

Appendix B

Drafting Instructions

Drafting instruction

Drafting instruction 1 – Amend Cl. 6.5 of Town Centre LEPs – ‘Affordable Housing’

The intent of this drafting instruction is to amend Clause 6.5 so it:

- ensures the Program is directly referred to as the guiding document for the ongoing application of the LEP requirements and the administration of the Program. Current clause only refer to the Program with regards to it setting equivalent monetary contribution amounts. This has left some ambiguity about the legal weight that should be granted the Program
- rearranges the existing clause 6.5 to address current confusion and unintended interpretation of the development that should be excluded from having to pay a contribution. In particular, a change of use that did not result in the creation of more floor area was being excluded, where that was not the intent of the provision. This can be achieved by:
 - removing reference to ‘excluded development’, instead defining what development the clause does apply to, and
 - defining Total Floor Area (TFA), removing from the calculation of TFA some previously excluded uses
- requires the contribution to be satisfied by way of monetary contribution or dwelling contribution in accordance with the City of Sydney Affordable Housing Program (the Program), as adopted by Council; and
- specifies that where an in-kind contribution is being made, that it is done in accordance with the Program;
- any DAs determined with affordable housing conditions of consent referencing the Green Square Program remain valid and lawful when the City of Sydney Affordable Housing Program comes into effect.

Recommended wording of draft clause:

6.5 Affordable housing

- (1) If a development application has been determined with reference to the Green Square Affordable Housing Program before the commencement of the City of Sydney Affordable Housing Program, the determined development application remains valid.
- (2) This clause applies to development that involves:
 - (a) the erection of a new building of more than 200 square metres, or
 - (b) additions to an existing building resulting in the creation of more than 200 square metres of residential floor area, or
 - (c) additions to an existing building resulting in the creation of more than 60 square metres of non-residential floor area, or
 - (d) demolition of existing floor area and the subsequent creation of more than 200 square metres of new floor area for the same or new purpose
 - (e) a change of use of more than 60 square metres of existing floor area.
- (3) The consent authority may, when granting development consent on land impose a condition on development under subclause (1) requiring a contribution equivalent to the ***affordable housing levy contribution***, being:

- (a) 3% of so much (if any) of the total floor area that is intended to be used for residential purposes, and
 - (b) 1% of so much (if any) of the total floor area that is not intended to be used for residential purposes.
- (4) Any condition imposed under this section must be for the purpose of achieving affordable housing outcomes, in accordance with the principles and requirements of the **City of Sydney Affordable Housing Program**, adopted by the Council on XX XX XX and made available by the Council on its website (www.cityofsydney.nsw.gov.au)
- (5) A condition imposed under this section must permit a person to satisfy the affordable housing levy contribution, by way of:
- (a) a dedication in favour of the Council of land comprising one or more dwellings (each having a total floor area of not less than 35 square metres and not more than 90 square metres) with any remainder being paid as a monetary contribution to the Council, or
 - (b) monetary contribution to the Council.
- (6) The rate at which monetary contribution is to be taken to be equivalent to floor area for the purposes of this clause is to be calculated in accordance with the **City of Sydney Affordable Housing Program**, adopted by the Council on XX XX XX.
- (7) To avoid doubt:
- (a) it does not matter whether the floor area, to which a condition under this clause relates, was in existence before, or is created after, the commencement of this clause, or whether or not the floor area concerned replaces a previously existing area, and
 - (b) the demolition of a building, or a change in the use of land, does not give rise to a claim for a refund of any contribution.
- (8) In this clause:

total floor area means the total of the areas of each floor of a building within the outer face of the external enclosing walls and including balconies, but excluding the following:

- (a) columns, fins, sun control devices, awnings and other elements, projections or works outside the general lines of the outer face of the external walls,
- (b) any area of a balcony that is more than the minimum area required by the consent authority in respect of the balcony,
- (c) ancillary car parking up to the maximum permitted by the consent authority and any associated internal vehicular and pedestrian access to that car parking,
- (d) space for the loading and unloading of goods,
- (e) other excluded floor area, being:
 - i. floor area in Zone IN1 General Industrial; or
 - ii. floor area used for the purpose of residential accommodation that is used to provide affordable housing or public housing; or
 - iii. floor area used for the purpose of community facilities, public roads or public utility undertakings.

The City of Sydney Affordable Housing Program is to be publicly exhibited in conjunction with the draft Planning Proposal. It is noted the operation of the clause is contingent on the adoption of the Programs by Council.

Drafting instruction 2 – Insert in Cl. 6.5A of Town Centre LEPs, ‘Contributions for purpose of affordable housing on Planning Proposal land’

Insert new Clause 6.5A and new Schedule to:

- identify *Planning Proposal land*. The intent of this new clause is to provide a framework to identify sites that have been the subject of a site-specific planning proposal and to require an affordable housing contribution (in addition to that which applies under 7.13), but only to the new development capacity achieved in the planning proposal. Ultimately the new Schedule is intended to streamline and provide transparency and certainty to a process that would otherwise be required to be achieved through a planning agreement at the planning proposal stage.
- On *Planning Proposal land*, an affordable housing contribution requirement is to be applied to:
 - the erection of a new building over 200 square metres
 - additions to an existing building resulting in the creation of more than 200 square metres of residential floor area
 - additions to an existing building resulting in the creation of more than 60 square metres of non-residential floor area, or
 - change of use to existing floor area from a non-residential purpose to a residential purpose.
- While not required to be reflected in the LEP, it should be noted the contribution rate to be applied to land will be established and inserted into the Schedule at the time the change of planning controls comes into effect, that is, the contribution rate will be different depending on what is achieved in a planning proposal. The affordable housing program explains how the rate will be established.
- The contribution requirement is intended to apply to additional floor area that is achieved in the planning proposal process. It does not matter if all of the additional floor area is not being achieved at the development application stage – a proportional contribution should apply. The intent is to ensure that the additional contribution requirement resulting from the planning proposal is to be proportionally shared amongst development, irrespective of staging.
- For clarity, the contribution is not intended to apply to other floor area that may be achieved subject to Clause 6.9 – Design Excellence of the LEPs
- Where development is staged or is subject to site specific DCP, then the contribution requirement is to be distributed amongst buildings within the development.
- Where floor area already exists on a site, and is not changing for a residential use, then it is not required to pay a contribution under this provision.
- The clause is to refer to the City of Sydney affordable housing program for how a contribution may be satisfied. However, the Schedule may identify how a contribution *must* be satisfied.

Recommended wording of draft clause:

6.5AA Contributions for purpose of affordable housing on Planning Proposal land

- (1) This clause applies to development on land identified in Column 1 of Schedule 7 – Planning Proposal land that involves:
 - (a) the erection of a new building over 200 square metres, or
 - (b) additions to an existing building resulting in the creation of more than 200 square metres of residential floor area, or
 - (c) additions to an existing building resulting in the creation of more than 60 square metres of non-residential floor area, or

- (d) change of use to existing floor area from a non-residential purpose to a residential use or a tourist or visitor accommodation use.
- (2) The consent authority may, when granting development consent on Planning Proposal land, impose a condition on development under subclause (1) requiring a contribution equivalent to the **affordable housing levy contribution**, being the amount identified in Column 3, Schedule 6 of so much of any **Schedule 6 floor area**.
- (3) The affordable housing levy contribution is to be satisfied as required by Column 4, Schedule 6.
- (4) The rate at which a monetary contribution is to be taken to be equivalent to floor area for the purposes of this clause is to be calculated in accordance with the Program.

Note. The Program is made available by the Council on its website (www.cityofsydney.nsw.gov.au).

- (5) Where development is staged development any contribution requirement payable under subclause (2) is to be distributed, in accordance with the Program, amongst the buildings (if there is more than one) as part of the site specific development control plan.
- (6) Where the floor area of development to which this clause applies is for less than the maximum floor area that can be achieved under Clause 4.4, then the contribution requirement payable under subclause (2) is to be proportional to the contribution requirement that would otherwise be payable if all of the floor area in the development achievable under Clause 4.4 was being achieved, in accordance with the Program.
- (7) To avoid doubt:
 - (a) it does not matter whether the floor area, to which a condition under this clause relates, was in existence before, or is created after, the commencement of this clause, or whether or not the floor area concerned replaces a previously existing area, and
 - (b) the demolition of a building, or a change in the use of land, does not give rise to a claim for a refund of any contribution.

- (8) In this clause:

Program means the City of Sydney Affordable Housing Program, adopted by the Council on XX XX XX.

Planning Proposal land floor area means the amount of floor area calculated as:

Floor area that can be achieved on the land under Clause 4.4 x uplift proportion shown in Column 2, Schedule 7

Schedule 6 (including example):

Column 1 - Locality and description	Column 2 – Uplift proportion	Column 3 – Contribution rate	Column 4 – How is the contribution requirement is to be satisfied?
e.g. 1 Fred Street, Zetland, Lot 5 DP 666666	50%	12%	Either by way of: (i) a dedication in favour of the Council of land comprising one or more dwellings (each having a total floor area of not less

Column 1 - Locality and description	Column 2 – Uplift proportion	Column 3 – Contribution rate	Column 4 – How is the contribution requirement is to be satisfied?
			<p>than 35 square metres and not more than 90 square metres), in accordance with the Program, with any remainder being paid as a monetary contribution to the Council, or</p> <p>(ii) monetary contribution to the Council.</p>

Drafting instruction 3 – Amend 7.13 – ‘Contribution for purpose of affordable housing’ in Sydney LEP 2012

The intent of this drafting instruction is to amend Clause 7.13 so:

- the adoption date of the City of Sydney Affordable Housing Program is updated in Sydney LEP 2012 when the Town Centre Planning Proposal is finalised and made.
- any DAs determined with affordable housing conditions of consent referencing the Green Square or Southern Employment Lands Programs remain valid and lawful when the City of Sydney Affordable Housing Program comes into effect.

Cl. 7.13 Contribution for purpose of affordable housing

- (1) If a development application has been determined with reference to the Green Square or Southern Employment Lands Affordable Housing Programs before the commencement of the City of Sydney Affordable Housing Program, the determined development application remains valid.