Attachment D

Gateway Determination 11 July 2019

NSW GOVERNMENT | Planning, Industry & Environment

Gateway Determination

***Planning proposal (Department Ref: PP_2018_SYDNE_007_00)**: to amend the Sydney Local Environmental Plan 2012 by inserting a site-specific provision to allow bonus floor space and* height *to facilitate the delivery of commercial premises at 30-62 Barcom Avenue, Darlinghurst.*

I, the Executive Director, Regions at the Department of Planning, Industry and Environment, as delegate of the Minister for Planning and Public Spaces, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the Sydney Local Environmental Plan (LEP) 2012 to insert a site-specific clause to allow bonus building height and floor space controls to facilitate the delivery of commercial development at 30-62 Barcom Avenue, Darlinghurst should proceed subject to the following conditions:

1. The planning proposal is to be amended prior to community consultation as follows:
   (a) update the objectives and intended outcomes section of the planning proposal to align with the explanation of provisions;
   (b) amend the explanation of provisions to clarify that to be afforded the bonus building height and floor space:
      - the entire building cannot be used for residential accommodation or tourist and visitor accommodation;
      - the additional building height and floor space is restricted to commercial premises uses; and
      - car parking associated with the additional building height and floor space is prohibited.
   (c) amend the planning proposal to remove the provision for a 6-star NABERS Energy Commitment Agreement; and
   (d) update the project timeline.

2. The revised planning proposal is to be provided to the Department for review and approval prior to community and agency consultation.

3. Public exhibition is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:
   (a) the planning proposal must be made publicly available for a minimum of **28 days**; and
   (b) the planning proposal 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 local environmental plans* (Department of Planning and Environment 2016).

4. Consultation is required with the following public authorities/organisations under section 3.34(2)(d) of the Act and/or to comply with the requirements of the relevant 9.1 Directions:

   - Office of Environment and Heritage;
   - Transport for NSW; and
   - Roads and Maritime Services.

   Each public authority/organisation is to be provided with a copy of the planning proposal and any relevant supporting material and given at least 21 days to comment on the proposal.

5. A public hearing is not required to be held into the matter by any person or body under section 3.34(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).

6. The planning proposal authority is authorised as the local plan-making authority to exercise the functions under section 3.36(2) of the Act subject to the following:
   (a) the planning proposal authority has satisfied all the conditions of the Gateway determination;
   (b) the planning proposal is consistent with section 9.1 Directions or the Secretary has agreed that any inconsistencies are justified; and
   (c) there are no outstanding written objections from public authorities.

7. The time frame for completing the LEP is to be **12 months** following the date of the Gateway determination.

Dated 11th day of July 2019.

Stephen Murray
Executive Director, Regions
Department of Planning, Industry and Environment

Delegate of the Minister for Planning and Public Spaces

Planning, Industry & Environment

PP_2018_SYDNE_007_00

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

Dear Ms Barone

Planning proposal PP_2018_SYDNE_007_00 to amend Sydney Local Environment Plan 2012

I am writing in response to Council's request for a Gateway determination under section 3.34(1) of the Environmental Planning and Assessment Act 1979 (the Act) in respect of the planning proposal to allow bonus floor space and height controls for non-residential development to facilitate the delivery of commercial premises at 30-62 Barcom Avenue, Darlinghurst.

As delegate of the Minister of Planning and Public Spaces, I have now determined that the planning proposal should proceed subject to the conditions in the enclosed Gateway determination.

The intended outcomes and explanation of provisions of the planning proposal do not align. The Department consulted with Council on this matter and Council has advised what will permit the additional height and floor space. Consequently, the Department has included a Gateway condition requiring the objectives, intended outcomes and explanation of provisions to be updated in the planning proposal report.

The planning proposal is to be amended to remove the provision for a 6-star National Australian Built Environment Rating System (NABERS) Energy Commitment Agreement. This provision would restrict the use of acceptable verification methods to demonstrate energy efficiency in the National Construction Code (NCC) 2019, require detailed building design to be known at the planning proposal stage and duplicate the requirements of the site-specific amendment to the Sydney DCP 2012. The Department fully supports sustainable development outcomes in the natural and built environment, including water and energy efficiency. Removal of this provision from the planning proposal will not prevent appropriate energy efficiency standards being achieved through the NCC 2019 and the site-specific DCP.

I have considered Council's request to be the local plan-making authority and have determined to condition the Gateway for Council to be the local plan-making authority. However, the revised planning proposal will have to be provided to the Department for review and approval prior to community and agency consultation.

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The amending local environmental plan (LEP) is to be finalised within 12 months of the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request to draft and finalise the LEP should be made directly to Parliamentary Counsel's Office 8 weeks prior to the projected publication date. A copy of the request should be forwarded to the Department of Planning and Environment.

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. In order to meet these commitments, the Minister for Planning and Public Spaces may take action under section 3.32(2)(d) of the Act if the time frames outlined in this determination are not met.

Should you have any enquiries about this matter, I have arranged for Ms Kate Masters to assist you. Ms Masters can be contacted on 9274 6321.

Yours sincerely

11 July 2019

Stephen Murray
Executive Director, Regions

Encl: Gateway determination

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