

23 October 2019

218078

Emma Hitchens
Acting Director, Eastern District (City of Sydney)
NSW Department of Planning, Industry and Environment
320 Pitt Street,
Sydney NSW 2000

Attention: Mary Su,

RE: Response to Request for Gateway Review – 30-62 Barcom Avenue, Darlinghurst

Dear Mary,

This letter has been prepared by Ethos Urban on behalf of Clanricarde Investments Pty Ltd who own land at 30-62 Barcom Avenue, Darlinghurst and who are the proponents of the Planning Proposal (Ref. PP_2018_SYDNE_007_00). The Planning Proposal is currently the subject of a Gateway Review requested by the City of Sydney Council on 4 September 2019.

This letter is to inform the Department of Planning, Industry and Environment (DPIE) that due to the extensive delays that will ensue from the Gateway Review process, the proponent is prepared to enter into a Voluntary Planning Agreement (VPA) with Council (as a condition of a revised Gateway) to enable the provision of a 6 STAR NABERS or equivalent, which would be applicable only to the additional floor area being sought under the Planning Proposal. The VPA would be prepared, adopted and executed with Council prior to the finalisation of the Planning Proposal and would be applicable at the Development Application stage.

Furthermore, given the relatively minor scale of the Planning Proposal, we contest that the imposition of NABERS in a planning instrument such as an LEP is a broader policy issue that should be resolved between Department of Planning, Industry and Environment (DPIE) and Council. Clanricarde Investments Pty Ltd should not be a test case nor be unduly hindered by this broader policy issue, which will have a detrimental impact on the delivery of the project potentially setting it back by up to 6 months.

While Clanricarde is prepared to enter into a VPA with Council to ensure that a 6 Star NABERS or equivalent is implemented into the proposed scheme at DA stage, we note that the Gateway Review to incorporate NABERS into the LEP is not appropriate and represents a misapplication of provisions/contents that can be included within an LEP pursuant to Clause 3.14 of the EP& A Act. The imposition of a NABERS commitment is a detailed design matter that is more appropriate for application in a DCP, as per the current application of this requirement by Council. Furthermore, the imposition of this commitment in the LEP is highly unnecessary as it replicates a control which is currently contained within the DCP and can be implemented with a VPA.

On this basis, Clanricarde Investments Pty Ltd have written to the City of Sydney to provide an offer to enter into a VPA and to respectfully request that they withdraw their request for a Gateway Review given that it is not justified and can be dealt with by way of an alternate legal mechanism that will enable the Planning Proposal to be progressed in a timely manner. We note that this alternative process was adopted for 4-6 Bligh Street which was the subject of a VPA with NABERS commitments in lieu of an LEP requirement.

ETHOS URBAN

Therefore, the commitments for NABERs can be secured with a VPA and resolved at the DA stage without causing further delays to the progression of the Planning Proposal and more critically, the timing on the delivery of the project.

We would welcome a meeting with DPIE to discuss this matter further. Should you have any queries, please do not hesitate to contact the undersigned.

Yours sincerely,

A handwritten signature in cursive script, appearing to read 'J. McBride'.

James McBride
Associate Director
(02) 9409 4954
jmcbride@ethosurban.com