

Item 4.

Post Exhibition - Planning Proposal - Conservation Areas Review - Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012 Amendment

File No: X031159

Summary

This report follows the public exhibition of Planning Proposal - Conservation Areas Review (the planning proposal) and Draft Sydney Development Control Plan 2012 - Conservation Areas Review (the draft DCP).

In December 2023, Council resolved to approve the planning proposal for submission to the Department of Planning, Housing and Infrastructure (the Department) and with a request for a Gateway Determination.

The planning proposal included a 2-part amendment to Sydney Local Environmental Plan 2012 (the LEP):

- (a) for 'small scale buildings' in conservation areas, it proposed to replace the mapped height building control in the LEP with a written provision in the LEP that limited building height to the maximum existing height of the building on the site, or 7.5m, whichever is greater
- (b) amendments to conservation area boundaries

However, the Department issued a Gateway Determination on 23 January 2025. Condition 1 of the Gateway Determination deleted part (a) of the proposed amendment. Following this, the City was required to adjust the planning proposal to be consistent with the Gateway Determination and proceeded with the public exhibition of part (b) of the amendment.

The planning proposal included amendments to conservation areas boundaries. The draft DCP included amendments to the general heritage provisions of the City's DCP. The amendments aim to strengthen the integrity of our conservation areas by removing sites which do not contribute to their significance and to strengthen DCP controls relating to the conservation of significant heritage fabric in line with best practice.

The proposed planning controls were publicly exhibited from 4 June 2025 to 9 July 2025 and 9 submissions were received. There were 3 submissions in support, 4 in objection and 2 with some concerns. Each of the submissions are addressed in this report with one amendment proposed in response.

The draft DCP permits solar panels to be installed on buildings in conservation areas. It requires that where panels are proposed on the principal roof plane of a contributory building in a conservation area, that the panels are to be installed parallel to the pitch of roof. It also enables panels installation provided they make minimal intrusive change to significant roof fabric.

An additional note has been provided in the DCP that directs applicants to the City's Guideline for solar panels in heritage conservation areas, which provides additional installation guidance. This Guideline contains guidance on how to install solar panels in heritage settings, including encouraging panels of a visually recessive colour and pattern.

This report recommends Council approve the planning proposal and draft DCP. If approved, Council as the planning proposal authority is authorised to exercise the functions of the local plan making authority and proceed to finalisation. The amendment to the Sydney LEP 2012 will come into effect when it is published on the NSW Legislation website.

The amendment to the Sydney Development Control Plan 2012 will come into effect at the same time as the Sydney LEP 2012 amendment is published.

Recommendation

It is resolved that:

- (A) Council note the matters raised in submissions to the public exhibition of the Planning Proposal - Conservation Areas Review and Draft Sydney Development Control Plan 2012 Amendment - Conservation Areas Review as shown at Attachment A to the subject report;
- (B) Council approve the Planning Proposal - Conservation Areas Review shown at Attachment B to the subject report, to be made as a Local Environmental Plan under Section 3.36 of the Environmental Planning and Assessment Act 1979;
- (C) Council approve Draft Sydney Development Control Plan 2012 Amendment - Conservation Areas Review shown at Attachment C to the subject report, noting the Development Control Plan will come into effect on the date of publication of the subject Local Environmental Plan; and
- (D) authority be delegated to the Chief Executive Officer to make minor variations to the Planning Proposal - Conservation Areas Review and Draft Sydney Development Control Plan 2012 Amendment - Conservation Areas Review to correct any minor errors prior to finalisation.

Attachments

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| Attachment A. | Summary of Submissions and Responses |
| Attachment B. | Planning Proposal - Conservation Areas Review |
| Attachment C. | Draft Sydney Development Control Plan 2012 Amendment - Conservation Areas Review |
| Attachment D. | Council and Central Sydney Planning Committee Resolutions |
| Attachment E. | Gateway Determination and Report - dated 23 January 2025 |

Background

1. In December 2023, Council resolved (Attachment D) to approve the planning proposal for submission to the Department of Planning, Housing and Infrastructure (the Department) and with a request for a Gateway Determination.
2. The planning proposal included a 2-part amendment to Sydney Local Environmental Plan 2012 (the LEP):
 - (a) for 'small scale buildings' in conservation areas, it proposed to replace the mapped height building control in the LEP with a written provision in the LEP that limited building height to the maximum existing height of the building on the site, or 7.5m, whichever is greater
 - (b) amendments to conservation area boundaries
3. A fuller justification and description of the proposed amendments can be found in the City's December 2023 report to the Transport, Heritage, Environment and Planning Committee and the Central Sydney Planning Committee which can be accessed at: <https://meetings.cityofsydney.nsw.gov.au/ieListDocuments.aspx?CId=137&MId=4185&Ver=4> (see Item 6).
4. However, the Department issued a Gateway Determination on 23 January 2025 (Attachment E). Condition 1 of the Gateway Determination deleted part (a) of the proposed amendment. The reason provided in the Department's Gateway Determination report for not supporting the first amendment was:

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.
5. Following this, the City was required to adjust the planning proposal to be consistent with the Gateway Determination and proceeded with the public exhibition of part (b) of the amendment.
6. This means that in a few locations in previous Business B4 zones that a degree of mismatch between height and existing contributory buildings remains.

Public exhibition

We received 9 submissions from the community in response to the public exhibition

7. The planning proposal and draft DCP were publicly exhibited for 26 working days from 4 June to 9 July 2025 in accordance with the Gateway Determination and the City's Community Participation Plan.
8. The City sent 943 notification letters to landowners and occupants. The exhibition was also advertised on the City's "Sydney Your Say" page. The Sydney Your Say page received 571 page views and 349 document downloads during the exhibition period. The project was included in the June edition of Sydney Your Say eNews sent on 11 June to 5,023 subscribers.
9. A total of 9 submissions were received during the public exhibition period. There were 3 submissions in support, 4 in objection and 2 with some concerns.

Support was expressed for the proposed changes to conservation area boundaries

10. The support included:
 - that the reduced conservation area boundaries had the potential to support change and therefore potential to support more much needed housing
 - that the reduced conservation area boundaries would provide owners of currently identified detracting and neutral buildings with the ability to undertake essential maintenance work as exempt development, without the need to lodge a development application
 - the expansion of the Reservoir Street and Fosterville Conservation Area (C66) to include 11 Victorian and Federation terraces at 95-113A Commonwealth Street
 - the transfer of Paddington Town Hall and Paddington fire Station from Victoria Barracks Conservation Area (C49) to the Paddington South Conservation Area (C48)
 - the removal of 1-5 Rosebank Street, Darlinghurst from the Rosebank Conservation Area (C14)

A general concern was expressed in relation to the proposed boundary changes

11. The concern included that these areas were set a long time ago, that they were put in place to conserve, that is, not to be changed. To review and recommend a change to something that in theory was not meant to be changed made a mockery of the initial and this process.

Response

12. The City's conservation areas are extensive, rich and diverse in history and character. They are much more than a collection of individual heritage items. They are highly successful and sustainable urban environments that are home to over 100,000 people.
13. They are also not static. Their small, often narrow lot sizes, variety of building types and over two centuries of accumulated growth have produced dense urban environments that accommodate significant change every year.

14. The proposed conservation area boundary adjustments reflect the current state of our conservation areas. The amendments are proposed to ensure that sites are contained within the most suitable area to be conserved, to correct errors in conservation area boundaries, to remove detracting or neutral buildings on the edges of conservation areas, and to add additional contributory buildings to the conservation areas. They are sensible changes that will strengthen the significance of our conservation areas overall. The intactness of conservation areas should be reviewed from time to time to ensure their consistency and intent, particularly at the boundary edges.

Objections were raised in regard to the boundary adjustment proposed for the Woolloomooloo Heritage Conservation Area (C71)

15. There were 2 submissions that raised objection. Their concerns included that the justification for the proposed adjustment is unfounded as it includes the removal of 5 contributory buildings that continue to warrant heritage protection due to their contribution to the conservation area.

Response

16. These sites referred to are on the western edge of the Woolloomooloo conservation area. The sites are either detracting, neutral or considered isolated contributory buildings on the edge of the conservation area. Whilst contributory, 75 Crown Street, 55-61 Riley Street and, 41 Riley Street and 19-21 Riley Street are also listed heritage items, so their heritage significance is maintained via their individual heritage listings. The major Crown Gardens complex has continued the unsympathetic character of William Street into the conservation area, creating a disjointed conservation area. The review identified that these sites could accommodate sympathetic change in an area of high amenity with Cook and Phillip Park to the west, the local centre of William Street to the south and St James train station within walking distance.

One objection was raised in regard to the boundary adjustment proposed for the Hereford and Forest Lodge Conservation Area (C33)

17. Their concerns relate to the removal of 2A Pymont Bridge Road, Camperdown from the conservation area. Their reasons for objection are summarised below with a response provided:
 - **Objection:** Although the building is classified as a "neutral" building on the DCP Buildings Contributions Map, it does contain some elements that do make a contribution to this HCA given that the apartments have a "terrace" characteristic, particularly those fronting Foss Street, considered to be the primary frontage.
 - **Response:** Whilst the existing building is sympathetic to the conservation area in terms of scale and typology, it is not considered contributory.
 - **Objection:** 2A Pymont Bridge Road adjoins Orphan Creek Public Reserve, a locally listed heritage item under Sydney LEP 2012 (I38). The removal of 2A Pymont Bridge Road from the conservation area means that any future redevelopment of the site will not need to minimise negative impacts on the significance of the listed heritage item, to the same extent.

- **Response:** Clause 5.10(5) of Sydney LEP 2012 will continue to apply to the site. It requires that the consent authority may, before granting consent to any development on land that is within the vicinity of a heritage item, require the assessment of the proposed development and its potential impact the heritage significance of the heritage item.
- **Objection:** In the event of removal from the HCA, the requirement of any future development of the subject property will not necessarily be bound by the same extent by the heritage controls of the DCP in relation to the significance of the conservation area.
- **Response:** As the building does not contribute to the significance of the conservation area and sits on the edge of the conservation area, removing it from the conservation area will strengthen the significance and consistency of the conservation area. The proposed change will also align the conservation area boundaries with locality area boundaries within the City's DCP.

Removing it from the conservation area does mean that the site will not be subject to the extent of heritage DCP controls. This is considered acceptable sites that contribute to our conservation areas will continue to be protected by the DCP controls and the change reduces restrictions on sites that do not contribute.

A concern was raised in regard to the boundary adjustment proposed for the Potts Point Conservation Area (C51)

18. Their concerns relate to the removal of 82-94 Darlinghurst Road, Potts Point from the conservation area. The site contains a 34-storey concrete and aluminium mixed use detached apartment building. The Coca Cola billboard is fixed to the podium level of the building. Their concern related to the potential loss of the Coca Cola billboard.
19. 82-94 Darlinghurst Road, including the Coca Cola billboard, is identified as detracting from the significance of the conservation area as it is not from a significant historical period and is unsympathetic to the significant historical features and patterns of the conservation area. Adjusting the boundary will reflect the current built form of the conservation area and strengthen the heritage significance of the conservation area.

A concern was raised that in some cases a Heritage Impact Statement might not be required

20. The City's current DCP requires the submission of a Heritage Impact Statement (HIS) for development applications affecting heritage items or properties within conservation areas. The current DCP is discretionary in its requirement for a HIS to be prepared for buildings over 50 years old that are not either heritage items or within conservation areas.

21. This discretion for buildings over 50 years old is retained in the draft DCP for sites outside of conservation areas, with clarity provided around the process for when the City may require the preparation of a HIS. The draft DCP includes the following clarification:

A pre-development application consultation is required to determine whether a heritage impact statement is required for work proposed. If required, the heritage significance of a building and the impact the proposed development has on the building and its setting must accompany any subsequent application.

22. The submission raises concern about this discretion and would prefer certainty around when a HIS is required, and what criteria will be used on determining if a HIS is not required.
23. The existing and draft DCP already contains some criteria for when a HIS may be required as the existing and draft control only relate to substantial demolition or major alterations to a building older than 50 years. It is essential that the DCP provides flexibility in the requirement for the preparation of a HIS so as to avoid the burdening applicants with the unnecessary cost of preparing a HIS when it may not be warranted. It is best to determine if a HIS is warranted at pre-development application stage when the details of the proposal are known and the significance of the existing structure are known.
24. No changes are proposed to the draft control in response to the submission. A HIS will continue to be required for all development applications affecting heritage items and properties within conservation areas.

A concern was raised in regard to the quality of Heritage Impact Statements

25. The concern expressed related to who should prepare HIS and that when a HIS is not prepared by a suitably qualified person, that the application should be rejected.
26. Being more prescriptive in relation to who prepares a HIS is not considered warranted. The proposed controls already asks for the person to be suitably qualified and makes reference to NSW Guidelines in relation to the preparation of a HIS.
27. The City currently and will continue to monitor the quality of HISs being submitted. Where a HIS is considered deficient or inadequate by the City's Heritage Specialists, additional information or amended HIS are and will be requested.

A request was made to investigate individually heritage listing a number of intact terraces rows and other buildings in Paddington

28. The City undertook a preliminary review the suggested heritage items and deemed that the properties' existing Heritage Conservation Area listing was sufficient in relation to their future protection.

A request was made for additional aesthetic controls in relation to the installation of solar panels on the principal roof plane of buildings in conservation areas

29. The draft DCP permits solar panels to be installed on buildings in conservation areas. It requires that where panels are proposed on the principal roof plane of a contributory building in a conservation area, that the panels are to be installed parallel to the pitch of roof. It also requires that panels must make minimal intrusive change to significant roof fabric.
30. In response to the submission, a note has been proposed that directs applicants to the City's Guideline for solar panels in heritage conservation areas. This Guideline contains guidance on how to install solar panels in a heritage settings, including encouraging the use of panels visually recessive in colour and pattern. The additional note is shown in red text in Attachment C.

A request was made for the DCP to include controls on party walls and the requirement for neighbours' consent

31. It is the applicant's responsibility to clearly demonstrate all owners have consented to the application being lodged. The City will not accept an application without owner's consent.
32. The City has advice on its website in relation to party walls and the requirement for consent. The DCP is not considered the best place for this advice.
33. Where a development involves works on a party wall or works which rely on a party wall for lateral or vertical support, the City encourages applicants to obtain party wall consent from their neighbour. This consent is distinct from land owners' consent and is not a formal requirement for a development application.
34. All development applications must be made by the owner of the land to which the application relates, or by a person with the written consent of the owners of the land. Land owners' consent for the lodgement of a development application is only required from a neighbour where the development proposed straddles the property boundary.
35. Where it's unclear from the application how the development may impact on the party wall, the applicant will be asked to provide clarification and adjoining land owners' consent from the adjoining neighbour will be required where necessary.
36. Where development is proposed that involves works adjacent to or to a party wall, the City will typically impose conditions on any consent requiring that all works are carried out within the boundary of the land (unless express permission is given by the other party), that a dilapidation survey be carried out and that certification is provided by a structural engineer as to the structural stability of the party wall.

A request was made for changes to Part 4 of the DCP and observations were made that the City sometimes doesn't enforce strict compliance with DCP controls

37. Change to Part 4 of the DCP are not within the scope of the exhibited DCP amendment.

38. The Environmental Planning and Assessment Act 1979 (The Act) details that the principal purpose of a DCP is to provide guidance and that the controls within a DCP are not statutory requirements. The Act states that DCP controls are to be applied flexibly and in applying them flexibly allow for reasonable alternative solutions that achieve the objects of those controls.
39. As it must, the City applies DCPs in compliance with the Act, having regard to the specifics of development applications lodged and their variable context.

An unrelated question was asked about mandatory requirements for building upgrades

40. One submission was concerned that if a neighbouring site was to redevelop that Council may require adjoining heritage properties to be upgraded to comply with contemporary building standards.
41. Council can only require a building and new building works to comply with the National Construction Code where that building and new building works are the subject of a development application, or complying development certificate.

Concerns were raised about an unrelated planning proposal for 47-51 Riley Street, Woolloomooloo

42. There was one submission that raised concerns in relation to the bulk and scale of a separate site-specific planning proposal for 47-51 Riley Street. Planning Proposal: 47-51 Riley Street was approved by Council and the CSPC at the June round of meetings. The proposal was approved with a 7.1m reduction in height, to RL25.5m and a reduction in floor space to an FSR of 3.2:1, in response to public submissions.

Key Implications

Strategic Alignment - Sustainable Sydney 2030-2050 Continuing the Vision

43. Sustainable Sydney 2030-2050 Continuing the Vision renews the communities' vision for the sustainable development of the city to 2050. It includes 10 strategic directions to guide the future of the city, as well as 10 targets against which to measure progress. The proposed planning controls are aligned with the strategic directions and objectives.
44. The proposed planning controls give effect to the infrastructure, liveability, productivity and sustainability priorities in the Greater Sydney Commission's Greater Sydney Region Plan and Eastern City District Plan and the City's Local Strategic Planning Statement.

Risks

45. City staff have undertaken a thorough assessment of the proposal and found that with the recommended changes, it demonstrates strategic merit in accordance with NSW Government guidelines. The NSW Government also assessed and issued a Gateway Determination. The planning proposal is consistent with Sustainable Sydney 2030-2050 Continuing the Vision.

46. Progressing the proposal in its amended form, taking into account matters raised through the public consultation process, is within the City's risk tolerance and appetite. The amended proposal strikes the right balance between achieving our strategic objectives and preserving and promoting culture and heritage.

Relevant Legislation

47. Environmental Planning and Assessment Act 1979
48. Environmental Planning and Assessment Regulation 2021
49. Environmental Planning and Assessment (Statement of Expectations) Order 2024

Critical Dates / Time Frames

50. The Gateway Determination specified that the amendment to the Sydney LEP 2012 is to be completed by 7 November 2025.
51. The Gateway Determination authorises Council to exercise its delegation and liaise directly with Parliamentary Counsel to draft and make the local environmental plan. If the planning proposal is approved by the Central Sydney Planning Committee and Council, the City will commence this process. Once the process is complete and the plan is made, the amendment to the Sydney LEP 2012 will come into effect when published on the NSW Legislation website.
52. If approved by Council, the draft DCP will come into effect on the same day as the amendment to the Sydney LEP 2012.

GRAHAM JAHN AM

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