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Gateway determination report – PP-2021-3645

Performance Standards for Net Zero Energy Buildings

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Table 1 Reports and plans supporting the proposal

Relevant reports and plans
Attachment D – Outgoing Correspondence Request for Gateway
Attachment E – Report Considered by the CSPC – Performance Standards for Net Zero Energy Buildings
Attachment E1 – CSPC Resolution – 13 May 2021 – Performance Standards for Net Zero Energy Buildings

1 Planning Proposal

1.1 Overview and objectives of planning proposal

Table 2 Planning proposal details

LGA	City of Sydney Local Government Area
PPA	City of Sydney Council
NAME	Performance Standards for Net Zero Energy Buildings
NUMBER	PP-2021-3645
LEPs TO BE AMENDED	Sydney Local Environmental Plan 2012, Sydney Local Environmental Plan (Green Square Town Centre) 2013 and Sydney Local Environmental Plan (Green Square Town Centre – Stage 2) 2013.
RECEIVED	27/05/2021
FILE NO.	IRF21/2919
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

1.2 Objectives of planning proposal

The planning proposal contains objectives and intended outcomes that adequately explain the intent of the proposal.

The objectives of the planning proposal are to:

- reduce energy consumption and the associated greenhouse gas emissions of office, shopping centre and hotel developments;
- improve the resilience of office, shopping centre and hotel developments to the impacts of climate change; and
- facilitate net zero energy development by 2026 for development subject of this planning proposal.

The planning proposal will introduce performance standards into the relevant LEPs, which bring together energy efficiency, on-site renewables and off-site renewables and will be implemented in stages. The performance standards have been developed for new office, shopping centre, hotel and multi-unit residential developments, as well as refurbishments and additions to these development types.

The objectives of this planning proposal are clear and adequate.

1.3 Explanation of provisions

The planning proposal seeks to amend the Sydney Local Environmental Plan 2012, Sydney Local Environmental Plan (Green Square Town Centre) 2013 and Sydney Local Environmental Plan (Green Square Town Centre – Stage 2) 2013 by introducing a new local provision that will:

- set out the objective of the clause, which is to reduce greenhouse gas emissions and increase the resilience of buildings;
- identify the clause only applies to new development of and refurbishment and additions to office, shopping centre and hotel developments of certain sizes;
- require the consent authority to be satisfied that development is either highly efficient and reduces energy use through energy efficiency and the use of on-site renewables or is capable of achieving net zero energy prior to commencing use, depending on when the development application is lodged
- require consideration be given to the relevant performance standards in the Development Control Plan (or a Design Guide adopted by Council) when determining if a development is either highly efficient and reduces energy use through energy efficiency and the use of on-site renewables or is capable of achieving net zero energy prior to commencing use, depending on when the development application is lodged
- include definitions specific to the local provision for net zero energy, refurbishment and shopping centre.

The planning proposal will apply to the development types shown in **Table 2**.

Table 2 Development the planning proposal applies to

Development	Development thresholds for performance standards
Office (base building)	A new office building containing a net lettable area (NLA) of 1,000m ² or more
	A refurbishment to an existing office building that contains an NLA of 1,000m ²
	an existing office building of 1,000m ² NLA or more with an addition of 50% or more NLA
Retail (applies to shopping centre base building only)	a new shopping centre containing a gross lettable area – retail (GLAR) of 5,000m ² or more
	an existing shopping centre of 5,000m ² GLAR or more with an addition of 50% or more GLAR
Hotel (whole of building)	A new hotel of 100 rooms or more
	A refurbishment to an existing hotel that contains 100 rooms or more
	An existing hotel of 100 rooms or more with an addition of 50% or more hotel rooms
Mixed use	Where one or more of the above thresholds for each proposed use apply

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved.

The planning proposal seeks to require consideration be given to the relevant performance standards, via a Development Control Plan (DCP) or a Design Guide adopted by Council. It is noted that the Planning Proposal identifies that either a DCP or Design Guide will be brought into effect to support the Net Zero controls.

Prior to community consultation, a condition has been identified requiring Council to refine the Planning Proposal to clearly identify the proposed hierarchy of controls and whether a Design Guide or DCP will come into effect, including the supporting proposed performance standards. It is noted that this will need to address how the design guide / DCP will be referenced within the amended provision of the Sydney LEP 2012. This should also consider how these provisions will be addressed by future State Significant Development if required.

As defined within 'Planning for net zero energy buildings' (**Attachment G**), a net zero energy development means a development that consumes no more energy than is provided by a combination of:

- renewable energy generated on-site, or
- renewable energy procured from off-site sources for a period of 5 years.

In this definition, energy includes electricity, thermal energy and gas, and excludes diesel used for emergency back-up generation. Other emissions, such as those from refrigerants, are not included.

The planning proposal seeks to implement the performance standards in two stages. The first stage applies to development applications (DA's) submitted between 1 January 2023 and 31 December 2025 and includes performance standards that can be achieved through energy efficiency and on-site renewable energy. The second stage applies to DA's submitted from 1 January 2026 onwards, and achieves net zero emissions through increasing energy efficiency and on-site renewable energy target plus offsetting any remaining energy use through purchasing off-site renewable energy.

There are options available for meeting the performance standards, which include recognised planning and design tools such as National Australian Built Environment Rating System (NABERS) and Green Star, as well as an energy intensity target of energy used per square metre over a year. NABERS and Green Star require third party verification which simplifies the DA assessment process.

There are three options to procure off-site renewable energy. These include purchasing and retiring large-scale generation certificates, purchasing GreenPower certificates or entering into a new, augmenting an existing, power purchase agreement. Council have stated a condition of consent will require the proponent to enter into a contract that involves the procurement of the off-site renewables each year for five years.

The performance standards which are proposed for the development types are shown in **Table 3**.

Table 3 Development thresholds and performance standards

		Performance Standards	
Development	Development thresholds for performance standards	Applications submitted between 1 January 2023 – 31 December 2025 (Stage 1)	Applications submitted from 1 January 2026 onwards (Stage 2)

		Performance Standards	
Office (base building)	A new office building containing a net lettable area (NLA) of 1,000m ² or more	maximum 45 kWh/yr/m ² of Gross Floor Area (GFA), or 5.5 Star NABERS Energy Commitment Agreement (CA) + 25%, or	maximum 45 kWh/yr/m ² of GFA, or 5.5 Star NABERS Energy CA + 25%, or
	A refurbishment to an existing office building that contains an NLA of 1,000m ²	certified Green Star Buildings rating with a “credit achievement” in Credit 22: Energy Use, or	certified Green Star Buildings rating with a “credit achievement” in Credit 22: Energy Use, or
	an existing office building of 1,000m ² NLA or more with an addition of 50% or more NLA	equivalent	equivalent and renewable energy procurement equivalent to “net zero energy” or a maximum 45 kWh/yr/m ² of GFA
Retail (applies to shopping centre base building only)	a new shopping centre containing a gross lettable area – retail (GLAR) of 5,000m ² or more	maximum 55 kWh/yr/m ² of GFA, or 4 star NABERS Energy CA, or	maximum 45 kWh/yr/m ² of GFA, or 5 star NABERS Energy CA, or
	an existing shopping centre of 5,000m ² GLAR or more with an addition of 50% or more GLAR	certified Green Star Buildings rating achieving the “minimum expectation” in Credit 22: Energy Use, or equivalent	certified Green Star Buildings rating with “exceptional performance” in Credit 22: Energy Use, or equivalent and renewable energy procurement equivalent to “net zero energy” or a maximum of 45 kWh/yr/m ² of GFA
Hotel (whole of building)	A new hotel of 100 rooms or more	maximum 245 kWh/yr/m ² of GFA, or	maximum 240 kWh/yr/m ² of GFA, or
	A refurbishment to an existing hotel that contains 100 rooms or more	4 star NABERS Energy CA, or certified Green Star Buildings rating achieving the “minimum expectation” in Credit 22: Energy Use, or	4 star NABERS Energy CA + 10%, or certified Green Star Buildings rating with a “credit achievement” in Credit 22: Energy Use, or
	An existing hotel of 100 rooms or more with an addition of 50% or more hotel rooms	equivalent	equivalent and renewable energy procurement equivalent to “net zero energy” or a maximum of 240 kWh/yr/m ² of GFA

		Performance Standards	
Mixed use	the above thresholds for each proposed use apply	the above performance standards apply for each proposed use	the above performance standards apply for each proposed use

The standards proposed within the planning proposal are beyond that of the performance standards of the National Construction Code (NCC). Council contends the energy modelling which informed the NCC used development typologies reflective of average development across Australia, not the built form found within the Sydney CBD.

Council have stated that within the city, existing offices, hotels and apartments contribute to 68 per cent of building greenhouse gas emissions. The Sydney CBD has higher density compared to other parts and regions of Australia. Council contends the performance standards of the NCC do not reflect the range of developments found in large cities.

The Department considers, from a policy perspective, that the proposed targets (NABERS, Green Star energy credit and energy intensity) appear reasonable, based on projects within Greater Sydney and the work on costings and Internal Rate of Return (IRR) conducted by Council.

1.4 Site description and surrounding area

The planning proposal applies to the entire City of Sydney Local Government Area.

1.5 Background

In May and November 2018, two industry and government forums were facilitated by Council. These forums identified issues and opportunities to support the target of net zero emissions by 2050.

On the basis of the forums, the program of work considered four building asset classes:

- Office (base building)
- Shopping centre (base building)
- Hotel (whole building)
- Multi-unit residential (whole building).

In addition, mixed use was also considered as component uses of the four asset types.

Energy use was modelled for each of the four development types. Section J of the NCC was established as the baseline for the modelling.

From July 2019 to February 2021, Council engaged with industry and government on the energy reduction measures, initial energy modelling, cost benefit analysis, draft performance standards and timeframes, development thresholds and integration of off-site renewables. Through this process, stakeholder feedback shaped the final performance standards.

Developers recommended the implementation be delayed by 1 to 2 years, to account for the impact of the COVID-19 pandemic, and its effects on retail and residential development markets. The delay resulted in Stage 1 commencing in 2023 and Stage 2 commencing in 2026.

In March 2021, the planning for net zero energy buildings briefing for industry and government was conducted by Council. A total of 185 representatives from industry, NSW government, Greater Sydney councils and agencies/councils outside of NSW attended the briefing. The objective of the briefing was to present the proposed performance standards, answer key questions about the project and confirm support for the implementation of the standards. After the briefing, a survey

was conducted, with 30% of the attendees completing the survey. A total of 76% of the respondents supported the performance standards to be implemented. Council's planning proposal is accompanied by a summary report of the briefing.

2 Need for the planning proposal

The planning proposal will give effect to the Eastern City District Plan, the City of Sydney Local Strategic Planning Statement (City Plan 2036) and Sustainable Sydney 2030. It will help facilitate a built form within the Sydney LGA which contributes to reducing greenhouse gas emissions and achieve net zero emissions.

The planning proposal will also contribute to achieving the objectives of the NSW Government's Net Zero Plan, which aims to achieve net zero emissions by 2050. On a global scale, the planning proposal contributes to achieving the ambitions of the Paris Agreement, which outlines global carbon emissions must reach net zero by around 2050.

Currently, there are performance targets within Council's planning controls for new office buildings only, which align with the 2019 update to the NCC. There are no targets for shopping centres or hotel developments.

A planning proposal is one mechanism of achieving the objectives and intended outcomes. The proposed LEP amendments described in this planning proposal will be supported by new provisions under the Design Guide adopted by Council. The planning proposal is accompanied by 'Planning for net zero energy buildings', which is a document outlining the performance standards pathways to achieve high-performing net zero energy buildings in Greater Sydney.

A condition has been imposed for the Gateway determination, to ensure the Design Guide and 'Planning for net zero energy buildings' will be exhibited concurrently with the Planning Proposal.

3 Strategic assessment

3.1 District Plan

The site is within the Eastern City District and the Greater Sydney Commission released the Eastern City District Plan on 18 March 2018. The plan contains planning priorities and actions to guide the growth of the district while improving its social, economic and environmental assets.

The planning proposal is consistent with the priorities for infrastructure and collaboration, liveability, productivity, and sustainability in the plan as outlined below.

The Department is satisfied the planning proposal gives to the District Plan in accordance with section 3.8 of the *Environmental Planning and Assessment Act 1979*. The following table includes an assessment of the planning proposal against relevant directions and actions.

Table 3 District Plan assessment

District Plan Priorities	Justification
Planning Priority E1: Planning for a city supported by infrastructure	<p>The proposal is consistent with this priority and will deliver Action 6 of the Eastern City District Plan:</p> <p><i>Action 6:</i></p> <p><i>Maximise the utility of existing infrastructure assets, and consider strategies to influence behaviour changes, to reduce the demand for new infrastructure, including supporting the development of adaptive and flexible regulations to allow decentralised utilities.</i></p> <p>The proposal will provide standards for development to achieve net zero energy use for DA's lodged after 1 January 2026, and will support investment in renewable energy sectors.</p>
Planning Priority E13: Supporting growth of targeted industry sectors	<p>The proposal is consistent with this priority and will deliver Action 55 of the Eastern City District Plan:</p> <p><i>Action 55:</i></p> <p><i>Provide a regulatory environment that enables economic opportunities created by changing technologies.</i></p> <p>The proposal will facilitate a highly energy efficient built form and net zero energy buildings, which creates employment for energy efficiency and renewables.</p>
Planning Priority E19: Reduce carbon emissions and managing energy, water and waste efficiently	<p>The proposal is consistent with this priority and will deliver Action 68, 69 and 72 of the Eastern City District Plan:</p> <p><i>Action 68:</i></p> <p><i>Support initiatives that contribute to the aspirational objective of achieving net-zero emissions by 2050, especially through the establishment of low-carbon precincts in Planned Precincts, Collaboration Areas, State Significant Precincts and Urban Transformation projects.</i></p> <p><i>Action 69:</i></p> <p><i>Support precinct-based initiatives to increase renewal energy generation, and energy and water efficiency, especially in Planned Precincts, Collaboration Areas, State Significant Precincts and Urban Transformation Projects.</i></p> <p><i>Action 72:</i></p> <p><i>Encourage the preparation of low-carbon, high efficiency strategies to reduce emissions, optimise the use of water, reduce waste and optimise car parking provision where an increase in total floor area greater than 100,000 square metres is proposed in any contiguous area of 10 or more hectares.</i></p> <p>The proposal will contribute to the City of Sydney Council's objective of net zero by 2040, and the State Government's objective of net zero by 2050. The proposed performance standards will reduce greenhouse gas emissions through the use of on-site renewable energy and off-site renewable energy.</p>
Planning Priority E20: Adapting to the impacts of	<p>The proposal is consistent with this priority and will deliver Action 74 and 76 of the Eastern City District Plan:</p>

urban and natural hazards and climate change

Action 74:

Support initiatives that respond to the impacts of climate change.

Action 76:

Mitigate the urban heat island effect and reduce vulnerability to extreme heat.

The proposal will introduce performance standards to achieve net zero energy buildings and reduce greenhouse gas emissions.

3.2 Local

The proposal states that it is consistent with the following local plans and endorsed strategies. It is also consistent with the strategic direction and objectives, as stated in the table below:

Table 4 Local strategic planning assessment

Local Strategies	Justification
Local Strategic Planning Statement	<p>The planning proposal supports the following planning priorities within the LSPS:</p> <p>Priority I2: Align development and growth with supporting infrastructure</p> <p>Priority S2: Creating better buildings and places to reduce emissions and waste and use water efficiently</p> <p>Priority S3: Increasing resilience of people and infrastructure against natural and urban hazards.</p>
Sustainable Sydney 2030	<p>Sustainable Sydney 2030 is Council's Community Strategic Plan. It contains 10 strategic directions to guide the future of the City.</p> <p>The proposal will help to deliver on the following directions:</p> <ul style="list-style-type: none"> • Direction 2: A leading environmental performer • Direction 9: Sustainable Development, Renewal and Design • Direction 10: Implementation through Effective Governance and Partnerships.

3.3 Central Sydney Planning Committee

On 13 May 2021, the Central Sydney Planning Committee reviewed the planning proposal for Performance Standards for Net Zero Energy Buildings and Sydney Development Control Plan 2012 Amendment (**Attachment E and E1**). The committee resolved to approve the planning proposal for submission to the Department with a request for Gateway Determination.

3.4 Section 9.1 Ministerial Directions

The planning proposal has no applicable section 9.1 Ministerial Directions.

3.5 State environmental planning policies (SEPPs)

The planning proposal is consistent with all relevant SEPPs as discussed in the table below.

Table 6 Assessment of planning proposal against relevant SEPPs

SEPPs	Consistent / Not Consistent	Reasons for Consistency or Inconsistency
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	Consistent	The planning proposal does not propose provisions that would impact the application of this SEPP. This is as it applies to development not subject to this SEPP.
State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004	Consistent	The planning proposal does not propose provisions that would impact the application of this SEPP.
State Environmental Planning Policy (Infrastructure) 2007	Consistent	The planning proposal does not propose provisions that would impact the application of this SEPP.
State Environmental Planning Policy (State Significant Precincts) 2005	Consistent	The planning proposal does not propose provisions that would impact the application of this SEPP.
State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development	Consistent	The planning proposal does not propose provisions that would impact the application of this SEPP.

4 Site-specific assessment

4.1 Environmental

The planning proposal will not adversely affect any critical habitat or threatened species, populations or ecological communities, or their habitats.

The Department considers the planning proposal will have positive environmental impacts, as it will facilitate energy efficient buildings within the Council and reduce greenhouse gas emissions.

4.2 Social and economic

The planning proposal provides the following positive social impacts:

- reduced greenhouse gas emissions;
- reduced running costs for developers, owners and occupants of buildings;
- demand for new skills and jobs in energy efficiency; and
- savings in avoided health, energy network and emissions costs.

A cost benefit analysis was undertaken by Council as part of the *Planning for net zero energy buildings* which forms part of the Planning Proposal. This analysis considered the costs and benefits to direct participants.

Council contends the broader analysis conducted identified that the performance standards will save investors, businesses and occupants \$1.341 billion between their implementation in 2023 and 2050.

The cost benefit analysis also identified a positive financial return for each development. The Internal Rate of Return (IRR) is the discount rate which would make the net present value of all cash flows equal to zero. A positive IRR makes a profit. A CapEx (Capital Expenditure) increase is the additional cost to meet the performance standard as a percentage of the full cost of the development. **Table 7** illustrate a positive IRR and a small CapEx increase, which means the return outweigh the costs.

Table 7 Development the planning proposal applies to

Asset Class	Stage	IRR	CapEx Increase
Office	First	10 – 37%	0.11% - 0.58%
	Second	16 – 28%	0.16% - 0.52%
Shopping centre	First	2 – 23%	0.16% - 0.42%
	Second	9 – 11%	0.95% - 1.28%
Hotel	First	17 – 20%	A new hotel of 100 rooms or more
	Second	9 – 10%	A refurbishment to an existing hotel that contains 100 rooms or more

The Department notes the analysis undertaken by Council and considers the planning proposal should be subject to broader community consultation.

4.3 Infrastructure

The planning proposal does not seek to facilitate any physical works, rather the inclusion of new local provisions into the relevant LEPs to introduce performance standards. These standards bring together energy efficiency, on-site renewables and off-site renewables and will be implemented in stages.

The Department considers the planning proposal to have positive impacts to infrastructure, as the performance standards will reduce power and electricity demand.

5 Consultation

5.1 Community

Council proposes a community consultation period of 28 days.

The exhibition period proposed is considered appropriate, and forms to the conditions of the Gateway determination.

5.2 Agencies

The proposal does not specifically raise which agencies will be consulted.

It is recommended the following agencies be consulted on the planning proposal and given 28 days to comment:

- NSW Environment, Energy and Science; and
- Relevant utility and service providers.

6 Timeframe

Council proposes a 12 month time frame to complete the LEP.

The Department recommends a time frame of 12 months to ensure it is completed in line with its commitment to reduce processing times. It is recommended that if the gateway is supported it also includes conditions requiring council to exhibit and report on the proposal by specified milestone dates.

A condition to the above effect is recommended in the Gateway determination.

7 Local plan-making authority

Council has advised that it would like to exercise its functions as a Local Plan-Making authority. The Department recommends that Council should not be the local plan-making authority for this planning proposal due to the nature and complexity of the proposal, and its potential to affect State Policy.

8 Assessment Summary

The planning proposal is supported to proceed with conditions for the following reasons:

- it is consistent with the Eastern City District Plan
- it is consistent with and gives effect to, the City of Sydney Local Strategic Planning Statement
- it will facilitate net zero energy buildings
- it will reduce costs for developers, owners and occupants for buildings
- it will reduce greenhouse gas emissions
- it will generate employment and new skills in energy efficiency.

As discussed in the previous sections 1, 3, 4 and 5, the proposal should be updated to:

- remove any draft clauses from the planning proposal and place into an appendix as example clauses. Refine the planning proposal to include a plain English explanation of the principles of the proposed provisions and intended policy outcomes they need to secure.

Based on the assessment outlined in this report, the proposal must be updated before consultation to:

- clearly identify the proposed hierarchy of controls and whether a Design Guide or DCP will come into effect, including the supporting proposed performance standards.

9 Recommendation

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

1. The planning proposal is to be updated to:
 - remove any draft clauses from the planning proposal and place into an appendix as examples clauses. Refine the planning proposal to include a plain English explanation for the principles of the proposed provisions and intended policy outcomes they need to secure.
2. Prior to community consultation, Council is to refine the Planning Proposal to clearly identify the proposed hierarchy of controls and whether a Design Guide or DCP will come into effect, including the supporting proposed performance standards.
3. Council is to exhibit the associated draft amendment to Sydney Development Control Plan 2012/Design Guide and 'Planning for net zero energy buildings' concurrently with the Planning Proposal.
4. Consultation is required with the following public authorities:
 - NSW Energy, Environment and Science; and
 - Relevant utility and service providers.
5. The planning proposal should be made available for community consultation for a minimum of 28 days.
6. The planning proposal must be exhibited 6 months from the date of the Gateway determination.
7. The planning proposal must be reported to council for a final recommendation 10 months from the date of the Gateway determination.
8. The timeframe for completing the LEP is to be 12 months from the date of the Gateway determination.
9. Given the nature of the proposal, Council should not be authorised to be the local plan-making authority.

_____ (Signature)

_____ 1.10.21 _____ (Date)

Adrian Melo

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_____ (Signature)

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