



Property Council of Australia
ABN 13 00847 4422

Level 1, 11 Barrack Street
Sydney NSW 2000

T. +61 2 9033 1900
E. nsw@propertycouncil.com.au

propertycouncil.com.au
 @propertycouncil

Australia's property industry

Creating for Generations

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Ms Debra Just
Chief Executive Officer
Willoughby City Council
PO Box 57
Chatswood NSW 2057

Dear Ms Just

Draft Design Excellence Policy & Guidelines for Design Excellence Review

The Property Council welcomes the opportunity to provide comments on Council's draft design excellence policy (policy) and guidelines for design excellence review (guidelines). We understand that the policy and the guidelines only apply to the Chatswood CBD.

As Australia's peak representative body of the property and construction industry, the Property Council represents more than 2,200 members nationally, including investors, owners, managers and developers of property across a wide range of asset classes.

The Property Industry is also Australia's largest employer – in the Local Government Area of Willoughby property creates 7,421 local jobs, 508m dollars in wages and 1.3b dollars in economic activity – a significant contribution.

Good design is essential to ensure liveability, quality of life, the creation of place and the achievement of sustainable development in new urban development. The Property Council and its members are acutely aware of the benefits that come with good design. For many it gives them a competitive edge over other players in the development industry. From a broader industry perspective, design done well has the potential to change the narrative when it comes to higher densities by displaying the benefits that come with well-designed developments. Most importantly, good design leads to better, high amenity precincts and places, integral aspects, appealing and sustainable communities.

The importance of good design in the planning process has been reflected by changes to the Environmental Planning and Assessment Act 1979 which added a new objective 'to promote good design'. This addition has elevated the importance of design in the planning system and made it a requirement when assessment development proposals.

Our members have considerable experience with the implementation design excellence provisions and architectural design competitions managed by the Department of Planning, Industry and Environment (through State Significant Development) and the City of Sydney's process under clause 6.21 of *Sydney Local Environmental Plan 2012*.

PROSPERITY | JOBS | STRONG COMMUNITIES

In recent years the number of other local councils resolving to develop design excellence provisions has increased. Often these policies are developed with no consideration of the cost of implementation and the need for appropriate resourcing and technical expertise within the council.

It is suggested Council have regard for these matters when it considers whether to adopt the policy.

Willoughby's draft Design Excellence Policy and Draft Competition Guidelines have been reviewed by our members and the following comments are provided to assist Council's decision-making process:

Increasing Complexity and Additional Planning Layers

The development industry is facing an ever-expanding list of design-focused policies and guidelines to be considered in the planning system. State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development and the Apartment Design Guide. Other guidance policies include, the Government Architect's publications, Better Placed, Greener Places and Design Guide for Heritage.

Increasingly, local councils are also developing requirements for design excellence into their local environmental plans – which in some cases are establishing the need for architectural design competitions. It is unfortunate that we are seeing multiple layers of design excellence requirements (with their inherent complexity and uncertainty that deliver poor outcomes) added to the planning system.

Our members have serious concerns with the additional layers of regulation and red tape they must have regard for during the development application phase of a project. The cumulative impact of additional regulation and red tape (including monetary contributions) contribute to rising project cost and delay, which ultimately reduce housing affordability and productivity without guaranteeing a better outcome.

It is recommended that Council undertake a regulatory impact statement or a similar process to determine the ultimate benefit, or otherwise, of the policy. If the cost and impact on resourcing at a local government, industry and community level outweighs the ultimate benefit of the outcomes from the policy – then alternative policies should be pursued.

Demonstrated Design Excellence

Clause 1.3 of the draft guideline indicates that depending on the proposed project outcome design excellence can be evaluated through a competition or a review process. The Property Council welcomes recognition that in certain situations, design excellence can be evaluated through an alternative to a design competition. The guidelines should be clearer regarding when the review process applies and when a competition is necessary.

Flexibility should be provided within the policy to give an alternate pathway for demonstrating design excellence that avoids the need for an architectural design competition. The policy needs to consider a range of alternatives to a competition that adopt industry best practice such as the use of an international award-winning architect or a proponent led design competition to select well regarded architects and designers.

It is a major concern that a jury may determine that a design demonstrates design excellence however, Council will not be bound by this outcome and can determine that design excellence has in fact not been met during the DA stage. There must be a process to resolve any disagreement

between a jury panel and the Council officers that protects the integrity of the design excellence process and provides certainty to the proponent, surrounding landowners and the community.

Cost of Architectural Design Competition

The guidelines require the competition/review process to be fully funded by the proponent which will add a significant cost of investing in Willoughby and may undermine project feasibility. A number of costs are specified in the guidelines (including \$3,500 per jury member per day, \$1,200 per panel review sitting, and fee for the design excellence competition equal to 0.02% of the proposed development cost).

At this stage, the basis of these costs or how they have been determined is not clear - are there more cost-effective options that could produce the same outcome?

All other costs (for example architects fees, reports, briefs, committees, etc) are also met by the proponent. These costs are in addition to a myriad of property taxes and charges, infrastructure contributions and other planning or design requirements that add uncertainty into the system and undermine business plans and ultimately investment decisions. These costs will also worsen housing affordability as they are passed on through to the market cost of a product.

Project timeframes

The architectural design competition will add significant time to the development assessment process. There should be clearly articulated guidance regarding the timeframes associated with the design competition process to ensure that proposals are not unnecessarily delayed by the process. Council can make requests from the proponent at any time through the process which will lead to escalating costs and timeframe. Council should identify a clear scope, path of responsibility and time in order to provide certainty.

Jury Composition

The Property Council is supportive of independent jurors sitting on the jury panel to bring impartial advice and views to the process. However, these jurors should be assessing the design in complete agreement with the brief to ensure it is met.

Absent from the jury composition within the draft guidelines is the requirement for jurors to have the skills and expertise to assess and understand the commercial drivers of a proposed scheme. To ensure that projects remain viable, we recommend Council amend the guidelines to allow for the inclusion of the proponent or its nominated experts to sit as members of the jury (provided they have required architectural or urban design qualifications and expertise). This means that the proponent would be permitted at least one position on the jury panel to not only ensure a high-quality development which demonstrates design excellence, but also meets the commercial drivers of the project.

The draft guidelines have a minimum of 5 jury members including 2 nominated by the proponent, 2 nominated by the Council and 1 nominated by the Government Architect. Our members have suggested there should be 6 members of the jury with the proponent nominating 3 members and Council nominating 3 members (1 of whom could be the Government Architect).

The impartiality of the jury chair is a significant consideration given the importance of the role they play. They have a significant influence over the panel and are responsible for the negotiation process should the jury's decision be split. We welcome the decision for an independent chair nominated by the Government Architect.

Design Integrity Phase

The draft guidelines describe the design integrity phase of the design excellence process. It is noted that the proponent pays for the cost of running the panel. The guidelines identify when the panel will review the design at multiple stages in the project life from pre-lodgement to Occupation Certificate. This will be at considerable expense to the proponent and the benefits to the project have not been demonstrated.

As an alternative, the architect could have an ongoing role to oversee the implementation of the chosen design. Several of the milestone events appear to be excessive, including simple section 4.55 modifications and at the Occupation Certificate stage. Further consultation is required on this aspect of the draft guidelines and additional justification should be provided for the design integrity panel to be involved in these stages of a project's development.

Bonus Building Height and Floor Space Ratio

For those who undertake design excellence competitions and successfully achieve design excellence through this process, there should be bonus floor space ratio and height awarded to the proponent for both a significant investment in the process and a further positive outcome for the community. The design excellence process is both lengthy and resource intensive and should be undertaken for specific and economically justifiable reasons. There should be specific guidance or principles stipulated which invoke any bonuses that are applicable in achieving design excellence.

The draft policy is silent about what bonus development potential will be available within the Chatswood CBD. The Willoughby LEP 2012 currently has no provision for the operation of a design excellence bonus scheme. Council needs to specify what bonus provisions will operate in conjunction with the design excellence guidelines. It is unclear if Council is referring to the proposed increased heights and density detailed in the Chatswood CBD strategy (FSR 6:1 and Height 90m in the B4 Mixed Use zone). If Council is seeking a City of Sydney style process in the Chatswood CBD, they should be considering a 10% FSR/Height bonus which exceeds the current Chatswood CBD strategy. This must be clarified and bonus floor space ratio and height bonuses clearly incorporated into the policy.

Managing Disputes

The draft guidelines set out the circumstances where a proponent or the Council may need to ask the competition jury to reconvene. The Property Council supports the use of competitions juries where they help to achieve design excellence but there needs to be clear guidance over the process to give comfort to proponents about the certainty of the process and to limit a proponent incurring excessive/unlimited costs.

Should you have any questions, please do not hesitate to contact Troy Loveday, Senior Policy Advisor by email at tloveday@propertycouncil.com.au or (02) 9033-1907.

Yours sincerely



William Power
NSW Deputy Executive Director
Property Council of Australia