



13 December 2024

REF: WTJ23 -075

Tom Atkinson
A/Manager – City of Sydney and Eastern District
Planning, Land Use Strategy and Housing
Department of Planning, Housing and Infrastructure
Via email: [REDACTED]

Attention: Tom Atkinson

GATEWAY REVIEW - PLANNING PROPOSAL AT 50 BOTANY STREET, BONDI JUNCTION

Department Reference: PP-2024-104

Dear Tom,

We confirm that we act for Bondi Exchange Pty Ltd (the Proponent) in relation to the Planning Proposal no 2024-104 (PP) at 50 Botany Street, Bondi Junction (Site).

Reference is made to your email correspondence dated 10th December 2024, regarding the Proponent's request for a review of the Gateway Determination issued by the Department of Planning, Housing and Infrastructure (Department) on 14 October 2024 (Gateway Determination) (NSW Planning Portal Reference Number GR-2024-13).

It is understood that additional information is sought by the Department to confirm the eligibility of the request for review.

Accordingly, please see our response to the additional information request below.

- **Explain how the request meets the criteria for a Gateway review (as set out in the LEP Making Guideline).**

The Local Environmental Plan Making Guideline (LEP Guideline) sets out the criteria in which a request can be made for a review of a Gateway determination.

The review criteria and the Proponent's associated responses are provided in **TABLE 1** below.

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TABLE 1. GATEWAY REVIEW CRITERIA

| Criteria A review may be requested when a Gateway determination: | Proponent's Response |
|--|---|
| <ul style="list-style-type: none"> States the planning proposal should not proceed | Not Applicable. The Gateway Determination supports the progression of the PP. |
| <ul style="list-style-type: none"> Requires that the planning proposal should be altered and re-submitted to which the proponent or council thinks this should be reconsidered | Not Applicable. The Gateway Determination supports the progression of the PP. |
| <ul style="list-style-type: none"> Imposes conditions (other than consultation requirements) in the Gateway determination or imposes conditions that requires variation to the proposal, for which a proponent and/or council thinks should be reconsidered. | <p>The Proponent requests the reconsideration of the imposition of Condition 1(a) of the Gateway Determination which provides as follows:</p> <ol style="list-style-type: none"> 1. <i>Prior to exhibition, the proposal is required to be updated to:</i> <ol style="list-style-type: none"> a) <i>Provide a plain English explanation of how the affordable housing contribution additional local provision will apply to the site and include a disclaimer that final wording will be subject to Parliamentary Counsel drafting.</i> <p>It is requested that Condition 1(a) be deleted as the Proponent's PP does not seek to amend the Waverley Local Environmental Plan 2012 (WLEP) by way of including a new site specific provision for the payment of an affordable housing contribution (AHC).</p> <p>Instead, the PP 'anticipates' the making of an AHC. As such, the Proponent has made numerous offers to Council to enter into a planning agreement to facilitate the same.</p> <p>Extensive justification regarding the inappropriateness of an AHC in the circumstances of this PP is provided in the Gateway Review Request submitted to the Department by Willowtree Planning dated 28 November 2024, via the NSW Planning Portal (Gateway Review Request). Particular reference is made to the section titled 'Justification for Why an Alteration of the Gateway Determination is Warranted' and the legal advice provided at Attachment 1 to the Gateway Review Request.</p> |

- Justify why an alteration to the Gateway determination is warranted, including, where relevant, responses to issues raised by the original Gateway decision maker.**

Without repeating the extensive justifications provided in the Gateway Review Request, we summarise the Proponent's reasons for requesting the review as follows:



- The quantum of the AHC proposed by Council is unreasonable as it will place an arbitrary (and overly onerous) financial burden on the future development of the Site.
- The percentage of the AHC proposed by Council is materially misrepresented as Council seek to impose a contribution rate which is almost 40% higher than the rate identified in Council's own feasibility report.
- Council has mis-characterised the PP in the reports to the Panel and Department by making it appear that AHC mechanism which is sought to be inserted into the WLEP was proposed by the Proponent. Council's proposed AHC mechanism in the Proponent's PP has been rejected on two previous occasions by the Department (see PP- 2021-3131 and PP-2023-2221).

- **Outline the proposed alteration to the Gateway determination that is being sought.**

It is requested that Condition 1(a) of the Gateway Determination be deleted, as the Proponent's PP does not seek to amend the WLEP to include a site specific AHC provision.

For completeness, it is requested that Condition 1(a) to be replaced as follows:

1. *Prior to exhibition, the proposal is required to be updated to:*

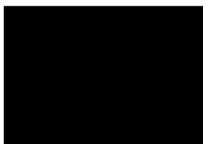
- a) *Require the removal of any requirement for the payment of an affordable housing contribution.*

Additionally, for the reasons outlined above and as detailed in the Gateway Review Request, the Proponent respectfully requests that the Council not be delegated the responsibility of the plan-making authority of this PP.

In accordance with the above, we consider that we have met the requirements for the lodgement of a review of the Gateway Determination.

Should you have any questions in relation to the above, please do not hesitate to contact me.

Your sincerely,



Andrew Pigott
Director
Willowtree Planning Pty Ltd

