



# GATEWAY REVIEW Additional Response

**Purpose:** To respond to additional matters outlined in Randwick Council's notes to the Independent Planning Commission (IPC) dated 19 September 2018

<b>Dept. Ref. No:</b>	GR_2018_RANDW_001_00
<b>LGA</b>	Randwick
<b>LEP to be Amended:</b>	Randwick LEP 2012
<b>Address/ Location:</b>	Various sites within the Kensington and Kingsford Town Centres
<b>Proposal:</b>	The planning proposal seeks to increase the maximum building height and floor space ratio controls and introduce new local provisions for specified land within the town centres of Kensington and Kingsford (referred to herein as the K2K area).
<b>Review request made by:</b>	<input checked="" type="checkbox"/> The council <input type="checkbox"/> A proponent
<b>Reason for review:</b>	<input type="checkbox"/> A determination has been made that the Planning Proposal should not proceed. <input type="checkbox"/> A determination has been made that the Planning Proposal should be resubmitted to the Gateway. <input checked="" type="checkbox"/> A determination has been made that has imposed requirements (other than consultation requirements) or makes variations to the proposal that the proponent or council thinks should be reconsidered.
<b>Department's Summary of Response</b>	<p>The Department would consider supporting the delivery of community infrastructure for the K2K planning proposal under a clause of Randwick LEP 2012 for this planning proposal, but only if drafted in the same manner as clause 6.14 of Sydney LEP 2012 for Green Square or other similar provision such as Burwood or Penrith LEPs.</p> <p>Specifically, this means that development that results in additional floor space in accordance with floor space uplift afforded by the planning proposal be permitted, but only where that development includes community infrastructure on the land to which the development applies. Any type of infrastructure not provided on the development site would not be subject to the clause.</p> <p>The infrastructure identified in any clause is essential works listed the Department's Local Infrastructure Contributions Practice Note (2018) (<b>Attachment B</b>).</p> <p>However, if Council wishes to continue to implement the CIC scheme as currently proposed the Department continues to recommend that condition 1(c) of the gateway determination be retained on the basis that the proposed CIC clause is inconsistent with the EP&amp;A Act and supporting policies for levying development contributions.</p> <p>Noting that section 7.11 of the Act provides the only power to impose a condition of development consent to require a monetary contribution.</p>

## ADDITIONAL RESPONSE BY COUNCIL

<p><b>Details of response by Council</b></p>	<p>Randwick Council has prepared a written response to key matters raised by the Department in its Justification Report for the Gateway Review of the K2K Planning Proposal. Council's written response is attached at <b>Attachment A</b>.</p> <p>The Department is responding to the IPC's request for the Department to comment on Council's written response.</p>
<p><b>Key Matters raised in Council's further response</b></p>	<p>Council has prepared this additional written response to clarify their intentions for the following three gateway conditions, which are the subject of the Gateway Review:</p> <ul style="list-style-type: none"> <li>• <b>Deletion of Condition 1(b)</b> - Specifies building height and floor space ratios (FSRs) increases for sites where additional height can be attained under design excellence provisions.</li> <li>• <b>Deletion of Condition 1(c)</b> – Requires removal of the proposed LEP clause for the provision of community infrastructure</li> <li>• <b>Deletion of Condition 2</b> – Requires public authority consultation are considered unnecessary</li> </ul> <p>Council's written response states that condition 1(b) is not required if condition 1(c) is removed. Additionally, the response states that Council accepts the Department's position to retain condition 2.</p> <p>Therefore, the Council's response at <b>Attachment A</b> focuses on responding to each of the points of concern raised in the Department's Justification Report pertaining to condition 1(c) of the gateway determination.</p> <p>The Department has provided further comments where relevant to each of the matters raised by Council in <b>Attachment A</b> – see below.</p>

## ADDITIONAL RESPONSE BY THE DEPARTMENT

	Council's Comments	Department's further comments
<b>Item 1</b>	Council confirms that the proposed community infrastructure LEP clause will not include a specified requirement that a VPA must be entered into.	<ul style="list-style-type: none"> <li>The Department's supports this approach to not include a requirement in any clause of the LEP for a VPA to be entered into for the provision of community infrastructure as this is contrary to section 7.11 of the Act.</li> <li>If Randwick Council elects to use the same community infrastructure provision under clause 6.14 of Sydney LEP 2012 or other similar LEP provision, the Department would be willing to work with Council to resolve how best to implement this for the K2K planning proposal.</li> </ul>
<b>Item 2</b>	Council states the CIC infrastructure is essential to meeting the infrastructure needs of redevelopment of the town centres and that these items generally align with the essential works list under the Local Infrastructure Contributions Practice Note (2018).	<ul style="list-style-type: none"> <li>It is noted that Council agrees that the list of proposed works for the CIC don't all align with essential works listed under the Department's Local Infrastructure Contributions Practice Note (2018) (<b>Attachment B</b>).</li> <li>Clause 6.14 "Community Infrastructure floor space at Green Square" of the Sydney LEP 2012 identifies the types of community infrastructure in the clause consistent with the essential works listed in the Department's Local Infrastructure Contributions Practice Note (2018). Burwood and Penrith LEPs also have this provision and list infrastructure consistent with the essential works list.</li> <li>Further to the Department's argument in its justification report and while improvements to the amenity of the K2K area are commended, the use of alternative means of achieving some of the intended outcomes of the community infrastructure works sought do not appear to have been explored by Council.</li> <li>There was no evidence in Council's strategic documentation provided to the Department to demonstrate that there was a direct need generated for the proposed community infrastructure to support the additional 1,1515 dwellings expected to be development in accordance with the proposal. This type of justification would normally entail an Infrastructure Needs and/or Social and Open Spaces Needs Analysis which would clearly articulate the direct need for these works.</li> </ul>
<b>Item 3</b>	The CIC would provide for 'on-site' infrastructure that would be delivered in the K2K area and that this approach is the same as that applied under Clause 6.14 of Sydney LEP	<ul style="list-style-type: none"> <li>The documentation provided by Council does not outline where the proposed community infrastructure would be placed within the K2K area or not.</li> <li>Despite this, the Department would require that any community infrastructure clause would ensure that this infrastructure be delivered on the site to which the development relates,</li> </ul>

Council's Comments	Department's further comments
2012 for Green Square.	<p>not more broadly within or in the vicinity of the K2K area.</p> <ul style="list-style-type: none"> <li>• Under Clause 6.14 “Community Infrastructure floor space at Green Square” of the Sydney LEP 2012 it states that: <ul style="list-style-type: none"> <li>(1) <i>The objectives of this clause are as follows:</i> <ul style="list-style-type: none"> <li>(a) <i>to allow greater densities where Green Square community infrastructure is also provided,</i></li> <li>(b) <i>to ensure that such greater densities reflect the desired character of the localities in which they are allowed and minimise adverse impacts on the amenity of those localities,</i></li> <li>(c) <i>to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure.</i></li> </ul> </li> <li>(2) <u><i>The consent authority may consent to development that results in additional floor space in accordance with subclause (4) if the development includes Green Square community infrastructure.</i></u></li> <li>(3) <i>In deciding whether to grant development consent, the consent authority:</i> <ul style="list-style-type: none"> <li>(a) <i>must be satisfied that the development is consistent with the objectives of this clause, and</i></li> <li>(b) <i>must be satisfied that the Green Square community infrastructure is reasonably necessary at Green Square, and</i></li> <li>(c) <i>must take into account the nature of the Green Square community infrastructure and its value to the Green Square community.</i></li> </ul> </li> <li>(4) <i>Under subclause (2), a building on land in an Area specified in paragraph (a), (b), (c), (d), (e) or (f) is eligible for an amount of additional floor space determined by the consent authority but no more than that which may be achieved by applying the floor space ratio specified in the relevant paragraph to the building:</i> <ul style="list-style-type: none"> <li>(a) <i>Area 5—0.25:1,</i></li> <li>(b) <i>Area 6—0.5:1,</i></li> <li>(c) <i>Area 7—0.75:1,</i></li> <li>(d) <i>Area 8—1:1,</i></li> <li>(e) <i>Area 9—1.5:1,</i></li> <li>(f) <i>Area 10—2.2:1.</i></li> </ul> </li> <li>(5) <i>In this clause:</i></li> </ul> </li> </ul>

	Council's Comments	Department's further comments
		<p><b>Area</b> means an Area shown on the Floor Space Ratio Map.</p> <p><b>Green Square community infrastructure</b> means development at Green Square for the purposes of recreation areas, recreation facilities (indoor), recreation facilities (outdoor), public roads, drainage or flood mitigation works. (emphasis added in underline).</p> <ul style="list-style-type: none"> <li>• As underlined above, the provision of community infrastructure can be tied to additional floor space uplift but only where the community infrastructure is delivered as part of the development proposed.</li> <li>• This approach is also taken in Burwood LEP 2012 (clause 4.4A) and Penrith LEP 2010 (clause 8.7(3)).</li> <li>• Implementation of Clause 6.14 of Sydney LEP 2012 is supported by Development Guidelines "Providing Community Infrastructure in Green Square" (December 2012) prepared by City of Sydney Council (<b>Attachment C</b>).</li> <li>• It should be noted that unlike Randwick Council's proposal, the applicant for a DA in Green Square is to ascertain and deliver the extent and type of community infrastructure that would be required to achieve the additional FSR afforded under Clause 6.14 of Sydney LEP 2012.</li> <li>• In this regard the applicant is expected to deliver this agreed community infrastructure on the site of the development, rather than provide a monetary contribution to Council for the delivery of community infrastructure. It is only where this cannot be achieved, that the City of Sydney Council may collect monetary contributions; but would seek as far as practicable to have the community infrastructure works delivered.</li> <li>• If Randwick Council elects to use the same approach as that under Clause 6.14 of Sydney LEP 2012 for the delivery of community infrastructure the Department would be willing to work with Council to resolve how best to implement this for the K2K planning proposal.</li> </ul>

	<b>Council's Comments</b>	<b>Department's further comments</b>
<b>Item 4</b>	Council indicates that they have identified the location of the proposed locations for all CIC infrastructure items.	<ul style="list-style-type: none"> <li>The Department notes that not all of the locations of the proposed infrastructure for the CIC scheme are identified in the documentation provided.</li> </ul>
<b>Item 5</b>	Council indicates that the infrastructure costs have been developed using benchmarks.	<ul style="list-style-type: none"> <li>This information has not been provided to the Department. The Department has been unable to determine if the proposed infrastructure is appropriately costed.</li> </ul>
<b>Item 6</b>	Council indicates that acquisition of open space land is not included in the list of CIC works and will be paid for through Section 94A (Section 7.12) contributions.	<ul style="list-style-type: none"> <li>The Department notes that this information was not provided as such it could not be determined whether the proper scope of works for the listed community infrastructure items was identified.</li> </ul>
<b>Item 7</b>	Council indicates that the CIC items will give rise to the objectives of their strategy for a green, sustainable, attractive, vibrant and prosperous place.	<ul style="list-style-type: none"> <li>The Department notes that it is unclear how the community will directly benefit from some of the infrastructure items proposed by the CIC scheme.</li> </ul>
<b>Item 8</b>	Council is not clear on Department's reference to non-descript.	<ul style="list-style-type: none"> <li>The Department notes that this information was not supplied to inform what scope of works would be undertaken for each of the listed community infrastructure items identified. For example, whether the proposed items included land acquisition and construction costs.</li> </ul>
<b>Item 9</b>	Council has confirmed that the infrastructure works will be delivered within the K2K area only.	<ul style="list-style-type: none"> <li>The Department notes that the location of the proposed infrastructure items for the CIC scheme were not all clearly identified.</li> <li>To enact the same community infrastructure clause in Randwick LEP as clause 6.14 under Sydney LEP 2012, requires that this infrastructure be delivered on the site of the development, not the site of the planning proposal. This is expressly mentioned at subclause (2) of clause 6.14 of Sydney LEP 2012 (see Item 3 above).</li> </ul>

	<b>Council's Comments</b>	<b>Department's further comments</b>
<b>Item 10</b>	Council has confirmed that the proposed CIC levy rate was determined by their consultants HillPDA.	<ul style="list-style-type: none"> <li>• Noted</li> </ul>
<b>Item 11</b>	Council indicates that the cost of infrastructure items has been determined by Council and any shortfall would be met by Council.	<ul style="list-style-type: none"> <li>• Noted</li> </ul>
<b>Item 12</b>	Council states that there is no compulsion for a developer to utilise the bonus height controls proposed for the CIC scheme.	<ul style="list-style-type: none"> <li>• Noted</li> </ul>
<b>Item 13</b>	Council states that the items proposed for the CIC scheme are consistent with the requirements of the Act and the Regulations.	<ul style="list-style-type: none"> <li>• Noted. The Department's advice regarding the CIC scheme as outlined in the meeting with the IPC on 2 October 2018 and as outlined in the Department's justification report remains unchanged.</li> <li>• The Department would be willing to consider supporting the delivery of community infrastructure for the K2K planning proposal under a clause of Randwick LEP 2012 for this planning proposal, but only if drafted in the same manner as clause 6.14 of Sydney LEP 2012 for Green Square or other similar provision such as Burwood or Penrith LEPs.</li> <li>• Specifically, this means that development that results in additional floor space in accordance with floor space uplift afforded by the planning proposal be permitted, but only where that development includes community infrastructure on the land to which the development applies. Any type of infrastructure not provided on the development site would not be subject to the clause.</li> <li>• Note section 7.11 of the Act provides the only power to impose a condition of development consent to require a monetary contribution.</li> </ul>

# Attachments

**Attachment A** – Talking Notes for IPC meeting with Council, dated 19.9.18 prepared by Randwick Council

**Attachment B** – Practice Note – Local Infrastructure Contributions (January 2018), Department of Planning and Environment

**Attachment C** – Development Guidelines – Providing Community Infrastructure in Green Square (December 2012), City of Sydney Council