



IRF24/505

# Gateway determination report – PP-2024-27

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Dwelling Retention

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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 and present.

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# 1 Planning proposal

## 1.1 Overview

Table 1 Planning proposal details

LGA	City of Sydney
PPA	City of Sydney
NAME	Dwelling Retention
NUMBER	PP-2024-27
LEP TO BE AMENDED	Sydney Local Environmental Plan 2012 (Sydney LEP 2012)
ADDRESS	LGA-wide
RECEIVED	9/01/2024
FILE NO.	EF24/1157
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 objective of the planning proposal is to minimise the loss of housing diversity through the redevelopment of existing dwellings.

The intended outcome is to:

- Support housing diversity and affordability by discouraging the replacement of smaller apartments with fewer large apartments;
- Maintain and grow housing supply in the City, and
- Maintain residential densities close to amenities and public transport.

The objectives of this planning proposal are clear and adequate.

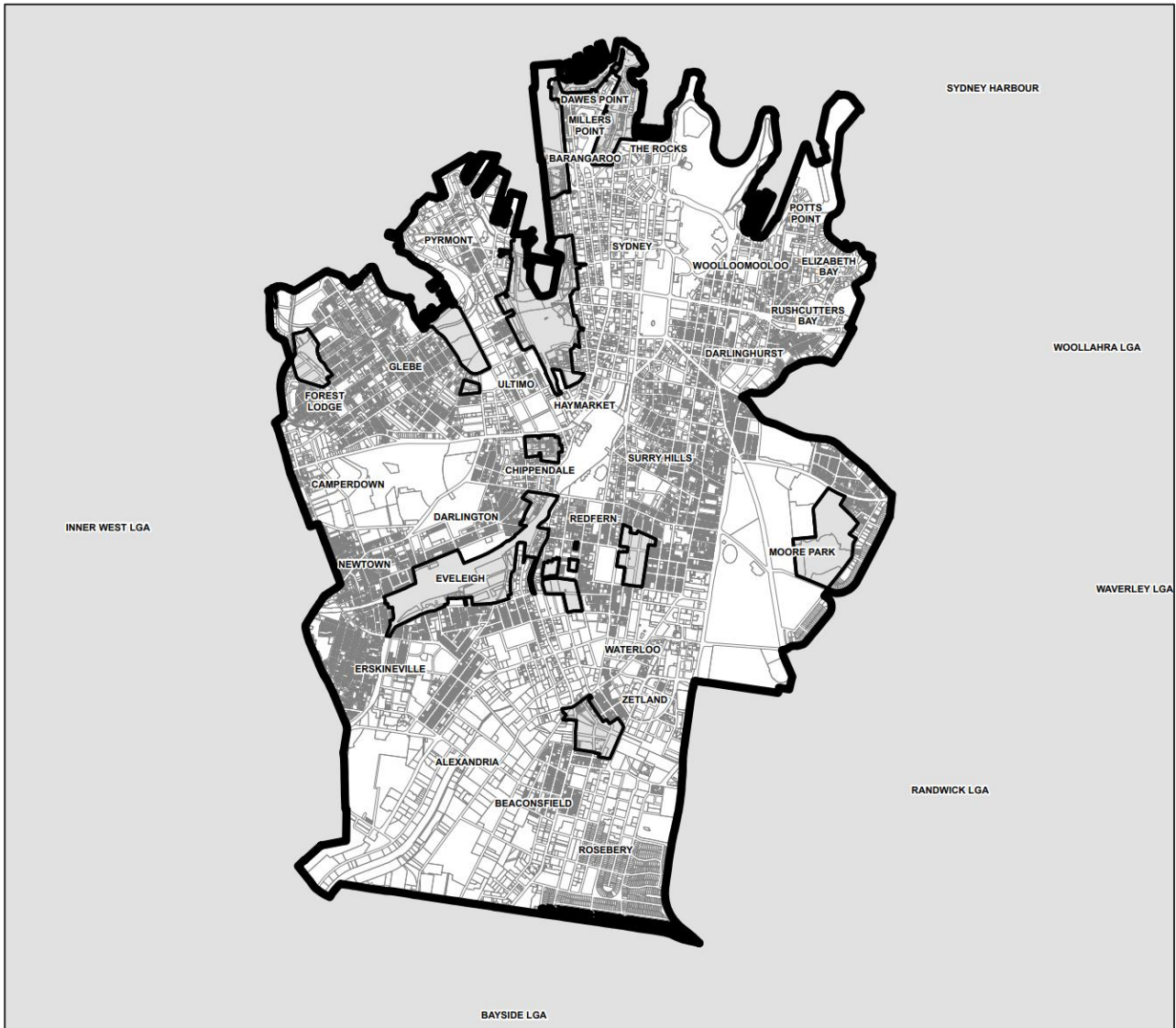
## 1.3 Explanation of provisions

The planning proposal seeks to amend the Sydney LEP 2012 to introduce a new local provision in Part 6 of the Sydney LEP 2012 to require that redevelopment of a residential flat building or mixed-use development will not result in a reduction of more than 1 dwelling or 15% of the dwellings in the building, whichever is greater.

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved.

## 1.4 Site description and surrounding area

This planning proposal applies to the entire City of Sydney Local Government Area (LGA) (see **Figure 1**).



**Figure 1 Subject site (source: Extract from Sydney LEP 2012 Land Application Map, 2024)**

## 1.5 Background

On 18 September 2023, City of Sydney Council resolved in part to investigate preparing a planning proposal to include objectives and controls in the Sydney Local Environmental Plan (LEP) 2012 to protect against the net reduction of dwellings on a development site. The resolution was the result of a Notice of Motion in response to recent development applications which reduced the number of dwellings on sites. The resolution acknowledged current housing supply issues and recent trends within the LGA of multi-dwelling apartment buildings being redeveloped with fewer dwellings than the existing building on the site.

On 9 January 2024, Council submitted the planning proposal (PP-2024-27) for Gateway assessment.

The Department is aware that other LGAs, including Waverly and Woollahra, are also progressing proposals to retain dwellings.

## 2 Need for the planning proposal

Whilst not the direct result of a strategic study or report, the planning proposal aims to give effect to the City of Sydney Local Strategic Planning Statement (LSPS) by ensuring that housing diversity and supply are increasing, and more housing opportunities are being provided to residents.

The planning proposal including information demonstrating that in parts of the LGA, there is a net loss of dwellings trend resulting from the redevelopment of existing residential flat buildings and mixed-use developments where they have been redeveloped with larger but a smaller number of apartments. Council's position is that this is a risk to achieving housing targets and increasing housing supply and diversity.

The planning proposal (page 8) states that as of November 2023:

- there were 9 development applications (DAs) under consideration which would potentially result in a net loss of up to 124 dwellings, and
- since 2018 there have been 24 DAs approved by Council or the Land and Environment Court resulting a net loss of 63 dwellings.

Currently, the net dwelling loss is localised to suburbs in the east of the LGA, including Potts Point, Rushcutters Bay and Elizabeth Bay. The types of buildings that are being redeveloped generally contain smaller studios and one-bedroom apartments. These smaller apartments have historically allowed these parts of the LGA to remain relatively affordable. Redevelopment of these buildings into larger more expensive apartments is resulting in the reduction of well-located more affordable housing stock in the LGA.

Overall, it is considered that the details submitted with the planning proposal demonstrate that there is a trend in the LGA resulting in the loss of affordable dwellings and housing diversity. The intended outcome of the proposal is to support housing diversity and maintain residential densities in accessible areas.

The proposal seeks to provide a statutory mechanism to achieve the proposals intended outcome. There is currently no state-wide approach policy specific to this issue. The proposal cannot be delivered under the current planning framework and a planning proposal is required to amend the Sydney LEP 2012. The Department is aware that other councils, including Waverly and Woollahra, are also preparing proposals to address similar trends in their LGAs.

The proposed local provision aims to limit the loss of housing stock to one dwelling or 15 per cent of dwellings, whichever is the greater. The 15 per cent is rounded to the nearest whole number. The planning proposal states:

*“The potential for additional gross floor area and the ability to reduce the number of dwellings by 15 per cent means diversity and minimum amenity standards can still be achieved.”*

No further explanation for the 15 per cent numerical standard has been provided with the planning proposal.

While the planning proposal has included adequate justification for the need to address the loss of diverse and affordable housing choices, adequate justification has not been provided to demonstrate how the proposed numerical standard was selected and why it is the best mechanism to address this housing trend.

It is recommended that the planning proposal is updated prior to community consultation to provide greater explanation and justification for how the 15% numerical standard was selected. This should include:

- Further explanation of how the 15% rate of maximum dwelling reduction was identified rather than another rate and how it is the most appropriate to achieve the proposal objectives.
- Multiple worked examples showing how the provision will apply in different scenarios and development types. This should include:
  - the methodology for how the reduction in overall dwellings on the site would be calculated when there is a non-residential component.
  - scenarios where mixed-use buildings reducing the number of dwellings and some dwellings are converted to non-residential uses, and
  - scenarios for residential flat buildings.
- Discussion of how the proposed provision will apply to zones predominately characterised by employment or mixed uses.

In addition to the above, the planning proposal does not include any details about how savings and transitional provisions will apply to the new provision. The proposal will have implications for DAs and modifications. The planning proposal should be updated to include savings and transitional arrangements for DAs lodged but not determined prior to the LEP coming into effect.

The Gateway determination includes conditions to ensure the planning proposal is updated to address the matters above prior to community consultation.

## 3 Strategic assessment

### 3.1 Regional Plan

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

The Plan includes housing targets for the Eastern Harbour City district and includes objectives that aim to increase housing supply and diversity. The objective of the planning proposal is to provide for a new local provision that will ensure housing supply is not significantly decreased and that the objectives of the Greater Sydney Region Plan, including the housing targets can be achieved.

### 3.2 District Plan

The site is within the Eastern City District and the 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.

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* (EP&A Act). In particular, Planning Priority E5 Providing housing supply, choice and affordability, with access to jobs, services and public transport.

The planning proposal is consistent with Planning Priority E5 as it aims to minimise the reduction in housing supply as a result of recent trends within the LGA whereby residential flat buildings are being redeveloped with a net reduction in dwellings.



The Planning Priority includes housing targets for LGA's in the Eastern Harbour City, including the City of Sydney. The planning proposal will support Council in achieving its housing targets and increasing housing supply by ensuring that development does not result in significant reduction in dwellings diversity and supply in areas of the LGA.

### 3.3 Local

The planning proposal states that it is consistent with the following local plans and endorsed strategies. It is also consistent with the strategic direction and objectives, as stated in the table below:

**Table 3 Local strategic planning assessment**

Local Strategies	Justification
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. One key move in the plan is to increase housing diversity and choice for residents of the LGA.</p> <p>The planning proposal is consistent with this move as it aims to address a recent development trend resulting in net loss of dwellings in certain areas of the LGA. The reduction in housing is largely occurring to smaller dwelling types such as studios and one-bedroom apartments that are being replaced with larger apartments.</p>
Housing for All (City of Sydney Local Housing Strategy)	<p>The City of Sydney Local Housing Strategy sets out priorities and actions for how Council will meet the housing related priorities in the Eastern City District Plan. It contains Priority H1 that aims to facilitate more homes in the right locations and Priority H3 which aims to increase diversity and choice in housing.</p> <p>While the planning proposal does not provide for more dwellings, it seeks to ensure there isn't a significant reduction in overall dwellings within the LGA. It will also ensure that dwelling diversity is retained in the LGA.</p>
Sustainable Sydney 2030-2050	<p>Council community strategic plan sets out a vision for the sustainable development of the City to 2050 and beyond. It includes 10 strategic directions to guide the future of the City and 10 targets to help measure progress.</p> <p>The planning proposal is consistent with the key directions of Sustainable Sydney 2030 – 2050, particularly Direction 10, 'Housing for all' as it aims to retain housing diversity and the relatively affordable and smaller homes in the LGA.</p>

### 3.4 Section 9.1 Ministerial Directions

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



Table 4 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.1 Implementation of Regional Plans	Consistent	The planning proposal gives effect to the objectives of the Region Plan, as discussed in <b>Section</b> Error! Reference source not found..
1.4A Exclusion of Development Standards from Variation	Consistent	This planning proposal does not propose to exclude the development standard from the operation of clause 4.6.
1.15 Implementation of the Pyrmont Peninsula Place Strategy	Consistent	The planning proposal will not impede on the direction and vision of the Pyrmont Peninsula Place Strategy.
3.2 Heritage Conservation	Consistent	<p>The direction aims to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance. This planning proposal aims to minimise redevelopment of residential development that will result in a net loss of dwellings.</p> <p>The planning proposal will not affect the application of heritage conservation controls contained within Sydney LEP 2012.</p> <p>The planning proposal allows for the use of Clause 4.6 where the proposed development standard could be varied in certain circumstances such as when a heritage item is being reinstated to its original form.</p>
4.2 Coastal Management	Unresolved.	<p>This direction applies when a planning proposal authority prepares a planning proposal that applies to land that is within the coastal zone, as defined under the <i>Coastal Management Act 2016</i>. The planning proposal documentation states that this direction is not relevant to the planning proposal. However, the proposed planning provision will apply to the whole of the LGA and some areas of the LGA are located within coastal zones.</p> <p>The planning proposal should be updated prior to consultation to confirm that this direction is applicable and provide justification to demonstrate consistency.</p>

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
6.1 Residential Zones	Consistent	<p>This direction aims to encourage housing diversity, provide housing close to infrastructure and minimise environmental impact of housing.</p> <p>The planning proposal is consistent with this direction as it:</p> <ul style="list-style-type: none"> <li>• aims to minimise the reduction in number of dwellings in areas with good supporting infrastructure. This will ensure dwelling diversity is retained in the LGA. Notwithstanding this, for clarity and transparency for the community and industry, prior to consultation the planning proposal is to be updated to explain how the proposed provision of how a mix of dwelling sizes for a range of households can be achieved.</li> <li>• allows flexibility for a reduction of at least one dwelling in all circumstances to allow for improved amenity, good design outcomes and heritage conservation.</li> <li>• It does not result in a reduction in permissible residential density as no changes are being proposed to the land use table, height standards or FSR standards.</li> </ul>
7.1 Employment Zones	Unresolved	<p>This direction aims to encourage employment growth and protect employment land.</p> <p>The planning proposal details that the proposed development standard will not apply to residential floor space that is to be converted to a non-residential use.</p> <p>As discussed in Section 2 of this report, inadequate explanation has been provided in the planning proposal to demonstrate how this provision will work in practice. For example, if a mixed-use building containing 20 dwellings is redeveloped, and 2.5 apartments are converted to a non-residential use, it is unclear the numbers of dwellings that could be lost under the provision. Clarification should be provided in the planning proposal to demonstrate how dwelling loss would be calculated where only a portion of an existing dwelling is converted a non-residential use.</p> <p>The Gateway determination has been conditioned to ensure the above matters are addressed prior to community consultation.</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	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
State Environmental Planning Policy (Housing) 2021	This SEPP contains provisions to allow for the development of diverse types of housing and controls for housing in a way that reflects and enhances its locality. It contains provisions to ensure residential flat buildings and mixed-use development consider the Apartment Design Guide.	Yes	The planning proposal is consistent with the SEPP as it considers the need to provide apartments with good amenity for future residents that meet the Apartment Design Guide. It is acknowledged that existing apartments in many older residential flat buildings do not meet current amenity requirements. The new provision allows for the reduction of 1 dwelling for all redevelopments to ensure new dwellings can achieve amenity standards. As discussed earlier in this report, the planning proposal is to be updated prior to community consultation to provide worked examples of how limiting the reduction in apartments to 15% will apply.
State Environmental Planning Policy (Biodiversity and Conservation) 2021	The SEPP contains objectives and actions with respect to the Sydney Harbour Catchment area to ensure that the catchment, foreshores, waterways and islands of Sydney Harbour are recognised, protected, enhanced and maintained. The Sydney LGA is identified as being part of the Sydney Harbour Catchment area	Yes	Parts of Sydney LGA are within the Sydney Harbour Catchment area.  The planning proposal will not hinder the application of the SEPP.

## 4 Site-specific assessment

### 4.1 Environmental

The following table provides an assessment of the potential environmental impacts associated with the proposal.

**Table 9 Environmental impact assessment**

Environmental Impact	Assessment
Flood Risk	The planning proposal does not seek to intensify development above the current principal development standards and will not hinder the application of flood management controls in Sydney LEP 2012 and Sydney Development Control Plan 2012.
Heritage	<p>The planning proposal will not affect the application of heritage conservation provisions within Sydney LEP 2012.</p> <p>The new provision enables the use of Clause 4.6. This will allow for circumstances where a heritage item is being reinstated to its original form. As such it is considered that the planning proposal will not result in unacceptable impacts on heritage items and heritage conservation areas within the LGA.</p>

### 4.2 Social and economic

The following table provides an assessment of the potential social and economic impacts associated with the proposal.

**Table 10 Social and economic impact assessment**

Social and Economic Impact	Assessment
Social	<p>The planning proposal is unlikely to result in any significant adverse social impacts. The planning proposal will assist in retaining studio and one bedroom apartments in the City of Sydney LGA near existing infrastructure which are generally the more affordable dwellings types in the LGA.</p> <p>Through the community consultation process, the wider community will have an opportunity to voice their views regarding the proposal.</p>
Economic	The planning proposal is unlikely to result in any significant adverse economic impacts. As discussed earlier in this report, the planning proposal will not reduce permissible residential density of land as no changes are being proposed to the land use table and no changes to the height or FSR standards are proposed. Additionally, the proposed provision will not apply to any residential floor space being converted to a non-residential use to maintain employment land uses.

## 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 proposal will also help ensure that housing stock near existing infrastructure is not significantly reduced and that existing infrastructure continues to be efficiently used.

## 5 Consultation

### 5.1 Community

Council proposes a community consultation period of 20 days.

The planning proposal is categorised as a complex under the LEP Making Guidelines (September 2022). Accordingly, a community consultation period of 30 working days is recommended and this forms part of the conditions to the Gateway determination.

### 5.2 Agencies

The proposal does not outline which agencies will be consulted. Given the administrative nature of the planning proposal, it is considered that no agencies need to be consulted on the planning proposal.

## 6 Timeframe

Council proposes a 12 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 complex

The Department recommends an LEP completion date of 28 March 2025 in line with its commitment to reducing processing times and with regard to the benchmark timeframes. A condition to the above effect is recommended in the Gateway determination.

## 7 Local plan-making authority

Council does not request delegation to be the Local Plan-Making authority.

As the planning proposal proposes a new provision that is not contained in the Standard Instrument the planning proposal is considered complex. Accordingly, Council as the planning proposal authority is not authorised to exercise the functions of local plan-making authority.

## 8 Assessment summary

The planning proposal is supported to proceed with conditions for the following reasons:

- It is consistent with the District Plan and Council's Local Strategic Planning Statement because it will ensure housing supply is not significantly impacted and that housing diversity is provided in the LGA.
- It seeks to ensure that redevelopment will not result in a significant reduction in the number of well located, relatively affordable dwellings within the LGA;

- It provides flexibility for built form outcomes that will be able to achieve the requirements of the Apartment Design Guide; and
- An amendment to the Sydney LEP 2012 is the best means of achieving the objectives and intended outcomes of the planning proposal.

## 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. The planning proposal is to be updated to include:
  - Additional evidence and analysis for clarity and transparency explaining how the proposed numerical standard was selected and why it is the best mechanism to address this housing trend. This should include:
    - i. Further explanation of how the 15% rate of maximum dwelling reduction was identified rather than another rate and how it is the most appropriate to achieve the proposal objectives.
    - ii. Multiple worked examples showing how the provision will apply in different scenarios and development types. This should include:
      - the methodology for how the reduction in overall dwellings on the site would be calculated when there is a non-residential component.
      - scenarios where mixed-use buildings reducing the number of dwellings and some dwellings are converted to non-residential uses, and
      - scenarios for residential flat buildings.
    - iii. Further explanation of how the proposed provision of how a mix of dwelling sizes for a range of households can be achieved.
    - iv. Discussion of how the proposed provision will apply to zones predominately characterised by employment or mixed uses.
  - Justification to demonstrate how the planning proposal is consistent with Local Planning Direction 4.2 – Coastal Management.
  - A provision for savings and transitional arrangements for applications lodged prior to the provision coming into effect.
2. The planning proposal should be made available for community consultation for a minimum of 30 working days.

Given the nature of the planning proposal, it is recommended Council not be authorised to be the local plan-making authority.

The timeframe for the LEP to be completed is on or before 28 March 2025.



5 April 2024

Kelly McKellar

A/Director, Eastern and South District



5 April 2024

Laura Locke

A/Executive Director, Metro East and South

Assessment officer

Ellen Shannon

Senior Planning Officer, Metro East and South (City)

(02) 8275 1834