

# **Attachment C**

## **Gateway Determination**



## Gateway Determination

*Planning proposal (Department Ref: PP\_2017\_SYDNE\_006\_00): to amend affordable housing provisions in Sydney Local Environmental Plan 2012.*

I, the Acting Deputy Secretary, Planning Services at the Department of Planning and Environment as delegate of the Greater Sydney Commission, have determined under section 56(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the Sydney Local Environmental Plan (LEP) (2012) should proceed subject to the following conditions:

1. Prior to community consultation, the planning proposal is to be amended to:
  - (a) demonstrate consistency with the Draft Greater Sydney Region Plan and Draft Revised Eastern City District Plan;
  - (b) update the project timeline;
  - (c) include the Central Sydney Affordable Housing program currently in the Central Sydney Planning Strategy planning proposal;
  - (d) remove from the explanation of provisions the amendment allowing affordable housing contributions to apply to exempt and complying development;
  - (e) change the commencement date of contribution to three years with two year staging;
  - (f) provide details on the likely supply of affordable housing through the application of the standard levy on residual land;
  - (g) provide further justification to the Site Specific 'Schedule 7 Land' affordable housing contribution in terms of its impact on the application of VPAs or increase contributions for Local or State infrastructure; and
  - (h) provide clarification on the application of site specific affordable housing contributions on additional building height.
2. Prior to community consultation, the revised planning proposal is to be provided to the Department for review and approval for public exhibition.
3. Prior to finalisation, the planning proposal is to be amended to demonstrate consistency with any available guidance note on affordable housing schemes under SEPP 70 or a new housing SEPP released by the Greater Sydney Commission and/or the Department.
4. Community consultation is required under sections 56(2)(c) and 57 of the Act as follows:
  - (a) the planning proposal must be made publicly available for a minimum of **28 days**; and
  - (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material

that must be made publicly available along with planning proposals as identified in section 5.5.2 of *A Guide to Preparing LEPs* (Department of Planning and Environment 2016).

5. No consultation is required with public authorities under section 56(2)(d) of the Act.
6. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
7. The timeframe for completing the LEP is to be **12 months** from the week following the date of the Gateway determination.

Dated 10<sup>th</sup> day of January 2017 2018



**David Gainsford**  
**Acting Deputy Secretary**  
**Planning Services**  
**Department of Planning and Environment**

**Delegate of the Greater Sydney Commission**



Ms Monica Barone  
Chief Executive Officer  
City of Sydney Council  
GPO Box 1591  
Sydney NSW 2001

Dear Ms Barone

**Planning proposal to amend Sydney Local Environmental Plan (2012)**

I am writing in response to Council's letter of 25 May 2017 requesting a Gateway determination under section 56 of the *Environmental Planning and Assessment Act 1979* (the Act) in respect of the planning proposal to amend affordable housing provisions in Sydney Local Environmental Plan 2012.

As delegate of the Greater Sydney Commission, I have now determined the planning proposal should proceed subject to the conditions in the attached Gateway determination.

The Greater Sydney Commission and the Department of Planning and Environment are finalising a broader policy position as part of a guidance note on affordable housing schemes under State Environmental Planning Policy No 70 – Affordable Housing (Revised Schemes) and a new Housing SEPP. I have conditioned the Gateway determination to require Council to demonstrate consistency with any guidance note on affordable housing schemes released by the Greater Sydney Commission and the Department before the plan is finalised.

Plan-making powers were delegated to councils by the Minister in October 2012. It is noted that Council has requested to be issued with delegation for this planning proposal. I have considered the nature of Council's planning proposal and have decided not to issue an authorisation for Council to exercise delegation to make this plan given the potential impact on State government policy.

To provide consistency with Council's affordable housing programs, the Gateway determination includes a condition to include the Central Sydney Affordable Housing program currently in the Central Sydney Planning Strategy planning proposal.

I understand that the planning proposal seeks to enable Council to apply affordable housing contributions to exempt and complying development. The intent of complying development is to provide a fast-track approval pathway. The promotion and simplification of complying development is an important initiative to support the NSW Government's commitment to faster approvals and cutting red tape for homeowners and businesses. For this reason, it is conditioned that an affordable housing levy is not applied to exempt and complying development

To achieve an equitable outcome regarding timing, the Department considers that the current market supply be developed in line with current controls and the future supply be under the new controls. Given a significant amount of supply is still proposed, I have included a condition to amend the commencement date.

Further, the Department commissioned independent analysis of Council's planning proposal and affordable housing program. Recommendations from the independent analysis have informed Department's assessment of the planning proposal. The planning proposal does not provide the likely supply of affordable housing through application of affordable housing on residual land. To provide further justification, it is conditioned for Council to provide the details on the likely supply of affordable housing through the application of the standard levy on residual land.

I note that Council has not provided a contribution rate for additional building height and that the site specific levy is complicated and may provide less certainty to the development industry. Therefore, it is recommended that as a condition of Gateway, Council further justify the site-specific levy mechanism to ensure a clear and simple application and consider imposing a levy on additional building height.

Council should also ensure the negotiation of voluntary planning agreements will not be used to secure affordable housing contributions above and beyond what is advocated in Council's policy. The application of multiple affordable housing contributions through different mechanisms would not be appropriate as this may adversely impact on development feasibility and housing supply.

Further, Council should consider the merits of a variable rate as opposed to a standard flat rate applied on residual land. The independent analysis commissioned by the Department identified there is significant variance in the precincts and that there should be consideration to a variable rate to remove cross subsidy between precincts.

The amending Local Environmental Plan (LEP) is to be finalised within 12 months of the week following the date of the Gateway determination. Council should aim to commence exhibition of the planning proposal as soon as possible. Council's request for the Department to draft and finalise the LEP should be made six weeks before the projected publication date.

The state government is committed to reducing the time taken to complete LEPs by tailoring the steps in the process to the complexity of the proposal, and by providing clear and publicly available justification for each plan at an early stage. To meet these commitments, the Greater Sydney Commission may take action under section 54(2)(d) of the Act if the time frames outlined in this determination are not met.

The Department is keen to have discussions on the above matters. Should you have any further enquiries in relation to this matter, I have arranged for Mr Wayne Williamson of the Department's Sydney Region East team to assist you. Mr Williamson can be contacted on 9274 6585.

Yours sincerely

A handwritten signature in blue ink, appearing to read "David Gainsford".

**David Gainsford**  
**Acting Deputy Secretary**  
**Planning Services**

10/11/18

Encl: Gateway Determination