



29 October 2018

**Advice for Gateway Determination Review
Planning Proposal for the Kensington and Kingsford Town Centres
(GR_2018_RANDW_001_00)**

1. INTRODUCTION

1. On 30 August 2018, the Independent Planning Commission NSW (**Commission**) received a request for advice from the NSW Department of Planning and Environment (**Department**) regarding a Gateway Determination review of a planning proposal for the Kensington and Kingsford town centres.
2. On 5 March 2018, Randwick City Council (**Council**) sought a review of conditions 1, 2, 3 and 7 imposed by the Department as part of the Gateway Determination issued on 12 December 2017.
3. The Commission has been requested by the Department, as delegate of the Greater Sydney Commission (**GSC**), in accordance with section 3.34(5) of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*, to review the planning proposal and prepare advice concerning the merits of the review request. The GSC specified that the Commission's advice should include a clear and concise recommendation to the GSC confirming whether or not, in the opinion of the Commission, the planning proposal should proceed past Gateway in accordance with the original submission.
4. Professor Mary O'Kane AC, Chair of the Commission, nominated Mr John Hann (Chair) and Mr Steve O'Connor to constitute the Commission to review the Gateway Determination.

1.1 Subject site

5. The Kensington and Kingsford town centres are located along the Anzac Parade corridor. The Kensington town centre extends from Carton Street (northern extent) to Doncaster Avenue (southern extent). The Kingsford town centre extends from just north of Barker Street (northern extent) to Sturt Street (southern extent).
6. The planning proposal applies to land currently zoned B2 Local Centre as well as three additional sites currently zoned R2 Low Density Residential and R3 Medium Density Residential which form minor boundary extensions to the Kingsford town centre.
7. The City to South East Light Rail (currently under construction) will traverse Anzac Parade through the Kensington and Kingsford town centres. Figure 1 identifies the location of the town centres.

Figure 1: Location of the Kensington and Kingsford town centres
(Source: Planning Proposal, Randwick City Council)



1.2 Council's request for Gateway Determination review

8. On 12 December 2017, the Department, as delegate of the GSC, determined that the planning proposal seeking to amend the height and floor space ratio (**FSR**) controls and introduce new local provisions for the Kensington and Kingsford town centres should proceed. Accordingly, a Gateway Determination was issued by the Department, subject to conditions.
9. On 5 March 2018, Council provided a submission supporting a request for a Gateway Determination review. Council specifically requested the deletion or amendment of the following Gateway Determination conditions:
 1. *Prior to community consultation, the planning proposal is to be amended to:*
 - (a) *identify additional opportunity sites in order to increase the dwelling capacity by a minimum of 600 dwellings within the planning proposal boundary currently zoned B2 Local Centre Zone in the Kensington and Kingsford Town Centres;*
 - (b) *specify appropriate heights and floor space ratios (FSRs) for the additional opportunity sites and specify FSR increases for sites where additional height (ie. additional 2 storeys) can be attained under design excellence provisions;*
 - (c) *remove the proposed draft Community Infrastructure Contributions clause (Attachment C – Clause 6.14 Community Infrastructure height of buildings Kensington and Kingsford Town Centres) and amend to remove references throughout the proposal to a Community Infrastructure clause;*
 - (d) *remove the proposed clause in the planning proposal for Affordable Housing and instead provide a statement of intent for the inclusion of a clause in a draft LEP for Affordable Housing (Attachment A – draft Affordable Housing Clause).*
 - (e) *include in the statement of intent for Affordable Housing a reference to:*
 - i. *determining an appropriate figure (\$/m²) for the town centres, equivalent to the value of the properties; and*
 - ii. *providing more detail, including an example of how the contribution is calculated and further explanation of the “accountable total floor space”.*
 2. *Prior to community consultation, initial consultation on the revised Planning Proposal is to be undertaken with the following public agencies:*
 - *Sydney Airport Corporation Limited (SACL), Civil Aviation Safety Authority (CASA) and Air Services Australia (AsA) in relation to maximum building heights and to satisfy the requirements of Section 117 Direction 3.5 Development Near Licensed Aerodromes; and*
 - *Transport for NSW and Roads and Maritime Services in relation to the scope of detailed traffic modelling and potential future road corridor widening to support growth in the corridor.*

These public authorities are to be provided with a copy of the Planning Proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.
 3. *Prior to community consultation, the revised planning proposal is to be submitted to the Department of Planning and Environment for endorsement.*
 7. *The timeframe for completing the LEP is to be **12 months** from the week following the date of the Gateway determination.*

10. Following the request for a Gateway Determination review, Council confirmed that all but one of the recommended conditions have been resolved to Council's satisfaction. The only condition that remains in dispute is Condition 1(c).
11. Council has stated in its Gateway Review submission that condition 1(c) should be removed as it considers the community infrastructure clause (**CIC**) is a legal, transparent and legitimate way for Council to fund community infrastructure to support growth. The community infrastructure contributions would be secured by developers offering to enter into a voluntary planning agreement (**VPA**) with Council at the time of lodgement of the corresponding development application (**DA**). This would enable the variation of building heights and FSR within the town centres, above those that currently apply under the *Randwick Local Environmental Plan 2012 (RLEP 2012)*.

1.3 Summary of Planning Proposal and Gateway Determination

12. The Gateway Determination relates to a planning proposal to introduce new provisions for the Kensington and Kingsford town centres under the RLEP 2012. The planning proposal seeks to introduce new provisions relating to land currently zoned B2 Local Centre, land zoned R2 Low Density Residential and R3 Medium Density Residential, including:
 - increase the maximum building height and floor space ratio identified in Council's draft Planning Strategy for the Kensington and Kingsford town centres;
 - introduce a CIC clause where the maximum building heights and/or maximum FSR may be achieved subject to a contribution being made towards community infrastructure within the town centres;
 - introduce the requirement for an architectural design alternatives competition to ensure design excellence is achieved for development on 'opportunity sites' that will accommodate taller buildings;
 - for developments that successfully demonstrate design excellence, an additional building height of up to two storeys and the exclusion of identified social infrastructure/innovation centre floor space requirements from the total gross floor area (**GFA**) calculation may be granted;
 - introduce new provisions applying to land zoned B2 Local Centre within the town centres including the requirement for active frontages; and
 - rezone three sites currently zoned R2 Low Density Residential and R3 Medium Density Residential to B2 Local Centre to ensure a cohesive zoning application across the Kingsford town centre.
13. A short chronology of the history of the planning proposal is provided below:
 - 3 February 2017 – the planning proposal was referred to the Department for Gateway Determination.
 - 12 December 2017 – the Department issued a Gateway Determination with conditions.
 - 5 March 2018 – Council requested a Gateway Determination review.
 - 30 August 2018 – the Commission received a request from the Department to undertake a Gateway Determination review.

2. THE DEPARTMENT'S GATEWAY DETERMINATION REPORT AND GATEWAY REVIEW JUSTIFICATION ASSESSMENT

14. The Department's Gateway Determination report concluded the proposed amendments to the planning controls in the Kensington and Kingsford town centres will provide an updated planning framework to support increased housing and employment growth within the Anzac Parade corridor.
15. However, based on a comprehensive review of the planning proposal, including an urban design peer review undertaken by Allen Jack & Cottier (AJ&C) and advice from Transport for NSW regarding the capacity of the future light rail, the Department also concluded that while the planning proposal has merit to proceed to public exhibition, it should be subject to a number of conditions, including:
 - Council investigating increased dwelling capacity within additional opportunity sites based on feedback from the AJ&C peer review, advice from Transport for NSW and feasibility testing that was conducted;
 - additional height and FSR controls within the additional opportunity sites being specified;
 - removal of the draft CIC clause as it is inconsistent with the requirements of the EP&A Act and supporting policies for levying development contributions;
 - removal of the proposed Affordable Housing clause and instead provide a statement of intent for the inclusion of a draft Affordable Housing clause;
 - consultation being carried out with the relevant public agencies relating to aviation safety, traffic modelling and future road corridor widening; and
 - community consultation and public authority consultation being carried out consistent with the requirements of the EP&A Act.
16. As indicated in Paragraph 10, all but one of the conditions have been resolved to Council's satisfaction, leaving condition 1(c) in dispute. The Department's Gateway Review Justification Assessment concluded the following in respect to condition 1(c):
 - 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.

2.1 Referral of Gateway Determination to the Commission

17. Given the very different views of the Department and Council about a range of issues the Department referred the Gateway Determination to the Commission to undertake an independent review as Council sought a review of the determination.
18. To assist the Commission in its review, the Department's referral included the Gateway Determination, the Proponent's request for a Gateway Determination review and the Department's Gateway Determination Justification Assessment.
19. The Department requested the Commission review the planning proposal and prepare advice concerning the merits of the review request including a clear and concise recommendation to the GSC confirming whether, in the Commission's opinion, the planning proposal should proceed past Gateway in accordance with the original

submission.

3. THE COMMISSION'S MEETINGS AND SITE INSPECTION

20. As part of the Gateway Determination review, the Commission met with representatives of the Department and Council on several occasions and undertook a site visit. A summary of the meetings and site inspection is set out below.

21. All meeting transcripts and site inspection notes were made available on the Commission's website.

3.1 Meeting with the Department

22. On 19 September 2018, the Department met with the Commission on the Gateway Determination. Key points of discussion included the following:

- the Department advised it no longer requires that a minimum of 600 dwellings must be found within the town centre boundaries and that these dwellings could instead be provided throughout the broader local government area (**LGA**) and as part of Council's local housing strategy which is currently being prepared;
- the Department considers that the proposed CIC is contrary to section 7.7 of the EP&A Act, which states that a provision of an environmental planning instrument that expressly requires a planning agreement to be entered into before a development application can be made, considered or determined has no effect; and
- the Department considered that not all the community infrastructure items listed in Council's planning proposal are consistent with what would normally be provided for under a Section 7.11 contributions plan and that not all of the items would directly relate to, or be provided upon, the individual development sites.

3.2 Meeting with Council

23. On 19 September 2018, Council provided a response to the Commission on the matters raised by the Department in its Gateway Determination. Key points of discussion included the following:

- Council confirmed the CIC is intended to apply to all land within the Kensington and Kingsford town centres and has been informed by a comprehensive strategic planning exercise, including an urban design competition, community consultation, financial feasibility assessment of the proposed CIC, and other specialist studies;
- Council considered the existing section 7.12 contributions (which is capped at 1% of the construction value) cannot provide the full range of public benefits envisaged under the CIC and Local Infrastructure facilities, therefore Council has sought an increase in its section 7.12 (formerly section 94A) contribution levy from 1% to 3%;
- Council stated that there is legal power under the EP&A Act to include the proposed CIC clause and that a similar scheme is operating in the adjoining City of Sydney LGA at Green Square;
- Council described how the CIC scheme would operate and confirmed it would not be a compulsory requirement to enter into a VPA, rather an option for a developer to achieve additional height and/or floor space by making a contribution to community infrastructure;
- Council confirmed the CIC rate was established by their consultants Hill PDA as this rate had been market tested having been operational in Green Square since 2012; and
- Council confirmed that it had been working closely with the Department on the

requirements to identify an additional 600 dwellings under condition 1(a) of the Gateway Determination. Accordingly, Council understands that both condition 1(a) and 1(b) would now be removed, noting that condition 1(b) requires the identification of appropriate heights and FSR for additional opportunity sites for the 600 dwellings required under condition 1(a);

- Council confirmed it accepts condition 2 of the Gateway Determination requiring consultation to be carried out with certain public agencies and also accepts Conditions 3 & 7.

3.3 Site inspection

24. On 19 September 2018, the Commission conducted an inspection of the site by walking the length of both the Kensington and Kingsford town centres (along Anzac Parade). The site inspection provided the opportunity to view the site in context to the surrounding area and built environment and view the location of proposed opportunity sites and future light rail stops.

3.4 Meeting with the Department

25. On 2 October 2018, the Commission met with the Department to discuss the proposed CIC scheme. Key points of discussion included the following:

- the Department outlined its view that the CIC scheme requires a VPA to be entered into which is inconsistent with the requirements of the EP&A Act;
- the Department outlined what it considered to be the key differences between the proposed CIC scheme at Randwick and the operational CIC schemes at Green Square and Burwood Town Centre; and
- the Department advised that it would agree to an appropriately modified version of the CIC clause.

3.5 Meeting with Council

26. On 8 October 2018, the Commission met with Council and its consultants from Hill PDA, Conybeare Morrison and SG Haddad Advisory. Key points of discussion included the following:

- Council's consultants described how the proposed infrastructure items listed under the CIC were costed;
- Council's consultants described how the dollar rate per square meter of additional gross floor area GFA was derived; and
- Council described the similarities between the proposed CIC and community infrastructure provisions at Green Square in the City of Sydney LGA.

4. ADDITIONAL INFORMATION

27. On 19 September 2018, the Commission received additional information from Council including a response to each of the issues raised by the Department in its Gateway Review Justification Assessment. This additional information was made available on the Commission's website on 20 September 2018.

28. On 5 October 2018, the Commission received additional information from the Department in response to the additional information provided by Council dated 19 September 2018. This additional information was made available on the Commission's website on 17 October 2018.

5. THE COMMISSION'S CONSIDERATION

29. Council's Gateway Determination review submission requested the deletion of conditions 1(a), 1(b), 1(c), 2 and 3 and amendments to condition 7.
30. In regards to condition 1(a), the Department outlined in its Gateway Review Justification Assessment that it has accepted Council's position that it will consider finding 600 additional dwellings as part of its Local Housing Strategy. Accordingly, the Department recommended that Gateway condition 1(a) be deleted. The Commission therefore agrees that condition 1(a) can be deleted.
31. In regards to condition 1(b), Council considers the condition is not required if the CIC clause is supported (as the increase in building heights will be achieved via the clause). The Commission considers condition 1(b) can be deleted on the basis that the Department no longer requires the planning proposal to identify additional opportunity sites.
32. In regards to condition 1(c), the Commission's consideration of this matter is discussed in detail in the following pages.
33. In regards to condition 2, 3 and 7, Council has confirmed that it accepts the Department's position not to remove or amend these conditions. Given that there is now agreement between the parties, the Commission therefore considers these conditions should be retained.
34. In reviewing the Gateway Determination, the Commission has carefully considered the following material (the **Material**):
- Planning Proposal for Kensington and Kingsford Town Centres prepared by Council and dated January 2017;
 - Gateway Determination Report prepared by the Department and endorsed on 31 October 2017;
 - Gateway Determination endorsed by the Department and dated 12 December 2017;
 - Gateway Review Justification Assessment prepared by the Department and endorsed on 30 August 2018;
 - additional information received from Council on 19 September 2018 (refer paragraph 27);
 - additional information received from the Department on 5 October 2018 (refer paragraph 28);
 - Council's legal advice, dated 8 October 2018 (provided on the basis of common interest privilege); and
 - the Department's legal advice, dated 28 May 2018 (provided on the basis of common interest privilege).

5.1 Key Matters for Consideration

35. The Commission's key matters for consideration in undertaking the Gateway Determination review related to:
- the operation of similar CIC schemes in other metropolitan LGAs;
 - clarification regarding whether the CIC scheme relates to both building height and FSR;
 - the classification of community infrastructure;

- the establishment of a dollar rate (per square metre of additional GFA) that would be attributed toward community infrastructure; and
- requirements to enter into a VPA and whether the CIC can be legally made.

5.1.1 CIC schemes in other metropolitan LGAs

36. In considering the implementation of a CIC for the Kensington and Kingsford town centres, the Commission has reviewed similar CIC schemes that currently operate in other LGAs including at Green Square in the City of Sydney LGA and Burwood Town Centre in the Burwood LGA.
37. In respect to the Green Square scheme, clause 6.14 of the *Sydney Local Environmental Plan 2012 (SLEP 2012)* states that the consent authority may consent to development that results in additional floor space at certain sites at Green Square if the development includes community infrastructure. In deciding whether to grant development consent, the consent authority must be satisfied that the Green Square community infrastructure is reasonably necessary at Green Square.
38. To achieve the additional FSR at Green Square, an Applicant must enter into a VPA with the City of Sydney Council. The draft VPA details the community infrastructure to be provided as part of a development. The draft VPA and DA are exhibited concurrently.
39. Similarly, clause 4.4A of the *Burwood Local Environmental Plan 2012 (BLEP 2012)* allows additional GFA for buildings within the Burwood Town Centre, subject to the provision of community infrastructure and the consent authority being satisfied that the community infrastructure is appropriate for the Burwood Town Centre.
40. The provision of community infrastructure at Green Square and the Burwood Town Centre include works that are in addition the requirements of a Section 7.11 contributions plan. If no community infrastructure is able to be provided on a specific development site, a higher FSR may still be achieved should a developer offer a contribution towards the delivery of community infrastructure off-site but still within the defined boundaries of the Green Square Urban Renewal Area or Burwood Town Centre.
41. Both the City of Sydney Council and Burwood Council have prepared community infrastructure development guidelines that detail how and where community infrastructure is to be delivered within the Green Square Urban Renewal Area and Burwood Town Centre, respectively.
42. In the case of Green Square, the development guidelines include a dollar rate that is used to establish the value of additional floor space, which is currently set at \$475 per square metre. In the case of Burwood Town Centre, Burwood Council's Schedule of Fees and Charges includes the contribution amount for 'bonus' development which is currently set at \$1,750 per square metre of residential floor space in the Burwood Town Centre.
43. Council formed the view that the community infrastructure scheme proposed for the Kensington and Kingsford town centres would be structured and consequently operate similar to the community infrastructure contribution schemes in place at Green Square and Burwood Town Centre.

5.1.2 Clarification on whether the CIC relates to both building height and FSR

44. The Commission confirmed with Council that the CIC scheme applies to both an increase in the maximum building heights and FSR controls. The Commission therefore recommends the draft CIC clause at Appendix C of the planning proposal be amended to specifically make reference to increased density. This is discussed further at paragraph 60.

5.1.3 Classification of community infrastructure

45. The Department's Gateway Determination Justification Assessment states that a number of community infrastructure items identified by Council for the CIC are not necessarily related to demand that is created by additional development. The Department provided examples of these non-essential infrastructure items including pneumatic waste collection systems, water sensitive urban design and public art works.

46. The Department also considered that a number of the items proposed under the CIC would not fall under the Essential Works list provided in the Department's Practice Note for Local Infrastructure Contributions (January 2018) (**LIC Practice Note**).

47. The Commission has concluded that the LIC Practice Note applies only to Local Infrastructure Contributions and therefore there is no necessity to require the proposed CIC items to fall within the essential works listed in the LIC Practice Note.

48. Both the SLEP 2012 and BLEP 2012 provide a definition for community infrastructure. For the Green Square example, community infrastructure is defined under clause 6.14(5) of the SLEP 2012 as "*development at Green Square for the purposes of recreation areas, recreation facilities (indoor), recreation facilities (outdoor), public roads, drainage or flood mitigation works*". Similarly, for the Burwood Town Centre example, community infrastructure is defined under clause 4.4A(9) of the BLEP 2012 as "*(a) a recreation area, (b) a community facility, (c) an information and education facility*".

49. The Commission's consideration on the definition of community infrastructure under the draft CIC clause is discussed further at paragraph 63.

5.1.4 Establishment of a dollar rate toward community infrastructure

50. The CIC scheme involves a set levy of \$475 per square metre of additional GFA. The Department's Gateway Determination Justification Assessment states the planning proposal does not justify or provide evidence that the works are properly costed or reasonable. The Department considered this rate to not be based on the cost of the required infrastructure, but rather is what is applied for the Green Square model.

51. Council advised in its additional information supplied to the Commission (refer paragraph 27) that the levy \$475 per square metre was recommended by its consultants (Hill PDA) as this rate had been market tested (being the rate set for the Green Square CIC scheme), therefore demonstrating that it could be afforded and would generate the monetary contributions required to fund Council's proposed community infrastructure. Hill PDA also undertook a review of other metropolitan LGAs which determined the \$475 per square metre of additional GFA to be a comparatively low rate.

52. The Commission concludes that Council may adopt guidelines that define a dollar amount for the contribution for the increased GFA (assuming that it could be sufficiently tied to the increase in height), but the actual offer would remain voluntary.

5.1.5 Requirement to enter into a VPA

53. The Department's Gateway Determination Justification Assessment stated that the CIC scheme could not be supported as the approach proposed by Council would result in a mandatory requirement to enter into a VPA to access the additional building height anticipated by the planning proposal. The Department references Section 7.7 of the EP&A Act which states that a provision of an environmental planning instrument (i.e. an LEP) that expressly requires a planning agreement to be entered into before a development application can be made, considered or determined, has no effect.

54. Council advised in its additional information supplied to the Commission (refer paragraph 27) that there is no case law to suggest that the proposed CIC scheme is unlawful and/or beyond the LEP making power available under the EP&A Act. Further, Council considered the CIC scheme complies with the fundamental principles of planning agreements outlined in the Department's Draft Practice Note for Planning Agreements (November 2016).

55. The Commission concludes the proposed CIC scheme outlined in the planning proposal is a valid mechanism to attain contributions towards community infrastructure in the Kensington and Kingsford town centres. Further, section 7.4(4) of the EP&A Act confirms that a contribution does not have to have a connection to the development.

56. The Commission further concludes that the RLEP 2012 would provide three pathways to development consent on the affected sites, including:

- compliance with the height limits under clause 4.3 of the RLEP 2012; or
- obtaining a variation to the maximum building heights through submission of a written request pursuant to clause 4.6 of the RLEP 2012; or
- by making a voluntary offer to enter into a VPA to contribute to community infrastructure.

57. In consideration of the pathways to development consent listed at paragraph 56, the Commission concludes that the proposed CIC scheme could not reasonably be read as 'requiring' a VPA to be entered into and is therefore a valid mechanism to attain voluntary contributions toward community infrastructure.

5.1.6 Commission's consideration

58. The Commission is satisfied that the proposed CIC scheme outlined in the planning proposal is a valid mechanism to attain contributions towards community infrastructure in the Kensington and Kingsford town centres, subject to revisions of the draft CIC clause (refer to paragraph 63). Further, the Commission notes that the Department would consider supporting the delivery of community infrastructure via a new clause under the RLEP 2012, but only if it is drafted in a similar manner as clause 6.14 of the SLEP 2012 for Green Square and subject to the drafting amendments referred to in paragraph 63.

59. The Commission is satisfied that the community infrastructure items proposed under Council's CIC scheme are not required to directly align with the items listed under the Essential Works list of the Department's LIC Practice Note.

60. The Commission notes there was a degree of uncertainty around whether the CIC scheme related to FSR controls as it wasn't specifically mentioned in the draft CIC clause (at Appendix C of the planning proposal). Council confirmed that the CIC scheme is intended to relate to both increased building heights and FSR controls throughout the Kensington and Kingsford town centres. The Commission recommends the draft CIC clause included at Appendix C of the planning proposal be amended so that it makes reference, amongst other things, to the maximum FSR that may be achieved, subject to a contribution to community infrastructure. Attachment A provides an example of how this clause could be amended to address this issue.
61. The Commission accepts that the establishment of an appropriate contribution rate toward community infrastructure is at the discretion of Council and may be adjusted periodically. Further, the Commission accepts that the rate of \$475 per square metre of additional GFA within the Kensington and Kingsford town centres (outlined in Council's draft development guidelines, dated September 2018) has been market tested in the adjoining City of Sydney LGA at Green Square and reviewed against rates applied in other LGAs.
62. The Commission is satisfied the CIC scheme is not inconsistent with the requirements of section 7.7 of the EP&A Act. As noted at paragraph 55, section 7.4(4) of the EP&A Act confirms that a contribution is not required to have a direct nexus to a proposed development. Therefore, the provision of community infrastructure is not required to be provided 'on-site' and may instead be provided elsewhere within the Kensington and Kingsford town centres.
63. The Commission has also carefully considered the Department's position and agrees that the definition of community infrastructure under the proposed CIC clause could be more clearly defined to provide greater certainty and consistency with similar CIC clauses operating under other LEPs. The Commission therefore recommends the draft CIC clause included at Appendix C of the planning proposal be amended to define community infrastructure as being for the purposes of:
- *recreation areas;*
 - *recreation facilities (indoor);*
 - *recreation facilities (outdoor);*
 - *public roads;*
 - *drainage; and*
 - *community facilities.*
64. Accordingly, the Commission considers the proposed CIC scheme is a valid contributions mechanism and is therefore satisfied that a CIC clause can be included in the planning proposal, subject to the revisions outlined above. A draft revised CIC clause is included at Attachment A.
65. The Commission has also considered how the proposed CIC scheme relates to clause 4.6 of the RLEP 2012 which enables the departure from certain development standards.
66. The Commission considers that it is reasonable that clause 4.6 of the RLEP 2012 applies to development standards in the Kensington and Kingsford town centres including any additional height and FSR under the CIC clause to achieve alternative development outcomes through flexibility in relevant development standards. Further, clause 4.6 will provide another avenue to potentially achieve additional building height

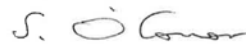
and GFA above the base controls without having to enter into a VPA.

6. THE COMMISSION'S ADVICE

67. The Commission has undertaken a review of the Gateway determination, as requested by the Minister's delegate, as set out in paragraph 19, and provides the following advice to the GSC confirming whether the planning proposal should proceed past Gateway in accordance with the original submission.
68. The Commission has reviewed and considered the Material before it, met with the Department and Council on several occasions and carried out a site inspection.
69. The Commission's review recommends condition 1(a) be deleted for the reasons set out at paragraph 30.
70. The Commission's review recommends condition 1(b) be deleted for the reasons set out at paragraph 31.
71. The Commission's review recommends condition 1(c) be deleted for the reasons set out at paragraph 58.
72. The Commission recommends a new condition be included requiring Council to adopt the revised CIC clause as set out in Appendix A, which clearly address both height and FSR and more clearly defines community infrastructure.
73. The Commission's review recommends conditions 2, 3 and 7 be retained for the reasons set out at paragraph 33.



John Hann (Chair)
Member of the Commission



Steve O'Connor
Member of the Commission