



GATEWAY REVIEW Justification Assessment

Purpose: To outline the Planning Proposal, the reasons why the original Gateway determination was made and to consider and assess the request for a review of a Gateway determination.

Dept. Ref. No:	GR_2018_RANDW_001_00	
LGA	Randwick	
LEP to be Amended:	Randwick LEP 2012	
Address/ Location:	Various sites within the Kensington and Kingsford Town Centres	
Proposal:	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).	
Review request made by:	<input checked="" type="checkbox"/>	The council
	<input type="checkbox"/>	A proponent
Reason for review:	<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.

BACKGROUND INFORMATION

Details of the Planning Proposal

The planning proposal seeks to amend the maximum building height and floor space ratio controls under Randwick Local Environmental Plan 2012 (RLEP 2012) and introduce new local provisions applying to land zoned B2 Local Centre and three sites zoned R2 Low Density Residential in the town centres of Kensington and Kingsford (K2K) (see **Figure 1**, image by Randwick Council).

The planning proposal outlines the proposed amendments in more detail (see **Attachment F**).



Figure 1: The extent of the land to which the planning proposal applies

The proposal has been modelled and based upon Council's Draft Planning Strategy for Kensington and Kingsford Town Centre **Attachment F**. Council also held an Urban Design Competition. However, only key ideas from this competition were utilised from the winning entry into the planning proposal for K2K.

Numerous other strategies and guidelines have helped inform the planning proposal – see list in Part A of the Planning Proposal report at **Attachment F**. However, the key influencing report is Conybeare Morrison's (CM+) *Kensington and Kingsford Town Centres Urban Design Report 2016*.

As stated by CM+'s report, the new and soon to be delivered South East light rail will better connect and serve the area and has been identified as the key catalyst to afford additional density in and around each of the light rail stations along Anzac Parade.

The land around the light rail stations were subsequently identified by the urban design report as key opportunity locations for additional density. The exception to this was the Carlton Street light rail stop (**Figure 2**).

The extent the K2K proposal area is generally confined within a 100m radius of each of the light rail stations as show in **Figures 3** and **4**, with taller buildings proposed to be located at the key nodes directly adjoining Anzac Parade.

Council's draft planning strategy outlines the dwelling yield achievable under the proposed height and FSR controls with a range as follows:

Total number of dwellings	Dwelling uplift
5,288 (70sqm* average dwelling size)	1,481
4,627 (80 sqm* average dwelling size)	1,296
4,112 (90 sqm* average dwelling size)	1,152

* Gross Floor Area (GFA)

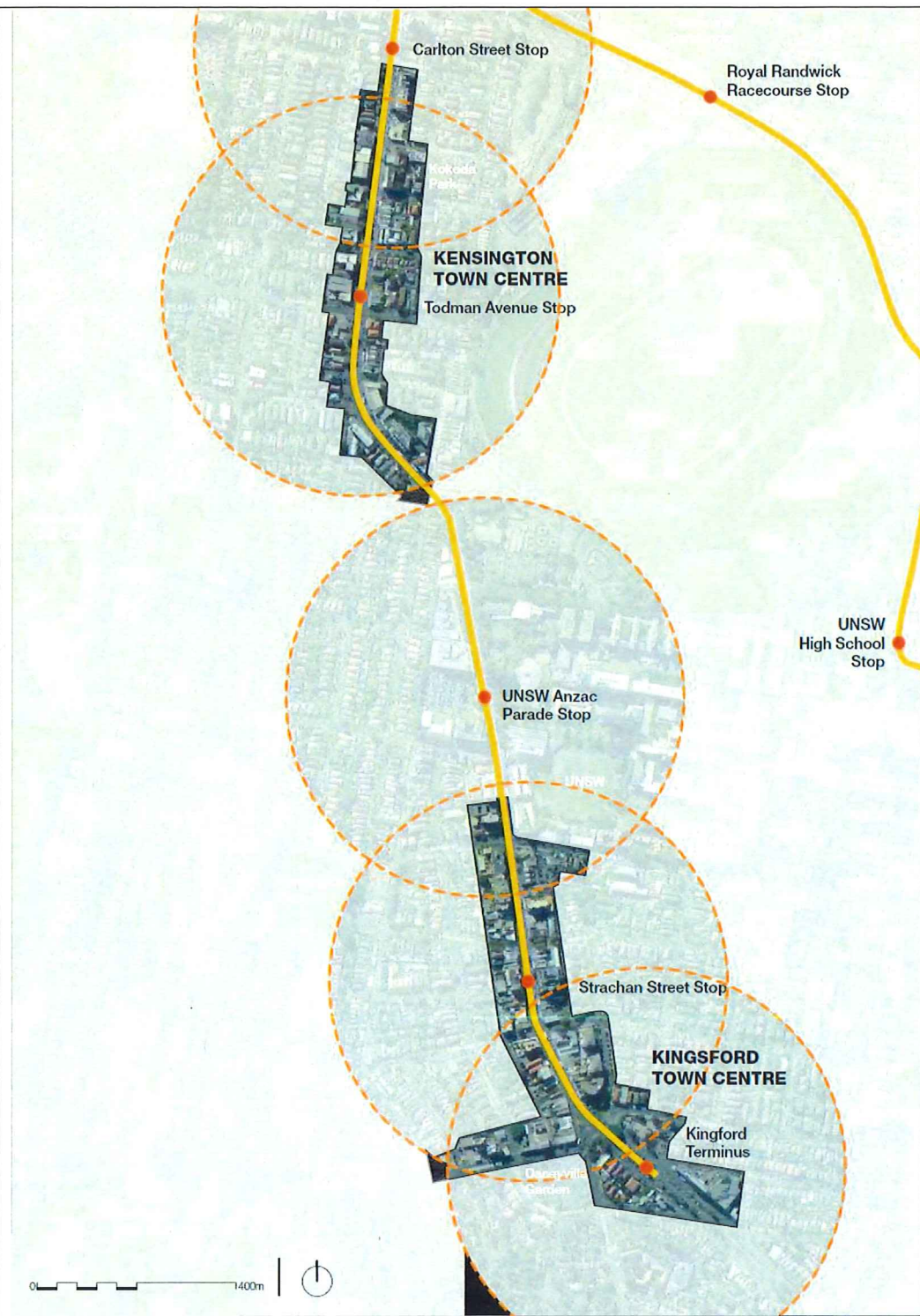


Figure 2: K2K Proposal area overlaid with Light Rail Stations along Anzac Parade

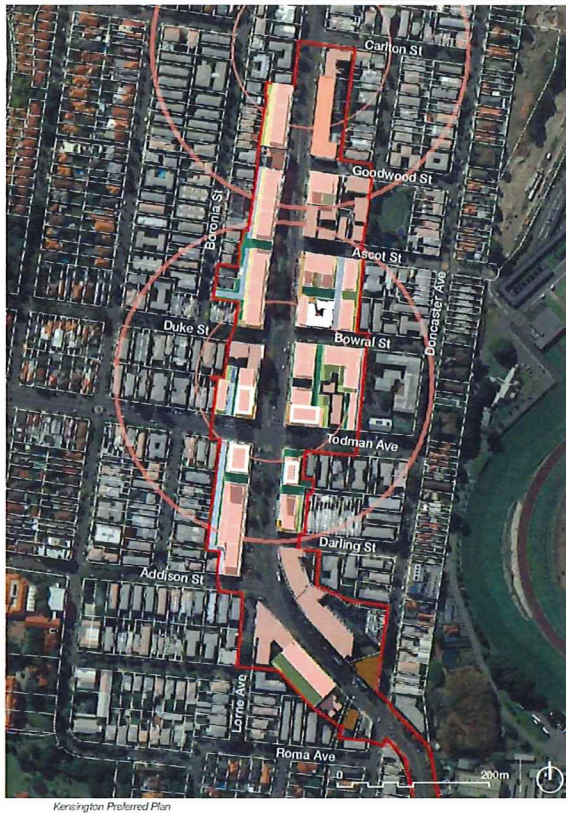


Figure 3: Preferred Plan for Kensington for the Planning Proposal (inner and outer rings equal 100 and 200m distances from light rail stations)
 Source: Kensington + Kingsford Town Centres – Urban Design Report (January 2017) by CM+

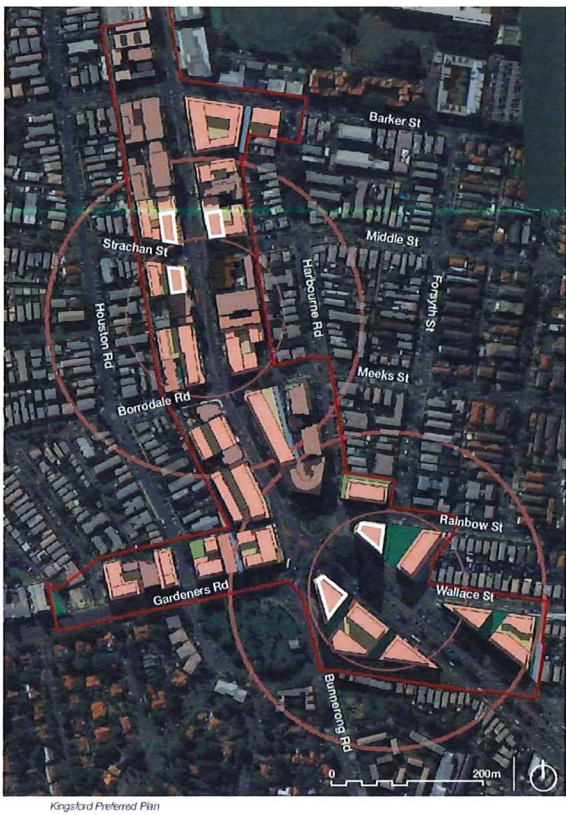


Figure 4: Preferred Plan for Kingston for the Planning Proposal (inner and outer rings equal 100 and 200m distances from light rail stations)
 Source: Kensington + Kingsford Town Centres – Urban Design Report (January 2017) by CM+

Proposed Building Heights

CM+'s urban design report considered built form options for each of the town centres, based on three scenarios:

- **Option 1** – Taller built form in a 200m radius from a light rail station – resulting in an estimated 5,043 dwellings with maximum 14 and 16 storey buildings
- **Option 2** – Taller built form in a 100m radius from a light rail station – resulting in an estimated 4,484 dwellings with maximum 14 and 18 storey buildings
- **Option 3** – Reinforce spine/taller built form at Kingsford Junction - resulting in an estimated 4,438 dwellings with maximum 4 and 9 storey buildings

Despite these options, the preferred option outlined in the urban design report does not conform with any of the options and instead results in an estimated 4,627 dwellings (based on the same average unit size of 80m²). There is no explanation for this option provided as part of the documentation submitted by Council.

The preferred scheme only permits 16 storey buildings at four sites within the Kensington, and 15 storey buildings at five sites within the Kingsford. An additional 2 storeys can be granted to the key nominated sites if design excellence is achieved or public space links are provided. These nominated or 'opportunity' sites are located at Todman Square (Kensington), Kingsford Midtown and Kingsford Junction (see Attachment D in the Council's planning proposal documentation at **Attachment F**).

In accordance with the Council's urban design report the remaining sites are proposed to accommodate 9 storeys and are directly along Anzac Parade, with development at 4 storeys behind this graduating down to existing lower density development outside the land to which the proposal relates. There is little to indicate why this was the preferred option, as this built form option had not been tested in the way that the other options had.

Under the current LEP controls the maximum building heights for sites in Kensington is 25-28m (approx. 8-9 storeys) and in Kingsford is 24m (approx. 7 storeys).

Proposed Floor Space Ratios (FSRs)

The proposal seeks to also increase the FSRs for the town centres as follows:

	Current FSRs	Proposed FSRs
General sites within planning proposal area	3:1 – Kingston No FSR – Kensington, however other controls would make equivalent to 2.5:1 and 3:1	4:1
Key Sites with additional building height (Todman Square, Kingsford Midtown, Kingsford Junction).		5:1 with a minimum of 1:1 non-residential floor space requirement

Community Infrastructure Contribution (CIC)

The planning proposal also sought to include an LEP clause requiring payments towards the provision of affordable housing and community infrastructure, and an increase of the Section 94A contributions (now referred to as Section 7.12 fixed levies).

Since the proposal's submission Randwick Council has sought to implement affordable housing into its LEP through a separate LEP amendment in accordance with *State Environmental Planning Policy 70 – Affordable Housing*, and separately sought approval from the Department for an increase in the Section 7.12 fixed levy from 1% to 3% of total development cost.

	<p>The proposed inclusion of a Community Infrastructure Contribution (CIC) provision in the LEP are based on strategic advice provided by SG Haddad Advisory (Appendix 3 of the planning proposal at Attachment F) and Hill PDA (Appendix 4 of the planning proposal at Attachment F).</p> <p>The proposed CIC provision requires the payment of a contribution commensurate to the additional height proposed over and above the building heights permitted under RLEP 2012, as current. A payment of \$475 per square metre of gross floor area (or part thereof) is required to be paid for each additional square metre gained over and above that which would be afforded by the current building height controls.</p> <p>Council's planning proposal states that the proposed community infrastructure items and works are those identified by the draft planning strategy. However, the listed infrastructure for the CIC is not the same specified by the draft strategy. Additionally, the scope of CIC works has not been determined by any analysis that would be able to identify the needs of the likely resulting incoming population or the likely demographics of this population and workforce</p> <p>The proposal by Council states that satisfying the proposed CIC provision requires a Voluntary Planning Agreement (VPA) to be entered into by the developer and Council. Both the Randwick Development Control Plan 2013 (DCP 2013) and associated guidelines referred to as "<i>Providing community infrastructure in Kensington to Kingsford town centres</i>" are expected to detail the type and location of the community infrastructure and how the community infrastructure needed to support K2K is can be delivered through the development process and under planning agreements.</p> <p>The documentation for the planning proposal did not include the proposed changes for DCP 2013 or include a copy of the proposed guidelines.</p>
<p>Reason for Gateway determination</p>	<p>On 12 December 2017 the delegate of the Greater Sydney Commission determined that the planning proposal should proceed subject to conditions.</p> <p>A Gateway determination was issued on the basis that the proposal (as revised) has merit as it provides an updated planning framework for increased housing and employment growth within the Anzac Parade Corridor, that optimises and capitalises upon the new Light rail service from Kingsford to the city's CBD (Attachment G).</p> <p>As part of the Department's assessment of the proposal for gateway (Attachment G), a peer review of the K2K planning proposal and draft strategy was undertaken by Allen Jack and Cottier (AJ&C) on behalf of the Department. This was done with a focus on reviewing the urban design and density controls to ensure the proposal adequately responds to the capacity and demand for growth within the K2K area.</p> <p>AJ&C undertook site investigations and considered the site constraints including existing strata developments, heritage properties and recently approved developments and current planning proposals, to determine sites that may be excluded and included as additional opportunity sites to maximise the living opportunities near the transport nodes.</p> <p>The peer review identified further development potential within the K2K corridor to maximise the living opportunities near the transport nodes:</p> <ul style="list-style-type: none"> - by increasing maximum building heights and FSRs on K2K identified opportunity sites; and - expanding the proposed opportunity sites/precincts by increasing the area of the opportunity sites to align with a 100m street block distance from the Todman Ave light rail stop in Kensington; and

- identifying 3 new opportunity sites, one in Kingsford Mid-Town and two in Kingsford Junction.

Reasons for Gateway Determination

The Council's planning proposal was supported and issued a Gateway determination on the basis that it:

- enables coordinated development uplift in sequence with future increased transport capacity, introduced by the NSW Government's investment and delivery of the new South East Light Rail service;
- provides additional housing choice and supply in close proximity to the health and education precincts of the University of NSW and Prince of Wales Hospital;
- supports and encourages growth in employment through the development of additional retail and commercial floor space;
- was consistent with the then Revised Eastern District Plan, as it:
 - creates opportunities for innovation and creative industries in the Randwick Collaboration Area;
 - seeks to manage growth and change in strategic and local centres; and
 - contributes the delivery of housing supply.
- is consistent with relevant State Environmental Planning Policies;
- is generally consistent with relevant Section 9.1 (formerly Section 117) Directions; and
- was supported by adequate public transport and road network capacity.

The Department considered the proposal had merit subject to the imposition of a number of modifications that were imposed through conditions for the Gateway as follows:

Increased capacity for dwelling numbers

This condition requires Council to investigate additional dwelling capacity within the boundary of the current planning proposal to accommodate increased density. Prior to exhibition, it was recommended that the planning proposal be updated to increase the dwelling capacity by a minimum of 600 dwellings within the B2 Local Centre zone of the Kensington and Kingsford Town Centres.

Based on the feedback from the AJ&C peer review (**Attachment I**), advice from Transport for NSW (TfNSW) (**Attachment J**) and feasibility testing, it was considered this additional dwelling capacity could be accommodated as part of this planning proposal. The condition did not specify any specific sites that the additional dwellings should be located.

Deletion of Community Infrastructure Contribution (CIC) levy

The gateway determination requires that the planning proposal be amended to remove the proposed Community Infrastructure Contribution levy (proposed clause 6.14 of RELP - Community Infrastructure and Height of Buildings Kensington and Kingsford Town Centres). The proposed clause is inconsistent with the EP&A Act and supporting policies for levying development contributions. It was considered that Council should instead investigate a Section 94 Contribution Plan as the proposed CIC levy does not conform with the existing legislative framework for infrastructure funding under the EP&A Act.

Design Excellence

As a result of removal of the Community Infrastructure Contribution clause, the planning proposal is also required to be amended to provide a statement of intent consistent with increasing the height of buildings contained in the planning proposal and corresponding maps, prior to exhibition. The height of buildings maps should also reflect a maximum building height in metres for achieving the 2 storey increase on key sites subject to achievement of design excellence.

COUNCIL'S JUSTIFICATION FOR REVIEW

Details of justification:

On 5 March 2018 the Department received a Gateway Review request from Randwick City Council. Council's Review request is in response to certain conditions imposed on the Planning Proposal as part of the Gateway determination issued on 12 December 2017 (**Attachment D**).

Specifically, Council is requesting deletion or amendment of the following Gateway conditions as follows:

- **Deletion of Condition 1(a)** – Requires identification of additional opportunity sites to increase the dwelling capacity by a minimum of 600 dwellings
- **Deletion of Condition 1(b)** - Specifies building height and floor space ratios (FSRs) increases for sites where additional height can be attained under design excellence provisions.
- **Deletion of Condition 1(c)** – Requires removal of the proposed LEP clause for the provision of community infrastructure
- **Deletion of Condition 2** – Requires public authority consultation are considered unnecessary
- **Deletion of Condition 3** – Requires resubmission of the revised planning proposal to the Department for review prior to exhibition
- **Amendment of Condition 7** – Requires a 12 month timeframe for completion of the LEP amendment.

Council states that the conditions have not been adequately substantiated and are inconsistent with Council's comprehensive evidence based planning strategy for the Kensington and Kingsford Town Centres.

Council states Conditions 1(a) and 1(b) requiring an increase in development capacity by 600 dwellings and the subsequent increase in the height and FSR for certain sites to accommodate this additional capacity, are unsubstantiated and will result in unacceptable environmental impacts.

Council has requested that the Gateway Condition 1(c) requiring the removal of the proposed Community Infrastructure Contribution (CIC) clause be deleted from the gateway determination. Council states that the CIC is a necessary and legal mechanism to provide essential infrastructure within the Kensington and Kingsford Town Centres.

Council contends that required consultation with various agencies prior to public exhibition, has either taken place or is currently being undertaken. As such, Council requests that the consultation requirements under Condition 2 of the Gateway determination be removed. It is understood that Council believes this requirement will delay the implementation of the draft plan.

Council also requests that Condition 3 requiring the Department to review endorse the revised Planning Proposal prior to exhibition is also deleted.

Should the above changes be supported, Council has requested that Condition 7 be amended so that the timeframe for completing the Local Environmental Plan is 12 months from the conclusion of the Gateway Review process.

Material provided in support of application/proposal:	<p>In addition to the planning proposal documentation originally submitted to DPE, Council has provided the following documents to support the Gateway Review request:</p> <ul style="list-style-type: none">• Gateway Review Request Application Form• Gateway Review Request Submission• Council Response to AJ+C Recommendations - dated 18 October 2017• Conybeare Morrison's Assessment of the AJ+C Recommendations Report, dated March 2018• EMM Anzac Parade Corridor Future Light Rail System Capacity Analysis Addendum Report, dated 1 March 2018• ARUP Stage 2 Transport Modelling Report, dated 18 May 2017.
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ASSESSMENT SUMMARY

Department's Assessment

Provide a summary assessment of the Department's position/views on the review request

The Department has undertaken a detailed assessment of the review request documentation submitted by Council. The Department's position on the elements of the review request are as follows:

Condition 1(a) - Residential densities and yields for the Town Centres

Prior to issuing the Gateway determination, the Department engaged Allen Jack and Cottier (AJ+C) to undertake a peer review of the proposal and the associated draft strategy. AJ+C reviewed the urban design and density controls to test how the proposal responds to the capacity and demand for growth within the K2K area.

AJ+C's review (**Attachment I**) identified further development potential within the K2K area beyond that indicated in the planning proposal, and that this could be achieved by maximising the residential and employment development opportunities near the future light rail transport nodes. AJ+C recommended contemplating extending the site boundaries of the proposal and adding opportunity sites to form part of the proposal, as well as establishing FSRs for sites where additional height can be attained under design excellence provisions.

The review made the following recommended amendments to the proposal:

- expand the four proposed opportunity sites at the intersection of Todman Ave and Anzac Pde, Kensington to cover the entire existing urban block;
- extend the Planning Proposal boundary at the northwest corner of the Kensington town study area to Boronia Street;
- include the site at the southeast corner of the intersection at Strachan Street and Anzac Parade intersection as an additional opportunity site; and
- add two additional opportunity sites located at the northwest corner of the Kingsford Roundabout intersection.

Based on AJ+C's analysis and recommendations, it is estimated that this would result in an increase of approximately 596 additional dwellings (based on an average dwelling size of 80 sqm) over and above that intended by Council's proposal (which is estimated to be approximately 1,481 dwellings).

The Department also used its Urban Feasibility Model to test the FSR and height of building parameters sought by the Planning Proposal and the additional recommendations of the AJ+C report (**Attachment I**). This testing highlighted that there is opportunity to accommodate further growth and densities within the K2K area.

This increased density identified by AJ+C was also supported by advice received by TfNSW that indicated that the public transport network with the new South East Light Rail service has capacity to accommodate additional development beyond that forecasted by Council for the Planning Proposal (**Attachment J**).

In issuing the gateway requirement for the inclusion of an additional 600 dwellings, the Department did not nominate the specific sites that these were to be located understanding that this could be investigated as part of the revisions to the planning proposal before this is further reviewed by the Department and then goes on exhibition for public comment.

Traffic and Transport Assessment

The upper limiting capacity of the light rail has been raised by Council as a key issue in planning for growth along the Anzac Parade Corridor. On behalf of Council, EMM Consulting prepared an Anzac Parade Corridor Light Rail Analysis (2016). This analysis was undertaken to support the original Planning Proposal (see Appendix 13 of the original Planning Proposal documentation).

EMM's study concluded that by 2020, the CBD and South East Light Rail system alone will not be sufficient to provide for the public transport needs of the Anzac Parade Corridor. EMM also concluded that if adequate bus services are not provided in conjunction with the future light rail services, the project population growth associated with the associated with the original Planning Proposal cannot be provided for within the Kensington and Kingsford Town Centres.

Transport for NSW (TfNSW) identified that EMM's analysis supporting the original Planning Proposal underestimates the future capacity of the broader public transport network supporting the area, which includes both light rail and bus services.

A further EMM addendum report was submitted as part of the review documentation submitted by Council (see Attachment C of the Council's Review documentation at **Attachment D**). This report continues to question the capacity of the new light rail, stating that the capacity of transport services will be the same as that currently provided by the existing bus services. It states that by adding an additional 600 dwellings within the K2K area beyond that originally proposed by Council, this will stretch bus services to require up to 52 bus services to the city in the peak period to prevent overcrowding. This analysis does not account for any increases in the number of light rail services that TfNSW has indicated could be accommodated for.

Council also engaged ARUP to undertake a Stage 1 Traffic and Transport Assessment to inform the Planning Proposal (see Appendix 10 of the original Planning Proposal at **Attachment F**), with the intention that a Stage 2 report will be prepared in 2017 to incorporate traffic modelling to further test the proposed dwelling growth and road closures. The Stage 1 report did not identify the capacity of the road network to support the original proposal, given that the Stage 2 reporting is anticipated to undertake further traffic modelling to ensure integration of any improvements to the network.

ARUP's Stage 2 Transport Modelling was provided as part of Council's Review documentation (see Attachment D in the Council's Review documentation at **Attachment D** of this report). This modelling is based on the uplifts proposed by the original proposal and indicates that with road closures to accommodate the light rail, it was concluded that the remaining intersections would generally operate at acceptable levels. This modelling work does not analyse the potential uplift sought by Condition 1(a) of the gateway determination, to then understand what (if any substantive) impact the additional dwellings may have to traffic modelling. It is also noted that ARUP's analysis did not appear to factor in any increase in modal split towards public transport that may be generated by the introduction of the light rail also.

Both TfNSW and Roads and Maritime Services (RMS) recommended that there is additional capacity in this location for dwellings above the analysis conducted by Council of up to 5,600 dwellings. These agencies suggested that the new minimum capacity would be in the order of 2,100 dwellings; which would allow for proposed 1,481 dwellings under the original Planning Proposal and the provision of an additional 600 dwellings.

TfNSW requested that a Gateway condition that requires detailed modelling be completed prior to exhibition and that Council consult with TfNSW and RMS on the scope for potential future road corridor widening. This requirement is reflective in Condition 2 of the gateway, which requires that Council initially consult with TfNSW and RMS in relation to the scope of detailed traffic modelling and potential future road corridor widening to support growth in the K2K area.

Recommendation

Gateway Condition 1(a) required the planning proposal to be amended to identify additional opportunities in order to increase the proposal's dwelling capacity for the K2K area.

Council wrote to the Department on 15 August 2018 (**Attachment M**) stating that they will *consider* finding the 600 additional dwellings within 400m of the light rail alignment. Some

of these areas may be outside of the town centre boundaries for the planning proposal. Council advised that this work will form part of their upcoming Housing Strategy due for completion in July 2019.

While the Department's assessment clearly indicates that there is capacity for additional residential development in the K2K area and in the corridor, the Council's suggested approach to consider this as part of their Local Housing Strategy will mean that Council can comprehensively evaluate the capacity and capability for additional residential development in this 400m catchment of the light rail alignment as part of its broader medium to longer term housing framework for the Randwick LGA.

Further, this approach would allow Council to consider this future supply alongside other priorities under the Eastern District Plan to not only identify housing supply for the next 10 years, but also to ensure housing diversity and choice outcomes are achievable. The Greater Sydney Commission's expectation is that the Local Housing Strategy will likely result in amendments to Council's LEP to support additional capacity and opportunity for delivery of new housing in the Randwick LGA.

Consequently, the Department recommends that the gateway condition 1(a) for the K2K planning proposal be deleted.

Condition 1(b) - Opportunity Sites

Council's original planning proposal stated that where a development on an opportunity site was able to successfully demonstrate design excellence this could afford:

- an additional building height to a maximum of two storeys (to achieve the maximum height in controls); and
- exclusion of identified social infrastructure/innovation centre floor space requirements from the total gross floor area calculation (which was taken to mean the CIC contribution scheme).

As a result of recommended removal of the Community Infrastructure Contribution clause under Condition 1(c) in the Gateway determination, (see detail below), Condition 1(b) of the Gateway determination requires two elements:

- that appropriate maximum heights and FSRs for opportunity (nominated) sites in the K2K area be specified in the revised planning proposal; and
- that where a further and additional 2 storeys in height may be attained for these sites, that this can be achieved under design excellence provisions in RLEP 2012.

In Council's gateway review documentation, it states that any additional or bonus FSR achieved by Condition 1(b) would result in further floor space for the opportunity sites that would exceed that intended by their strategy and planning proposal. Council also indicates that this would result in development for these sites *"that would be unachievable and inconsistent with the urban design and accessibility outcomes outlined in the planning strategy and key objective of maintain suitable amenity to nearby residential areas"*.

Council also indicates in its gateway review documentation that based on the constraints of these opportunity sites, and that additional development of this order would result in unacceptable overshadowing impacts.

The Department is of the view that the Council misconstrued the intension of Condition 1(b) to set appropriate FSR and building height controls for opportunity sites, and to only permit for additional building height of up to 2 storeys, not including any bonus and further FSR.

In summary it was intended by this gateway condition that where an additional 2 storeys of height is sought for these opportunity sites beyond a base building height, that this will

not additionally permit a further or bonus increase in the FSR for a development and that this additional height can only be achieved where design excellence is demonstrated.

Recommendation

The Department recommends updating Condition 1(b) to clarify the requirement for the planning proposal to establish set FSR and building heights for opportunity sites, and also clarify that the use of design excellence applies where a further and additional two storeys of building height is sought for these nominated sites.

Consequently, the Department recommends that Condition 1(b) be revised as follows:

“(b) identify specific maximum building heights and floors space ratios (FSRs) for all opportunity sites and nominate which of these sites can achieve a further and additional two storeys of building height where design excellence is achieved.”

This approach will still ensure that the design excellence provision will not permit for any additional FSR beyond that specified by the proposal, but will only permit for an additional two storeys of development on nominated opportunity sites where design excellence is achieved.

Condition 1(c) - Community Infrastructure Clause

The Planning Proposal seeks introduce and implement a Community Infrastructure Contribution (CIC) scheme under a new clause in RLEP 2012. The CIC scheme proposed by Council seeks to operate as a value capture mechanism. Specifically, it seeks to raise monetary and in-kind contributions toward the capital cost of local and community infrastructure by capturing a portion of the increased land value created by increased development uplift.

The intent of the proposed CIC clause would permit a proponent for a development to obtain incentive or ‘bonus’ building height above a ‘base’ height control, but only when a contribution is provided by the proponent for the delivery of the listed infrastructure in the CIC.

In practice, the proposed scheme seeks to allow a development to attain the maximum building heights proposed by Council’s planning proposal but only if the proponent for the development makes a contribution to the CIC scheme. Where a contribution is not made to the CIC scheme the development is required to comply with the building height controls as is currently stipulated under RLEP 2012. Therefore, no additional building height can be achieved for any of the sites in the K2K area unless a contribution is paid.

The contribution is to be secured via a Voluntary Planning Agreement (VPA), either as monetary or in-kind contributions or both, which is to be lodged with the corresponding Development Application. Once the VPA is executed, the additional height bonus under the LEP is then activated. Should the developer choose not to enter into a VPA for the CIC, the ‘base’ or current height controls under Randwick LEP 2012 would continue to apply.

Council intends to amend Randwick DCP 2013 to detail the type and location of the community and local infrastructure items. The community infrastructure items are outlined in the proposal and include, but are not limited to, items such as community facilities, bicycle network improvements, a new innovation centre and pneumatic waste collection (see Attachment B - Draft Schedule of Local Infrastructure and Community Facilities of **Attachment F**).

The methodology for calculating the value of the CIC contribution is not outlined within the proposal. However, the financial feasibility assessment by HillPDA (see Appendix 4 of the original proposal at **Attachment F**) identified that in order for the total infrastructure requirements listed in the draft schedule of local infrastructure and community infrastructure (see Attachment B of the original proposal at **Attachment F**) to be delivered (equivalent to \$85m), Council would need to implement both a 3% Section 7.12 levy (formerly known as a Section 94A levy) and a \$475/m² Community Infrastructure

Levy (CIL) on the expected additional residential floor space that could be achieved under the bonus height controls.

The Council is separately pursuing the ability to increase its current Section 7.12 levy to 3%, which is currently being accessed separately by the Department.

The Department cannot support the CIC scheme as proposed for the following reasons:

- Section 7.7 of the EP&A Act states that a provision of an environmental planning instrument (ie. an LEP) that expressly requires a planning agreement to be entered into before a development application can be considered or determined, has no effect.

The approach for the CIC as proposed by Council would result in a mandatory requirement to enter into a VPA to access additional building height anticipated by the planning proposal. The Department is therefore concerned the clause cannot be legally made as it is not considered to be 'voluntary', but rather enforced to then activate the proposal.

- Several of the proposed infrastructure items identified by Council for the CIC are linked to the demand created by the increase in density, these items include bicycle network improvements, Anzac Pde footpaths and intersections and local road improvements and upgrades.

A number of community infrastructure items identified by Council for the CIC are not necessarily related to demand created by additional development, nor are these considered to be 'essential' works (see Council's proposed list of infrastructure categorised as essential and not at **Attachment K**).

Examples of non-essential infrastructure included in the community infrastructure list proposed are pneumatic waste collection systems, water sensitive urban design and public art works. None of these are considered are critical to supporting additional development.

Although relevant to Section 7.11 Plans (formerly Section 94 Plans), it is noteworthy that many of the items proposed under the CIC would not fall within the Essential Works List as outlined in the Department's Practice Note for Local Infrastructure Contributions (January 2018). Essential works are defined under the note as:

- Land for open space (eg. Parks and sporting facilities) including base embellishment
- Land for community services (eg. Child care centres and libraries)
- Land and facilities for transport (eg. Roads, traffic management and pedestrian and cycle facilities), but not including car parking
- Land and facilities for stormwater management
- The costs of plan preparation and administration.

The Department's draft VPA Practice Note establishes key policy principles that planning authorities and developers participating in planning agreements should adhere to. These include the requirement that planning agreements be underpinned by proper strategic land use planning for essential infrastructure to address expected growth. In this regard the proposed CIC does not conform to this approach. Therefore, Council's CIC scheme is therefore inconsistent with the Department's draft VPA Practice Note and does not in many cases include essential works that would help support new residents and workers.

- Council has also justified the use of the CIC scheme on the basis that it is the same, or not dissimilar, to that implemented under Clause 6.14 of the City of Sydney's SLEP 2012 for Green Square.

Specifically, Clause 6.14 states that this relates only to the delivery of "Green

Square community infrastructure”, which is defined under SLEP 2012 as development for the purposes of recreation areas, recreation facilities (indoor), recreation facilities (outdoor), public roads, drainage or flood mitigation works.

The Department is of a view that this and Randwick Council’s CIC scheme are not the same on the basis that the Green Square scheme relates to delivery of necessary community infrastructure within the same site as the development; whereas the proposed CIC infrastructure works relate to off-site infrastructure and are not all necessary community infrastructure and are not necessarily related to the development. The Department’s legal advice also notes this difference in the clauses.

- It is not clear where most of the works proposed by Council will be located relative to the K2K area. For example, Council has not provided any plans or details of where, what specifications (distance, widths) of the proposed cycleways, or where the multi-purpose community centre is to be located and on what land.
- There is little in the documentation provided by Council to indicate what the delivery priorities are for the works listed, to then understand where capital gained under the CIC scheme will be allocated in order of importance.
- Nothing has been provided to justify or provide evidence that the works are properly costed for or reasonable. For example the CIC scheme lists a multi-purpose community centre and exhibition centre for \$1.6 million, which would appear rather inexpensive when compared to other levied community facility buildings. For example and as a cost comparison, City of Ryde Council’s Section 7.11 (Section 94) Plan seeks to collect levies for a new multi-purpose community centre to serve 10,000 residents that will cost \$9.98 million (updated cost dated Aug 2014).

It is also assumed that based on the level of cost apportioned by Randwick Council that the proposed community centre wouldn’t include land costs.

- Open space is also identified by the CIC strategy as needed to support the proposal, but this is only proposed to be additionally delivered for Kensington area and the land that may be acquired using this money is not identified. A total of \$12 million is allocated to this item, but it is unclear what this will deliver in terms of land and embellishments and where this will be delivered.
- Many of the CIC works listed are not essential or necessary infrastructure works; for example the provision of two pneumatic waste systems, which are set to collectively cost \$14 million.
- It is unclear how the community will directly benefit from some of the infrastructure proposed (eg. Smart poles and innovation centres). And despite this, the light rail project will be including its own smart poles along Anzac Parade, which questions why further or similar poles would be needed.
- Some of the proposed CIC listed works are so non-descript that it is unclear how a developer could offer to do these works in kind instead of paying the required share of CIC.
- Although the Council sees the proposed CIC system is the same as that applied by the City of Sydney for part of Green Square in that it relies on the exact same per square metre cost rates of \$475 per sqm of GFA; the proposed CIC is different in that:
 - It suggests that the intention is for the community infrastructure to be delivered offsite and into public ownership, meaning that the infrastructure does not actually have anything to do with the development being proposed in the K2K planning proposal
 - it is based on achieving additional building height and not FSR;

- a developer could potentially achieve the full FSR afforded by the K2K proposal, while not needing to rely on attaining additional building height and thereby circumvent paying towards the CIC scheme; and
 - it is questioned how is it established what a developer is required to pay for a contribution that is based on additional building height, if the rate of contribution is based on additional GFA. That is, how does Council or developer establish what amount of GFA can be achieved under the current height controls to then determine what additional GFA is achieved when it only additional building height is afforded by the proposal.
- There is no justification for the set \$475/m² rate proposed for the CIC levy. This rate does not appear to be based on the cost of the required infrastructure, but rather is what is applied for the Green Square model. The HillPDA report on development feasibility (at Appendix 4 of the original proposal) does not provide any further detail with respect to the calculation of this figure. Rather the totals to contribute to the CIC were based on four specific sites within the K2K Corridor and the capacity to contribute to the CIC if these sites were developed to a certain scale and floor space.
 - The Planning Proposal appears to identify the full cost of the infrastructure items to be payable through the CIC levy for specific sites rather than any apportionment of cost based on different development within the town centres.
 - The Department has obtained legal advice which supports the points above and confirms that Section 7.11 & 7.12 (formerly Section 94 & 94A) are the exclusive source of power under the Act for Council to impose a condition of consent requiring a monetary contribution as a condition of development consent, and a condition can only be imposed under these sections in accordance with a contributions plan.
 - The granting development approval for additional building height that is dependent upon entering into a planning agreement goes against Council's own endorsed Planning Agreement Policy (**Attachment L**), which states that:

"Planning decisions may not be bought or sold through planning agreements;...

The Council will not improperly rely on its statutory position in order to extract unreasonable public benefits under planning agreements."

It is construed that by withholding granting approval for building height sought by the planning proposal is inappropriately relying upon its statutory position to extract contributions from a developer and/or that the outcome of development application is dependent upon entering into a voluntary planning agreement. This approach could also be construed to fetter the discretion of the Council as a consent authority.

Despite the above, Section 7.12 (former Section 94A) contributions will still apply to developments in the K2K area nonetheless. Therefore, in applying and mandating both the Section 7.12 and the CIC levies it could be construed that the Council is seeking to 'double dip' on local infrastructure contributions; or that Council is trying to circumvent the developer contribution rules under the EP&A Act where Section 7.11 and Section 7.12 contributions can't both be collected for the same development.

Additionally, if this listed infrastructure for the CIC were to be delivered under a Section 7.11 Plan (formerly 94 Plan) much of it wouldn't be considered to be essential or necessary works to then be able to be captured in a Section 7.11 Plan in accordance with the Department's Practice Note for Local Infrastructure Contributions.

Recommendation

The Department recommends that this gateway condition is not amended or removed because:

- it is considered the CIC clause as proposed cannot be legally made;
- the community infrastructure items identified by Council have not been adequately justified;
- the types of infrastructure identified by Council are not essentially critical to supporting additional development;
- the CIC is inconsistent with the Department's draft VPA Practice Note; and
- there is insufficient justification provided for the proposed CIC levy rate.

The other alternative for Council is to consider adopting the same type of clause and process enforced by Clause 6.14 of Sydney LEP 2012, whereby Council can require the provision of listed essential community infrastructure where additional floor space proposed but only where this infrastructure is constructed and delivered on the same site as the development.

Condition 2 - Public Authority Consultation requirements

The Greater Sydney Commission and its delegates determine what consultation is required with State or Commonwealth public authorities that will, or may be, adversely affected by the proposal (Section 3.34(d) of the Act).

As such, it is considered that the imposition of Condition 2 of the Gateway determination is appropriate, given the public authorities identified are likely to be impacted by the proposal and that the proposal is to be amended to include an additional 600 dwellings.

The Gateway condition for Council to complete detailed traffic and transport modelling prior to exhibition and subsequent consultation with TfNSW and RMS on the scope for potential future road corridor widening was included at the request of TfNSW. This work will also inform the most appropriate location of the additional 600 dwellings.

It is noted that Council is already undertaking consultation with these authorities and has therefore already likely satisfied these conditions. Moreover, this extent of consultation is regularly required as part of any proposal of this type, regardless whether the proposal is proponent or council led.

Recommendation

The Department recommends that this condition is not amended or removed. Council is already undertaking consultation with these agencies, which will satisfy this condition, and therefore there is no need to amend or remove this condition.

Condition 3 - Resubmission of Planning Proposal prior to exhibition

Either the current conditions or revised conditioned the Department recommends that this condition is not amended given the proposal will be amended prior to community consultation.

Furthermore and under Section 3.34(b) of the EP&A Act, the Greater Sydney Commission and its delegates may determine that a matter should be resubmitted for any reason.

Condition 7 - Timeframe for completion of LEP

The Department recommends that this Gateway condition is amended to allow for additional timeframe to complete the revisions to the proposal post the Gateway Review process. Specifically, the Department recommends that Council be granted 12 months from the date of the final decision by the IPC.

RECOMMENDATION

Reason for review: 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.

Recommendation:	<input type="checkbox"/>	The Planning Proposal should proceed past Gateway in accordance with the original submission.
		<input type="checkbox"/> no amendments are suggested to original determination. <input type="checkbox"/> amendments are suggested to the original determination.
	<input type="checkbox"/>	The Planning Proposal should not proceed past Gateway.

Any additional comments:

Endorsed by: