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*.
2. Public exhibition is required under section 3.34(2)(c) and clause 4 of Schedule 1 to the Act as follows:
 - (a) the planning proposal is categorised as standard as described in the *Local Environmental Plan Making Guideline* (Department of Planning and Environment, August 2023) and must be made publicly available for a minimum of 20 working days; and
 - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in *Local Environmental Plan Making Guideline* (Department of Planning and Environment, August 2023).

Given the nature of the planning proposal, it is recommended that the Gateway authorise council to be the local plan-making authority and that an LEP completion date of 7 November 2025 be included on the Gateway.



4 July 2024

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21 January 2025

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