



**Planning Proposal
Amendment to
Ashfield Local
Environmental Plan 2013**

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Executive Summary

This Planning Proposal seeks to correct deficiencies in the Ashfield Local Environmental Plan (ALEP) 2013 relating to provisions for certain works to buildings and sites within Heritage Conservation Areas and for Heritage Items. This will provide better management of the conservation of buildings within Heritage Conservation Areas (HCA) and Heritage Items (HI).

The Planning Proposal seeks to delete an exempt development clause in Schedule 2 of the ALEP 2013 which applies to external building works within Heritage Conservation Areas and to Heritage Items. This is in order to address misapplication of the clause and potential resulting adverse impacts to these places. Deletion of the subject exempt clause will ensure that there will not be any situation where works are carried out which are incompatible with the heritage significance of Heritage Conservation Areas and Heritage Items.

It also seeks to amend the ALEP 2013 Clause 4.1A to ensure that it satisfactorily addresses land subdivision of properties listed as Heritage Items. This will ensure the allotment subdivision configuration is consistent with the heritage significance of the site by having the required open space curtilage setting and size in relation to the heritage item building.

This Planning Proposal has been prepared in accordance with Section 3.33 of the *Environmental Planning and Assessment Act 1979* (the 'Act'), *A Guide to Preparing Local Environmental Plans* and *A Guide to Preparing Planning Proposals*. The Planning Proposal relates to the area in which the ALEP 2013 applies.

Background

On December 2013 the gazettal of Ashfield LEP 2013 included in *Schedule 2 – Exempt Development* clause: **Minor Alterations (external) to buildings comprising heritage items or in a heritage conservation area**. This exemption clause permitted minor exterior works within a HCA and to a HI where considered “minor”. However, the wording of the clause has led to ambiguity and uncertainty in explaining what constitutes “minor development”.

Given the sensitive nature of HCAs and HIs it is necessary ensure that there is no misinterpretation or misapplication in the use of the exemption clause. Therefore, the Planning Proposal seeks to remove the above exemption clause in Schedule 2 – Exempt Development.

The Ashfield LEP 2013 contains an omission in Clause 4.1A in which it does not contain a prohibition on Heritage Item properties being able to have Torrens Title subdivision. As part of this Planning Proposal Council seeks to use this opportunity to amend Clause 4.1A to add reference to ‘Heritage Items’.

As required by Section 3.33 of the *Environmental Planning and Assessment Act 1979* what follows is a response to “Planning proposals – a guide to preparing planning proposal” by the Department of Planning and Environment.

Planning Proposal

EVALUATION AGAINST CRITERIA IN “PLANNING PROPOSALS – A GUIDE TO PREPARING PLANNING PROPOSAL” (THE GUIDE)

PART 1- OBJECTIVES OR INTENDED OUTCOMES

This Planning Proposal is for amendments to the ALEP 2013 affecting Heritage Conservation Areas and Heritage Items. The objectives of this Planning Proposal are to:

- address omissions and anomalies in the written instrument relating to heritage conservation matters as indicated in Part 2;
- facilitate better management of minor external alterations to buildings comprising Heritage Items or within a Heritage Conservation Area;
- prohibit Heritage Items from being able to achieve small lot torrens title subdivision in order to have the LEP clause adequately relate to those building types and their site curtilage and preserve their cultural significance;
- ensure land subdivision provisions adequately respond to Heritage items and their heritage significance.

There are 50 HCAs and 611 HIs listed in the ALEP 2013 which are affected by this Planning Proposal.

PART 2 EXPLANATION OF PROVISIONS

The proposed outcome will be achieved by way of amending *Schedule 2 - Exempt Development* and *Clause 4.1A* of the Ashfield LEP 2013. Detailed description of the proposed changes are discussed below:

ALEP 2013- Schedule 2 - Exempt Development

In December 2013 the ALEP 2013 was gazetted. An alternative exemption clause, in the form drafted by Parliamentary Counsel after exhibition of the draft LEP, was included that has enabled external alterations to buildings comprising HIs or in HCA (as shown in *Italics* below). This exemption clause has permitted minor works to exteriors of buildings within Heritage Conservation Area and to Heritage Items to occur without development consent where classed as “minor” development. However, there is no definition of what constitutes minor work in the Ashfield LEP 2013 or in the Environmental Planning and Assessment Act 1979. Such a definition would require a detailed list of such work specific to an HCA or HI and applicable to particular building components.

To ensure there is no misapplication or misinterpretation of this clause resulting in work that may negatively impact buildings with heritage significance, it is proposed that in *Schedule 2 - Exempt Development* the following clause be deleted:

Minor alterations (external) to buildings comprising heritage items or in a heritage conservation area

Must only involve one or more of the following:

- (a) painting, plastering or cement rendering,*
- (b) the repair or replacement of a non-structural wall or roof cladding,*
- (c) the replacement or maintenance of downpipes or roof guttering,*
- (d) other non-structural alterations involving plumbing, electrical works, attaching fittings, restoration and decorative work.*

Clause 5.10 (3) of the Ashfield LEP 2013 (below) can be relied upon to manage future external minor alterations within Heritage Conservation Areas and Heritage Items without the requirement for development consent. This is because that in terms of procedure, Clause 5.10(3) enables exemption from development consent by way of a property owner submitting a letter or similar to Council with supporting material. Council can then reply by way of letter or similar.

5.10 Heritage conservation

(3) When consent not required

However, development consent under this clause is not required if:

- (a) the applicant has notified the consent authority of the proposed development and the consent authority has advised the applicant in writing before any work is carried out that it is satisfied that the proposed development:*
 - (i) is of a minor nature or is for the maintenance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or archaeological site or a building, work, relic, tree or place within the heritage conservation area, and*
 - (ii) would not adversely affect the heritage significance of the heritage item, Aboriginal object, Aboriginal place, archaeological site or heritage conservation area*

Clause 4.1A (2) Exceptions to minimum subdivision lot size for certain residential development

Clause 4.1A (2) of the Ashfield LEP 2013 contains an omission that does not exclude Heritage Item properties from small lot torrens title subdivision. Council seeks to correct this omission by adding reference to a heritage item as indicated in bold below.

*(2) Despite clause 4.1 (3), development consent may be granted to the subdivision of land identified as "Area 1" on the Lot Size Map that is not within a heritage conservation area, **and that is not a heritage item**, if:*

- (a) each lot resulting from the subdivision will be at least 200 square metres, and*
- (b) a semi-detached dwelling is or will be located on each lot, and*
- (c) each lot will have a minimum street frontage of 7 metres.*

There are no intended changes to the Ashfield LEP 2013 relating to mapping.

PART 3 JUSTIFICATION

Section A - The Need for the Planning Proposal

Q1: Is the Planning Proposal the result of any strategic study or report?

This Planning Proposal is not a result of a strategic study or report because it is not seeking to change planning policy. This Planning Proposal is prepared in response to an anomaly first identified by Council officers in January 2014 relating to the exempt clause (described in Part 2) imposed under Schedule 2 -Exempt Development of the ALEP 2013. Additionally, this Planning Proposal addresses an omission in Clause 4.1A(2) in which the content does not exclude Heritage Items from torrens title subdivision for small lots.

The amendment is consistent and supported by the Ashfield Urban Planning Strategy 2010 in its parts dealing with Heritage Conservation and its management at: Part 4.0 - A Great Place to Live, 02 – Action 01. At Part 5.0 Vibrant Village Centres - 02, 03, 04.

Q2: Is the Planning Proposal the best means of achieving the objectives or intended outcomes or is there a better way?

Yes. This Planning Proposal is the best means for achieving the intended outcomes as it is directly necessary to amend the relevant clauses under Ashfield LEP 2013.

Reliance on the status quo would lead to potential ambiguity or misapplication in the wording relating to minor external alterations to buildings within HCAs and to HIs, and substantial adverse environmental impacts to the building fabric and sensitive heritage significance in these places.

Given the sensitive nature of heritage conservation the proposed amendments under this Planning Proposal provides better management in the conservation of heritage significance in former Ashfield Local Government Area which the ALEP 2013 applies to. The proposed amendments also provide a safeguard from misapplication and misinterpretation of the current LEP clauses relating to minor exterior works and subdivision to heritage item buildings.

Section B - Relationship to the Strategic Planning Framework

Q3: Is the Planning Proposal consistent with the objectives and actions of the applicable regional or subregional strategy?

The following provides the matters for consideration listed in The Guide and provides responses specific to the proposal which demonstrate that the proposal has clear strategic planning merit.

A Metropolis of 3 Cities: The Greater Sydney Region Plan (March 2018)

An assessment against the Greater Sydney Region Plan is provided in the **Table 1** below.

Table 1 Greater Sydney Region Plan. A Metropolis of Three Cities

Direction	Objective	Response
4 - Liveability (Direction – A city for people)	<p>Objective 13 : Environmental heritage is identified, conserved and enhanced.</p> <p>States this objective as: “relates to conserving, interpreting and celebrating Greater Sydney’s heritage values leads to a better understanding of history and respect</p>	<p>The Planning Proposal will intrinsically and substantially improve conservation of buildings within Heritage Conservation Areas and Heritage Item Buildings by addressing ambiguity and omission in clauses within the Ashfield LEP 2013 relating to exterior works and</p>

	<p>for the experience of diverse communities. Heritage identification and management and interpretation is required so that heritage places and stories can be experienced by current and future generations”.</p> <p>Strategy 13.1</p> <p>Identify conserve and enhance environmental heritage by :</p> <p>Managing and monitoring cumulative impact of development on the heritage values and character of places.</p>	<p>torrens title subdivision.</p> <p>The Planning Proposal is consistent with Objective 13 as it facilitates better management of Heritage Conservation Areas and Heritage Item Buildings.</p>
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Eastern City District Plan (March 18)

An assessment against the Eastern City District Plan is provided in **Table 2** below.

Table 2 Eastern City District Plan

Direction	Objective	Response
3 - Liveability (Direction 3 – A city for people)	<p>Planning Priority E6 Creating and renewing great places and local centres, and respecting the District's Heritage</p> <p>Objective 13: Environmental heritage is identified, conserved and enhanced.</p> <p>Action 20: Identify, conserve and enhance environmental heritage by:</p> <p>c. managing and monitoring the cumulative impact of development on the heritage values and character of places.</p>	<p>The Planning Proposal is consistent with Objective 13 and Action 20 and will enable the necessary required level of management of Heritage Conservation Areas and Heritage Item Buildings.</p>

Q4: Is the Planning Proposal consistent with a Council's local strategic or other local strategic plan?

Our Inner West 2036

On June 2018 Council's Inner West Community Strategic Plan - *Our Inner West 2036* was endorsed and contains the vision, long-term goals and strategies for the LGA.

The Strategic Direction and Outcome relevant to this planning proposal is:

Strategic direction 2: Unique, liveable, networked neighbourhoods

2.2 The unique character and heritage of neighbourhoods is retained and enhanced

- 1. Provide clear and consistent planning frameworks and processes that respect heritage and the distinct characters of urban villages*
- 2. Manage change with respect for place, community history and heritage*

The Planning Proposal is consistent with the above.

Ashfield Urban Planning Strategy 2010

On October 2010 the former Ashfield Council adopted the Ashfield Urban Planning Strategy 2010 which supports the Ashfield LEP 2013, and this now applies to the Inner West Council area. **Table 3** provides an assessment against this strategy.

Table 3 - Ashfield Urban Planning Strategy 2010

Direction	Action	Response
4.0 A Great Place To Live	<p>2. Implement Proposed Heritage Listings and Conservation Areas.</p> <p>These included existing HCAs and HIs in the Ashfield LEP 1985, and additional Heritage Conservation Areas and Heritage Items supported by detailed studies introduced into the Ashfield LEP 2013. There are a total of 50 Heritage Conservation Areas (with approx. 1300 properties and also those in the Haberfield HCA suburb) and 611 Heritage Items.</p>	The Planning Proposal will better conserve and maintain the cultural significance of heritage items and heritage conservation listed under Schedule 5 of the Ashfield LEP 2013.
5.0 Vibrant Village Centres	2. Retain the Heritage Value of Summer Hill Urban Village	These places are Heritage Conservation Areas in which the Planning Proposal will better manage the conservation of these places.
	3. Retain the Heritage Value of Haberfield Urban Village	
	4. Retain the Heritage Value of Croydon Urban Village	

Q5: Is the Planning Proposal consistent with the applicable State Environmental Planning Policies ?

There are no conflicts with the State Environmental Planning Policies (SEPP) listed in **Table 4**.

Table 4 SEPP TABLE

SEPP	APPLIES/COMMENTS
SEPP No 1—Development Standards	Not Applicable
SEPP No 19—Bushland in Urban Areas	Not Applicable

SEPP No 21—Caravan Parks	Not Applicable
SEPP No 30—Intensive Agriculture	Not Applicable
SEPP No 33—Hazardous and Offensive Development	Not Applicable
SEPP No 36—Manufactured Home Estates	Not Applicable
SEPP No 44—Koala Habitat Protection	Not Applicable
SEPP No 47—Moore Park Showground	Not Applicable
SEPP No 50—Canal Estate Development	Not Applicable.
SEPP No 52—Farm Dams and Other Works in Land and Water Management Plan Areas	Not Applicable
SEPP No 55—Remediation of Land	Not Applicable
SEPP No 62—Sustainable Aquaculture	Not Applicable
SEPP No 64—Advertising and Signage	Consistent. In principle, any proposed signage on any buildings or sites with heritage significance are not considered to be minor development and would require a Development Application (DA). Therefore, the consideration of this SEPP would occur at DA Stage. Therefore, this SEPP is not directly applicable to this proposal.
SEPP No 65—Design Quality of Residential Flat Development	Not applicable
SEPP No 70—Affordable Housing (Revised Schemes)	Not applicable
SEPP (Affordable Rental Housing) 2009	Not applicable
SEPP (Building Sustainability Index: BASIX) 2004	Not applicable
SEPP (Educational Establishments and Child Care Facilities) 2017	Not applicable
SEPP (Educational Establishments and Child Care Facilities) 2017	Not applicable

SEPP (Exempt and Complying Development Codes) 2008	Consistent Schedule 2 - Exempt development of Ashfield LEP 2013 includes an exempt development provision that pertains to work that is additional to the list of works provided for in the SEPP. Deletion of ALEP clause therefore has no effect on the SEPP provisions.
SEPP (Housing for Seniors or People with a Disability) 2004	Not applicable
SEPP (Infrastructure) 2007	Not applicable
SEPP (Kosciuszko National Park—Alpine Resorts) 2007	Not Applicable
SEPP (Kurnell Peninsula) 1989	Not Applicable
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	Not Applicable
SEPP (Miscellaneous Consent Provisions) 2007	Not Applicable
SEPP (Penrith Lakes Scheme) 1989	Not Applicable
SEPP (Three Ports) 2013	Not Applicable
SEPP (Rural Lands) 2008	Not Applicable
SEPP (State and Regional Development) 2011	Not Applicable
SEPP (Sydney Drinking Water Catchment) 2011	Not Applicable
SEPP (Sydney Region Growth Centres) 2006	Not Applicable
SEPP (Urban Renewal) 2010	Not Applicable
SEPP (Western Sydney Employment Area) 2009	Not Applicable
SEPP (Western Sydney Parklands) 2009	Not Applicable
SEPP (Vegetation in Non—Rural Areas) 2017	Not Applicable
SREP (Sydney Harbour Catchment) 2005	Not Applicable
SREP No 8 - Central Coast Plateau Areas	Not Applicable

SREP No 9 - Extractive Industry (No 2 – 1995)	Not Applicable
SREP No 16 - Walsh Bay	Not Applicable
SREP No 18 - Public Transport Corridors	Not Applicable
SREP No 19 - Rouse Hill Development Area	Not Applicable
SREP No 24 - Homebush Bay Area	Not Applicable
SREP No 26 - City West	Not Applicable
SREP No 30 - St Marys	Not Applicable
SREP No 33 - Cooks Cove	Not Applicable

Q6: Is the Planning Proposal consistent with the applicable Ministerial Directions?

The Planning Proposal is consistent with the relevant Ministerial Directions as demonstrated in **Table 5**.

Table 5 List of relevant s9.1 Ministerial Direction

Ministerial Direction	Relevance	Consistency/Response
2. Environment and Heritage		
2.3 Heritage Conservation	<p>Objective</p> <p>(1) The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.</p> <p>The Direction applies to all planning authorities and applies when a relevant planning authority prepares a planning proposal relating to heritage conservation.</p> <p>A Planning Proposal must contain provisions that facilitate the conservation of Heritage Conservation areas and heritage items.</p>	<p>Consistent. The Planning Proposal is necessary to ensure that this Direction is adequately complied with.</p>

3. Housing, Infrastructure and Development		
3.1 Residential Zones	<p>(1) The objectives of this direction are:</p> <p>(a) to encourage a variety and choice of housing types to provide for existing and future housing needs,</p> <p>(b) to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and</p> <p>(c) to minimise the impact of residential development on the environment and resource lands.</p>	Consistent. The Planning Proposal will not affect permissible residential density of land, and not affect any landuse zoning.
6. Local Plan Making		
6.1 The objective of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development.	This requires that for all Planning Proposals, that they do not contain the matters identified in direction's clause (4).	The Planning Proposal complies with this direction. There will not be any adverse impacts on the efficient and appropriate assessment of development.
7. Metropolitan Planning		
7.1 Implementation of A Plan for Growing Sydney	<p>This Direction applies to all Planning Proposals in nominated Local Government Areas and seeks to give legal effect to the planning principles, directions and priorities for subregions, strategic centres and transport gateways contained in <i>A Plan for Growing Sydney</i>.</p> <p>A Planning Proposal must be consistent with the Plan unless the inconsistency is of minor significance and the planning proposal achieves the overall intent of the Plan.</p>	<p>A Plan for Growing Sydney has been superseded by <i>A Metropolis of 3 Cities: The Greater Sydney Region Plan</i> (March 2018).</p> <p>The Planning Proposal would be consistent with this Direction if it were in place.</p>

Section C - Environmental, Social and Economic Impacts

Q7: Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

There is no likelihood that this Planning Proposal- LEP amendment - will adversely affect critical habitat or threatened species, populations or ecological communities.

Q8: Are there any other likely environmental effects as a result of the Planning Proposal and how are they proposed to be managed?

This Planning Proposal is not likely to result in other environmental effects. The ALEP 2013 contains sufficient controls in managing the protection of environmental heritage. The proposed LEP amendments would strengthen the application of these controls.

Q9: Has the Planning Proposal adequately addressed any social and economic effects?

There will be no adverse social or economic effects as a result of this proposal.

Section D - State and Commonwealth Interests

Q10: Is there adequate public infrastructure for the Planning Proposal?

Nothing proposed in this planning proposal would increase pressure on existing infrastructure or generate demand for additional public infrastructure.

Q11: What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

Consultation with State and Commonwealth public authorities will be undertaken in accordance with the Gateway Determination. It is anticipated that the Office of Environment and Heritage would be required to be contacted in relation to the proposed LEP amendments.

Part 4 - Mapping

The Planning Proposal does not affect the maps for the Ashfield LEP 2013.

Part 5 - Community Consultation

The Planning Proposal will be exhibited for a period of 28 days in accordance with the Gateway determination. The exhibition material includes documents required by in the Gateway Determination and in the Department of Planning and Environment Planning Proposal guidelines .

Part 6 - Project Timeline

A project timeline is provided in the table below consistent with the Gateway determination for a 26 week completion timeline.

Phase	Timing
Gateway determination date	18 April 2019.
State agency consultation (during exhibition)	Concurrent with public exhibition
Commencement and completion dates for public exhibition period	End week 15
Consideration of submissions	End week 17
Report to Council	End week 20
Referral to Parliamentary Counsel of written instrument and response	End week 21
Referral to Department for Mapping	Not applicable
Instruction to Department to gazette LEP amendments- upload onto website	End week 24
LEP amendment gazetted.	End week 26