

Planning Services

Gateway Determination Report

LGA	City of Sydney
RPA	City of Sydney
NAME	Affordable Housing Review (0 homes, 0 jobs)
NUMBER	PP 2017 SYDNE 006 00
LEP TO BE AMENDED	Sydney Local Environmental Plan 2012
ADDRESS	N/A
DESCRIPTION	N/A
RECEIVED	25 May 2017
FILE NO.	17/07326
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POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required.
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal.

INTRODUCTION

Description of planning proposal

The proposal seeks to increase the amount of affordable housing in the City of Sydney to achieve Council's Sustainable Sydney 2030 affordable housing targets. The proposal seeks amendments to Sydney Local Environmental Plan 2012 (SLEP 2012) and the introduction of the City of Sydney Affordable Housing Program (to be adopted by Council) to provide a transparent framework for the application of affordable housing contributions when land is being developed.

Summary of recommendation

It is recommended that the proposal proceed subject to conditions. It is noted City of Sydney Local Government Area (LGA) is listed in State Environmental Planning Policy No 70 – Affordable Housing (Revised Schemes) which allows Council to pursue affordable housing supply through inclusionary zoning.

PROPOSAL

Objectives or intended outcomes

The objectives of the planning proposal are to:

- provide a transparent framework (publicly accessible guideline) for development to make equitable affordable housing contributions;
- give effect to the intent of the draft Central District Plan to provide affordable housing on land where there is an increase in floor area, where need for affordable housing is identified and where development viability can be maintained;

- increase the amount of affordable housing in the LGA to achieve Council's affordable housing targets in Sustainable Sydney 2030;
- ensure affordable housing contribution rates do not impact on development viability;
- increase certainty for landowners and developers seeking to develop land in the LGA; and
- align, streamline and simplify existing affordable housing schemes in the LGA.

It is recommended that the planning proposal needs to be updated to reflect the revised draft Eastern City District Plan as a condition of Gateway.

Explanation of provisions

The explanation of provisions adequately addresses the intended method of achieving the objectives of the planning proposal. To achieve these objectives, the proposal seeks to amend clause 7.13 *Contribution for purpose of affordable housing* and clause 7.13A *Affordable housing in Zone B7*, and introduce Schedule 7 to SLEP 2012. These amendments seek to:

- expand the operation of current affordable housing contribution schemes to where it does not currently apply (excluding Central Sydney). This is referred to as residual land (**Attachment F**);
- provide a framework to identify sites that will benefit from increased development capacity and land value through a planning proposal to change the planning controls, and require a supplementary affordable housing contribution. These sites are called Schedule 7 land;
- clarify what development is excluded from a requirement to make an affordable housing contribution;
- clarify how land in the B7 Business Park zone that is also identified at Schedule 1 (1AA) of the SLEP 2012 can be developed; and
- reduce the minimum size of any affordable housing dwelling to be dedicated to Council to 35 square metres and introduce a maximum dwelling size of 90 square metres.

The contribution requirement for residual land is to be introduced over four years to allow for market adjustment to the contribution requirement.

Date of determination of development application	Total floor area intended for non-residential floor area	Total floor area intended for residential floor area
To 31 May 2019	0%	0%
1 June 2019 – 31 May 2021	0.5%	1.5%
1 June 2021 onwards	1%	3%

Residual land

A contribution requirement on residual land is only to apply to development that is for the creation of new floor area or the change of use for current floor area from non-residential to residential.

Schedule 7 land

For Schedule 7 sites, the contribution requirement will only apply to new development capacity that is facilitated by the site-specific planning proposal. It does not apply to any existing development capacity and therefore does not replace any affordable housing contribution requirement that may already apply to the land under clause 7.13 of SLEP 2012. This means that on Schedule 7 land where there is a current affordable housing contribution requirement, both the contribution under clause 7.13 and the Schedule 7 contribution requirement will apply. In these instances, the contribution will be negotiated as part of the planning proposal.

Minimum dwelling size

The proposal seeks to introduce a minimum size of any affordable housing dwelling dedicated to Council of 35 square metres and a maximum dwelling size of 90 square metres.

Currently, clause 7.13 requires any dedicated dwelling be no less than 50 square metres but does not specify a maximum. This reflects the minimum studio dwelling size under the Apartment Design Guide.

Development excluded from contribution

Clause 7.13 currently excludes development where it will result in the creation of less than 200 square metres of residential floor area and 60 square metres of commercial floor area. This exclusion enables minor additions to a development without attracting an affordable housing contribution.

However, development such as warehouse buildings being reused for residential development can also be interpreted as excluded as no new floor area is being created. Council believes this is contrary to the intent of the clause and is seeking to amend clause 7.13 to require an affordable housing contribution on development that is for substantial change of use from non-residential to residential to current floor area in Green Square, Ultimo/Pymont and Southern Employment Lands. 'Substantial alterations or additions' are proposed to be defined as those where the cost of works is more than \$50,000.

This will enable an affordable housing contribution requirement to be applied to substantial change of use where development consent is not required. Current provisions in SLEP 2012 inhibit the ability of Council to apply affordable housing contributions to exempt and complying development.

The intent of complying development is to provide a fast-track approval pathway. The promotion and simplification of complying development is an important initiative to support the NSW Government's commitment to faster approvals and cutting red tape for homeowners and businesses. For this reason, it is recommended that an affordable housing levy is not applied to complying development.

The Department of Planning and Environment recommends as a condition of Gateway that the planning proposal be updated to remove references to applying affordable housing contributions to exempt and complying development in the explanation of provisions.

B7 zoned land

Currently in SLEP 2012, clause 7.13A permits affordable housing as the only form of residential development in the B7 Business Park Zone. Although Schedule 1(1AA) permits with consent the development of shop top housing and seniors housing on certain land in the B7 Zone at Birmingham Street and Botany Road, Alexandria.

To avoid doubt, it is proposed to amend the SLEP 2012 to clarify that land identified at Schedule 1 (1AA) can be developed for shop-top housing and/or seniors housing, despite any requirement under clause 7.13A for only affordable housing to be provided on the site.

City of Sydney Affordable Housing Program

The operational details for the collection and distribution of affordable housing contributions will be contained within the City of Sydney Affordable Housing Program to be adopted by Council.

The program is proposed to replace the Green Square and Southern Employment Lands affordable housing programs.

Mapping

The planning proposal contains maps that show the subject land and explain the proposed changes to the respective LEP maps for each proposed amendment. These maps are adequate for exhibition purposes. Maps that comply with the Standard Technical Requirements for SI LEP maps will need to be prepared before the LEP is made.

NEED FOR THE PLANNING PROPOSAL

Council commissioned an affordable housing needs analysis that found housing in Central Sydney is at a considerable premium, with the medium strata dwelling price now \$832,000. The proportion of affordable housing for purchase for very low, low and moderate-income households is almost non-existent. Rental costs are above the Sydney average; the median weekly rent for a two-bedroom unit in September 2016 was \$750.

Housing affordability affects Central Sydney's ability to attract and retain global businesses and a highly skilled workforce. Where relatively low paid key workers, who underpin and enable growth in high value sectors, cannot access appropriate and affordable housing, there is direct risk to metropolitan Sydney's global city status and by extension the Australian economy. Without an affordable housing scheme, the market will continue to produce housing aimed at households on relatively high incomes. Lower income households will need to move out of the inner-city, away from their communities and their employment in the inner-city

A planning proposal is the best way to facilitate a new affordable housing contribution scheme in the City of Sydney.

STRATEGIC ASSESSMENT

State

A Plan for Growing Sydney

The proposal is consistent with several relevant goals, directions and actions of the plan. It will increase the supply of affordable housing and improve housing diversity and choice.

Regional/District

Revised draft Eastern City District Plan

The draft district plan recognises that 4000-8000 affordable dwellings need to be provided in Greater Sydney each year to meet the needs of lower income groups. The plan encourages councils to develop local housing strategies and actions to address the range of housing needs in their LGAs, including affordable housing.

The plan nominates an affordable rental housing target of 5-10%, subject to viability, in urban renewal and land release areas, noting that the application of the target should not prejudice other approaches to secure affordable housing in areas outside these areas.

A critical focus of the plan is that any mechanism that is introduced to secure affordability should be cognisant of the impact on development viability.

Independent economic analysis commissioned by Council identifies that the housing targets in the plan are modest and do not reflect market-specific ability to contribute to affordable housing. Testing finds that the 5-10% targets of additional floor space as proposed by the plan are comfortably tolerated by the study area.

Council's proposal supports the plan's priority of housing diversity and affordability by facilitating the delivery of affordable rental housing in Central Sydney.

The proposal's analysis is based on the draft Central District plan. A Gateway condition will require Council to update the proposal to demonstrate consistency with the revised draft Eastern City District Plan.

The revised draft Eastern City District Plan reaffirms that across Greater Sydney targets generally in the range of 5–10% of new residential floor space are viable.

Local

Sustainable Sydney 2030

Council's strategic plan establishes an ambitious target that 7.5% of housing will be social housing and 7.5% of housing will be affordable housing in 2030. To achieve this, approximately 11,000 affordable housing dwellings of a projected 148,000 dwellings are required in the LGA.

Section 117(2) Directions

The proposal is considered to be consistent with the following section 117 Directions:

- 1.1 Business and Industrial Zones;
- 2.3 Heritage Conservation;
- 3.1 Residential Zones;
- 3.2 Caravan Parks and Manufactured Home Estates;
- 3.3 Home Occupations;
- 3.4 Integrating Land Use and Transport;
- 6.2 Reserving Land for Public Purposes;
- 6.3 Site Specific Provisions; and
- 7.1 Implementation of A Plan for Growing Sydney.

State environmental planning policies

The proposal is considered to be consistent with the following relevant SEPPs:

- SEPP No 70 – Affordable Housing (Revised Schemes);
- SEPP (Building Sustainability Index: BASIX) 2004;
- SEPP (Exempt and Complying Development Codes) 2008;
- SEPP (Housing for Seniors or People with a Disability) 2004;
- SEPP (Infrastructure) 2007; and
- SEPP (Affordable Rental Housing) 2009.

The City of Sydney is identified in SEPP 70 Affordable Housing (Revised Schemes).

The proposal is also consistent with SEPP (Affordable Rental Housing) 2009, which does not apply to land in Green Square, Ultimo/Pymont and the Southern Employment Lands. While these exclusions will be retained, no further exclusions are proposed.

SITE-SPECIFIC ASSESSMENT

Social

In the Sydney LGA, increasing housing costs are expected to have an increasingly detrimental impact on its socioeconomic diversity. Gentrification of inner-city neighbourhoods has increased the gap among those who can and cannot afford housing. There is a growing disconnect between households able to afford private market housing and highly socioeconomically disadvantaged households living in inner-city public housing estates.

It is estimated that the expansion of Council's affordable housing schemes to residual land will result in approximately 590 affordable rental housing dwellings in addition to the 1335 estimated under current schemes in Green Square, Ultimo/Pymont, the Southern Employment Lands and the proposed Central Sydney scheme.

Environmental

It is unlikely that critical habitat or threatened species, populations or ecological communities or their habitats will be adversely affected as a result of this planning proposal.

Economic

To understand the economic impacts of the proposed affordable housing contributions, Council sought independent economic advice to test identified housing sub-markets in the LGA and to gain an understanding of the full impacts of implementing the additional requirements, how the impacts vary in different parts of the LGA and how they may be mitigated.

Consultation with the Greater Sydney Commission (GSC) has confirmed that the methodology used to calculate the impact on development feasibility is generally sound, as are the methods and assumptions used to identify and adjust/index monetary contributions.

Standard affordable housing levy - residual land

Feasibility of staged introduction

The feasibility testing conducted by AEC found that in the short term, development only has capacity to pay a standard affordable housing levy of 1% residential and 1% non-residential GFA. Impact on development feasibility in the Southern precinct is less marked, as affordable housing contributions are already payable. For the Eastern and Western precincts, contributions greater than 1% of residential and non-residential GFA are likely to result in development becoming unfeasible unless there is a shift in market dynamics.

To allow the market to adjust to the standard affordable housing levy and reduce the impact on development feasibility, Council aims to implement a staged approach to the contribution rate in the following manner:

Date of determination of development application	Total floor area intended for non-residential floor area	Total floor area intended for residential floor area
To 31 May 2019	0%	0%
1 June 2019 – 31 May 2021	0.5%	1.5%

1 June 2021 onwards	1%	3%
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Consultation with the GSC concludes that the staged approach to introduce a levy on existing areas is reasonable, although it should be recognised that some impacts on development feasibility may occur where land has already been acquired by developers.

The Department commissioned JLL to undertake an independent peer review of AEC's economic report and feasibility testing. JLL recommended that given a significant amount of supply is still proposed, the implementation should commence in three years with two years staging. This is to ensure that current market supply is developed in line with current controls and the future supply be under the new controls. The Department considers this approach to be appropriate and has conditioned the Gateway determination appropriately.

Feasibility of standard levy

The Department's Housing Policy Team raised concerns over Council's proposed affordable housing mechanisms. Considerations should be placed on the potential impact the levy may have on the delivery of development.

Planning policy and the GSC are considering a broader policy position to limit the application of affordable housing contributions to areas/sites subject to an upzoning. This enables a more detailed feasibility assessment to be undertaken to ensure broader supply is not affected.

JLL's analysis considers that applying contributions to precincts/sites undergoing a rezoning throughout metropolitan Sydney (and potentially NSW) is likely to achieve more affordable housing than will be delivered through affordable housing contributions on residual land in the City of Sydney scheme.

JLL also noted that Council has not provided details on the number of affordable houses it considers could be delivered through this component. It is recommended that as a condition of Gateway, Council provide details on the supply of affordable housing through the application of the standard levy.

It is also important that Council ensures the negotiation of voluntary planning agreements (VPAs) will not be used to secure affordable housing contributions above and beyond what is advocated in Council's policy. The application of multiple affordable housing contributions through different mechanisms would not be acceptable.

Site-specific levy - Schedule 7 land

Feasibility

The AEC report studies the potential for a site-specific levy on planning gain/value uplift for public benefit. The study concludes that the requirement for affordable housing contributions by site-specific proposals is not likely to significantly impact investment in the study area, provided:

- prices paid for development sites are reflective of their development potential under existing planning controls;
- there is clear notice of Council's intentions to capture value through uplift where planning concessions are granted; and
- the sum of public benefits required (in addition to section 94 contribution rates) does not exceed the share of value uplift (50%) that Council seeks to capture.

Council has existing site-specific mechanisms to capture a proportion of planning gain/value uplift with a rezoning and/or increased density in Green Square and the Southern Employment Lands.

Consultation with the GSC found the analysis for Schedule 7 land does not include the impact of any special infrastructure contribution or increased VPA contribution for local or state infrastructure. This may reduce the amount available for affordable housing, assuming the total amount of contributions from the development for public benefit will be capped at 50% of total measured land value from the uplift.

To secure development viability, an existing landowner should be able to achieve an uplift of 50% to ensure a development project proceeds. These benchmarks and assumptions are being developed as part of a guidance note on affordable housing schemes under SEPP 70 and a new Housing SEPP. To facilitate this, the Department recommends a Gateway condition to ensure that before finalisation, the planning proposal is to be amended to demonstrate consistency with any guidance note.

Site-specific mechanism

Consultation with the Department's Policy Team and JLL's independent analysis identified that the site-specific levy is complicated and may provide less certainty to the development industry than is currently available through the VPA process. JLL has outlined the issue with applying the site-specific levy on additional building height as Council has not provided a contribution rate for additional building height greater than six storeys. It is recommended that as a condition of Gateway, Council further justify the site-specific levy mechanism to ensure a clear and simple application and consider imposing a levy on additional building height.

Infrastructure

The proposal does not impact on infrastructure services.

CONSULTATION

Community

Public consultation will be undertaken in accordance with the Gateway determination. Council suggests an exhibition period of 28 days. This is considered an appropriate time frame.

Agencies

No consultation is required with public authorities under section 56(2)(d) of the *Environmental Planning and Assessment Act 1979*.

TIME FRAME

Council has provided an indicative project timeline and requested a 12-month time frame for completion of the LEP. The Department considers this appropriate. It is recommended as a condition of Gateway that the project timeline be amended.

DELEGATION

Council is seeking delegation to carry out the Minister's plan-making functions under section 59 of the Act. Given the potential impact on state government policy and to ensure development remains economically viable, the Department recommends not issuing an authorisation for Council to exercise delegation to make this plan.

CONCLUSION

The planning proposal is supported because it facilitates an increase in affordable housing supply in City of Sydney LGA.

RECOMMENDATION

It is recommended that the delegate of the Greater Sydney Commission determine that the planning proposal should proceed subject to the following conditions:

1. Prior to community consultation, the planning proposal is amended to:
 - (a) demonstrate consistency with the Draft Greater Sydney Region Plan and revised draft Eastern City District Plan;
 - (b) update the project timeline;
 - (c) include the Central Sydney Affordable Housing Program currently in the Central Sydney Planning Strategy planning proposal;
 - (d) remove from the explanation of provisions the amendment allowing affordable housing contributions to apply to exempt and complying development;
 - (e) change the commencement date of contribution to three years with two-year staging;
 - (f) provide details on the likely supply of affordable housing through the application of the standard levy on residual land;
 - (g) provide further justification to the site-specific Schedule 7 land affordable housing contribution in terms of its impact on the application of VPAs or increase contributions for local or state infrastructure; and
 - (h) provide clarification on the application of site-specific affordable housing contributions on additional building height.
2. Prior to community consultation, the revised planning proposal is to be provided to the Department for review and approval for public exhibition.
3. Prior to finalisation, the planning proposal is to be amended to demonstrate consistency with any available guidance note on affordable housing schemes under SEPP 70 or a new Housing SEPP released by the GSC and/or the Department.
4. Community consultation is required under sections 56(2)(c) and 57 of the Act as follows:
 - (a) the planning proposal must be made publicly available for a minimum of **28 days**; and
 - (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of *A Guide to Preparing LEPs (Department of Planning and Environment 2016)*.
5. No consultation is required with public authorities under section 56(2)(d) of the Act.
6. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).

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



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