

## DRAFT WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014

# **ANNEXURE 5**

# Part 5A

# Other matters

- Gateway determination and Council's response:
  - Council's response to the gateway determination conditions
  - Gateway determination from DPI (12 July 2013 and 25 July 2013)

# Council's response to the gateway determination conditions

Item	Detail	Response
1	Amend Height of Building Map Sheet 005 to correctly reference the appropriate subclause for Area J, being 4.4C.	Height of Building Map Sheet 005 was amended to refer to subclause 4.4C.
2	Amend the Land Zoning, Floor Space Ratio and Height of Buildings maps to include the recent rezoning of 9A Cooper Park Road, Bellevue Hill.  [Condition deleted by the revised gateway determination.]	Land use, FSR and height controls were included in Draft WLEP 2013 submitted to the Department prior to the gateway determination. The FSR was slightly increased by a Council resolution. The original gateway determination did not reflect these controls. This was corrected by the revised determination.
3	Amend Schedule 1 to remove Item 8 being 9A Cooper Park Road, Bellevue Hill as it is now permissible within the land use zone.	Schedule 1 of the written instrument was amended to remove the reference to 9A Cooper Park Road, Bellevue Hill.
4	Amend clause 6.8 Flood Planning to remove the definition of projected sea level rise.	Clause 6.8 of the written instrument was amended to remove the definition of projected sea level rise.
5	Community consultation is required under sections 56(2)(c) and 57 of the <i>Environmental Planning and Assessment Act 1979</i> as follows:	Community consultation was carried out in accordance with section 56(2)(c) and 57 of the <i>Environmental Planning and Assessment 1979</i> .
	(a) The draft LEP must be made publicly available for a minimum of 28 days;	The public exhibition of Draft WLEP 2013 was from 21 August 2013 to 13 November 2013 (12 weeks). However, we continued to accept submission after the formal exhibition period closed.
	(b) Must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of A Guide to Preparing LEPs (Department of Planning and Infrastructure 2013).	The exhibition complied with the requirements in section 5.5.2 of A Guide to Preparing LEPs (Department of Planning and Infrastructure 2013).
6	Consultation is required with the following public authorities under section 56 (2)(d) of the EP&A Act and to comply with the requirements of relevant S117 Directions:  (Provide each public authority with a copy of the draft LEP and any relevant supporting material, as identified in the attached letter, and given at least 21 days to comment on the proposal).	The following public authorities were provided with a copy of Draft WLEP 2013 and supporting material, and invited to comment during the exhibition period.
	Transport for NSW	Letter dated 20 August 2013
	Roads and Maritime Services	Letter dated 20 August 2013
	Office of Environment and Heritage	Letter dated 20 August 2013
	Department of Education and Communities	Letter dated 20 August 2013
	Housing NSW	Letter dated 20 August 2013
	Government Property NSW	Letter dated 20 August 2013
	Office of Strategic Lands	Letter dated 20 August 2013
	Adjoining councils	Letter dated 20 August 2013

22 July 2014 Page 1 of 4

Item	Detail	Response
7	A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing.  [For example, in response to a submission or if reclassifying land]	Noted.
8	Timeframe for completing the LEP is to be 8 months from the week following the date of the gateway determination.	Noted. However, as we have exceeded this deadline the Department has extended our deadline.
_	[Additional condition identified by the revised gateway determination.]	New definition for 'small bar' and 'food and drink premises' was added to the Dictionary.
	New definitions for 'small bar' and 'food and drink premises' to be inserted into the dictionary.	The term 'small bar' (and its permissibility) has also been added to the Land Use Matrix (see Chapter 9 of the Discussion Paper).

## Additional information requested in cover letter

Detail	Response		
Consistency with EPIs and S117 directions			
Relevant policies Place relevant State environmental planning policies, any regional environmental plans and S117 directions that apply on exhibition with the gateway determination and draft LEP.	Relevant SEPPs, REPS and S117s that applied were placed on exhibition with the gateway determination.		
S117 direction 4.3 Flood Prone Land The draft LEP is inconsistent with S117 direction 4.3 Flood Prone Land. Department of Planning and Infrastructure agrees that the inconsistency is justified.	Noted.		
Neild Avenue, Paddington The Draft LEP is inconsistent with direction 6.2 Reserving Land for Public Purposes. Council has not facilitated the reservation of land for road reservation at Neild Avenue, Paddington, as requested by Roads and Maritime Services. Consult further with RMS during public exhibition of the draft LEP. If sufficient justification is provided by RMS, Council may be required to insert the road reservation in the draft LEP prior to submission under section 58 or progress a planning proposal to amend the LEP once made.	Noted.  Further consultation with RMS occurred during the public exhibition period. However, we received no further information from RMS to justify a road reservation at Neild Avenue.		
Gateway determination Place the letter on exhibition to demonstrate that the inconsistencies have been addressed.	Both the gateway determination letter and the revised gateway determination were placed on public exhibition.		

22 July 2014 Page 2 of 4

Detail	Response
Legal drafting	
Communicate during exhibition that the draft LEP may be subject to post exhibition changes to satisfy its legal drafting requirements.	Information was included on the website and in the Discussion Paper (Chapter 1: Introduction) stating that changes may be made post exhibition to satisfy legal drafting requirements.
Provide a plain English version of the draft LEP for exhibition explaining what the draft LEP does.	A plain English Discussion Paper and fact sheets were provided as part of the exhibition material.
Minor mapping changes	
Minor changes to the format of the LEP maps to ensure consistency with the Standard Technical Requirements for LEP Maps Version 1.2 – March 2009. May be undertaken after exhibition of the Draft LEP prior to final submission to the Department.	Noted.
Further matters for consideration	
Address inconsistencies in the land use table regarding local non mandatory objectives that appear to be inconsistent with the mandated objectives. Omit the relevant additional objectives or modify them to be consistent with the core objectives, before submission of the Draft LEP to the Department under section 58.	Noted.  Following the public exhibition period, and after reviewing submissions, we have recommended changes to local non mandatory objectives (see below).
Provide justification of the inclusion of light industrial as a permitted use in the B1 Neighbourhood Centre zone.  Place the justification on exhibition with the Draft LEP.  Prepare an additional objective for the zone to accommodate this land use before submission of the Draft	Further information was provided in the Discussion paper (Chapter 3: Land use zones and land use table) justifying the inclusion of light industrial as a permitted use in the B1 Neighbourhood Centre zone.
LEP under section 58.	An additional objective has been prepared for the B1 Neighbourhood Centre zone. It adds to the scope of the objectives for the zone, and reflects the land use table which permits light industries.
Consider zone objectives that reinforce the primacy of tourism-related uses in the SP3 Tourist zone at Watsons Bay. Provide further explanatory material on this matter	Further information was provided in the Discussion Paper (Chapter 3: Land use zones and land use table) justifying the use of the SP3 Tourist zone for Watsons Bay.
during public exhibition to justify the use of the SP3 Tourist zone in this location.	We have not included an additional objective for this zone, as the four existing objectives sufficiently address the primacy of tourism related uses in Watsons Bay.
Place explanatory statements on public exhibition to justify the use of the SP2 Infrastructure zone, specifically for school sites.	Further information was provided in the Discussion Paper (Chapter 3: Land use zones and land use table) justifying the use of the SP2 Infrastructure zone, specifically for school sites.

22 July 2014 Page 3 of 4

Detail	Response
Place on exhibition explanatory statements and plain English tables of intent for clauses:	A plain English explanatory statement for each of these clauses was included in the Discussion Paper (Chapter 2: Written instrument and maps, and Chapter 4: Lot Size).
4.1B	Clause 4.1B Minimum lot sizes for a dual occupancy, multi dwelling housing and residential flat building
4.1C	Clause 4.1C Minimum lot sizes for semi-detached dwellings and attached dwellings in Zone R2 Low Density Residential
4.3A	Clause 4.3A Second building heights
4.3B	Clause 4.3B Area I (White City Tennis Club) – Height of buildings
4.4A	Clause 4.4A Area 1 (Double Bay) - floor space ratio
4.4B	Clause4.4B Areas 2 and 3 (Selected B1 and B4 Centres) – floor space ratio
4.4C	Clause4.4C Area 4 (Rose Bay) – height and floor space ratio incentives
4.4D	Clause 4.4D Area 5 (188 Oxford Street) – floor space ratio
Amend clause 6.8 Flood Planning to remove the reference to the projected sea level rise definition.	Reference removed.
Consultation with agencies	
Consult with the following agencies:	The following public authorities were provided with a copy of Draft WLEP 2013 and supporting material with 12 weeks to provide comment.
Transport for NSW	Letter dated 20 August 2013
Roads and Maritime Services	Letter dated 20 August 2013
Office of Environment and Heritage	Letter dated 20 August 2013
Department of Education and Communities	Letter dated 20 August 2013
Housing NSW	Letter dated 20 August 2013
Government Property NSW	Letter dated 20 August 2013
Office of Strategic Lands	Letter dated 20 August 2013
Adjoining Councils	Letter dated 20 August 2013
Post exhibition steps	
Final Draft LEP and maps submitted to the Department following community consultation are to be consistent with the <i>Environmental Planning and Assessment Act</i> 1979	The Final Draft LEP and maps are consistent with the Environmental Planning and Assessment Act 1979 and Regulations.
and Regulations. Note that the Department and Parliamentary Counsel may modify some model clauses and the Draft LEP may need to be amended accordingly.	We note that the Department and Parliamentary Counsel may modify some model clauses and the Draft LEP.
The Department's Sydney East Regional office can assist Council in its review of the Draft LEP before submission to the Minister under section 58.	Noted.
Council may consider preparing planning proposals for specific opportunity sites.	Noted.

22 July 2014 Page 4 of 4



Mr Gary James General Manager Woollahra Municipal Council PO Box 61 DOUBLE BAY NSW 1360

Contact: Juliet Grant Phone: 85754100

Email: juliet.grant@planning.nsw.gov.au

Dear Mr James

### Draft Woollahra Local Environmental Plan 2013 – Gateway Determination

I am writing in response to your letter requesting certification of draft Woollahra Local Environmental Plan 2013 (draft LEP).

Please be advised that I have determined, as delegate of the Minister for Planning and Infrastructure, under clause 122(2) of Schedule 6 of the *Environmental Planning & Assessment Act 1979* (EP&A Act) that conditions precedent up to section 56(2) of the EP&A Act are dispensed with. As such I am pleased to advise that, as delegate of the Minister for Planning and Infrastructure, I have now determined the draft LEP should proceed subject to the conditions in the attached Gateway Determination.

The Minister delegated his plan making powers to councils in October 2012. It is noted that Council has accepted this delegation. Due to the significance of the draft LEP, I am not issuing authorisation for Council to exercise delegation to make this plan.

### Consistency with EPIs & 117 Directions

Council is reminded to place the relevant State Environmental Planning Policies, any Regional Environmental Plans (deemed SEPPs) and section 117 Directions that apply on exhibition with the Gateway Determination and draft LEP.

It has been identified that the draft LEP is inconsistent with section 117 Direction 4.3 Flood Prone Land. As the delegate of the Director General, I agree that the inconsistency with Direction 4.3 Flood Prone Land is justified as it is of minor significance.

The draft LEP is also inconsistent with Direction 6.2 Reserving Land for Public Purposes as Council have not facilitated the reservation of land for road reservation at Neild Avenue, Paddington as requested by Roads and Maritime Services (RMS).

Council is encouraged to consult further with RMS during public exhibition of the draft LEP. If sufficient justification is provided by RMS, Council may be required to insert the road reservation in the draft LEP prior to submission under section 58 or progress a planning proposal to amend the LEP once made.

As delegate of the Director General, I have formed the view that further information is necessary to consider the inconsistency with Direction 6.2 Reserving Land for Public Purposes prior to finalisation of the draft LEP.

Council is required to place this letter on exhibition to demonstrate that the inconsistencies have been addressed.

### Legal drafting

Parliamentary Counsel has not yet been sought. Therefore the Department has issued this Gateway Determination on the understanding that Council, when exhibiting the draft LEP, makes it clear to the public that the draft LEP may be subject to post exhibition changes to satisfy its legal drafting requirements. Council should also provide a plain English version of the draft LEP for exhibition explaining what the draft LEP does.

### Minor mapping changes

Further minor changes to the format of the LEP maps are required to be undertaken by Council to ensure consistency with the *Standard Technical Requirements for LEP Maps Version 1.2 – March 2009.* A list of these changes is enclosed as Attachment 3. Given the non-material nature of these revisions they may be undertaken after exhibition of the draft LEP prior to final submission to the Department. The Department's Sydney East Regional office can assist with this as necessary.

### Further matters for consideration

Regarding the land use table, the Standard Instrument LEP directs that additional non-mandatory objectives should reflect particular local development within a zone that are consistent with the core, mandated objectives for that zone. The Department has identified a number of local non mandatory objectives within the land use table that appear to be inconsistent with the mandated objectives. For example the provision of high density residential development within the R3 Medium Density Residential zone is contrary to the core objective of that zone which is to provide housing in a medium density residential environment. Council is encouraged to address these inconsistencies and omit the relevant additional objectives or modify them to be consistent with the core objectives. This should be addressed by Council prior to submission of the draft LEP to the Department under section 58.

The Department considers that the inclusion of light industrial as a permitted use in the B1 Neighbourhood Centre zones is contradictory to the mandatory objectives of the zone. Council is encouraged to provide justification regarding this matter and to place this information on public exhibition with the draft LEP. Council is encouraged to prepare an additional objective for the zone to accommodate this land use. This should be undertaken prior to submission of the draft LEP under section 58.

The Department acknowledges Council's intentions to encourage tourism-related uses in the SP3 Tourist zone at Watsons Bay and encourages Council to consider zone objectives that reinforce the primacy of tourism-related uses in this area. Council should provide further explanatory material on this matter during public exhibition to justify the use of the SP3 Tourist zone in this location.

The Department also notes Council's intentions to zone a number of sites SP2 Infrastructure. Council is required to place explanatory statements on public exhibition to justify the use of the SP2 Infrastructure zone, specifically for school sites.

In relation to Part 4 of the draft LEP, Council is also required to place on public exhibition explanatory statements and plain English tables of intent for clauses 4.1B, 4.1C, 4.3A, 4.3B, 4.4A, 4.4B, 4.4C and 4.4D.

At the meeting on 27 June 2013 between Department and Council officers, Council requested the reference to the definition of projected sea level rise be removed from clause 6.8 Flood Planning prior to public exhibition as it is not required and not intended to be included. Therefore item 4 of the Gateway Determination includes a condition to amend clause 6.8 Flood Planning to remove the reference to the projected sea level rise definition.

### Consultation with agencies

Council is required to consult with the following agencies as part of the public exhibition process for the draft LEP:

- Transport for NSW
- Roads and Maritime Services
- · Office of Environment and Heritage
- Department of Education and Communities
- Housing NSW
- Government Property NSW
- Office of Strategic Lands
- · Adjoining councils

### Post exhibition steps

Council should ensure that any final draft LEP and maps submitted to the Department following community consultation are consistent with the *Environmental Planning and Assessment Act* and *Regulations*. Council should note that the Department and Parliamentary Counsel may modify some model clauses and your draft LEP may need to be amended accordingly.

The Department's Sydney East Regional office can assist Council in its review of the draft LEP before submission to the Minister under section 58.

I understand that Council has identified a number of opportunities for additional housing in Woollahra which go beyond the controls identified in the draft LEP. As per the Department's letter of 22 June 2011, Council may consider preparing planning proposals for these specific opportunity sites.

I would like to thank Council for progressing the draft LEP in a highly professional manner and look forward to your ongoing commitment to finalise this new environmental planning instrument.

If you have any questions in relation to this matter, please contact Juliet Grant, Regional Director Sydney East of the Department of Planning and Infrastructure 02 8575 4100.

You's sincerely

Daniel Keary

12/7/13

Acting Executive Director Metropolitan Planning

#### Encl:

- Attachment 1 Gateway Determination
- Attachment 3 Technical mapping changes



# **Gateway Determination**

Comprehensive Woollahra Local Environmental Plan 2013 (13/10297) - Introduction of a new Standard Instrument LEP to apply to the Woollahra local government area

I, the Acting Executive Director, Metropolitan Planning at the Department of Planning and Infrastructure, as delegate of the Minister for Planning and Infrastructure, have determined under section 56(2) of the EP&A Act that the draft Woollahra Local Environmental Plan (LEP) 2013, to introduce a new Standard Instrument LEP to apply to the Woollahra local government area, should proceed subject to the following conditions:

- 1. Council amend Height of Building Map Sheet 005 to correctly reference the appropriate subclause for Area J, being 4.4C.
- 2. Council amend the Land Zoning, Floor Space Ratio and Height of Buildings maps to include the recent rezoning of 9A Cooper Park Road, Bellevue Hill.
- 3. Council amend Schedule 1 to remove Item 8 being 9A Cooper Park Road, Bellevue Hill as it is now permissible within the land use zone.
- 4. Council amend clause 6.8 Flood Planning to remove the definition of projected sea level rise.
- 5. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:
  - (a) the draft LEP must be made publicly available for a minimum of 28 days; and
  - (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of A Guide to Preparing LEPs (Department of Planning & Infrastructure 2013).
- 6. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act and to comply with the requirements of relevant s117 Directions:
  - Transport for NSW
  - Roads and Maritime Services
  - Office of Environment and Heritage
  - Department of Education and Communities
  - Housing NSW
  - Government Property NSW
  - Office of Strategic Lands
  - Adjoining councils

Each public authority is to be provided with a copy of the draft LEP and any relevant supporting material, as identified in the attached letter, and given at least 21 days to comment on the proposal.

- 7. A public hearing is not required to be held into the matter by any person or body under section 56(2) (e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
- 8. The timeframe for completing the LEP is to be **8 months** from the week following the date of the Gateway determination.

Dated 12 th day of

JULY 2013.

Daniel Keary

Acting Executive Director Metropolitan Planning

Planning Operations and Regional

Delivery

Department of Planning and

Infrastructure

Delegate of the Minister for Planning and Infrastructure

# Attachment 2- Technical Mapping Changes

Comments	Action	
General – all maps		
In the LEP title, the text 'Draft (28 May 2013)' should be deleted.	Revise	
ASS		
OK, no comments		
FBL		
Does not comply fully with mapping guidelines, but makes sense.	To be reviewed by PC.	
FLD		
The correct description for the patch should read 'Flood Planning Area'	Revise	
FSR		
OK, no comments		
HER		
OK, no comments		
НОВ		
OK, no comments		
LAP		
OK, no comments		
LRA		
OK, no comments		
LSZ		
OK, no comments		
LZN		
OK, no comments		



Mr Gary James General Manager Woollahra Municipal Council PO Box 61 DOUBLE BAY NSW 1360

Dear Mr James

### Draft Woollahra Local Environmental Plan 2013 – Revised gateway determination

I refer to the gateway determination recently issued for draft Woollahra Local Environmental Plan 2013.

Under section 56(7) of the *Environmental Planning and Assessment Act* 1979 | have altered the gateway determination issued on 12 July 2013 as follows:

- delete Condition (2) relating to 9A Cooper Park Road, Bellevue Hill; and
- insert new definitions for "small bars" and "food and drink premises" into the dictionary as identified in the attachment.

### Planning proposal for 9A Cooper Park Road, Bellevue Hill

Condition (2) in the 12 July 2013 gateway determination requested Council to amend the Land Zoning, Floor Space Ratio and Height of Buildings maps to include the recent rezoning of 9A Cooper Park Road, Bellevue Hill. This can be deleted as the controls have already been included in the draft LEP. I understand Council previously resolved to round up the floor space ratio identified in the planning proposal from 0.625:1 to 0.63:1 to be consistent with the Department's Technical Mapping Guidelines for Standard LEPs. This approach is supported.

### New definitions for "small bars" and "food and drink premises"

This is required as small bars were recently introduced to the Standard Instrument Order as a stand-alone land use. The changes to the dictionary as indicated above will make the draft LEP consistent with the Standard Instrument Order. As a consequence of the above changes, small bars will automatically be permitted wherever food and drink premises and pubs are currently proposed to be permitted.

If you have any further enquiries about this matter, I have arranged for Tim Archer, Team Leader, Sydney East, to assist you. He can be contacted on telephone number 02 8575 4120.

Yours sincerely

Regional Director Sydney Region East

Enclosed: Attachment – new definitions for dictionary

## Attachment – new definitions for dictionary

food and drink premises means premises that are used for the preparation and retail sale of food or drink (or both) for immediate consumption on or off the premises, and includes any of the following:

- (a) a restaurant or cafe,
- (b) take away food and drink premises,
- (c) a pub,
- (d) a small bar.

**Note.** Food and drink premises are a type of *retail premises*—see the definition of that term in this Dictionary.

small bar means a small bar within the meaning of the Liquor Act 2007.

**Note.** Small bars are a type of **food and drink premises**—see the definition of that term in this Dictionary.



# DRAFT WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014

# **ANNEXURE 5**

# Part 5B

# Other matters

• Matters requiring further consideration

# Matters requiring further consideration

No.	Ref	Name and agent	Issue address (if relevant)	Summary
1	76/119	The Scots College	5-7 Mansion Rd, Bellevue Hill	Review zone
2	33/34	Property owners Agent: Mike George Planning	71-83 New South Head Rd, Edgecliff	Review controls
3	99/106	Enfield Securities	2 New South Head Rd, Edgecliff	Review controls
4	140/148	Property Development Workshops P/L Agent: GSA	2-14 and 20 New South Head Rd, Edgecliff	Review controls
5	125/134	Land & Housing Corporation	23-25 Lawson St, Paddington	Review controls
6	125/134	Land & Housing Corporation	30-36 Moncur St, Woollahra	Review controls
7	27/28	Dan	Caledonian Rd/New South Head Rd,	Review controls
8	49/52	Dan	Rose Bay	
9	51/54	Cuthbert		
10	94/101	Willcocks		
11	143/152	Tri-Anta Pty Ltd Agent: Urbis	52 Old South Head Rd, Vaucluse	Review controls
12	44/45	Duff	38-178 Oxford St, Woollahra	Review controls
13	67/71 & 129	Irene Notaras Agent: Tomasy	70, 74, 76, 78 & 80 Oxford St, Woollahra	Review controls
14	71/76	Rebecca L Cooper Medical Research Foundation Agent: Planning Direction Pty Ltd	54-56/98-106 Oxford St, Woollahra	Review controls
15	7/7	AMB Capital Partners, Royal Hotels Group and Tarrega Pty Ltd Agent: GSA Planning	28/38 Bay St, 2 Guilfoyle Ave, 3 South Ave, Lot 1 DP 570584, Double Bay	Review controls in light of the Double Bay Centre review
16	40/42	aSquare planning	605 New South Head Rd, Rose Bay	Review controls
17	180/189	Franks	Laguna St/Old South Head	Review controls
18	69/71	Stavrou	Rd/Billong Ave, Vaucluse	
19	105/112	Property owners Agent: GSA Planning	438 Edgecliff Rd, Edgecliff	Review controls
20	69 /73 /86	Stavrou Agent: GSA Planning Agent: Winten Property Group	83-103 New South Head Rd, Vaucluse	Review controls
21	109/116	Perryman Agent: ABC Planning	100 Queen St, Woollahra	Review controls
22	115/123	J&A Knott, M&V Greene, A McLeod (Wyelba)	Queen Street, Woollahra	Review controls
23	103/110	Sex Workers Outreach Project	LGA-wide	Review permissibility of home occupation

22 July 2014 Page 1 of 1