

Mr Craig Swift-McNair
General Manager
Woollahra Municipal Council
PO Box 61
DOUBLE BAY NSW 1360

Our ref: IRF22/4535 (PP-2022-1646)

Dear Mr Swift-McNair

Planning proposal PP-2022-1646 to amend Woollahra Local Environmental Plan 2014

I am writing in response to the planning proposal you have forwarded to the Minister under section 3.34(1) of the *Environmental Planning and Assessment Act 1979* (the Act) to introduce alternative floor space ratio (FSR) and building height and site-specific provisions for land at 136-148 New South Head Road, Edgecliff, and the correspondence from Council staff received on 13 December 2022.

As delegate of the Minister for Planning and Public Spaces, I have determined that the planning proposal should proceed subject to the conditions in the enclosed Gateway determination.

The Department supports the intended outcome of the proposal to contribute to the supply of housing and commercial floor space in the Edgecliff centre. The proposal includes a minimum and maximum non-residential FSR of 3:1 and 3.5:1 respectively. Council later suggested that a minimum non-residential FSR of 2:1 would be appropriate. While the Department acknowledges Council's intent to reinforce the economic function of Edgecliff centre by setting controls on the quantum of non-residential floor space, such a provision is not informed by any feasibility testing. The Gateway approval requires further testing of this control.

The planning proposal has amended the proponent's original request for an alternative building height of 46m and reduced it to 42m. The Department has reviewed the assumptions behind the height standard and formed the view that the reduced height is likely to constrain the ability to deliver commercial floor space as shown in the concept scheme and is contrary to the proposal's objective. To address any concern that a 46m height limit may be more than necessary to accommodate a 12-storey building, conditions have been included to require further testing of the floor-to-floor heights of the concept scheme. It is also notable that at its meeting of 12 September 2022 that Council resolved to support a maximum building height of 46m.

The Department acknowledges the importance of infrastructure and affordable housing to support growth. The proposal seeks to establish a statutory mechanism to secure public benefits from development that utilises the alternative development standards. While precedents exist in other LEPs that require certain public benefits to support uplift, the proposed requirement for community infrastructure is very broad and does not provide certainty to the community about what is expected from future development. The infrastructure items are not specific, and it is unclear whether they would be provided on the subject site. The approach appears to create a development contributions regime that is outside the framework under section 7.11 or section 7.12 of the Act. As such, this component of the proposal could not be supported. However, Council has the option to negotiate with the proponent for a potential voluntary planning agreement to deliver public benefits.

The proposed community infrastructure requirement includes the provision of affordable housing or the recoupment of cost for providing such. Council does not currently have an Affordable Housing Contributions Scheme that is set out in or adopted by the Woollahra LEP 2012. Therefore, a provision that seeks to impose affordable housing levy is not supported.

Consistent with the Department's approval of the Local Housing Strategy, Council is advised to prepare an affordable housing contributions scheme in accordance with the Department's *Guideline for Developing an Affordable Housing Contribution Scheme*. This would involve examining the feasibility of levying affordable housing contributions for any new planning proposals that would result in uplift or an increase in land value. The Department will be available to provide advice and support for preparation of the scheme.

Council may still need to obtain the agreement of the Secretary to comply with the requirements of section 9.1 Direction - *1.4 Site Specific Provisions* prior to public exhibition. A revision to the planning proposal in accordance with the Gateway determination will be needed to address the above.

Administrative changes to the proposal are required to ensure adequate information is provided for community consultation purposes. The planning proposal notes that some of the traffic generation calculations provided by the proponent require further resolution. The Department encourages Council to continue to work with the proponent to resolve any outstanding issues with the traffic analysis.

I have considered Council's request to be the local plan-making authority and have determined not to condition the Gateway for Council to be the local plan-making authority in this instance.

The amending local environmental plan (LEP) is to be finalised within 8 months of the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request for the Department of Planning and Environment to draft and finalise the LEP should be made at least eight weeks in advance of the date the LEP is projected to be made.

The NSW Government has committed to reducing the time taken to complete LEPs. To meet these commitments, the Minister may appoint an alternate planning proposal authority if Council does not meet the timeframes outlined in the Gateway determination.

The Department's categorisation of planning proposals in the *Local Environmental Plan Making Guideline* (Department of Planning and Environment, 2022) is supported by category specific timeframes for satisfaction of conditions and authority and Government agency referrals, consultation, and responses. Compliance with milestones will be monitored by the Department to ensure planning proposals are progressing as required.

Should you have any enquiries about this matter, I have arranged for Mr Simon Ip, Manager Place and Infrastructure to assist you. Mr Ip can be contacted on (02) 8289 6714.

Yours sincerely



Amanda Harvey
Executive Director, Metro East and South
Planning and Land Use Strategy

21 April 2023

Encl: Gateway determination