

Attachment A3 - Appendix B
Drafting Instructions

Drafting instruction

Drafting instruction 1 – Amend Part 7, Division 3, Clause 7.13 ‘Contributions for purpose of affordable housing at Green Square, Ultimo-Pyrmont, on southern employment land or on residual land’

The intent of this drafting instruction is to amend Clause 7.13 so it:

- ensures the Program is directly referred to as the guiding document for the ongoing application of the LEP requirements and the administration of the Program. Current clauses only refer to the Program with regards to it setting equivalent monetary contribution amounts. This has left some ambiguity about the legal weight that should be granted the Program. This is particularly important in the new clauses because it is the Program that provides the specific requirements for how the clause is applied on various land. For example, in Green Square, a contribution requirement is calculated on all of the floor area in the building (assuming no contribution has been previously applied), because all of the floor area in Green Square has benefited from a rezoning. However, in Central Sydney and on residual land, where there has been no rezoning, the contribution requirement will be calculated only on newly created floor area or floor area that is changing use.
- rearranges the existing clause 7.13 to address current confusion and unintended interpretation of the development that should be excluded from having to pay a contribution. In particular, a change of use that did not result in the creation of more floor area was being excluded, where that was not the intent of the provision. This can be achieved by:
 - removing reference to ‘excluded development’, instead defining what development the clause does apply to, and
 - defining Total Floor Area (TFA), removing from the calculation of TFA some previously excluded uses
- is the same requirement in Green Square, Ultimo-Pyrmont, southern employment lands, and also introduces a new contribution requirement on ‘Central Sydney’ and ‘residual lands’¹;
- requires the contribution to be satisfied by way of monetary contribution or dwelling contribution in accordance with the City of Sydney Affordable Housing Program (the Program)², as adopted by Council; and
- specifies that where an in-kind contribution is being made, that it is done in accordance with the Program.

Note: In Central Sydney and residual land, the clause is not to apply to development applications lodged before 1 July 2018

Recommended wording of draft clause:

7.13 Contributions for purpose of affordable housing at Green Square, Ultimo-Pyrmont, Central Sydney on southern employment land or on residual land

- (1) This clause does not apply to development applications lodged prior to 1 July 2018 on land in Central Sydney, and on residual land.
- (2) This clause applies to development:
 - (a) at Green Square, Ultimo-Pyrmont, on southern employment land, or on residual land that involves:

- (i) the erection of a new building of more than 200 square metres, or
 - (ii) additions to an existing building resulting in the creation of more than 200 square metres of residential floor area, or
 - (iii) additions to an existing building resulting in the creation of more than 60 square metres of non-residential floor area, or
 - (iv) demolition of existing floor area and the subsequent creation of **more than 200 square metres of new floor area** for the same or new purpose.
- (b) at Green Square, Ultimo-Pyrmont or on southern employment land that involves:
- (i) a change of use of more than 60 square metres of existing floor area, ~~or~~
 - ~~(ii) substantial alterations or additions to existing floor area, being work that costs more than \$50,000~~
- (c) on residual land that involves a change of use of existing floor area from a non-residential purpose to a residential purpose or tourist or visitor accommodation purpose.
- (d) at Central Sydney that involves:
- (i) **the erection of a new building of more than 100 square metres, or**
 - (ii) **additions to an existing building resulting in the creation of more than 100 square metres of new floor area, or**
 - ~~(iii) the creation of more than 100 square metres of floor area; or~~
 - ~~(iv) substantial alterations and additions to existing floor area, being work that costs more than \$200,000; or~~
 - (iii) demolition of existing floor area and the subsequent creation of **more than 100 square metres of new floor area** for the same or new purpose; or
 - (iv) ~~a change of use of more than 200 square metres of existing floor area~~ **a change of use of existing floor area from a non-residential purpose to a residential purpose or tourist or visitor accommodation purpose.**
- (3) The consent authority may, when granting development consent on land at Green Square or on southern employment land, impose a condition on development under subclause (2) requiring a contribution equivalent to the ***affordable housing levy contribution***, being:
- (a) 3% of so much (if any) of the total floor area that is intended to be used for residential purposes, and
 - (b) 1% of so much (if any) of the total floor area that is not intended to be used for residential purposes.
- (4) The consent authority may, when granting development consent to development on land at Ultimo-Pyrmont, impose a condition requiring a contribution equivalent to the ***affordable housing levy contribution***, being:
- (a) 0.8% of so much (if any) of the total floor area of the development that is intended to be used for residential purposes, and
 - (b) 1.1% of so much (if any) of the total floor area of the development that is not intended to be used for residential purposes.
- (5) The consent authority may, when granting development consent in Central Sydney or on residual land, impose a condition on development under subclause (2) requiring a contribution equivalent to the ***affordable housing levy contribution***, being:

Date of determination of development application	Total floor area intended for non-residential floor area	Total floor area intended for residential floor area
To 31 May 2020	0%	0%
1 June 2020 – 31 May 2022	0.5%	1.5%
1 June 2022 onwards	1%	3%

- (6) Any condition imposed under this section must be for the purpose of achieving affordable housing outcomes, in accordance with the principles and requirements of the **Relevant Program**.
- (7) A condition imposed under this section must permit a person to satisfy the affordable housing levy contribution, by way of:
- (a) a dedication in favour of the Council of land comprising one or more dwellings (each having a total floor area of not less than 35 square metres and not more than 90 square metres) with any remainder being paid as a monetary contribution to the Council, or
 - (b) monetary contribution to the Council.
- (8) The rate at which monetary contribution is to be taken to be equivalent to floor area for the purposes of this clause is to be calculated in accordance with the **Relevant Program**.
- (9) To avoid doubt:
- (a) it does not matter whether the floor area, to which a condition under this clause relates, was in existence before, or is created after, the commencement of this clause, or whether or not the floor area concerned replaces a previously existing area, and
 - (b) the demolition of a building, or a change in the use of land, does not give rise to a claim for a refund of any contribution.
- (10) In this clause:

Relevant Program means:

- (a) on land in Ultimo-Pyrmont, the *Revised City West Affordable Housing Program* published by the NSW Government in June 2010 and held in the head office of the Department of Planning and Infrastructure, and
- (b) on land in Green Square, Central Sydney, on southern employment land or on residual land, the City of Sydney Affordable Housing Program, adopted by the Council on XX XX XX and made available by the Council on its website (www.cityofsydney.nsw.gov.au)

total floor area means the total of the areas of each floor of a building within the outer face of the external enclosing walls and including balconies, but excluding the following:

- (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,
- (b) any area of a balcony that is more than the minimum area required by the consent authority in respect of the balcony,
- (c) ~~the maximum~~ ancillary car parking up to the maximum permitted by the consent authority and any associated internal vehicular and pedestrian access to that car parking,

- (d) space for the loading and unloading of goods,
- (e) other excluded floor area, being:
 - i. floor area in Zone IN1 General Industrial; or
 - ii. floor area used for the purpose of residential accommodation that is used to provide affordable housing or public housing; or
 - iii. floor area used for the purpose of community facilities, public roads or public utility undertakings.

¹ The Locality and Site Identification map is to show Green Square, southern employment land, residual land, Central Sydney and ~~Schedule 7~~ Planning Proposal land.

² The City of Sydney Affordable Housing Program is to be publicly exhibited in conjunction with the draft Planning Proposal. It is noted the operation of the clause is contingent on the adoption of the Programs by Council.

Drafting instruction 2 – Insert in Part 7, Division 3 new clause 7.13AA ‘Contributions for purpose of affordable housing on ~~Schedule 7~~ Planning Proposal land’

Insert new Clause 7.13AA and new Schedule to:

- identify ~~Schedule 7~~ *Planning Proposal land*. The intent of this new clause is to provide a framework to identify sites that have been the subject of a site-specific planning proposal and to require an affordable housing contribution (in addition to that which applies under 7.13), but only to the new development capacity achieved in the planning proposal. Ultimately the new Schedule is intended to streamline and provide transparency and certainty to a process that would otherwise be required to be achieved through a planning agreement at the planning proposal stage.
- On ~~Schedule 7~~ *Planning Proposal land*, an affordable housing contribution requirement is to be applied to:
 - the erection of a new building over 200 square metres
 - additions to an existing building resulting in the creation of more than 200 square metres of residential floor area
 - additions to an existing building resulting in the creation of more than 60 square metres of non-residential floor area, or
 - change of use to existing floor area from a non-residential purpose to a residential purpose.
- While not required to be reflected in the LEP, it should be noted the contribution rate to be applied to land will be established and inserted into the Schedule at the time the change of planning controls comes into effect, that is, the contribution rate will be different depending on what is achieved in a planning proposal. The affordable housing program explains how the rate will be established.
- The contribution requirement is intended to apply to additional floor area that is achieved in the planning proposal process. It does not matter if all of the additional floor area is not being achieved at the development application stage – a proportional contribution should apply. The intent is to ensure that the additional contribution requirement resulting from the planning proposal is to be proportionally shared amongst development, irrespective of staging.
- For clarity, the contribution is not intended to apply to other floor area that may be achieved subject to Part 6 of the LEP i.e. design excellence or community infrastructure floor space in Green Square.

- Where development is subject to Clause 7.20 i.e. it is staged or is subject to site specific DCP, then the contribution requirement is to be distributed amongst buildings within the development.
- Where floor area already exists on a site, and is not changing for a residential use, then it is not required to pay a contribution under this provision.
- The clause is to refer to the City of Sydney affordable housing program for how a contribution may be satisfied. However, Schedule 7 may identify how a contribution *must* be satisfied.

Recommended wording of draft clause:

7.13AA Contributions for purpose of affordable housing on ~~Schedule 7~~ Planning Proposal land

- (1) This clause applies to development on land identified in Column 1 of Schedule 7 – Planning Proposal land that involves:
 - (a) the erection of a new building over 200 square metres, or
 - (b) additions to an existing building resulting in the creation of more than 200 square metres of residential floor area, or
 - (c) additions to an existing building resulting in the creation of more than 60 square metres of non-residential floor area, or
 - (d) change of use to existing floor area from a non-residential purpose to a residential ~~purpose~~ use or a tourist or visitor accommodation use.
- (2) The consent authority may, when granting development consent on ~~Schedule 7~~ Planning Proposal land, impose a condition on development under subclause (1) requiring a contribution equivalent to the **affordable housing levy contribution**, being the amount identified in Column 3, Schedule 7 of so much of any **Schedule 7 floor area**.
- (3) The affordable housing levy contribution is to be satisfied as required by Column 4, Schedule 7.
- (4) The rate at which a monetary contribution is to be taken to be equivalent to floor area for the purposes of this clause is to be calculated in accordance with the **Program**.
- (5) Where development is subject to Clause 7.20, any contribution requirement payable under subclause (2) is to be distributed, in accordance with the Program, amongst the buildings (if there is more than one) as part of the site specific development control plan.
- (6) Where the floor area of development to which this clause applies is for less than the maximum floor area that can be achieved under Clause 4.4, then the contribution requirement payable under subclause (2) is to be proportional to the contribution requirement that would otherwise be payable if all of the floor area in the development achievable under Clause 4.4 was being achieved, in accordance with the Program.
- (7) To avoid doubt:
 - (a) it does not matter whether the floor area, to which a condition under this clause relates, was in existence before, or is created after, the commencement of this clause, or whether or not the floor area concerned replaces a previously existing area, and
 - (b) the demolition of a building, or a change in the use of land, does not give rise to a claim for a refund of any contribution.
- (8) In this clause:

Program means the City of Sydney Affordable Housing Program, adopted by the Council on XX XX XX, and made available by the Council on its website (www.cityofsydney.nsw.gov.au).

Schedule 7 floor area means the amount of floor area calculated as:

Floor area that can be achieved on the land under Clause 4.4 x uplift proportion shown in Column 2, Schedule 7

Schedule 7 (including example):

Column 1 - Locality and description	Column 2 – Uplift proportion	Column 3 – Contribution rate	Column 4 – How is the contribution requirement is to be satisfied?
e.g. 1 Fred Street, Newtown, Lot 5 DP 666666	e.g. 50%	e.g. 12%	e.g. Either by way of: (i) a dedication in favour of the Council of land comprising one or more dwellings (each having a total floor area of not less than 35 square metres and not more than 90 square metres), in accordance with the Program, with any remainder being paid as a monetary contribution to the Council, or (ii) monetary contribution to the Council.

Drafting instruction 3 – Amend in Part 7, Division 3 clause 7.13A ‘Affordable housing in Zone B7’

This clause is to be amended to:

- ~~clarify that where a site is located in the B7 zone, and is also located in area 1AA in Schedule 1, that the provision of the Schedule 1 listing prevails and that shop top housing and seniors housing is permitted,~~
- refer to an amended affordable housing program

Recommended additions to the clause are shown in bold:

(1) Despite any

....

(c) the affordable housing will be provided in accordance with the **City of Sydney Affordable Housing Program, adopted by the Council on XX XX XX**, and

....

~~(2) To avoid doubt, on land in Zone B7 Business Park, that is also in area 1AA in Schedule 1, shop top housing and seniors housing is permitted. It does not matter whether the shop top housing and/or seniors housing is used for the purposes of affordable housing.~~

....

Drafting instruction 4 – Amend Clause 1.9 so that the State Environmental Planning Policy (Affordable Rental Housing) 2009 does not apply to land in ‘Central Sydney’.

This clause is to be amended so that in addition to Green Square and the Southern Employment Lands, the State Environmental Planning Policy (Affordable Rental Housing) 2009 does not apply to land in ‘Central Sydney’, identified as land zoned B8 – Metropolitan Centre on the Locality and Site Identification Map.

Recommended additions to the clause are shown in bold:

...

(2A) State Environmental Planning Policy (Affordable Rental Housing) 2009 does not apply to:

- (a) land at Green Square or at Ultimo-Pyrmont, or
- (b) southern employment land **or Central Sydney.**