



New South Wales Government  
Independent Planning Commission

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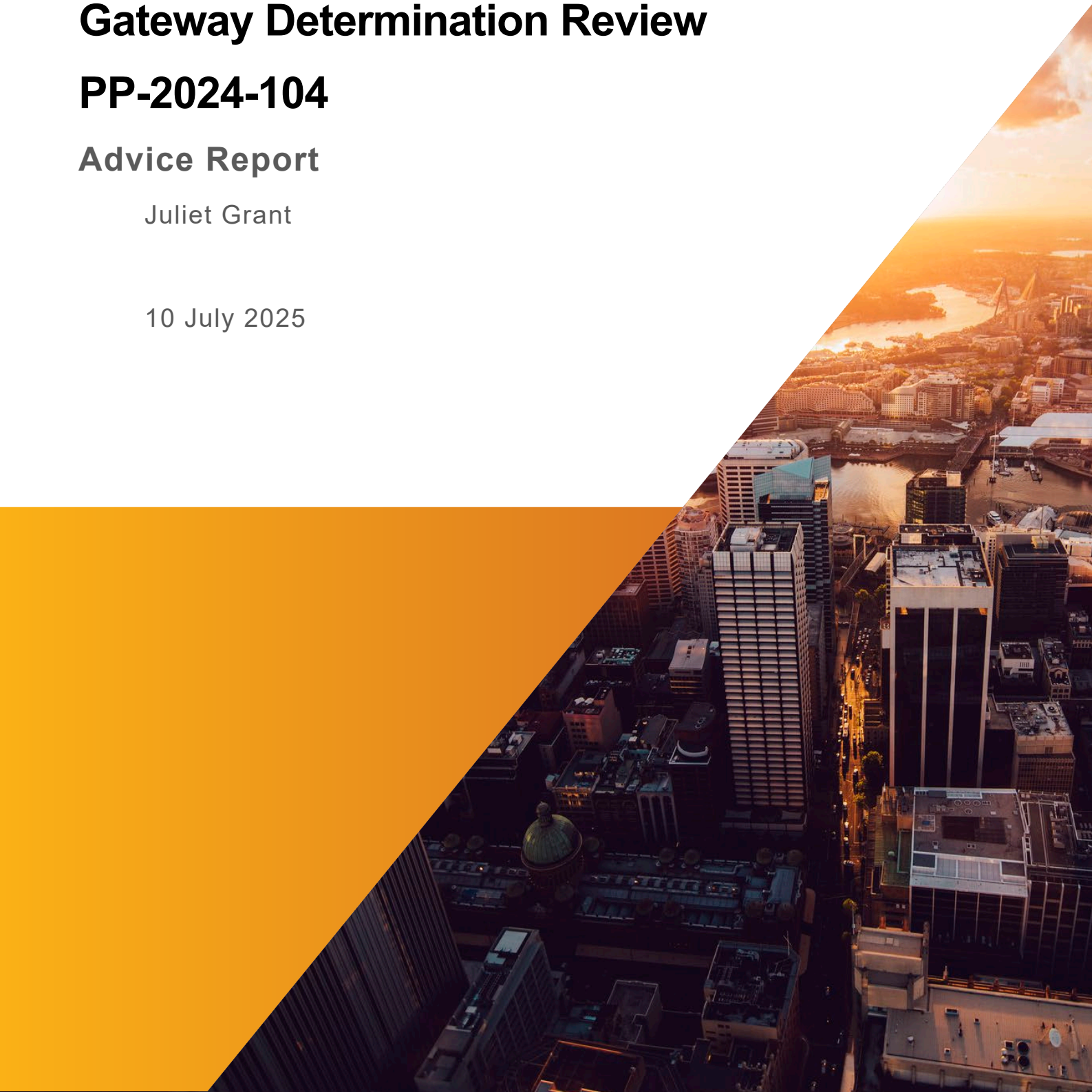
# 50 Botany Street, Bondi Junction Gateway Determination Review

## PP-2024-104

### Advice Report

Juliet Grant

10 July 2025



# 1. Introduction

- 1. On 12 June 2025, the NSW Independent Planning Commission (**Commission**) received a referral from the NSW Department of Planning, Housing and Infrastructure (**Department**) dated 4 June 2025 requesting advice on the merits of a Gateway Determination review request for planning proposal PP-2024-104 (**Planning Proposal**), in accordance with section 2.9(1)(c) of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**).
- 2. The Gateway Determination review request arises from the decision made on 11 October 2024 by the Department as delegate of the Minister for Planning and Public Spaces (**Minister**), who determined that the Planning Proposal should proceed with conditions. In response, Bondi Exchange Pty Ltd (the **Proponent**) requested a review of condition 1(a).
- 3. The Department has requested that the Commission review the Gateway Determination and provide advice on the merits of the review request, including a clear and concise recommendation to the Minister’s delegate on whether the Gateway Determination should be altered.
- 4. Andrew Mills, Chair of the Commission, appointed Juliet Grant to constitute the Commission for the purpose of exercising its functions with respect to this request for advice.

# 2. The Planning Proposal

- 5. The Proponent submitted a planning proposal to Waverley Council (**Council**) on 19 January 2024. Its stated objective was to amend the Waverley Local Environmental Plan 2012 (**WLEP 2012**) to “*achieve a land use and built form which supports a residential development outcome at the subject site*”.
- 6. Council is the Planning Proposal Authority (**PPA**) responsible for preparing and progressing the Planning Proposal which was submitted to the Department for Gateway assessment on 29 August 2024.
- 7. On 11 October 2024, the Department issued a Gateway Determination to amend the WLEP 2012, as proposed by the Planning Proposal set out in Table 1 below.

Table 1 - Amendments proposed to the WLEP 2012

Control	Current	Proposed
Zoning	SP2 Telecommunications	SP2 Telecommunications R3 Medium Density Residential
Maximum height of buildings	12.5m	No change
Floor space ratio	0.75:1	No change
Minimum lot size	N/A	232m <sup>2</sup>
Heritage	Heritage Item I166 (Telecommunication tower)	Remove heritage listing of Item I166 which has been demolished
	Botany Street Heritage Conservation Area (C3)	No change
Additional local provision	N/A	Permit the collection of the affordable housing contribution and set a rate of 9.27%.
Number of dwellings	0	7 homes

## 2.1 Review Request

8. On 29 November 2024 the Proponent submitted a formal request for a review of the Gateway Determination, seeking review of the lawfulness and quantum of the proposed affordable housing contribution incorporated into the planning proposal by Council. The Proponent objects to the quantum of the affordable housing contribution specified in condition 1(a), arguing that any rate applied would render the development financially unviable. The alteration sought by the Proponent is set out below in Table 2.

*Table 2 – Proposed alteration of Gateway condition 1(a)*

Current Gateway condition	Proposed altered Gateway condition
1. Prior to exhibition, the proposal is required to be updated to: (a) 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.	1. Prior to exhibition, the proposal is required to be updated to: (a) exclude the affordable housing contribution additional local provision.

## 3. The Commission's Advice

9. The Commission has been asked to review the Planning Proposal and provide advice on the merits of the Proponent's request for a review of the Department's Gateway determination, specifically the inclusion of an affordable housing contribution. In doing so, the Commission has considered the strategic and site-specific merits of the proposal, the relevant statutory and policy framework and the written material provided by the Proponent, Council and the Department. The Panel also undertook stakeholder consultation with the Proponent, Council and the Department.
10. The Commission acknowledges the broader strategic importance of affordable housing in both the Waverley LGA and Greater Sydney. It considers the proposed mechanism to secure affordable housing contributions through a site-specific Local Environment Plan (LEP) clause to be a legitimate and appropriate planning tool, particularly in areas experiencing uplift through rezoning.
11. Related to the subject Planning Proposal is planning proposal PP-2023-2221 which was prepared by Council to implement the Waverley Affordable Housing Contributions Scheme 2020 (AHCS 2020) by amending the WLEP to introduce a 1% levy on certain residential development and provide a mechanism to set site-specific contribution rates for planning proposal sites receiving residential uplift. This amendment came into effect on 16 August 2024. The Commission understands the relevant LEP provision enabling affordable housing contributions to be levied on sites benefitting from uplift via a planning proposal was previously deferred for administrative reasons, pending a planning proposal that would activate it. The subject Planning Proposal states that it intends to activate this provision. The Commission notes that this is not a unique approach and is one that is consistent with other LEPs, such as in the City of Sydney LEP (clause 7.13B and Schedule C6).

12. The Proponent contends that the Planning Proposal as submitted by Council wrongly implies that the Proponent put forward the affordable housing contribution mechanism for inclusion in the WLEP. Irrespective of any such implication, the Commission notes that Council as PPA has the authority to amend the Planning Proposal at any time in accordance with section 3.35 of the EP&A Act. This is also consistent with the *Local Environmental Plan Making Guideline (August 2023)*.
13. The Waverley Affordable Housing Contributions Scheme 2023 (**AHCS 2023**) was adopted by Council on 5 March 2024. The Department, in its meeting with the Commission, stated it is satisfied that the AHCS 2023 has been prepared in accordance with the requirements of the *Guideline for Developing an Affordable Housing Contribution Scheme (2019)*. The Department confirmed to the Commission that in line with this guideline, the definition of uplift includes a change from a non-residential land use zone to a residential zone. The AHCS 2023 seeks an affordable housing contribution target of up to 10% of total gross floor area for sites subject to uplift via a planning proposal.
14. The Proponent contends that Gateway determination condition 1(a) should be altered to exclude the affordable housing contribution from the Planning Proposal. The Department, in its meeting with the Commission, stated that condition 1(a) is an administrative condition to provide abundant clarity during public exhibition about how the proposed affordable housing contribution clause and supporting schedule would apply to the subject site. The Commission notes that Council exhibited the Planning Proposal between 5 November to 5 December 2024. The Department further stated that condition 1(a) does not relate to any quantum of affordable housing contribution. The Commission agrees with the Department that the Proponent has not provided adequate justification as to why Condition 1(a) of the Gateway is inappropriate and should be reconsidered.
15. Although the financial feasibility of development capable of being carried out at the Site is relevant to the review request, the Commission notes that it has not been asked to narrowly determine the appropriate housing contribution rate nor make a decision based on opposing valuation assessments. Rather, the Commission's role is to provide advice as to whether the Gateway determination and its conditions are reasonable and justified in the broader planning context and whether the review request has merit. In this case, the question is whether the affordable housing contribution additional local provision should be excluded.
16. The Commission has reviewed the Proponent's Consultancy and Feasibility Study dated 15 July 2024 and Council's Affordability Housing Feasibility Analysis, dated 12 August 2024. According to the Proponent's Consultancy and Feasibility Study the development is not viable under a 10%, 5% or 0% affordable housing contribution. Notwithstanding, in its meetings with the Commission the Proponent maintained its willingness to offer a \$100,000 contribution via a voluntary planning agreement, in addition to a 1% contribution under the affordable housing contribution provision in the WLEP at DA stage. The contradiction with the Proponent's own feasibility analysis qualifies the reliance that should be placed on its valuation.
17. The Commission notes Council and the Department are in agreement that the Planning Proposal has strategic and site-specific merit. The Commission is satisfied that Council has acted within its authority and in accordance with the relevant guidelines.
18. The Commission finds that the mechanism for securing affordable housing contributions is appropriate, and is of the view that it would have been more appropriate for the Proponent to raise its objections on financial grounds during the policy making stage.

19. The Commission finds that the Department's original Gateway determination and associated conditions are reasonable, justified and consistent with the applicable planning framework. The Commission advises that the Gateway determination should be maintained without alteration. Given the above, the Commission advises that Council should maintain its role as Local Plan Making Authority.

A handwritten signature in black ink, appearing to read 'J Grant', with a stylized, cursive script.

Juliet Grant (Chair)  
Member of the Commission

## Appendix A – Referral Letter

[Link to the Department's Referral letter, dated 4 June 2025.](#)

## Appendix B – Material Considered by the Commission

Document	Date
Planning proposal PP-2023-2221	
<ul style="list-style-type: none"> <li>Gateway Determination and Gateway Determination Report</li> <li>Post-exhibition report</li> </ul>	25 October 2024 5 March 2024
the Planning Proposal submitted for Gateway Assessment including attachments	13 August 2024
Department Gateway Determination and Gateway Determination Report	11 October 2024
Proponent's Gateway Review Request and additional information submitted to the Department	20 September 2024 2 October 2024 28 November 2024 13 December 2024 17 December 2024 22 January 2025 21 February 2025
Council's submission to the Commission and attachments	2 April 2025
Department's Justification Assessment and other reference material provided as part of the Department's Referral	4 June 2025
Comments and presentation material from meetings with:	
<ul style="list-style-type: none"> <li>Council</li> <li>Department</li> <li>Proponent</li> </ul>	30 June 2025 30 June 2025 1 July 2025 and 4 July 2025

## **Appendix C – Department’s Gateway Review Justification Assessment**

[Link to the Department’s Justification Assessment, dated 4 June 2025.](#)





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