

ATTACHMENT E

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**FORMAL OPINION FROM OFFICE OF
PARLIAMENTARY COUNSEL,
DATED 15 JULY 2013**

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PARLIAMENTARY COUNSEL

Opinion

Environmental Planning and Assessment Act 1979
Proposed Sydney Local Environmental Plan 2012 (Amendment No 2)

Your ref: Samantha Bird
Our ref: AE e2013-114-d07

In my opinion the attached draft environmental planning instrument may legally be made.

A handwritten signature in black ink, appearing to read "D Colagiuri".

(D COLAGIURI)
Parliamentary Counsel

15 July 2013



New South Wales

Sydney Local Environmental Plan 2012 (Amendment No 2)

under the

Environmental Planning and Assessment Act 1979

I, the Minister for Planning and Infrastructure, make the following local environmental plan under the *Environmental Planning and Assessment Act 1979*.

Minister for Planning and Infrastructure

Clause 1 Sydney Local Environmental Plan 2012 (Amendment No 2)

Sydney Local Environmental Plan 2012 (Amendment No 2)

under the

Environmental Planning and Assessment Act 1979

1 Name of Plan

This Plan is *Sydney Local Environmental Plan 2012 (Amendment No 2)*.

2 Commencement

This Plan commences on the day on which it is published on the NSW legislation website.

3 Land to which Plan applies

This Plan applies to the following land:

- (a) in relation to the amendments made by Schedule 1—the land to which *Sydney Local Environmental Plan 2012* applies,
- (b) in relation to the amendments made by Schedule 2—the land to which *South Sydney Local Environmental Plan 1998* applies.

Schedule 1 Amendment of Sydney Local Environmental Plan 2012

- [1] Clause 6.10 Heritage floor space**
Omit “space” from clause 6.10 (2) (d).
- [2] Clause 6.11 Utilisation of certain additional floor space requires allocation of heritage floor space**
Omit “the relevant paragraph” from clause 6.11 (1).
Insert instead “the following relevant paragraphs”.
- [3] Clause 6.11 (1) (a)–(d) and (2) (a) and (b)**
Omit “or” from the end of the paragraphs, wherever occurring.
- [4] Clause 6.21 Design excellence**
Omit “accommodation floor space or community floor space under Division 1, by up to 10% plus the sum of that accommodation floor space and community floor space” from clause 6.21 (7) (b).
Insert instead “accommodation floor space under Division 1 or any community infrastructure floor space under Division 2, by up to 10% plus the sum of that accommodation floor space or community infrastructure floor space”.
- [5] Clause 6.21 (7), Note**
Insert “infrastructure” after “community”.

Sydney Local Environmental Plan 2012 (Amendment No 2)

Schedule 2 Amendment of South Sydney Local Environmental Plan 1998

Schedule 2 Amendment of South Sydney Local Environmental Plan 1998

[1] Part 4 Special provisions

Insert after Division 2A:

Division 3 Affordable housing at Green Square

27L Affordable housing aims and objectives

Because land values in Green Square may reasonably be expected to increase when land in the area is developed in accordance with this plan, development in Green Square should provide different kinds of housing, including affordable housing, to ensure that very low income households, low income households and moderate income households may live in the area.

Development in Green Square should promote and retain a socially diverse residential population representative of all income groups.

27M Definitions

In this Division:

affordable housing has the same meaning as in the Act.

affordable housing provisions means the provisions of the *Green Square Affordable Housing Development Control Plan*, as in force from time to time, setting out a scheme for the provision and management of affordable housing in the Green Square area in accordance with affordable housing principles. Copies of the development control plan are available from the Council's administrative offices.

total floor area means the total of the areas of each floor of a building. The area of each such floor is taken to be the area within the outer face of the external enclosing walls, but excluding:

- (a) columns, fins, sun control devices, awnings and other elements, projections or works outside the general lines of the outer face of the external walls (other than balconies comprising the minimum balcony area required by the Council, and excluding any additional area), and
- (b) the maximum ancillary car parking permitted by the Council and any associated internal vehicular and pedestrian access to that car parking, and
- (c) space for the loading and unloading of goods.

very low income households, low income households and moderate income households have the same meanings as in clause 8 of *State Environmental Planning Policy No 70—Affordable Housing (Revised Schemes)*.

27N Green Square affordable housing principles

The *Green Square affordable housing principles* are as follows:

- (a) affordable housing should be provided and managed in the Green Square locality so that a socially diverse residential population representative of all income groups is created and maintained,
- (b) affordable housing that is provided is to be made available to a mix of very low income households, low income households and moderate income households,
- (c) affordable housing that is provided is to be rented to eligible households at an appropriate rate of gross household income,
- (d) dwellings provided for affordable housing are to be managed so as to maintain their continued use for affordable housing,
- (e) affordable housing is to consist of dwellings constructed to a standard which in the opinion of the Council is consistent with other dwellings in the Green Square locality.

27O Matters for consideration by consent authority

- (1) Before granting consent to any proposed development of land within Green Square in Zone No 10 (a), 10 (b), 10 (c), 10 (d), 10 (e), 11 (a) or 11 (b), the consent authority is to take into consideration the following:
 - (a) the aims and objectives of this Division,
 - (b) the Green Square affordable housing principles,
 - (c) the affordable housing principles set out in Schedule 2 to *State Environmental Planning Policy No 70—Affordable Housing (Revised Schemes)*,
 - (d) the need for development to provide different kinds of housing, including affordable housing, to ensure that very low income households, low income households and moderate income households may be able to afford to live in Green Square,
 - (e) the impact of the proposed development on the existing mix and likely future mix of residential housing stock within Green Square.

Sydney Local Environmental Plan 2012 (Amendment No 2)

Schedule 2 Amendment of South Sydney Local Environmental Plan 1998

- (2) Subclause (1) does not apply to land shown as being within Zone No 10 (d) on the map marked “South Sydney Local Environmental Plan 1998 (Amendment No 11)—Green Square—Zoning”.

27P Affordable housing conditions

- (1) Before granting consent to the carrying out of development (other than subdivision) on land in Green Square within Zone No 10 (a), 10 (b), 10 (c), 10 (d), 10 (e), 11 (a) or 11 (b), the consent authority must consider whether an affordable housing condition should be imposed on the consent.
- (2) The following are *affordable housing conditions*:
- (a) A condition requiring the payment of a monetary contribution to the consent authority by the applicant to be used for the purpose of providing affordable housing in accordance with the Green Square affordable housing principles and the affordable housing provisions that is the value, calculated in accordance with those provisions, of the following *total amount*:
- (i) 3% of so much (if any) of the total floor area to which the development application relates as is intended to be used exclusively for residential purposes, and
- (ii) 1% of so much (if any) of the total floor area to which the development application relates as is not intended to be used exclusively for residential purposes.
- (b) If that total amount is sufficient, a condition requiring:
- (i) the dedication in favour of the consent authority, free of cost, of land of the applicant comprised of one or more complete dwellings with a total floor area of not more than that total amount, each dwelling having a total floor area of not less than 50 square metres, and
- (ii) if the amount of total floor area of the complete dwelling or dwellings is less than that total amount, the payment of a monetary contribution to the consent authority by the applicant that is the value, calculated in accordance with the affordable housing provisions, of the total floor area equivalent to the difference between those amounts,

to be used for the purpose of providing affordable housing in accordance with the Green Square affordable housing principles and the affordable housing provisions.

- (3) To remove any doubt:
 - (a) it does not matter whether the total floor area concerned was in existence before, or is created after, the commencement of this Division, or whether the area concerned replaces a previously existing area, and
 - (b) demolition of a building or a change in the use of land does not give rise to a claim for a refund of any amount that has been contributed under this clause for use for affordable housing.
- (4) This clause authorises the imposition of an affordable housing condition when the consent authority grants consent to the carrying out of development (other than subdivision) on land in Green Square within Zone No 10 (a), 10 (b), 10 (c), 10 (d), 10 (e), 11 (a) or 11 (b), subject to section 94F (3) (c) and (4) of the Act and clauses 27Q and 27R.
- (5) However, a consent authority is not authorised to impose an affordable housing condition unless at least one of the circumstances described in section 94F (1) (a)–(d) of the Act exists.
- (6) This clause and any condition imposed under it are subject to section 94G of the Act.

27Q Development exempted from affordable housing conditions

This Division does not authorise an affordable housing condition to be imposed in the case of a development application seeking consent for development:

- (a) for residential purposes, if the proposed development will result in the creation of less than 200 square metres of total floor area, or
- (b) for non-residential purposes, if the proposed development will result in the creation of less than 60 square metres of total floor area, or
- (c) for the purpose of public housing, or
- (d) for the purpose of affordable housing, if the applicant for consent is a community housing or non-profit organisation, or
- (e) for the purpose of community facilities, or

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(f) for the purpose of a public road, or a public utility undertaking or facility,
and for no other purpose.

27R Affordable housing conditions after initial development

An affordable housing condition is not authorised to be imposed with respect to an amount of total floor area if the consent authority is satisfied that a condition of consent has previously been imposed pursuant to this Division with respect to the same or an equivalent amount of total floor area.

[2] Clause 29A Application of provisions of Sydney Local Environmental Plan 2012

Omit clause 29A (3).