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Plan finalisation report – PP_2020_SYDNE_004_00

Sydney Local Environmental Plan 2012 Amendment
75 - 600-660 Elizabeth Street, Redfern

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1 Introduction

1.1 Overview

1.1.1 Name of draft LEP

Sydney Local Environmental Plan 2012 (Amendment No. 75).

1.1.2 Site description

Table 1 Site description

| Site Description | Type | Council Name | LGA |
|---|------|----------------|----------------|
| The planning proposal (Attachment A) applies to land at 600-660 Elizabeth Street, Redfern. | Site | City of Sydney | City of Sydney |

The site consists of a single lot (Lot 1 DP 1249145) known as 600-660 Elizabeth Street, Redfern, rectangular in shape, with a total area of 10,850 m² (**Figure 1**). The site is entirely owned by NSW Land and Housing Corporation (LAHC).

Existing development on the site consists of the South Sydney Police Citizens' Youth Club (PCYC) located on the corner of Phillip and Elizabeth Streets, with three single story buildings, an outdoor basketball court and children's playground.

The northern portion of the site is vacant, containing 67 planted native and exotic tree species. It previously comprised 18 social housing dwellings, however the dwellings were demolished in 2013. The site forms part of the Redfern Housing Estate.



Figure 1 Subject site

1.1.3 Purpose of plan

The planning proposal seeks to amend Sydney Local Environmental Plan (LEP) 2012 (Sydney LEP 2012) for the land at 600-660 Elizabeth Street, Redfern to:

- amend the Land Application Map Sheet 1 to un-defer the site from the South Sydney LEP 1998 and include it in the Sydney LEP 2012.
- amend the Land Zoning Map Sheet 17 to introduce the R1 General Residential zone.
- amend the Floor Space Ratio Map Sheet 17 to introduce a floor space ratio of 1.5:1.
- amend the Height of Building Map Sheet 17 to increase the maximum building height to various heights ranging from RL 51.7 (approx. 4 storeys) to RL 87.5 (approx. 16 storeys)
- amend the Land Use and Transport Integration Map Sheet 17 to introduce the Category B maximum car parking rate.
- amend the Public Transport Accessibility Level Map Sheet 17 to introduce Category F to the site.
- amend the Acid Sulfate Soils Map Sheet 17 to introduce Class 5 to the site.
- introduce a new Active Street Frontages Map Sheet 17 to apply active street frontage controls to the Elizabeth Street boundary of the site.
- amend clause 1.9 Application of SEPPs to ensure State Environmental Planning Policy (Affordable Rental Housing) 2009 Division 1 does not apply to the site.
- Insert a site-specific local clause for community facilities, BASIX, affordable and social housing and overshadowing. The proposed site-specific provision will facilitate:
 - a bonus floor space ratio (FSR) of 0.57:1 if a minimum 3,500 sqm of floor space used for community facilities is provided in the development.
 - a bonus FSR of 0.15:1 if the development exceeds BASIX commitments for water and energy by not less than 5 points.
 - the bonus FSR is not achievable unless development includes at least 7.5% of total floor area, used for the purposes of residential development, being used for the purposes of affordable housing and development includes at least 30% of total floor area, used for the purposes of residential development, being used for the purposes of social housing premises.
 - Note: in this clause, social housing premises has the same meaning as in the Residential Tenancies Act 2010.
 - any development on the site must not overshadow Redfern Park and Oval between 9.00-15.00, all year round.
 - the consent authority must not consent to development of the site unless it is satisfied the redevelopment has taken into consideration the Design Guidelines endorsed by the NSW Planning Secretary.
 - the site is excluded from the requirement to prepare a development control plan where the consent authority considers the development to be consistent with the Design Guide.

Post exhibition changes to the planning proposal are discussed in **Section 3.3**.

The table below outlines the current and proposed controls for the LEP.

Table 2 Current and proposed controls

| Control | Current | Proposed |
|--------------------------------|--|--|
| Zone | No. 2(b) Residential (Medium Density) and No. 5 Special Uses (Activity Centre) under the South Sydney LEP 1998 | R1 General Residential under Sydney LEP 2012 |
| Maximum height of the building | 6 m for land zoned No.2(b) Residential (South Sydney DCP 1998) No Height for land zoned No.5 Special Uses | RL 50.3m to RL 87.5m (approximately 4 to 16 storeys) |
| Floor space ratio | 1.5:1 for land zoned No.2(b) Residential (South Sydney DCP 1998) No FSR for land zoned No.5 Special Uses | 1.5:1 |
| Number of dwellings | 0 | 300 (approx.) |
| Number of jobs | N/A | N/A |

1.1.4 Background

On 10 March 2020, NSW Land and Housing Corporation (LAHC) submitted a planning proposal request to the City of Sydney Council (Council) to change the planning controls for 600-660 Elizabeth Street, Redfern. The proposal included private built to rent housing, a site specific provision for a minimum of 10% affordable rental housing and community facility space.

Council subsequently prepared a revised planning proposal for new residential buildings with retail and community uses and requiring at least 10% affordable rental housing and at least 30% social housing, of total residential floor area.

A Gateway Determination was issued by the Department on 16 February 2021 and included a condition reducing Council's social and affordable rental housing requirement from 40% to require at least 30% of total residential floor area be used for a mix of social and affordable rental housing.

The proposal was publicly exhibited by Council from 24 May to 29 July 2021. A total of 24 public submissions were received, comprising 7 from public agencies, 1 from Shelter NSW, 1 from Counterpoint Community Services and 15 from the public.

On 30 November 2021, Council requested the Department finalise the planning proposal and Design Guide. The proposal was subject to post exhibition changes by Council and included the requirement for 7.5% of total residential floor area to be used for affordable rental housing in addition to 30% of total residential floor area to be used for social housing.

1.1.5 State electorate and local member

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

The site falls within the Sydney federal electorate and 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 16 February 2021 (**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 March 2021 following a request from both Council and LAHC to:

- amend condition 1(i) of the Gateway determination to clarify the minimum social and affordable rental housing to be a percentage of floor area, used for the purposes of residential development, rather than total floor area; and
- insert a new condition to amend the FSR provision in the planning proposal to refer to 3,500 m² of floor area instead of contiguous land used for the purpose of community facilities.

The planning proposal submitted for Gateway referred to social and affordable rental housing as a percentage of total floor area used for the purpose of residential development. During finalisation, the wording of the provision was unintentionally changed from residential floor space to total floor space. The revised wording confirms the original intended outcome.

The planning proposal referred to a bonus FSR for the provision of 3,500 m² of land for a community facility, however the draft design guide indicated a land area of 1,800 m² for a building envelope capable of facilitating 3,500 m² of floor area for a community facility. The new condition was inserted to provide clarity about the minimum community facility floor space required for the bonus FSR to apply.

In accordance with the Gateway determination (as altered) the proposal is due to be finalised in February 2022. The Department's assessment in finalising the plan is included within **Section 3** of this report.

3 Public exhibition and post-exhibition changes

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 24 May to 29 July 2021.

A total of 24 public submissions were received, comprising 7 from public agencies, 1 from Shelter NSW, 1 from Counterpoint Community Services and 15 from the public.

3.1 Submissions during exhibition

The key issues raised in the public submissions to the proposal related to over development and associated impacts including lack of open space, overshadowing, inconsistency with existing built character, wind and parking. A summary of the key issues is provided in the table below.

Table 3 Summary of Key Issues

| Issue raised | Council response and Department assessment of adequacy of response |
|--|--|
| Council's proposed built form is preferred to LAHC's original proposal | Council noted this comment and recommended no changes to the proposal. The Department considers this response is adequate. |
| Development should include at least 30% social | Council has amended the exhibited planning proposal to require 30% social housing and 7.5% affordable rental housing, of total residential floor area. |

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| housing and 10% affordable rental housing | The Department has considered Council's response and discusses the provision of social and affordable rental housing in Section 3 of this report. |
| <p>The proposal is too dense</p> <p>High density residential should not be approved on a busy road</p> <p>Inequitable density</p> | <p>The proposal provides the opportunity to deliver social and affordable rental housing on a site that is predominantly vacant and accessible to a range of public transport, jobs and services. Council considers the proposal to be a significant improvement on the proposal originally lodged by LAHC.</p> <p>Council notes the proposed density is consistent with other urban renewal precincts across the City.</p> <p>The Design Guide includes provisions to minimise the impact of road noise on future residents.</p> <p>The Department considers Council adequately responds to the issues.</p> |
| <p>The proposed height is inconsistent with the established character</p> <p>A lower transitional height to the south is required, to minimise overshadowing and visual impact to buildings on the south side of Philip Street.</p> | <p>The built character surrounding the site is diverse, including 3, 9 and 17 storey residential apartment buildings as well as single storey terraces. A contemporary 4 to 16 storey-built form on the site is consistent with this context.</p> <p>The Design Guide provides for a 4-storey built form transition to the Waterloo Heritage Conservation Area to the south and the resultant visual impact is considered acceptable.</p> <p>Most properties on the south side of Philip Street do not meet the minimum solar access requirements in Sydney DCP 2012. Future development will be subject to additional overshadowing analysis and should not result in any additional overshadowing to properties that do not meet the minimum solar access requirements.</p> <p>The Department considers Council adequately responds to the issues.</p> |
| <p>The site should be open space and not redeveloped</p> <p>Insufficient provision for open space and tree canopy</p> | <p>The proposal provides an opportunity to deliver new social and affordable rental housing on a site that is accessible by public transport and close to jobs and services.</p> <p>Council considers existing open space and recreation facilities in the area sufficient, and the proposal also secures a minimum 3,500 sqm community facility.</p> <p>The site is currently zoned for residential development and it would be unreasonable to restrict its use to open space. The site has excellent access to open space, being located opposite Redfern Park and Oval.</p> <p>An Arborist Report in support of the proposal has assessed potential impacts to trees. The Design Guide requires building setbacks on Walker and Kettle Streets to retain high value street trees and a minimum 15% tree canopy cover on the site.</p> <p>The Department considers Council adequately responds to the issues.</p> |
| Visual privacy issues and noise impacts for park users | <p>The proposal will provide passive surveillance of Redfern Park and Oval and is in line with Crime Prevention Through Environmental Design (CPTED) principles.</p> <p>Any future noise would be consistent with the site's current residential zoning and mixed-use setting.</p> <p>The Department considers Council adequately responds to the issue.</p> |

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| <p>The proposed building height will overshadow Redfern Park</p> <p>The proposed building height will overshadow street trees and negatively impact tree health</p> | <p>The planning proposal includes a site-specific provision that does not permit development to overshadow Redfern Park and Oval between 9am and 3pm all year round.</p> <p>Any overshadowing because of the proposal is not considered to be of an extent that will impact the health of street trees.</p> <p>The Department considers Council adequately responds to the issues.</p> |
| <p>Overshadowing to 57 Walker Street</p> <p>Overshadowing to 662-664 Elizabeth Street</p> <p>Overshadowing to residents on Moorhead Road and Kettle Street</p> | <p>57 Walker Street is located to the east of the site and the Design Guide is focussed on ensuring the rear private open space and rear living spaces of this property continue to receive good solar access throughout the year. Specific controls are provided in the Design Guide to ensure this.</p> <p>The overshadowing analysis submitted confirms existing dwellings at 662-664 Elizabeth Street, Moorhead Road and Kettle Street retain more than 2 hours of sunlight on 21 June between 9am and 3pm in compliance with Sydney DCP 2012.</p> <p>The Department considers Council adequately responds to the issues.</p> |
| <p>Privacy impacts to 57 Walker Street</p> | <p>Walker Street is approximately 20m wide and this distance, in addition to the existing setback of 57 Walker Street and proposed setbacks for future development on the site will provide appropriate separation and reasonable levels of external and internal visual privacy. Future development will be assessed against the separation requirements in the Apartment Design Guide and design features and street trees will also ensure reasonable levels of privacy.</p> <p>The Department considers Council adequately responds to the issue.</p> |
| <p>Negative wind conditions</p> | <p>A Wind Assessment Report in support of the proposal considers that wind conditions will be suitable for the intended outdoor area uses. The Design Guide contains development controls to manage wind conditions at the detailed development stage.</p> <p>The Department considers Council adequately responds to the issue.</p> |
| <p>Contamination and remediation concerns</p> | <p>A Phase 1 Environmental Site Assessment, Stage 2 Contamination Report and a Site Audit letter have been submitted. The Site Auditor concludes the site is capable of being made suitable for the residential use. Council is satisfied contamination matters can be dealt with at the detailed development application stage.</p> <p>The Department considers Council adequately responds to the issue.</p> |
| <p>Capacity of the bus network to service additional population increase</p> | <p>The submitted Traffic and Transport Report notes bus and train services are operating close to or at capacity, but the future Waterloo Station is expected to improve public transport capacity.</p> <p>Bus Network 2020 is an integrated network plan for Sydney's south east to ensure capacity for customers and high frequency bus services are retained on Elizabeth and Phillip Streets in Redfern.</p> <p>The Department considers Council adequately responds to the issue.</p> |

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| <p>Too much onsite carparking</p> <p>On street carparking impacts</p> <p>No carpark entry on Phillip Street</p> | <p>The proposal seeks to apply the Category B car parking rate in the LEP which could result in a maximum of 215 car parking spaces. Council is currently reviewing LEP parking rates which could result in a lower car parking rate being applied to the site.</p> <p>The submitted Traffic Report suggests the number of car parking spaces and traffic generated by the proposal is not anticipated to adversely affect the performance of the road network. Traffic, transport and parking impacts will be addressed at the development application stage when final carpark numbers and access arrangement are known.</p> <p>The indicative design proposes basement carparking access via Kettle Street.</p> <p>The Department considers Council adequately responds to the issues.</p> |
| <p>Rubbish, dumping and the upgrade of frontages</p> | <p>The proposal will upgrade the public domain frontages to Kettle and Walker Streets and an increase in passive surveillance will deter dumping along these frontages.</p> <p>The Department considers Council adequately responds to the issue.</p> |
| <p>Community facility redesign</p> | <p>Council encourages the future owner/ operator of the community facility to engage with residents in the design of the new community facility. This engagement will be determined at the development application stage when an owner/ operator is determined.</p> <p>The Department considers Council adequately responds to the issue.</p> |
| <p>Additional retail not required</p> | <p>The proposal provides commercial, community or retail uses along the Elizabeth Street frontage at ground level due to potential noise and flooding impacts and to activate the street. The non-residential uses are consistent with the zoning objectives and will provide facilities or services to meet the day to day needs of residents and local community.</p> <p>The Department considers Council adequately responds to the issue.</p> |
| <p>Failure to address long term impacts of Covid-19</p> | <p>The proposal will deliver new social and affordable rental housing on a site that is accessible to a range of public transport infrastructure, jobs and services. The provision of housing is important given the health, social and economic impacts of Covid-19.</p> <p>The Department considers Council adequately responds to the issue.</p> |
| <p>Construction noise and dust</p> | <p>These issues will need to be addressed as part of any future development application.</p> <p>The Department considers Council adequately responds to the issue.</p> |
| <p>Building maintenance</p> | <p>Building maintenance will be the responsibility of the future building owner.</p> <p>The Department considers Council adequately responds to the issue.</p> |
| <p>No more social housing</p> | <p>The demand for social housing in NSW is high and the proposal will facilitate the delivery of social and affordable rental housing in a location that is close to existing public transport, jobs and services. The proposal will be developed to be consistent with CPTED principles and apartment design standards.</p> |

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| | The Department considers Council adequately responds to the issue. |
| Shelter NSW: <ul style="list-style-type: none"> object to bundling of social and affordable rental housing dwellings and advocate for 10% affordable rental housing in addition to social housing concerns about the one size fits all application of Communities Plus and the 70:30 rule a proportion of affordable rental housing should be provided as Aboriginal housing provide universal design principles and sustainability requirements. | <p>Council supports this objection and has amended the planning proposal to require 30% social housing and 7.5% affordable rental housing.</p> <p>The Department has considered Council's response and discusses the provision of social and affordable rental housing in Section 3 of this report.</p> <p>The Design Guide has been amended to address provision of Aboriginal and Torres Strait Islander affordable rental housing.</p> <p>The Apartment Design Guide, LAHC's design requirements and the Design Guide addresses issues of universal design and sustainability.</p> |
| Counterpoint Community Services: <ul style="list-style-type: none"> Object to reducing Council's proposed minimum 40% of social and affordable rental housing Provide Aboriginal affordable rental housing Support provision of community facilities. | <p>Council supports this objection and has amended the planning proposal to require 30% social housing and 7.5% affordable rental housing.</p> <p>The Department has considered Council's response and discusses the provision of social and affordable rental housing in Section 3 of this report.</p> <p>The Design Guide has been amended to address provision of Aboriginal and Torres Strait Islander affordable rental housing.</p> <p>The detailed design, ownership and management of the community facility will be determined at a later stage and Council encourages LAHC and the future operator to consult with the community.</p> |

3.2 Advice from agencies

In accordance with the Gateway determination, Council was required to consult with the agencies listed in **Table 4** and who have provided the following feedback.

Table 4 Advice from public authorities

| Agency | Advice raised | Council response |
|--------------|--|--|
| Heritage NSW | No objection. Heritage NSW consider the proposal is unlikely to physically impact the adjacent State Heritage Redfern Park | Council noted the submission and did not recommend any further changes to the planning proposal. |

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| | and Oval and support the provision to ensure no additional overshadowing | The Department considers the response adequate. |
| NSW Environment, Energy and Science (EES) | No objection. EES note the proposal has not addressed consistency with the local planning direction on flooding, needs to demonstrate how the proposal can be implemented without causing adverse flood impacts, provide detail of mitigation measures, consider emergency management measures and document the proposed approach to manage climate change impacts | <p>Council noted the submission from EES and did not recommend any further changes.</p> <p>Council considers the planning proposal addresses the local planning direction for flooding as it notes the inconsistency but highlights consistency with the City's Interim Floodplain Management Policy, which has been prepared in accordance with the principles and guidelines of the Floodplain Development Manual 2005.</p> <p>The planning proposal also specifically addresses flooding, and the Stormwater Strategy Report recommends flood planning levels, mitigation measures to offset flooding and drainage improvements along Elizabeth, Kettle and Walker Streets.</p> <p>The Department notes the southern part of the site is affected during the 100-year average recurrence interval and the entire site is affected by the probable maximum flood. The proposal provides mitigation measures to offset potential flood impacts, requires buildings be designed to account for the internal flood risks and provides flood planning levels and minimum habitable flood levels to manage floodwater at building entrances. The proposal identifies that a detailed flood assessment will be required as part of the DA and the Department considers the flooding issues can be addressed at DA stage.</p> |
| Transport for NSW (TfNSW) | No objection. TfNSW note there are inconsistencies in the planning report and the traffic impact assessment and provided comments in relation to reducing maximum car parking rates, proposed vehicle access, the accuracy of impacts associated with the proposal and bus network 2020. | <p>Council noted the submission and did not recommend any further changes to the planning proposal.</p> <p>The Department notes Council is currently reviewing LEP parking rates and the submitted Traffic Report suggests the number of car parking spaces and traffic generated by the proposal is not anticipated to adversely affect the performance of the road network. Vehicle access is required to be approved by TfNSW prior to the design competition commencing.</p> |

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| | | The Department considers the response adequate. |
| Sydney Water | No objection. Sydney Water note water and wastewater servicing is available to the site and amplifications, adjustments and/or minor extensions may be required. | Council noted the submission and did not recommend any further changes to the planning proposal. The Department considers the response adequate. |
| Ausgrid | No objection. Ausgrid note it has no objection to the proposal and the future design must comply with relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. | Council noted the submission and did not recommend any further changes to the planning proposal. The Department considers the response adequate. |
| Environment Protection Authority (EPA) | EPA advised it had no comments on the proposal. | Council noted the submission and did not recommend any further changes to the planning proposal. The Department considers the response adequate. |

NSW Land and Housing Corporation

A submission from LAHC was provided to Council during public exhibition of the planning proposal. A further submission was received by Council and the Department following endorsement of the planning proposal by Council and lodgement to the Department for finalisation.

LAHC's public exhibition submission supports the planning proposal and the proposed height and density, however it raises a number of issues of concern as outlined in **Table 5**.

Table 5 LAHC public exhibition submission issues, Council response and Department assessment

| Issue | Council response | Department's assessment |
|--|---|--|
| LAHC seek that clause 7.20 will not apply to the site, which requires a future site specific DCP or Concept DA. | This is considered well founded as the Design Guide prepared by Council addresses the matters for consideration in clause 7.20 of Sydney LEP 2012. The planning proposal has been amended to include an exemption to clause 7.20 of Sydney LEP 2012. | The Department supports this amendment as the Design Guide prepared by Council contains development controls consistent with what would be included in a site specific DCP or Concept DA. |
| LAHC prefer the detailed built form controls to be in the Sydney DCP 2012. Nonetheless, LAHC has prepared an updated Design Guide, including the following changes: <ul style="list-style-type: none"> Allow car parking and basements to extend | Council has included the majority of LAHC's suggested changes as they reflect design development and provide design flexibility for the design excellence process. Council hasn't made changes relating to deep soil, DES or | The Department supports most of the changes Council has made to the Design Guide as they are appropriate and will support good design outcomes for the site. The Design Guide seeks to maximise tree canopy cover, deep soil and define the extent of on-site parking with the proposed |

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| <p>underneath the through site links.</p> <ul style="list-style-type: none"> 15% deep soil (as required by the ADG). A Design Excellence Strategy (DES) with a proponent majority jury and less prescriptive terms. Remove requirement to rebuild the community facility before demolition of the existing facility. | <p>community facility as they consider:</p> <ul style="list-style-type: none"> the controls relating to deep soil, tree canopy and basement extent are essential to deliver adequate deep soil and tree canopy outcomes on a site that is already heavily landscaped. the proposed DES will deliver a diverse architectural response. the new community facility should be provided as part of and at the same time as the redevelopment of the site. | <p>controls requiring the equivalent of 15% deep soil as per the ADG. The Department supports the provision of adequate deep soil to contribute to the future amenity of the site and considers the proposed controls appropriate for a site of this size and location.</p> <p>The Department considers the proposed DES provides for a balanced competitive design process and jury members reflecting a range of industry expertise to deliver high quality-built forms. The Department acknowledges the proposed process is one way to achieve architectural diversity and recommends changes to allow alternative options if agreed by the consent authority.</p> <p>The Department has considered the proposed community facility requirements in Table 6 and Section 3.3.1.</p> |
| <p>Minor height map adjustments to reflect the reference scheme and flexibility at design excellence and design development stage.</p> | <p>Council has made the proposed amendments to the height of buildings map as the changes are minor and consistent with the exhibited reference scheme.</p> | <p>The Department considers the height map changes provide sufficient flexibility for design development while maintaining certainty about potential impacts for the public.</p> |
| <p>Provision of space for community facility warrants an offset against development contributions as the provided facility exceeds demand created by the proposal.</p> | <p>Council states the PCYC part of the site is zoned for that use and the planning proposal ensures a similar use continues on the site, with no loss of community infrastructure.</p> <p>Council advises any offset of contributions can only be dealt with at the DA stage.</p> | <p>The Department considers it is appropriate to address contributions at the DA stage when the delivery and ownership of the community facility is known.</p> |
| <p>Does not support restrictive site-specific provisions linking maximum FSR to a range of requirements:</p> <ul style="list-style-type: none"> Provision of a community facility is at the cost of residential gross floor area (GFA) on the site. | <p>Council has amended the site-specific provision to separate the community facility GFA from the maximum GFA available to the remainder of the site.</p> <p>Council state the BASIX SEPP is what they must rely on to drive energy efficiency outcomes. The proposed provision offering an</p> | <p>The Department supports the separation of the community facility GFA from the maximum GFA available to the remainder of the site, as this would permit a larger community facility without impacting residential floor space permitted on the site.</p> |

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| <ul style="list-style-type: none"> Mandating higher BASIX energy targets is inconsistent with BASIX SEPP and not most appropriate means to achieve energy efficiency. Unacceptable operating constraint to have an LEP clause mandating 30% social or affordable rental housing. | <p>incentive of additional floor space where higher BASIX targets are met is permitted by the BASIX SEPP.</p> <p>The other site-specific provisions have been retained.</p> | <p>Council has demonstrated that the proposal can achieve the BASIX commitments identified and LAHC are supportive of higher sustainability targets. The Department considers the incentive provision for increased BASIX performance is consistent with the BASIX SEPP and no change is recommended.</p> <p>Refer to discussion in Table 6 and Section 3.3.1 regarding the requirement for social or affordable rental housing.</p> |
|--|---|--|

In LAHC's further submission, they again advise they agree in principle with the planning proposal, however, continue to have concerns with the affordable rental housing requirement, feasibility analysis, FSR bonus provision, inconsistency with the Gateway determination and the Design Guide. A summary of LAHC's issues is provided in **Table 6**.

Table 6 LAHC further submission issues and Department's assessment

| LAHC Issue | Department's assessment |
|--|--|
| <p><u>Affordable rental housing requirement</u></p> <ul style="list-style-type: none"> The proposed requirement for 7.5% affordable rental housing in addition to 30% social housing ignores the self-funded nature of LAHC and reduces the ability of LAHC to deliver more than 30% social housing, on or off site. LAHC is committed to delivering a minimum 30% social housing at the site. Prefer the site is not subject to any minimum requirements for social or affordable housing. If DPE consider a planning control necessary, prefer a minimum requirement for 30% affordable housing. | <p>The Department acknowledges there are a range of affordable rental and social housing targets in different state and local government policies. These include the Eastern City District Plan, NSW Government's Future Directions for Social Housing in NSW, Council's Local Strategic Planning Statement and Local Housing Strategy.</p> <p>Council proposes a requirement for up to 7.5% affordable rental housing and 30% social housing, based on strategic policy and its own economic feasibility analysis. Council contends social and affordable rental housing are not the same tenure and providing social housing does not satisfy the state and local government requirements for affordable rental housing.</p> <p>LAHC advises they are committed to delivery of 30% social housing (as per Future Directions), and if a planning control is considered necessary by DPE, would prefer a minimum requirement for 30% affordable housing.</p> <p>The Department has considered the requirement for social and affordable housing in detail in Section 3.3.1.</p> |
| <p><u>Feasibility analysis</u></p> <ul style="list-style-type: none"> The Feasibility analysis used by Council was based on assumptions not discussed with LAHC, prioritises outcomes to be delivered on site, ignores LAHC's delivery | <p>During the public exhibition Council engaged AEC Group to undertake a Feasibility Study to understand if requiring affordable rental housing above the 30% social housing was financially viable. The Study concludes the project could potentially accommodate 30% social housing, up to 7.5% affordable rental housing and 62.5% market housing, before development margins fall below</p> |

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| <p>costs and funding model for social housing and assumes the community facility is funded by a third party and has not include its construction cost.</p> <ul style="list-style-type: none"> The analysis does not consider how much additional social housing could be delivered off-site if the additional 7.5% affordable rental housing is not required and it decreases the land value of the site. | <p>market expectations. The Study acknowledges its limitations and notes it should only be relied on as preliminary or indicative.</p> <p>The Department acknowledges Council's approach to understand if the proposal can accommodate affordable rental housing in addition to the 30% social housing based on standard feasibility approach. However, the Department also notes LAHC is self-funded and the planning proposal process, while facilitating more social housing on the subject site, is also required to be used by LAHC to provide revenue opportunities for social housing across NSW.</p> <p>The Department has considered the requirement for social and affordable housing in detail in Section 3.3.1.</p> |
| <p><u>Inconsistency with Gateway Determination</u></p> <ul style="list-style-type: none"> Consider Council's proposed social and affordable rental housing requirement is inconsistent with the Gateway Determination. Contend that Council has not justified the increased social and affordable rental housing beyond its Feasibility assessment. | <p>The Gateway Determination required at least 30% of the total floor area being used for residential development being used for the purposes of a mix of social and affordable rental housing.</p> <p>Council has proposed a requirement for a minimum 30% social housing and 7.5% affordable rental housing. They have justified this on policy and feasibility grounds including:</p> <ul style="list-style-type: none"> consistent with Council's Local Strategic Planning Statement that seeks minimum 25% of floor space as affordable rental housing on Government sites and significantly increase the proportion of social housing on NSW Government sites that are being renewed. social and affordable rental housing are required on site to meet identified need the District Region Plan 5-10% affordable housing target the proposal is economically viable. <p>The Department considers the proposal is not inconsistent with the Gateway Determination and Council have provided strategic and economic justification to support their position. However, the Department recommends a site-specific provision requiring at least 30% of the gross floor area used for the purposes of residential accommodation to be used for affordable housing, as discussed in detail in Section 3.3.1.</p> |
| <p><u>FSR bonus provision</u></p> <ul style="list-style-type: none"> The design outcome for the site has not been informed by social housing delivery and increased density has not been applied due to the public benefit of social housing. The LEP clause linking the bonus FSR to the delivery of social and affordable rental housing is inequitable and LAHC prefer that the maximum FSR is not linked to | <p>Council's post exhibition report considers incentivising social and affordable rental housing in the LEP. This is a valid planning consideration and has strategic merit as it delivers on Council's affordable housing dwelling targets.</p> <p>The council's proposed LEP clause linking bonus FSR to the delivery of social and affordable rental housing has some merit as it indicates the density is allowable, in this instance, due to the public benefit of affordable housing. The clause also reinforces that the density would not be accessible to private sector proponents.</p> <p>The removal of the incentive provision would mean the planning proposal delivers a significant increase in height and FSR without</p> |

| | |
|---|--|
| <p>a minimum social or affordable rental housing requirement.</p> | <p>securing affordable housing, which forms part of the strategic merit and public benefit of the proposal.</p> <p>The Department notes a similar approach was recently taken for the Cowper Street Planning Proposal (now complete) and includes a clause requiring provision of affordable housing in the LEP.</p> <p>The Department notes while the bonus FSR clause secures the delivery of affordable housing on site for the proposed development, it does not prohibit the redevelopment or disposal of the site under the existing FSR control (1.5:1) which remain unchanged by the planning proposal (although transferred across from the South Sydney DCP).</p> <p>A change to the planning proposal is therefore not necessary.</p> |
| <p><u>Draft Design Guide</u></p> <ul style="list-style-type: none"> • Reiterate preference for a DCP as this will allow for more flexibility in the DA process. • Unclear of the rationale for a Design Guide written into the LEP. • The use of the Design Guide is inconsistent with Ministerial Direction 6.3 Site Specific provisions, as it provides unnecessarily restrictive site-specific planning controls. | <p>A Design Guide operates generally the same as a DCP and provides relevant development controls to achieve the objectives for development on the site. Where the design guide diverges from a DCP it is required to be considered in the assessment of State Significant Development.</p> <p>The proposed Design Guide will apply to development on the site when the proposed FSR exceeds 1.5:1 and can be applied to any future development application, including State Significant Development. The Department considers a Design Guide important as it will provide guidance on the desired outcome and advice on how this can be achieved. The Design Guide also provides controls and guidance to address some of the concerns raised in public submissions including built form character, overshadowing, parking and amenity.</p> <p>The Design Guide is not considered to be inconsistent with Section 9.1 Direction 6.3 Site Specific Provision, as although the Design Guide informs the rezoning, it is a separate process and will be approved separately by the Planning Secretary.</p> <p>A change to the planning proposal is not considered necessary.</p> |
| <p><u>Draft Design Guide community facility requirements</u></p> <ul style="list-style-type: none"> • Do not agree with the requirement for a new community facility to be built before the existing PCYC is demolished as it would make the redevelopment unviable, impact site wide remediation and a cost-effective delivery program. • The site specific LEP provision sufficiently addresses delivery of a community facility. | <p>The Department notes the planning proposal reference scheme anticipates future development would include site-wide excavation for 2-3 basement levels for car parking and site servicing. In addition, contamination and remediation studies have identified a layer of fill and natural peat across the site that exceeds the criteria for proposed residential and commercial uses. Asbestos has also been identified within the site and the presence of actual or potential acid sulfate soils. To ensure the site is suitable for the intended uses, a Remediation Action Plan (RAP) and remediation work is required site-wide, at the DA stage.</p> <p>The Department considers LAHC's concerns are reasonable, as requiring the existing PCYC building to remain on site until a new community facility is built will adversely impact the ability to undertake the required remediation works and basement construction.</p> |

Housing SEPP 2021

The planning proposal should reflect the replacement of SEPP Affordable Rental Housing (ARH) 2009 with the Housing SEPP 2021 and clause 16(2), 21, 42, 43, and 44 that govern operations of LAHC should be retained as applicable to the site.

The Housing SEPP was adopted and commenced on 26 November 2021 and repealed SEPP ARH. It is recommended the proposed clause be updated to reference that Division 1 of the Housing SEPP does not apply to the site, consistent with the intent of the original clause.

Clauses 16(2) and 21 in Division 1 are not relevant without the application of Division 1 and have not been retained. Clauses 42, 43 and 44 of the Housing SEPP continue to apply as the proposed clause only turns off Division 1.

3.3 Post-exhibition changes

Following the community consultation process, Council resolved to endorse the planning proposal, with amendments. The post-exhibition amendments include:

- Social and affordable rental housing: Council proposed 7.5% and 30% of residential floor space on site to be provided as affordable rental and social housing, respectively (amended from at least 30% of residential floor space to be provided as a mix of social and affordable rental housing).
- Bonus FSR: Council proposed reducing the bonus FSR to 0.57:1 (from 0.75:1) if a community facility is provided and 0.15:1 (from 0.25:1) if the development exceeds BASIX commitments.
- Height: minor adjustment to the height map to provide more flexibility for design solutions at the design competition stage.
- Community facility: the requirement for a 3,500 sqm facility is retained, but Council proposes the community facility floor space is excluded from the calculation of GFA. If a larger facility was considered appropriate at the DA stage, this will not detract from the residential floor space permitted on the site.
- Concept DA/ site specific DCP: Council proposed that a Concept DA or site specific DCP is not required where the consent authority is satisfied the proposal is consistent with the endorsed Design Guide.
- Aboriginal and Torres Strait Islander Housing: Design Guide updated to include consideration given to allocating up to 10% or more of the total number of dwellings to be provided for Aboriginal and Torres Strait Islander Housing.

3.3.1 The Department's recommended changes

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

- A site-specific provision requiring at least 30% of the GFA used for the purposes of residential accommodation to be used for affordable housing
- Remove from the Design Guide the requirement for the new community facility to be built before the existing PCYC is demolished and replace with a requirement for future development applications to address the timing of the construction and operation of the community facility, and other minor changes.
- Replace reference to repealed SEPP ARH with the adopted Housing SEPP. The amended clause will ensure Division 1 in Part 2 of Chapter 2 of the Housing SEPP 2021 does not apply to the site, consistent with the original clause.

These recommended changes are discussed in more detail below.

Affordable housing

Affordable housing is defined under the *Environmental Planning and Assessment Act 1979* as housing for very low-income households, low-income households or moderate-income households. Social housing and affordable rental housing are both forms of affordable housing. Social housing is for households experiencing the highest housing stress and social disadvantage, while affordable rental housing is for households earning very low to moderate incomes.

The Gateway Determination conditioned that at least 30% of residential floor space be provided as a mix of social and affordable rental housing. The condition was recommended as it was consistent with the relevant strategic targets in different state and local government policies, including:

- 5-10% affordable rental housing target in the Greater Sydney Commission's Eastern City District Plan.
- 70:30 ratio of private to social housing outlined in NSW Government Future Directions for Social Housing in NSW (Future Directions).
- minimum 25% of floor space as affordable rental housing on NSW Government sites and significantly increase the proportion of social housing on NSW Government sites that are being renewed (Council's Local Strategic Planning Statement).
- 7.5% of all housing to be provided as social housing and 7.5% of all housing to be provided as affordable rental housing (Council's Local Housing Strategy).

Council considers the proposal is an opportunity to optimise NSW Government owned land for the delivery of new social and affordable rental housing. To support their proposed social (30%) and affordable rental (7.5%) housing requirement, Council contends both social and affordable rental housing are required on site to meet an identified need and to satisfy state and local government social and affordable rental housing targets. Council contends the following factors support their proposal:

- social and affordable rental housing are different tenures, and
- the proposal is financially viable.

Social and affordable rental housing are different tenures

Council contends affordable rental housing is required in addition to social housing as they consider they are different tenures, each with an essential role to play. To support their proposal Council points to:

- the Waterloo South Independent Advisory Group (IAG) Report, which identified a need for both social and affordable rental housing in the Waterloo South Estate. Council considers this is applicable to the Elizabeth Street proposal, as it is located 300 m north-east of Waterloo South.
- the Housing Diversity and Affordability Study prepared by Hill PDA, on behalf of LAHC, to support this planning proposal. The Study considers up to 30% social housing would make a meaningful contribution to social housing supply and the provision of 5-10% affordable rental housing is appropriate.

The Waterloo South Estate proposal is to renew an existing social housing site for 3,060 dwellings and 18,000 sqm of non-residential floor space. This scale is significantly different to the Elizabeth Street site which is vacant (except for the PCYC building) and may deliver approximately 300 dwellings (social, affordable rental and market). The Department acknowledges the conclusions of the IAG Report but considers it specific to the Waterloo South planning proposal and of limited relevance to inform the Elizabeth Street planning proposal.

The Hill PDA report acknowledges a diverse range of affordable housing is required and recommends up to 30% social housing and 5-10% affordable rental housing, with the balance

market housing. This report however was based on a build to rent development, with a higher FSR and development yield than the current proposal. It is also noted the recommended provision of up to 30% social housing could be substantially less than 30%. As such the Department notes the recommendations of the report but considers it is not strictly applicable and further notes the Waterloo proposal has since been amended.

The Department agrees with Council that social and affordable rental housing are different tenures, however, considers the issue is whether a requirement for 7.5% affordable rental housing in addition to at least 30% social housing in the LEP is appropriate and reasonable for the proposal.

Financial viability

Council claims the provision of the proposed social and affordable rental housing is financially viable. As discussed in **Table 6**, a Feasibility Study prepared by AEC Group has been undertaken to inform Council's position.

LAHC have raised concerns the Study makes assumptions not discussed with LAHC, ignores the self-funded model LAHC operates under and does not consider how much additional social housing could be delivered off-site if the 7.5% affordable rental housing is not required.

As noted in **Table 6**, the Department acknowledges Council's approach to support the proposed amount of affordable rental housing and LAHC's position that the planning proposal process, while facilitating more social housing on the subject site, is also used by LAHC to provide revenue opportunities for social housing across NSW.

Department's assessment

The Department has considered Council's proposal, the issues raised in LAHC's submissions and the public benefit and strategic merit of the proposal, as discussed below.

Public benefit

The proposal provides an opportunity to deliver a higher number of social dwellings as the site currently contains no dwellings and is not subject to requirements to redevelop and replace existing social housing. The commitment from LAHC, in accordance with Future Directions, to provide at least 30% affordable housing is a significant public benefit and will deliver new affordable housing and increase the amount of affordable housing in the local government area (LGA).

Council has also secured a commitment for 3,500 sqm of community facility floor space to be provided on the site, to access the bonus FSR provision. This exceeds the existing 1,275 sqm PCYC facility on the southern part of the site and is far greater than the demand generated by the proposal for approximately 100 sqm of new community facility floor space.

The 3,500 sqm community facility floor space will provide a significant benefit to the local community by delivering substantially more community facility space than is currently available. The space could deliver facilities such as a library, community hall and indoor recreation centre to meet future demand.

Given the proposal already delivers substantial public benefit through the delivery of new affordable housing and replaces and provides additional community facility floor space, the Department considers also requiring 7.5% affordable rental housing is unreasonable.

Strategic merit

State and local strategic planning and policy documents provide a range of targets to deliver social and affordable rental housing. The proposal for at least 30% affordable housing is not inconsistent with State policy including the District Plan target (5-10% affordable rental housing) and LAHC's target for 30% social housing (Future Directions).

The proposal is also consistent with Council's Local Strategic Planning Statement to increase social and affordable rental housing in the LGA and the aim to significantly increase the proportion of social housing on NSW Government sites that are being renewed, as the proposal will deliver new affordable housing on a vacant site. It will also contribute to Council's targets for 7.5% social housing and 7.5% affordable rental housing of all housing across the LGA.

Affordable Housing Conclusion

The Department notes the importance of increasing affordable housing in areas with an identified need. The proposal provides an opportunity to deliver new affordable and market housing, increases affordable housing in the LGA and provides additional community facility floor space.

The Department recommends the site-specific provision be amended to require at least 30% of the GFA used for the purposes of residential accommodation to be used for affordable housing (comprising social and affordable rental housing). This will allow for an appropriate mix of social and affordable rental housing to be determined in future development applications in the context of Future Directions targets, the needs of the LGA and in consultation with any affordable housing provider.

The Department notes the Gateway Determination conditioned the final planning proposal to address the mix of social and affordable rental housing. As LAHC will be delivering affordable housing in accordance with Future Directions, the Department concludes that specifying the exact mix of social and affordable rental housing is not necessary at the planning proposal stage as State and local strategic policy provides sufficient guidance to ensure the site will contain at least 30% affordable housing, with the exact mix determined at the DA Stage.

Further, the proposed requirement for at least 30% affordable housing, is a minimum, which will allow future development to exceed 30% if determined appropriate by LAHC and the priorities of Future Directions.

The Department also recommends future development applications address the mix of social and affordable rental housing provided, as a requirement in the Design Guide.

Overall, the proposal provides for a housing development that is consistent with State government policy, will increase affordable housing supply in the LGA, provide significant public benefit with new affordable housing and additional community facility floor space.

Design Guide

LAHC, in its submission, requested changes to the draft Design Guide including removing the requirement for the community facility to be built before the existing PCYC is demolished, deep soil and landscaping requirements and changes to the Design Excellence Strategy. LAHC also requested further minor changes in separate correspondence to the Department.

As discussed in **Table 6**, the Department considers requiring the existing PCYC building to remain on site until a new community facility is built will adversely impact the efficiency and cost of remediation works and basement construction. The Department recommends updating the Design Guide to remove this requirement and adding a requirement for future development applications to address the timing of the construction and operation/ occupation of the community facility.

The Department also recommends further changes to the Design Guide, including apartment quality, landscape and deep soil, basement access, design excellence strategy, building cores and cross ventilation, culturally appropriate housing, gas systems and clothes drying facilities. These further changes are considered separately to this Finalisation report as part of seeking the Planning Secretary's approval of the Design Guide.

The Department notes the Design Guide is required to be approved by the Planning Secretary prior to making the draft LEP, as the draft LEP includes a sub-clause referencing the Design Guide.

Housing SEPP

The Department has updated the clause to reflect the replacement of the repealed SEPP ARH with the Housing SEPP. The amended clause will ensure Division 1 in Part 2 of Chapter 2 of the Housing SEPP 2021 does not apply to the site, consistent with the original clause.

3.3.2 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 D**), 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 7 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 8 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 |

5 Post assessment consultation

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

Table 9 Consultation following the Department's assessment

| Stakeholder | Consultation | The Department is satisfied with the draft LEP |
|-------------------------------|--|---|
| Mapping | Maps have been prepared by the Department's ePlanning team and meet the technical requirements. | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details |
| Council | 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) Council's response to the draft LEP was received on 16 February 2022. Council raised no objection to making of the instrument and suggested some minor changes. (Attachment F). | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details |
| Parliamentary Counsel Opinion | On 16 February 2022, Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at Attachment PC . | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details |

Council reviewed the draft LEP and suggested some minor changes, including:

- in sub-clause (3)(b), use terminology 'BASIX affected development' to reflect the defined term in EP&A Regulation 2000. The Department agrees and notes the instrument uses the term 'BASIX affected development'.
- in sub-clause (5) amend 'floor area' to 'gross floor area'. The use of floor area retains the intent of the clause and no change is required.
- remove reference to clause 6.54(3)(c). This amendment has been included to update reference to the now repealed SEPP Affordable Rental Housing with the Housing SEPP. The draft LEP includes a definition for social housing provider and ensure consistency with the definition in the Housing SEPP.

The Department is satisfied with the draft LEP and recommends it can be made with no further changes.

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 now been addressed, and LAHC's outstanding concerns have been resolved.
- It will deliver public benefits by increasing affordable housing in an area with identified need and providing a significant amount of new community floorspace.
- Note that making the draft LEP is subject to the approval of the Design Guide by the Planning Secretary.



Aaron Nangle

Manager, Eastern District City of Sydney



David McNamara

Director, Eastern District City of Sydney



Malcolm McDonald

Executive Director, Eastern Harbour City

Assessment officer

Emily Dickson

Senior Planner, Eastern District City of Sydney

Attachments

Attachment A – Planning Proposal

Attachment B – Gateway Determination

Attachment C – Gateway Alteration

Attachment D – Gateway Determination Report

Attachment E – Council's Post Exhibition Report

Attachment F – Clause 3.36(1) consultation with Council

Attachment G – The Land and Housing Corporation’s Objection to Proposal

Attachment PC – Parliamentary Counsel’s Opinion

Attachment Maps – Draft LEP Maps

Attachment MCS – Map Cover Sheet

Attachment Council – Letter to Council Advising of Decision

Attachment LAHC – Letter to LAHC Advising of Decision