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Sydney Local Environmental Plan (Affordable
Housing) 2021

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1 Introduction

1.1 Overview

1.1.1 Name of draft LEP

Sydney Local Environmental Plan (Affordable Housing) 2021.

1.1.2 Purpose of plan

The planning proposal seeks to correct an error in the original affordable housing planning proposal (PP_2017_SYDNE_006_00) (**Attachment A**). The original planning proposal inadvertently excluded the proposed new planning controls for affordable housing and the City of Sydney Affordable Housing Program from applying to land subject to the Sydney Local Environmental Plan (Green Square Town Centre) 2013, Sydney Local Environmental Plan (Green Square Town Centre – Stage 2) 2013 (Town Centre LEPs).

The planning proposal seeks to amend the affordable housing provisions in the Town Centre LEPs to:

- include a new Schedule 7 for Planning Proposal Land for the identification of land where additional affordable housing contributions, or finished affordable rental housing dwellings, are required following an increase in development capacity (uplift);
- clarify what development is excluded from a requirement to make an affordable housing contribution;
- reduce the minimum size of any affordable housing dwelling to be dedicated to City of Sydney Council (Council) from 50m² to 35m² and introduce a maximum dwelling size of 90 m²;
- improve the interpretation and application of Clause 7.13;
- add a savings provision under Clause 7.13 ensuring the development applications that have been determined with affordable housing conditions of consent referencing the Green Square or Southern Employment Lands Programs remain valid and lawful; and
- implement the affordable housing program which provides the operational detail of the affordable housing contribution.

The proposed provisions are consistent with the original affordable housing planning proposal that received a Gateway determination in January 2018.

The proposed instrument will come into effect on 1 July 2021, in order to align with the original affordable housing planning proposal.

A framework for sites identified as planning proposal land

The Town Centre LEPs are to be amended to include a new schedule for the identification of sites as 'planning proposal land'. This land was intended to be known as 'Schedule 7 land' in the original affordable housing planning proposal. The planning proposal land is to be identified on the locality and site identification map in the LEPs.

The contribution requirement will only apply to the new development capacity that is facilitated by the site-specific planning proposal. It does not apply to any existing development capacity.

A condition was imposed at Gateway determination stage which requires the proposed planning proposal land provision was updated to maintain consistency with the original affordable housing planning proposal. Within the original planning proposal (PP_2017_SYDNE_006_00), the Department has made a post-exhibition change, which is discussed in Section 3.3.2 of this report.

City of Sydney's new Affordable Housing Program (the Program) (**Attachment E**) provides the operational detail for establishing the contribution. The Program is proposed to replace the Green Square affordable housing program adopted by Council on 12 March 2012.

The proposed contribution rate identified in the Program is shown in Table 1 below.

Table 2 Proposed contribution rates on planning proposal land with an increase in floor space ratio

Precinct	Proportion of additional floor area to be used for affordable housing
West precinct	12%
South precinct	12%
Eastern precinct	24%

Precincts are consistent with those in the City's development contributions plan 2015.

Minimum size of dedicated affordable housing dwellings

It was proposed that the minimum floor area of any affordable housing dwelling to be dedicated to Council is to be reduced to 35m² (gross floor area – GFA) and a maximum dwelling size of 90m² be introduced, as exhibited. Currently, the Town Centre LEPs require any dedicated dwelling to be no less than 50m² and do not specify a maximum GFA.

The intent of the amendment is to reflect the minimum studio dwelling size provided for under the Apartment Design Guide. The maximum floor area is proposed to ensure the affordable housing floor area resulting from the contribution scheme can accommodate families with children, is used efficiently and to the benefit of as many people as possible.

Improving the interpretation and application of current clauses

Currently, the Town Centre LEPs exclude the requirement for affordable housing contributions where development will result in the creation of less than 200m² of residential and 60m² commercial floor area respectively. The intent of this exclusion is to enable minor additions to a development without attracting an affordable housing contribution.

The existing clauses 6.5(6) of the Town Centre LEPs can be interpreted to also exclude development where a substantial change of use is being achieved, for example, where a warehouse is being refurbished for residential development, but no new floor area is being created. The clauses also exclude substantial refurbishment.

The planning proposal seeks to amend the existing clauses as to clarify when an affordable housing contribution is required, by stating the exact thresholds and criteria a development requires for this clause to apply, which includes location, cost of works and if development involves a change of use, alterations and additions or a new build.

1.1.3 Existing planning controls

The affordable housing scheme under clause 6.5 of the Town Centre LEPs requires 3% of residential floor area and 1% of commercial floor area to be provided as affordable housing. The affordable housing contribution can be satisfied either:

- by dedicating to Council land comprising one or more dwellings (each having a total floor area of not less than 50m²), with any remainder being paid as a monetary contribution to Council; or
- through a monetary contribution to Council, based on a predetermined rate. .

The rate at which monetary contribution is taken to be equivalent to floor area is to be calculated in accordance with the Green Square Affordable Housing Program adopted by Council on 12 March 2012.

1.1.4 State electorate and local member

The site falls within the Sydney state electorate. Alex Greenwich MP is the State Member.

The site falls within the Sydney federal electorate. Hon Tanya Plibersek MP is the Federal Member.

To the team's knowledge, neither MP has made any written representations regarding the proposal.

There are no donations or gifts to disclose, and a political donation disclosure is not required.

There have been no meetings or communications with registered lobbyists with respect to this proposal.

2 Gateway determination and alterations

The Gateway determination issued on 5/05/2020 (**Attachment B**) determined that the proposal should proceed subject to conditions. Council has met all the Gateway determination conditions.

The Gateway determination was altered on 25/06/2020 to change the name and description of the planning proposal.

In accordance with the Gateway determination (as altered) the proposal was due to be finalised on 5/11/2020. Council submitted the planning proposal for finalisation in September 2020.

3 Public exhibition and post-exhibition changes

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 9/07/2020 to 23/07/2020, as required by section 29 of the *Local Government Act 1993*.

A total of 7 submissions were received, 5 from individuals and 2 from organisations. The two organisations were the Property Council of Australia and City West Housing, the Council approved community housing provider in Green Square (**Attachment D**).]

No public meeting was held following public exhibition.

The exhibited planning proposal included relevant post exhibition amendments from the original affordable housing planning proposal (PP_2017_SYDNE_006_00) and Program.

3.1 Submissions during exhibition

3.1.1 Submissions supporting the proposal

The majority of submissions expressed support for increasing the supply of affordable housing in Sydney. City West Housing identified this is especially relevant given the recent financial impact that COVID-19 has had on many households.

3.1.2 Submissions objecting to and/or raising issues about the proposal

There were 7 submissions received from individuals and organisations including the Property Council of Australia and City West Housing.

Of the individual submissions, 3 objected to the proposal (42.9%), and 4 supported the proposal (57.1%).

Table 2 Summary of Key Issues

Issue raised	Council response and Department assessment of adequacy of response
Minimum size of affordable housing dwelling	<p>The submission by City West Housing, raised concerns relating to the proposed dwelling size controls for new affordable units.</p> <p>The submission contends that reducing the minimum size from 50m² to 35m² will also reduce the level of amenity to residents. Smaller units have more potential to exacerbate mental health issues. In addition, the submission contends that introducing a 90m² upper size limit will result in accommodation that is on the smaller size for a larger household, and could particularly disadvantage Aboriginal households which tend to be larger and already have difficulty accessing affordable and culturally appropriate housing.</p> <p>Council notes the submission, and recommended a change to remove the upper size limit of 90m², as limiting the dwelling size would constrain future delivery of housing suitable for larger family groups. However, the minimum size of 35m² will not be amended, as it still allows for affordable housing dwellings to be built larger than this.</p> <p>Council also note that these changes predominately affect the Green Square Town Centre LEPs only, and they cannot change the intent of the original planning proposal. However, Council have stated that the removal of the 90m² upper limit size will be proposed as part of the upcoming review of the comprehensive LEP.</p> <p>The Department notes the concerns outlined by City West Housing, and considers the recommended change proposed by Council to be acceptable. The Department also considers retaining the minimum size of 35m² acceptable, and notes that it will not prevent larger size dwelling from being constructed.</p>
There is too much affordable rental housing nearby already	<p>One submission opposed the planning proposal on the grounds there is too much affordable rental housing nearby already.</p> <p>Council stated increasing the amount of affordable housing is an urgent priority, and an affordable housing contribution scheme already operates within Green Square. The planning proposal will facilitate the delivery of units and the expenditure of funds collected for the provision of affordable housing throughout the entire LGA.</p> <p>The Department agrees with the response from Council, and supports the further delivery of affordable rental housing.</p>

Issue raised	Council response and Department assessment of adequacy of response
Impact on housing affordability	<p>The submission received by the Property Council of Australia which objected to the planning proposal, outlined the contribution will impact on development feasibility and is likely to be passed onto home buyers, reducing affordability more generally.</p> <p>Council states the planning proposal increases the equivalent monetary contribution rate in line with the rest of the LGA, rather than expanding the existing Green Square Affordable Housing Program. Council also procured independent economic advice which found there is no immediate or long term impact on viability within Green Square. In addition, a gradual phase in of the increased rate was included in the original planning proposal, and will allow the market to adjust all necessary contributions in economic feasibility work. Council states this will prevent the increased contribution rate being passed onto buyers.</p> <p>The Department agrees with the response from Council.</p>
Cumulative impact of development changes	<p>The submission received by the Property Council of Australia which objected to the planning proposal, stated the layers of bureaucratic requirements make it increasingly difficult to deliver housing in the City of Sydney above other LGAs.</p> <p>Council stated its affordable housing contribution schemes have allowed for housing to be delivered through both high and low property cycles with no noticeable impact on development viability.</p> <p>The Department agrees with the response from Council.</p>
Consistent policy approach needed to housing affordability	<p>The submission received by the Property Council of Australia which objected to the planning proposal, stated the responsibility for achieving affordable housing should be spread across the Sydney region and across other forms of affordable housing.</p> <p>Council states it recognises that a range of approaches are required to address the significant shortfall of affordable housing across the state, and it works with the state government to advocate for stronger affordable housing policies.</p> <p>The Department notes the response from Council.</p>

Issue raised	Council response and Department assessment of adequacy of response
Should not apply to commercial development	<p>The submission received by the Property Council of Australia which objected to the planning proposal, contends that commercial developments paying for affordable housing makes little sense, and is to the detriment of commercial development.</p> <p>Council states that the Green Square affordable housing scheme has always been 'inclusionary' in that it applies to both commercial and residential development proposals. In addition, Council contends that commercial development benefits from increased housing options for key workers.</p> <p>The Department agrees with the response from Council.</p>
Funds are often collected by Councils and remain unutilised	<p>The submission received by the Property Council of Australia which objected to the planning proposal, contends that funds should be utilised in a timely manner and not held by Councils.</p> <p>Council states funds will continue to be immediately housing provider to build and manage affordable housing within the LGA. Council states it will not retain any portion of the funds.</p> <p>The Department notes the response from Council.</p>

3.2 Advice from agencies

No consultation was required with public authorities under section 3.34(2)(d) of the *Environmental Planning and Assessment Act 1979*. This is consistent with the Gateway determination issued for the original affordable housing planning proposal PP_2017_SYDNE_006_00.

3.3 Post-exhibition changes

3.3.1 Council resolved changes

At Council's Ordinary Meeting on 24/08/2020, Council resolved to proceed with the planning proposal with the following minor post-exhibition changes:

- the upper size limit for affordable housing dwellings be deleted from the Town Centre Planning Proposal and the draft program to enable future delivery of housing suitable for larger family groups.

3.3.2 The Department's recommended changes

Following the receipt of the revised planning proposal from Council, the Department has made further changes to the proposal

Planning proposal land

Planning Proposal land is land that has been the subject of a planning proposal to change the planning controls that apply to the site to increase development capacity. The contribution requirement will only be applied to the new development capacity that would not have been allowed without the changes to the planning controls.

However, in accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979 (EP&A Act) provides that conditions can only be imposed on a development consent. A provision cannot be inserted in a local environmental plan to require the imposition of a condition by a consent authority upon the finalisation of a particular planning proposal.

If the policy intention of the introduction of 'planning proposal land' is to ensure that contributions are made for affordable housing when development consents are being granted, the LEP must clearly set out the land to which it is intended to apply, as well as the rate or formula for the purposes of calculating the amount of contribution.

For these reasons, the Department recommends a post exhibition change to remove the planning proposal land framework from the LEP amendment.

Commencement of the Plan

The instrument will come into effect on 1 July 2021, in order to align with the original affordable housing planning proposal.

Savings Provision

It is unnecessary to include a savings provision as proposed in the planning proposal to ensure the development applications that have been determined with affordable housing conditions of consent referencing the Green Square or Southern Employment Lands Programs remain valid and lawful. Any existing consents that are valid will continue to apply under existing use rights.

3.3.3 Justification for post-exhibition changes

The Department notes that these post-exhibition changes are justified and do not require re-exhibition. It is considered that the post-exhibition changes:

- are a reasonable response to comments provided by the public authorities.
- do not alter the intent of the planning proposal and are minor amendments to the planning proposal.

4 Department's Assessment

The proposal has been subject to detailed review and assessment through the Department's Gateway determination (**Attachment B**) and subsequent planning proposal processes. It has also been subject to a high level of public consultation and engagement.

The following reassesses the proposal against relevant Section 9.1 Directions, SEPPs, Regional and District Plans and Council's Local Strategic Planning Statement. It also reassesses any potential key impacts associated with the proposal (as modified).

As outlined in the Gateway determination report (**Attachment C**), the planning proposal submitted to the Department for finalisation:

- remains consistent with the regional and district plans relating to the site.
- remains consistent with the Council's Local Strategic Planning Statement.
- remains consistent with all relevant Section 9.1 Directions.
- remains consistent with all relevant SEPPs.

The following tables identify whether the proposal is consistent with the assessment undertaken at the Gateway determination stage. Where the proposal is inconsistent with this assessment, requires further analysis or requires reconsideration of any unresolved matters these are addressed in Section 4.1

Table 3 Summary of strategic assessment

	Consistent with Gateway determination report Assessment	
Regional Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
District Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Local Strategic Planning Statement	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Local Planning Panel (LPP) recommendation	<input type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1 <input checked="" type="checkbox"/> N/A
Section 9.1 Ministerial Directions	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
State Environmental Planning Policies (SEPPs)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

Table 4 Summary of site-specific assessment

Site-specific assessment	Consistent with Gateway determination report Assessment	
Social and economic impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Environment impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Infrastructure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

4.1 Detailed Assessment

The following section provides details of the Department's assessment of key matters and any recommended revisions to the planning proposal to make it suitable.

Minimum dwelling size

The planning proposal seeks to amend the affordable housing provisions in the Town Centre LEPs to reduce the minimum size of any affordable housing dwelling to be dedicated to City of Sydney Council (Council) from 50m² to 35m² and introduce a maximum dwelling size of 90 m².

A submission by City West Housing, the community housing provider, raised concerns relating to the proposed dwelling size controls for new affordable units.

The submission contends that reducing the minimum size from 50m² to 35m² will also reduce the level of amenity to residents. Smaller units have more potential to exacerbate mental health issues. In addition, the submission contends that introducing a 90m² upper size limit will result in accommodation that is on the smaller size for a larger household, and could particularly disadvantage Aboriginal households which tend to be larger and already have difficulty accessing affordable and culturally appropriate housing.

As such, Council recommended a post-exhibition change to remove the upper size limit of 90m², as limiting the dwelling size would constrain future delivery of housing suitable for larger family

groups. However, the minimum size of 35m² will not be amended, as it still allows for affordable housing dwellings to be built larger than this.

Council also note that these changes predominately affect the Green Square Town Centre LEPs only, and they cannot change the intent of the original affordable housing planning proposal. However, Council have stated that the removal of the 90m² upper limit size will be proposed as part of the upcoming review of the comprehensive LEP.

The Department notes the concerns outlined by City West Housing, and considers the recommended change proposed by Council to be acceptable. The Department also considers retaining the minimum size of 35m² acceptable, as:

- it aligns with the minimum apartment size within the Apartment Design Guide; and
- it will not prevent larger size dwelling from being constructed.

It is critical to note that the change will only apply to the Green Square Town Centre LEPs.

5 Post assessment consultation

The Department has consulted with the following stakeholders after the assessment.

Table 5 Consultation following the Department's assessment

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Council	<p>Council was consulted on the terms of the draft instrument under clause 3.36(1) of the <i>Environmental Planning and Assessment Act 1979</i> (Attachment F)</p> <p>Council confirmed on 27/04/2021 that it was agreeable with the draft and that the plan should be made (Attachment G)</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No, see below for details</p>
Parliamentary Counsel Opinion	<p>On 27/04/2021, Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at Attachment PC.</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No, see below for details</p>

6 Recommendation

It is recommended that the Minister's delegate as the local plan-making authority determine to make the draft LEP under clause 3.36(2)(a) of the Act because:

- the draft LEP has strategic merit being consistent with Eastern City District Plan.
- it is consistent with the Gateway Determination.
- issues raised during consultation have been addressed, and there are no outstanding agency objections to the proposal.



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Attachments

Attachment A – Planning Proposal

Attachment B – Gateway Determination

Attachment C – Gateway Determination Report

Attachment D – Summary of Submissions

Attachment E – Council's Post Exhibition Report

Attachment F – 3.36(1) consultation with Council

Attachment G - Council's confirmation on instrument

Attachment PC – Parliamentary Counsel Opinion