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Sydney Local Environmental Plan 2012 (Amendment No 52)

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1 Introduction

Overview

1.1.1 Name of draft LEP

Sydney Local Environmental Plan 2012 (Amendment No 52).

1.1.2 Site description

The planning proposal applies to land to which Sydney Local Environmental Plan 2012 applies.

1.1.3 Purpose of plan

The draft LEP seeks to amend the affordable housing provisions in Sydney Local Environmental Plan 2012 (Sydney LEP 2012) as follows:

- apply a standard affordable housing levy contribution to 'residual land' and 'Central Sydney' for any new floor area;
- include a new Schedule 7 for Planning Proposal Land for the identification of land where additional affordable housing contributions are required following an increase in development capacity (uplift);
- 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 Sydney LEP 2012 can develop; and
- reduce the minimum size of any affordable housing dwelling to be dedicated to City of Sydney Council (Council) to 35m² and introduce a maximum dwelling size of 90 m².

The draft City of Sydney Affordable Housing Program (the Program) provides the operational detail for the collection and distribution of affordable housing contributions (**Attachment B**). The program seeks to replace the Southern Employment Lands programs.

Residual Land and Central Sydney affordable housing levy contribution

It is proposed to amend the Sydney LEP 2012 to expand the operation of current affordable housing contribution schemes to all other land in the LGA that aren't subject to State policies. This is to be referred to as 'residual land' and 'Central Sydney' shown in **Figure 1**.

The proposed contribution requirement on 'residual land' and 'Central Sydney' is provided at **Table 1** below.

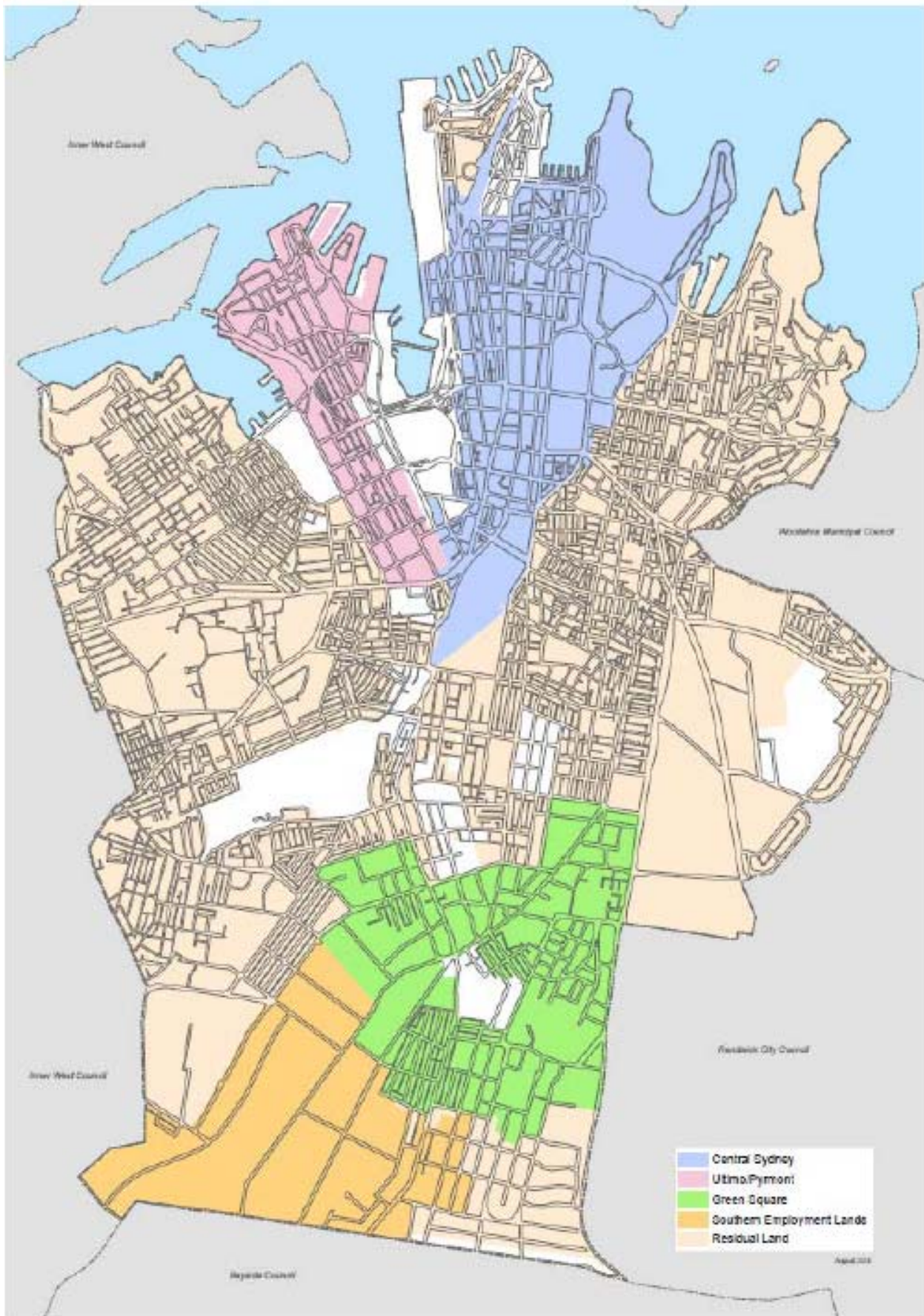


Figure 1: Map of land affected by the amendment

Table 1 Proposed contribution rates on residual land and Central Sydney

Date of determination of development application	Total floor area intended for non- residential floor area	Total floor area intended for residential floor area
1 June 2020 – 31 May 2022	0.5%	1.5%
1 June 2022 onwards	1%	3%

A framework for planning proposal land

It is proposed the Sydney LEP 2012 be amended to provide a framework to identify sites that will benefit from increased development capacity through a site-specific planning proposal process.

To achieve this, the Sydney LEP 2012 is proposed to be amended to include a new schedule for the identification of sites as 'Planning Proposal land'. 'Planning Proposal land' is also to be identified on the Locality and Site Identification Map in the LEP.

The contribution requirement will only apply to the new development capacity that is facilitated by a site-specific planning proposal.

The Program provides the contribution rate that will be applied to Planning Proposal land where there is an increase in development capacity on the land.

The contribution rate will apply to only the additional floor area facilitated by a site specific planning proposal. It will not apply to floor area potential already available under the Sydney LEP 2012.

The proposed contribution rate from is shown at **Table 2** below.

Table 2: Proposed contribution rates on Planning Proposal land where there is 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%

The precincts are consistent with those in the Council's development contributions plan 2015, see **Figure 2**.

The above rates do not apply to the Southern Employment Lands investigation areas where land is rezoned from employment to residential uses. The approach adopted by Council in 2015 in its Guideline to Preparing Site Specific Planning Proposal Requests in the City of Sydney Employment Lands Investigation Areas will continue to inform the consideration of planning proposals in those areas.

Contribution rates are to be reviewed bi-annually to ensure they continue to align with market realities.

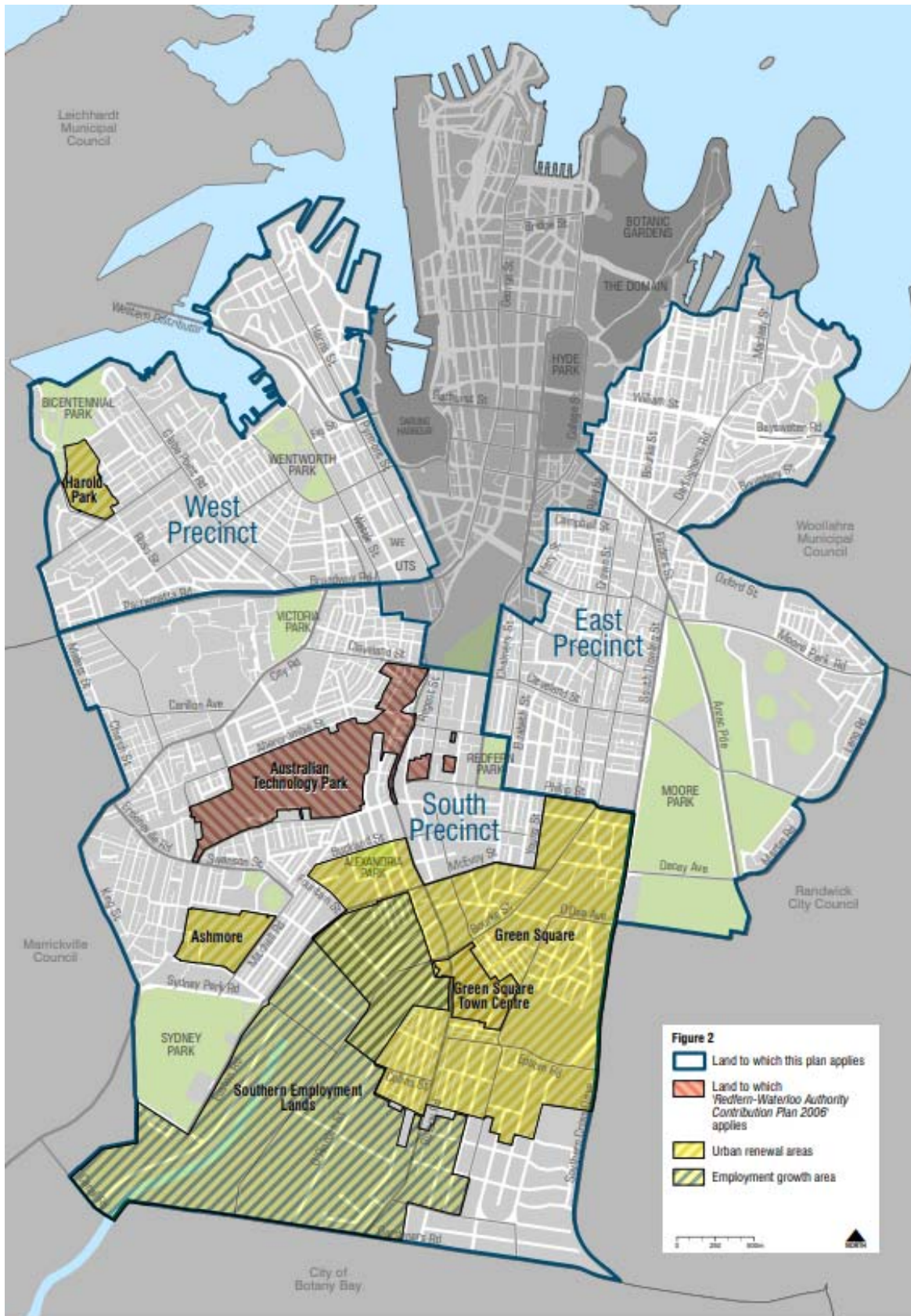


Figure 2: Map of precincts

Minimum size of dedicated affordable housing dwellings

It is proposed the minimum size of any affordable housing dwelling to be dedicated to Council be reduced to 35m² and a maximum dwelling size of 90 square metres be introduced. Currently Clause 7.13 requires any dedicated dwelling be no less than 50m² but does not specify a maximum.

The intent of the amendment is to reflect minimum studio dwelling size under the Apartment Design Guideline which is a minimum internal area of 35m².

Development exemptions under clause 7.13

It is proposed to amend the Sydney LEP 2012 to clarify what development is excluded from a requirement to make an affordable housing contribution.

Amending Clause 7.13 clarifies when an affordable housing contribution is required. An affordable housing contribution will have to be made depending on location, cost of works and if development involves a change of use, alterations and additions or a new build.

A contribution will only be required if development on land at Green Square, Ultimo-Pyrmont or Southern Employment Land or Residual land if it involves:

- the erection of a new building the gross floor area of which is more than 200 square metres, or
- alterations to an existing building that will result in the creation of more than 200 square metres of gross floor area that is intended to be used for the purpose of residential accommodation, or
- alterations to an existing building that will result in the creation of more than 60 square metres of gross floor area that is intended to be used for a purpose other than residential accommodation, or
- the demolition of existing floor area and the subsequent creation, whether for the same or a different purpose, of more than 200 square metres of gross floor area,
- development on land at Green Square or Ultimo-Pyrmont, or on southern employment land, that involves a change of use of more than 60 square metres of existing floor area of a building,
- development on residual land that involves a change of use of existing floor area from other than residential accommodation.

For Central Sydney it applies to development on land at Central Sydney that involves—

- the creation of more than 100 square metres of gross floor area, or
- the demolition of existing floor area and the subsequent creation, whether for the same or a different purpose, of more than 100 square metres of gross floor area, or
- a change of use of existing floor area from other than residential accommodation to residential accommodation or tourist and visitor accommodation.

Affordable housing program

The Program has been prepared to provide the operational detail for the collection and distribution of affordable housing contribution. The Program includes the following details on:

- Affordable housing principles;
- The appropriate contribution rate for planning proposal land;
- Affordable housing requirements;
- Equivalent monetary contribution amounts and method of calculating;
- Contribution rates for Green Square;

- How monetary contributions are paid and who are they allocated to;
- How dedicated affordable housing dwellings to be allocated;
- Development that may not be required to make a contribution;
- Indexing contributions;
- When is a contribution to be paid;
- Consideration of affordable housing contributions paid previously; and
- The recommended community housing provider.

1.1.4 State electorate and local member

The site falls within the Sydney State Electorate. Alex Greenwich MP is the State Member for Sydney.

The site falls within the Sydney Federal Electorate. Tanya Plibersek MP is the Federal Member for Sydney.

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 10/01/2018 (**Attachment C**) determined that the proposal should proceed subject to conditions. Council has met all the Gateway determination conditions.

The Department included as a condition of Gateway that prior to finalisation the planning proposal was to be amended to demonstrate consistency with any available guideline under State Environmental Planning Policy No 70 – Affordable Housing (Revised Schemes) (SEPP 70).

The Department is satisfied that Council has met the conditions of the Gateway determination and that the planning proposal is adequate for finalisation subject to post exhibition changes.

3 Public exhibition and post-exhibition changes

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 25 June 2018 to 23 July 2018.

Council received 80 submissions, including 64 from individuals and 16 from organisations such as community housing providers and development groups (**Attachment D**).

Submissions during exhibition

3.1.1 Submissions

The key issues that were raised in public submissions are discussed in **Table 3**. The key issues and responses are also detailed in Council's Post Exhibition Report (**Attachment D**).

Table 1 Summary of Key Issues

Issue raised	Council response and Department assessment of adequacy of response
<p>Funds resulting from the affordable housing program should be available to other community housing providers.</p>	<p>Council states that funds resulting from the affordable housing program are most efficiently used and result in the most affordable housing when managed by a single community housing provider. Spreading the contributions across multiple providers would reduce the level of certainty which City West Housing can undertake strategic land purchase for future projects.</p> <p>Notwithstanding Council's preference for funds to be allocated to a single community housing provider, the Program allows for other community housing providers to make a properly constituted application to be added to Schedule by demonstrating that they can effectively and efficiently provide affordable housing in the LGA and that including them would not have a negative impact on the delivery of affordable housing.</p> <p>In accordance with the Department's affordable housing guideline, councils are able to nominate a housing provider or identify a process to nominate housing providers. An affordable housing contribution scheme may have more than one registered community housing provider. However, in that instance the affordable housing contribution scheme must identify how funds will be split between providers.</p> <p>The Department considers Council's response adequately responds to this issue as council's affordable housing program outlines a process for other community housing providers to be included.</p>
<p>Impact on development economic viability.</p>	<p>The planning proposal is supported by economic advice commissioned by Council. Economic testing was to assess the full impacts of implementing the additional affordable housing requirements, how the impacts vary over different parts of the LGA and how they may be mitigated.</p> <p>The economic advice finds that in the short term the immediate introduction of a contribution requirement would likely impact on development viability in residual land and Central Sydney, but in Green Square, the increased rate would not impact on viability. However, the research also found that there is scope to introduce a levy in the medium term where sufficient advance warning is given to the market.</p> <p>The Department commissioned independent economic advice at the Gateway determination stage and conditioned the Gateway determination accordingly to increase the staged implementation of the levy so the industry will have a longer time to adjust to the contribution levy.</p>

Issue raised	Council response and Department assessment of adequacy of response
<p>Submission argues that universities should be excluded from the need to make a contribution</p>	<p>Council does not support the exemption of universities from the requirement to make a contribution because:</p> <ol style="list-style-type: none"> 1) the Program does exempt student housing being built by Universities from affordable housing contributions. 2) there is no certainty regarding access to student housing by target households, being very low to moderate income households. 3) the Program provides no other exemptions for not-for profit development, irrespective to their activities. 4) Council's affordable housing target, and this planning proposal and Program, is to ensure an increase in the supply of affordable rental housing for very low to moderate income households, including students and key workers, such as those that may be studying at or employed by the University. The University will benefit from the increase in affordable housing as much as any organisation in the City of Sydney. <p>The Department considers Council's response adequately responds to this issue.</p>
<p>Incentive schemes should be used to increase the amount of affordable housing rather than levy schemes.</p>	<p>Incentive schemes for affordable housing, such as those available under <i>State Environmental Planning Policy (Affordable Housing) 2009</i> have limited effectiveness in areas where land value is very high, and to date have not resulted in any affordable housing outcomes in the City of Sydney, though it has increased the stock of boarding houses and student accommodation.</p> <p>Other incentive schemes such as bonus FSR or height generally rely on increasing development capacity beyond the existing planning controls, with associated impacts on amenity.</p> <p>The Department considers Council's response adequately responds to this issue as Council's affordable housing program is consistent with the EP&A Act and District Plan.</p>
<p>Other methods of affordable housing should be explored, such as build to rent.</p>	<p>Council supports the development of new affordable housing models, recognising that a range of approaches are required to address the shortfall of affordable housing needed to achieve the City's targets. However, build to rent is not yet a viable alternative to the proven approach to ensuring long-term affordable housing stock through Council's existing contribution schemes.</p> <p>The Department considers Council's response adequately responds to this issue as other affordable housing mechanisms are outside the scope of this planning proposal.</p>

Issue raised	Council response and Department assessment of adequacy of response
<p>The research underpinning the contribution requirement does not reflect the current market.</p>	<p>The contribution requirement on Planning Proposal land is to be reviewed annually to ensure it continues to align with current local market conditions.</p> <p>The Department considers Council's response adequately responds to this issue.</p> <p>The Department's affordable housing guideline requires Council to review evidence related to the affordable housing contribution scheme at least once a year. Regular monitoring will identify issues or considerable changes in market conditions.</p>
<p>The contribution requirement will impact on wider housing affordability.</p>	<p>Council contends the levers that have the most effect on housing costs, such as taxation policy, cannot be affected by local government.</p> <p>The Department considers Council's response adequately responds to this issue and the delivery of affordable housing is supported by broader government policy including the District Plans, SEPP 70 and Department's affordable housing guideline. Housing costs are determined by a number of factors such as land prices and interest rates and not solely on the delivery of affordable rental housing to low income earners.</p>
<p>The one percent levy on commercial development will make providing commercial floor area difficult.</p>	<p>Council justifies the one percent contribution requirement for Central Sydney and Residual land is consistent with the existing requirement for a one percent contribution requirement for commercial development in Green Square and the Southern Employment Lands which was introduced in 2015.</p> <p>Council states it is fair and reasonable that commercial development, which benefits from increased housing options for key workers, contributes to affordable housing. A one percent contribution requirement is unlikely to have a substantial impact on development viability.</p> <p>Given the long introduction period of the levy rate, that allows time for market adjustment, there is adequate time for purchasers to take into consideration the contribution requirement.</p> <p>The Department considers Council's response adequately responds to this issue.</p> <p>Council's economic feasibility study finds that a one percent contribution rate with a staged introduction will not substantially impact on development viability for commercial development.</p> <p>Furthermore, the Department's affordable housing guideline also requires Council to review evidence related to the affordable housing contribution scheme at least once a year.</p> <p>Evidence must be reviewed regularly when monitoring identifies issues or considerable changes in market conditions.</p>

Issue raised	Council response and Department assessment of adequacy of response
<p>The increase in the Green Square contribution rate should be phased in like it is in the Central Sydney and the residual lands.</p>	<p>The affordable housing Program has been adjusted to allow for the current Green Square Program rates to continue to apply in Green Square until 31 May 2020. A consistent approach is proposed in relation to the planning proposal for the Green Square Town Centre.</p> <p>The Department considers Council's response adequately responds to this issue and believes a consistent approach is appropriate.</p>
<p>Affordable housing will result in increase anti-social behaviour, lower amenity, and resulting lowering of property values</p>	<p>Councils has identified that that affordable housing that has resulted from the current contributions schemes are of high design quality and are in keeping with the local context of those areas.</p> <p>Council states that there is no evidence to suggest that existing affordable housing in suburbs such as Ultimo, Pyrmont, Glebe or Zetland has had any negative impact on property values or social impacts.</p> <p>The Department considers Council's response adequately responds to this issue as there is no evidence to suggest that affordable housing results in an increase in anti-social behaviour.</p>
<p>The contribution rates should be higher.</p>	<p>Council states the rates are established at a level where they would not have unreasonable impact on the viability of development. Where viability is impacted, market housing cannot be provided, and contributions could not be paid.</p> <p>The Department considers Council's response adequately responds to this issue. In accordance with Council's affordable housing program, the contributions rates will be reviewed annually.</p>
<p>An ownership model should be introduced.</p>	<p>The City agrees there is benefit in the State government developing a range of affordable housing models to satisfy diverse demand. However, the planning proposal is intended to increase the stock of affordable rental housing.</p> <p>Council's affordable housing program aligns with how affordable housing dwellings are to be dedicated in accordance with SEPP 70 and its Guideline.</p> <p>The Department considers Council's response adequately responds to this issue.</p>
<p>Funds to deliver affordable housing need to be used quickly and should not be held by the City of Sydney</p>	<p>Council states while it is intended the funds resulting from the Program will be paid to the City, funds continue to be immediately passed to a community housing provider to build and manage affordable housing in the local government area. The City will not retain any portion of the funds.</p> <p>The Department considers Council's response adequately responds to this issue.</p>

Issue raised	Council response and Department assessment of adequacy of response
Affordable housing should only be kept as affordable housing for 10 years.	<p>Council states the 10-year model does not address the long-term need for affordable housing. The model requires ongoing high levels of development and building to replace expiring affordable housing stock while still attempting to deliver a net increase over time.</p> <p>The affordable housing model in the planning proposal provides property in perpetuity to community housing providers. This allows the sector to leverage its assets to borrow funds and invest in more affordable housing.</p> <p>The Department considers Council's response adequately responds to this issue.</p> <p>The Department's affordable housing guideline allows the dedication of dwellings to be provided in perpetuity.</p>
It's not Council's role to provide affordable housing	<p>District Plans were released by the Greater Sydney Commission in March 2018. Council states the Plans establish affordable housing targets and require councils to prepare a Housing Strategy that, amongst other things, provides a planning pathway for achieving the targets.</p> <p>Sustainable Sydney 2030, the City's community plan, establishes a target that in 2030, 7.5 percent of housing will be social housing and 7.5 percent of housing will be affordable rental housing. The target was established in response to a high level of concern in the community about housing affordability and the lack of affordable housing options in the City for low income earners.</p> <p>The Department considers Council's response adequately responds to this issue.</p> <p>The EP&A Act and SEPP 70 allows Council to levy for affordable housing contributions.</p>

Advice from agencies

In accordance with the Gateway determination, Council was not required to consult with any public authorities.

Post-exhibition changes

Remove reference to Green Square Town Centre

The publicly exhibited planning proposal and affordable housing Program were prepared with the intention to apply to all of the Green Square Urban Renewal area. However, reference to the LEPs that apply to the Green Square Town Centre (Town Centre) were inadvertently left out of the explanation of provisions in the planning proposal

Therefore, a new planning proposal for Green Square Town Centre has been prepared and will be pursued separately to this amendment.

The Department considers this post exhibition change to be appropriate. It is recommended that this amendment be endorsed without requiring further exhibition as it does not fundamentally change the intent of the planning proposal as exhibited.

Addition of examples to the program

Submissions raised concerns the publicly exhibited Program did not provide enough clarity about how the contribution requirement would be applied in practice. To address this, more examples have been included in the Program, including examples of how the exemptions may apply.

The Department considers this post exhibition change to be appropriate. It is recommended that this amendment be endorsed without requiring further exhibition as it does not fundamentally change the intent of the planning proposal as exhibited.

Additional exemptions

The Program includes circumstances under which Council may consider exempting a development from the need to make a contribution. Recommended additions include:

- a) exemptions for affordable housing; and
- b) more than 15% of the agreed cost of construction, or where the cost of works does not exceed \$100,000.

This is to ensure minor development is not inadvertently captured by a requirement to make a contribution.

The Department considers this post exhibition change to be appropriate. It is recommended that this amendment be endorsed without requiring further exhibition as it does not fundamentally change the intent of the planning proposal as exhibited.

Removal of the clarifications proposed to clause 7.13A – Affordable housing in zone B7

The exhibited planning proposal sought to clarify that the requirement in the B7 Business Park zone that all residential development must be affordable housing does not apply to land where shop-top housing is a permissible use prior to the rezoning of the Southern Employment Lands.

This has been removed from the Planning Proposal as it was addressed by Sydney LEP 2012 Amendment No 41 for minor policy and housekeeping.

The Department considers this post exhibition change to be appropriate. It is recommended that this amendment be endorsed without requiring further exhibition as it does not fundamentally change the intent of the planning proposal as exhibited.

Approach to adjusting equivalent monetary contribution rates

The exhibited Program explained an approach to how the equivalent monetary contribution rates would be adjusted over time. Amendments recommended to:

- c) align the timing of adjustment of rates with current processes to reduce potential confusion in the transition process;
- d) reduce the number of adjustments to one per year to increase certainty for developers; and
- e) provide clarification to how the rate is adjusted.

The Department considers this post exhibition change to be appropriate. It is recommended that this amendment be endorsed without requiring further exhibition as it does not fundamentally change the intent of the planning proposal as exhibited.

Introduction of a phase-in period for Green Square

Submissions raised concern that the immediate introduction of the increased equivalent monetary contribution rate in Green Square would impact on development viability of those development applications already in the pipeline. To address this, it is recommended the increased equivalent monetary contribution rate identified in the Program would be phased in. This will enable the market to adjust to increased rates.

The Department considers this post exhibition change to be appropriate. It is recommended that this amendment be endorsed without requiring further exhibition as it does not fundamentally change the intent of the planning proposal as exhibited.

Long standing development applications

In response to submissions raising concerns that complex development applications that have been in the development pipeline for some time would be impacted by the requirement to make a contribution.

A savings provisions is proposed that if a development application has not been determined before the commencement of Sydney Local Environmental Plan 2012 (Amendment No 52) it must be determined as if that Plan had not commenced.

The Department considers this post exhibition change to be appropriate. It is recommended that this amendment be endorsed without requiring further exhibition as it does not fundamentally change the intent of the planning proposal as exhibited.

Change of use in Central Sydney and on residual land

Consistent with the intent in Central Sydney and on residual land that a contribution should be made where existing floor area is changing to a higher order/value use, the planning proposal is recommended to be amended so that where there is a change of use from non-residential to residential or tourist accommodation, the contribution requirement will apply.

In Central Sydney, this replaces a more general requirement that a contribution would be applied in the event of any change of use. This is considered to be overly onerous and would potentially result in a contribution requirement for relatively minor changes to floor area use.

The Department considers this post exhibition change to be appropriate. It is recommended that this amendment be endorsed without requiring further exhibition as it does not fundamentally change the intent of the planning proposal as exhibited.

Review of rates for planning proposal land

It is recommended the Program be amended to clarify the rates that may apply to planning proposal land will be reviewed annually, at the same time as other contribution rates will be reviewed. This is to ensure certainty and that rates reflect current housing market conditions.

The Department considers this post exhibition change to be appropriate. It is recommended that this amendment be endorsed without requiring further exhibition as it does not fundamentally change the intent of the planning proposal as exhibited.

Substantial alterations and additions

The planning proposal and drafting instructions have been amended to remove any requirement that a contribution would apply where the development comprises only 'substantial' alterations and additions. On consideration of submissions, there is concern that this may trigger a requirement where modest renovations and/or required building upgrades are being made. This was not the intention of the planning proposal.

The Department considers this post exhibition change to be appropriate. It is recommended that this amendment be endorsed without requiring further exhibition as it does not fundamentally change the intent of the planning proposal as exhibited.

Where a previous contribution has been made

It is recommended the Program be amended to ensure that floor area that has been the subject of a previous affordable housing contribution, is not required to make further contribution following subsequent development of that same floor area. It is noted that where floor area has been demolished, that the contribution requirement will apply to any floor area that replaces it.

The Department considers this post exhibition change to be appropriate. It is recommended that this amendment be endorsed without requiring further exhibition as it does not fundamentally change the intent of the planning proposal as exhibited.

3.1.2 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), 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 Sydney Local Environmental Plan 2012 is to include a provision which specifies that if proposed development is on certain land, then a condition can be imposed on the development consent to require the payment of an amount of contribution. The proposed provision 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.

Residual Land and Central Sydney affordable housing levy contribution

As previously discussed in this report, the staged implementation of the affordable housing contribution is the appropriate mechanism to ensure an economically viable approach. In this regard, it is necessary to apply the rate applicable at the time of DA lodgement, because:

- the expected rate of the affordable housing contribution will be known during the preparation and lodgement of a development application;
- this delivers Council's intent for staging the contributions to allow the market to adjust to a new affordable housing levy;
- this will provide certainty and transparency to how the contribution rate will be determined; and
- responds appropriately to the economic impact of the COVID-19 pandemic.

Date of lodgement of development application	Total floor area intended for non- residential floor area	Total floor area intended for residential floor area
1 July 2021 – 30 June 2022	0.5%	1.5%
1 July 2022 onwards	1%	3%

Commencement of the Plan

To provide the industry and developers additional notice of the proposed amendment to Council's affordable housing provision and Affordable Housing Program, the instrument has been drafted to come into effect on 1 July 2021.

4 Department's Assessment

The proposal has been subject to detailed review and assessment through the Department's Gateway determination 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 E**), 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 2 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 3 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

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.

Guideline for developing an affordable housing contribution scheme

On 28 February 2019, the former Minister for Planning approved an amendment to SEPP 70 to expand the application of SEPP 70 to all local government areas (LGAs).

To support the amendment to SEPP 70, the Department prepared and released a guideline for developing an affordable housing contribution scheme (guideline) (**Attachment F**).

The Greater Sydney Commission's (GSC) Greater Sydney Region Plan and District Plans outline an approach to implement Affordable Rental Housing Targets. The targets should be applied at the same time as an uplift of land and be subject to viability testing.

The SEPP 70 guideline is consistent with the approach in the Greater Sydney Commission's Region Plan and District Plans.

The document is a guide for councils on how to develop an affordable housing contribution scheme under Section 9.32(1)(c) of the EP&A Act.

The Department conditioned the Gateway determination to ensure that prior to finalisation, the planning proposal is amended to demonstrate consistency with any available guideline under SEPP 70.

Council's affordable housing program is considered inconsistent with the GSC's Greater Sydney Region Plan and the Department's guideline because:

- the planning proposal creates a quasi-blanket affordable housing contribution rate that is not linked to an uplift or up zoning of land, whereas the guideline outlines a process, including identifying areas suitable for uplift and testing an affordable housing contribution rate using a residual land value approach; and
- the planning proposal has set a standard affordable housing contribution rate to new residential floor space (uplift) without testing having being undertaken at the same time as proposing a rezoning of land to validate economic viability. As a result, while the clause to levy contributions would be included in the LEP, it could be different to the affordable housing contribution rate set out in the scheme. To ensure transparency for industry, the guideline requires councils to be validate a contribution rate at the same time as a rezoning is proposed.

The Department considers the inconsistency with the guideline to be justified. The planning proposal was prepared and submitted to the Department for a Gateway determination prior to the release of the final District Plans and the Department's affordable housing guideline was not finalised and publicly released until after the planning proposal was submitted to the Department for finalisation.

Furthermore, the EP&A Act allows Councils to levy for affordable housing contributions if they fulfil the requirements of Section 7.32 of the EP&A Act. The Guideline only applies to councils seeking to prepare an affordable housing scheme under 7.32(1)(c) of the act. For these reasons the Department recommends the LEP be made.

Impact on smaller developments

The proposed amendment to levy affordable housing contributions in residual and Central Sydney land will include additional exemptions to ensure the contribution requirement does not unreasonably impact on the cost of development and be inadvertently captured by a requirement to make a contribution. In accordance with Council's program, development that is for one or more of the following are exempted from an affordable housing contribution:

- affordable housing;
- development that would result in the applicable affordable housing contribution amounting to more than 15% of the agreed cost of construction, or where the agreed cost of construction is less \$100,000; or
- where the change of use is from:
 - a commercial use or light industrial use to a general industrial use or heavy industrial use, or
 - a general or heavy industrial use to another general industrial use or heavy industrial use.

Furthermore, the draft LEP defines relevant development which clause 7.13 applies on land at Green Square or Ultimo-Pyrmont, or on southern employment land or residual land that involves:

- i) the erection of a new building the gross floor area of which is more than 200 square metres; or
- ii) alterations to an existing building that will result in the creation of more than 200 square metres of gross floor area that is intended to be used for the purpose of residential accommodation; or
- iii) alterations to an existing building that will result in the creation of more than 60 square metres of gross floor area that is intended to be used for a purpose other than residential accommodation; or
- iv) the demolition of any existing floor area and the subsequent creation of more than 200 square metres of gross floor area on the same site (whether for the same or a different purpose);

For land at Central Sydney it is development that involves:

- i) the creation of more than 100 square metres of gross floor area, or
- ii) the demolition of any existing floor area and the subsequent creation of more than 100 square metres of gross floor area on the same site (whether for the same or a different purpose), or
- iii) a change of use of any existing floor area of a building from other than residential accommodation to residential accommodation or tourist or visitor accommodation.

The Department is satisfied that these exclusions are reasonable and will not impact on development feasibility on smaller developments.

Monetary reporting

In response to the concerns raised in submissions about the potential impact on viability with the staged introduction of the residual land and Central Sydney land affordable housing contribution, the Department considers that the impacts can be mitigated through monetary reporting.

It is recommended that council undertake monetary reporting annually before the full contribution rate commences. The reporting should include details on development take up and the supply of affordable housing. This is consistent with the Affordable Housing Guideline which recommends that councils to review evidence related to the affordable housing contribution scheme at least once a year. This will ensure issues or considerable market changes in market conditions are identified.

Greater Sydney Commission

The Greater Sydney Commission was consulted on the proposal and they provided the following comments (**Attachment G**):

Planning Proposal Land Contribution:

- The scheme seeks to address the Greater Sydney Region Plan and District Plan requirements for an affordable rental housing targets on future up zoned land by setting differential targets across the local government area based on a viability test. The GSC recommends that to remain consistent with the Greater Sydney Region Plan requirement for affordable rental housing to focus on very low and low income households, at least two thirds of the proposed targets be reserved for these households; and
- If other local infrastructure costs are to be met from value capture then the rates for affordable rental housing would need to be reduced accordingly.

Central and Residual Land Levy:

- The District Plan target does not preclude councils from negotiating additional affordable housing for moderate income households where need has been identified in a local housing strategy and the proposed target has been subject to viability testing;
- The GSC notes that imposing a new levy on existing land has the potential to negatively impact the feasibility of developing land for developers by introducing a new cost. This cost needs to be carried by the land owner, developer or future apartment;
- The scale of the levy has been kept small at 3% whilst the staged mechanism is a sensible approach. The GSC's consultation with the development industry indicates that telegraphing the intention early and then slowly stepping up a levy is the most acceptable pathway for such a policy;
- The fact that similar levies have been in place at Green Square and Pyrmont Ultimo for a number of property cycles, without any obvious adverse consequences on supply, provides some comparative evidence that the proposed approach is satisfactory; and
- Council's viability analysis of the proposal indicated that the impacts on feasibility would be small and are within the expected variability of returns on development projects.

Table 4 Consultation following the Department's assessment

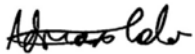
Stakeholder	Consultation	The Department is satisfied with the draft LEP
Mapping	Maps have been prepared by Council and have been checked by the Department's ePlanning team. The maps meet the technical requirements.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details

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 H).</p> <p>Council confirmed on 27/04/2020 that it was agreeable with the draft and that the plan should be made (Attachment I).</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
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>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details

5 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 the Eastern District Plan City and City of Sydney Local Strategic Planning Statement.
- It is consistent with the Gateway Determination.
- Issues raised during consultation have been addressed, and there are no outstanding objections to the proposal.



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Attachments

Attachment A – Planning Proposal

Attachment B – Affordable Housing Program

Attachment C – Gateway Determination

Attachment D – Council's Post Exhibition Report

Attachment E – Gateway Determination Report

Attachment F – Guideline to Developing Affordable Housing Contribution Scheme

Attachment G – GSC Comments

Attachment H – Section 3.36(1) Consultation with Council

Attachment I – Confirmation from Council