

Mr Matthew Stewart
General Manager
Canterbury Bankstown Council
PO Box 8
BANKSTOWN NSW 1885

Dear Mr Stewart

Planning proposal PP_2018_CBANK_002_00 to amend Canterbury Local Environmental Plan 2012

I am writing in response to Council's request for a Gateway determination under section 3.34(1) of the *Environmental Planning and Assessment Act 1979* (the Act) in respect of the planning proposal to introduce site area controls for boarding houses into the Canterbury Local Environmental Plan (LEP) 2012.

As delegate of the Greater Sydney Commission, I have now determined the planning proposal should proceed subject to the conditions in the enclosed Gateway determination.

Council will still need to obtain the agreement of the Department's Secretary to comply with the requirements of relevant Section 9.1 Directions 3.1 Residential zones and 6.3 Site specific provisions. Council should ensure this occurs prior to community consultation.

In order to meet the requirements of the above-mentioned Section 9.1 Directions, Council will be required to provide further analysis to support the proposal, to demonstrate the impacts on boarding house supply.

This analysis should include discussion on boarding house appeals in the Land and Environment Court, annual figures regarding boarding house and boarding room approvals under the Bankstown LEP and Canterbury LEP, and evaluation of the number of lots appropriate for boarding houses under the proposed controls. The analysis should also include examples of boarding house developments that were subject to the proposed site area controls in the former Bankstown LGA.

The analysis should demonstrate that the proposed controls can deliver appropriate boarding house development, that minimise likely adverse impacts on the amenity of the area and neighbouring properties.

The planning proposal should be updated to address the South District Plan and the Greater Sydney Region Plan, provide an updated project timeline and remove the proposed boarding house provisions that relate to the B6 zone. Further clarification is

also required as to Council's intent relating to the boarding house provisions contained in Bankstown LEP 2015 that are not proposed for the Canterbury LEP 2012.

I have considered Council's request to be the local plan-making authority and have determined not to condition the Gateway for Council to be the local plan-making authority due to the potential implications for state housing policy and affordability.

The amending LEP is to be finalised within 12 months of the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request for the Department of Planning and Environment to draft and finalise the LEP should be made 8 weeks prior to the projected publication date.

The State Government is committed to reducing the time taken to complete LEPs by tailoring the steps in the process to the complexity of the proposal, and by providing clear and publicly available justification for each plan at an early stage. In order to meet these commitments, the Greater Sydney Commission may take action under section 3.32(2)(d) of the Act if the time frames outlined in this determination are not met.

Should you have any further enquiries about this matter, I have arranged for Ms Kate Hanson to assist you. Ms Hanson can be contacted on 9860 1453.

Yours sincerely

 2 May 2018
Stephen Murray
Executive Director, Regions
Planning Services

Encl: Gateway Determination

Gateway Determination

Planning proposal (Department Ref: PP_2018_CBANK_002_00): to introduce site area controls for boarding houses in the former Canterbury Local Government Area.

I, the Executive Director, Regions at the Department of Planning and Environment, as delegate of the Greater Sydney Commission, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the Canterbury Local Environmental Plan (LEP) 2012 to introduce site area controls for boarding house in the former Canterbury Local Government Area should proceed subject to the following conditions:

1. Prior to community consultation the planning proposal is to be amended to:
 - (a) reflect the updated *Environmental Planning and Assessment Act 1979*;
 - (b) demonstrate consistency with A Metropolis of Three Cities - the Greater Sydney Region Plan and the South District Plan;
 - (c) update the timeline to reflect a 12-month timeframe for completion of the LEP;
 - (d) remove boarding house provisions that relate to the B6 Business Enterprise Zone;
 - (e) provide further analysis and justification to support the proposal. This should include, but not be limited to:
 - i. annual figures regarding boarding house and boarding room approvals under Bankstown LEP 2015 and Canterbury LEP 2012;
 - ii. evaluation of the number of lots appropriate for boarding houses under the proposed controls;
 - iii. further discussion on the boarding house appeals in the Land and Environment Court that are identified in Council's report of 12 December 2017;
 - iv. examples of boarding house developments that were subject to the proposed site area controls in the former Bankstown LGA that demonstrate the desired design outcomes; and
 - (f) provide explanation as to why not all boarding house provisions in the Bankstown LEP 2015 are proposed to be duplicated in the Canterbury LEP 2012.
2. The revised planning proposal is to be provided to the Department for review and approval for public exhibition.
3. Community consultation is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:
 - (a) the planning proposal must be made publicly available for a minimum of **28 days**; and

- (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of *A guide to preparing local environmental plans* (Department of Planning and Environment 2016).
- 4. No consultation is required with public authorities/organisations under section 3.34(2)(d) of the Act.
- 5. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
- 6. The time frame for completing the LEP is to be 12 months following the date of the Gateway determination.

Dated 2nd day of May 2018



Stephen Murray
Executive Director, Regions
Planning Services
Department of Planning and Environment

Delegate of the Greater Sydney Commission

Planning Services

Gateway Determination Report

LGA	Canterbury-Bankstown
PPA	Canterbury Bankstown Council
NAME	Proposal to introduce minimum frontage and site area controls for Boarding Houses (0 homes, 0 jobs)
NUMBER	PP 2018 CBANK 002 00
LEP TO BE AMENDED	Canterbury Local Environmental Plan 2012
DESCRIPTION	The proposal applies to certain land across the former Canterbury Local Government Area.
RECEIVED	5 March 2018
FILE NO.	IRF18/1279
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

INTRODUCTION

Description of planning proposal

The proposal seeks to amend Canterbury Local Environmental Plan (LEP) 2012 by introducing site area controls for boarding houses in the former Canterbury Local Government Area (LGA).

In doing so, the planning proposal seeks to align boarding house controls of the former Canterbury Council with those of the former Bankstown Council.

Site description

The proposal applies to all land zoned R2 Low Density Residential; R3 Medium Density Residential; R4 High Density Residential; B5 Business Development; and B6 Enterprise Corridor under Canterbury LEP 2012 (Figure 1).

Summary of recommendation

It is recommended that the proposal proceed subject to conditions because it:

- seeks to harmonise controls of the former Canterbury Council with those of the former Bankstown Council; and
- does not prohibit boarding house developments but rather seeks to ensure that the lot size and site width are adequate to minimise any likely adverse impacts on the amenity of the area and neighbouring properties.

While the proposal may have implications for the supply of boarding house developments in the LGA, on balance it won't impede Council's ability to provide housing supply and diversity. The proposal will improve built form outcomes and will lessen the impact of these types of developments. Moreover, these standards may be varied, as per the Department of Planning and Environment's Planning circular PS 18-003 *Variations to development standards*.

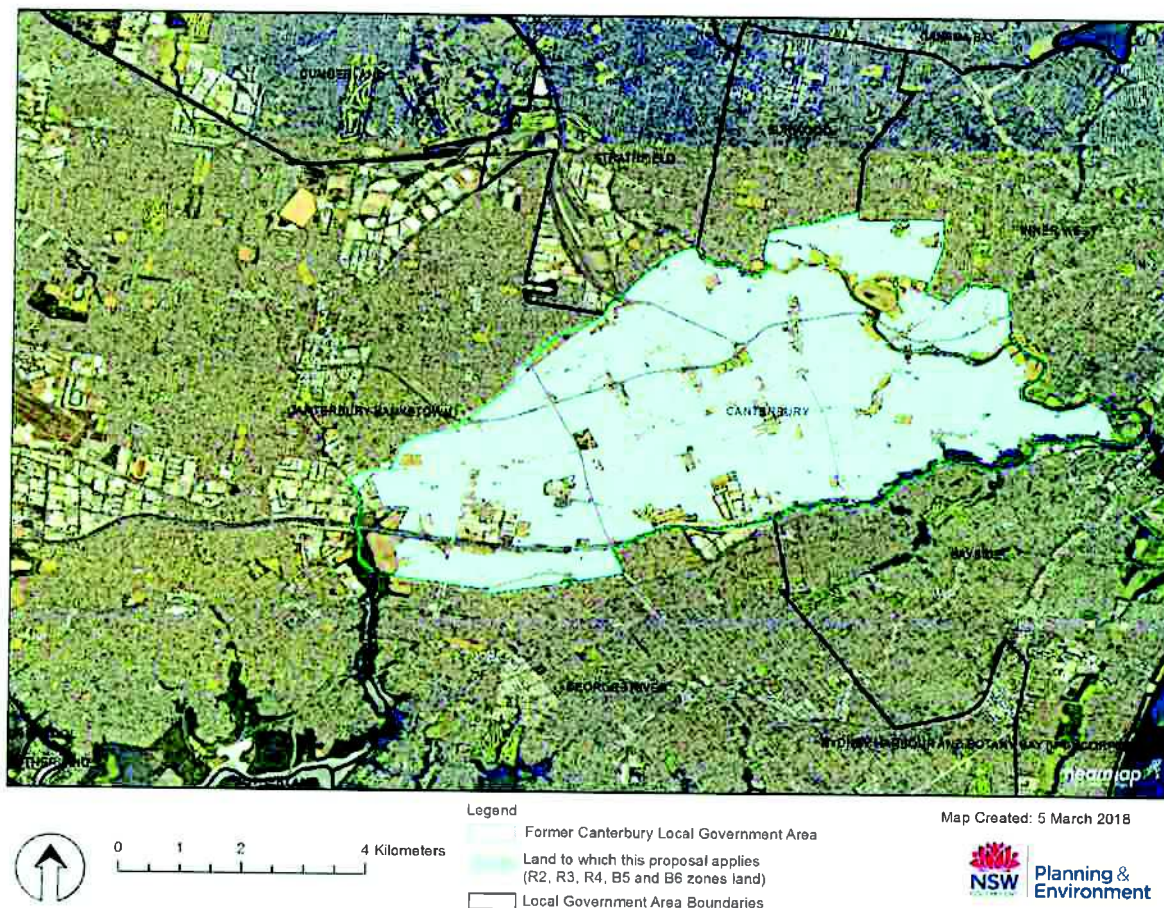


Figure 1 – Site Description

PROPOSAL

Objectives or intended outcomes

The statement of objectives accurately describes the intention of the planning proposal. The proposal seeks to align boarding house controls in the united LGA. This will ensure the continued permissibility of boarding houses but introduce site area controls that enable a built form sympathetic to local character and scale, that is consistent across the LGA.

Explanation of provisions

The explanation of provisions adequately addresses the intended method of achieving the objectives of the planning proposal. The proposal intends to amend Canterbury Local Environmental Plan (LEP) 2012 as follows:

- introduce minimum lot-sizes and frontages for boarding houses in the R2, R3, R4, B5 and B6 zones as illustrated in Table 1 below; and
- introduce the following objective: "When an existing lot is inadequate in terms of its area or width – to require the consolidation of 2 or more lots"

Table 1 – Proposed minimum lot and frontage sizes for boarding houses

Zone	Lot size	Frontage
R2 Low Density	1,200m ²	20m
R3 Medium Density	1,000m ²	20m
R4 High Density	1,000m ²	20m
B5 Business Development	5,000m ²	n/a
B6 Enterprise Corridor	5,000m ²	n/a

The effect of these controls is to ensure boarding house developments have sufficient site area to accommodate this form of development without unduly impacting adjoining properties and provide higher levels of amenity for boarding house residents.

The actual wording of the clause and associated objective will be determined at legal drafting stage, should the matter proceed this far.

Variations

While the proposal seeks to harmonise the amalgamated Council's LEPs, it should be noted that there are number of variations between the Bankstown LEP 2015 boarding house controls and the proposal. This is discussed in detail in **Annexure 1**.

A condition will be included as part of the Gateway seeking clarification of Council's intent relating to the boarding house provisions in the Bankstown LEP 2015 that are not proposed for the Canterbury LEP 2012.

Mapping

The proposal does not involve any changes to LEP maps.

NEED FOR THE PLANNING PROPOSAL

The planning proposal has arisen as a result of a strategic review of boarding house developments and controls across the Canterbury-Bankstown area by Council.

It is noted in Council's review that boarding house provisions were included by the former Bankstown Council in the LEP to assist with amenity impacts and retention of character in low density residential areas.

The Department was supportive of these provisions as they ensure boarding houses are provided in suitable locations, while maintaining residential amenity and reflecting the objective of each zone.

No equivalent controls are included in the Canterbury LEP 2012 or Canterbury DCP 2012.

Alignment of Controls

Council's review concluded that given the disparity of controls between the two former LGAs, it is appropriate to align controls within Canterbury LEP 2012 and Bankstown LEP 2015 to create consistency for this form of development.

This is supported by the Department's Guidance note for merged councils on planning functions (May 2016), which states that merged councils should commence the preparation of planning proposals to harmonise inconsistencies between LEPs following council elections (**Attachment G**).

Comprehensive LEP

An alternative approach to meeting the proposal's objective would be for Council to delay implementing these changes until the preparation of the comprehensive LEP for Canterbury-Bankstown.

However, given the outcomes of Council's review, it is considered appropriate to harmonise this particular local clause, subject to conditions of the Gateway, before undertaking the extensive task of preparing a comprehensive LEP.

Similarly dealing with boarding houses in isolation, rather than through the comprehensive LEP process, provides the department, Council, and the community the opportunity to thoroughly consider and address any implications for the provision of affordable housing that may arise during the plan-making process.

The proposal is therefore considered the best means of achieving the intended outcome of the proposal at this time.

STRATEGIC ASSESSMENT

State/Regional

A Metropolis of Three Cities - the Greater Sydney Region Plan

The Greater Sydney Region Plan (A Metropolis of Three Cities) was released by the Greater Sydney Commission on 18 March 2018.

The proposal is consistent with the objectives and actions in *A Metropolis of Three Cities*. Specifically, the proposal is consistent with Objective 10: Greater housing supply, Objective 11: Housing is more diverse and affordable and Objective 12: Great places that bring people together.

While A Metropolis of Three Cities emphasises the need to provide ongoing housing supply with a range of housing types, it also recognises that these dwellings need to be in the right location in order to support and create liveable neighbourhoods. The proposal is therefore consistent with the objectives of *A Metropolis of Three Cities* as it seeks to facilitate the ongoing supply of affordable housing whilst encouraging development that is sympathetic to local character and amenity.

District

South District Plan

The Greater Sydney Commission (GSC) released the *South District Plan* (the District Plan) on 18 March 2018. The District Plan contains planning priorities and actions to guide the growth of the South District while improving the District's social, economic and environmental assets.

Planning Priority S5 of the District Plan seeks to encourage the provision of housing supply, choice and affordability with access to jobs and service and public transportation. It is considered that the proposal is consistent with this priority as it seeks to provide for affordable housing capacity in the right location. It is noted that councils are in the best position to investigate and confirm the locations in their local government area that are suited for additional density opportunities.

Similarly, the proposal is consistent with the Districts Plan's Planning Priority S6, as it creates and renews places and respects the District's heritage. This priority states that planning proposals should be integrated with precinct-wide collaborative planning.

As discussed below, the proposal is consistent with the community's vision of the area, as it integrates the community's shared values (as identified in the draft community strategic plan) to cultivate and enhance the areas local distinctive character through collaboration.

The proposal is therefore consistent with the South District Plan as it won't impede Council's ability to provide an increase in housing supply more broadly, while also recognising the community's desire for well-designed affordable housing.

Local

Canterbury Community Strategic Plan

Council's Community Strategic Plan 2014-2023 (Community Plan) was adopted in 2014 and set's the vision for the former Canterbury LGA. The proposal notes that the proposed controls correlate with the community's long-term goals, particularly the vision of Canterbury being an "Attractive City". The proposal is considered to be consistent with the Community Plan.

Draft Community Strategic Plan for Canterbury-Bankstown

The draft Community Strategic Plan (CBCity 2028) is currently on exhibition and applies to the newly formed Council area. CBCity 2028 clearly identifies the community's desire for better designed and well-managed development, including affordable housing. The proposal is consistent with CBCity 2028 as it is the mechanism for implementing the communities vision for a well-designed, attractive city, without changing the permissibility of boarding houses.

Section 9.1 Ministerial Directions

The proposal is consistent with the following applicable Section 9.1 Directions:

- 1.1 Business and Industrial Zones
- 2.3 Heritage Conservation
- 3.3 Home Occupations
- 3.4 Integrating Land Use and Transport
- 6.2 Reserving Land for Public Purposes
- 7.1 Implementation of A Plan for Growing Sydney

Direction 1.1 Business and Industrial zones

This Direction seeks to protect employment land in business and industrial zones and encourage employment growth in suitable locations. The Direction applies to the planning proposal as it will affect land within existing business zones.

While the proposal seeks to introduce a minimum lot size for the development of boarding houses in the B5 and B6 zones, it is considered to be consistent with this Direction as it does not involve a reduction of business zoned land, nor does it reduce the total potential floor space area for employment uses.

Additionally, residential accommodation and boarding houses are not permissible in the B6 zone within Canterbury LEP 2012. It is recommended that proposed controls relating to boarding houses in the B6 zone be removed from the proposal prior to exhibition. This is discussed further in **Annexure 1** and is included as a Gateway condition.

The proposal is inconsistent with the following applicable Section 9.1 Directions:

- Direction 3.1 Residential zones; and
- Direction 6.3 Site specific provision

Direction 3.1 Residential Zones

This Direction seeks to encourage a variety and choice of housing types to provide for existing and future housing needs. This Direction applies to the planning proposal as it will affect land within residential zones and business zones in which significant residential development is permitted. The proposal is inconsistent with this direction as it may incur the delivery of this form of affordable housing.

The proposal states that while it seeks to introduce a minimum frontage and lot size for the development of boarding houses in the R2, R3 and R4 and business zones, it does not reduce the variety and choice of housing as the permissibility of boarding houses remains unchanged. Lots may be amalgamated should they fail to meet the minimum lot and frontage size.

Nonetheless, it is acknowledged that these controls may mean that boarding house development is less likely to occur in areas that do not meet the site requirements. A condition requiring Council to provide further analysis on the impacts on boarding house supply will be included in the Gateway. This analysis should include annual

figures regarding boarding house and boarding room approvals under each LEP prior to amalgamation to demonstrate that site area controls are not unduly restrictive on the feasibility of boarding house development.

It is considered that the proposal's consistency with Direction 3.1 remains unresolved until this analysis is provided.

Direction 6.3 Site specific provisions

This Direction seeks to discourage unnecessarily restrictive site-specific planning controls. The proposal is considered to be inconsistent with this direction as it imposes development standards or requirements for boarding houses in addition to those already contained in the Affordable Rental Housing SEPP (ARHSEPP).

While the proposed controls are designed to ensure that boarding houses are commensurate with the size and scale of neighbouring development in each zone, the proposal has not adequately demonstrated that it would enable high quality design solutions.

Given the existing provisions in Bankstown LEP 2015, Council are in the unique position to demonstrate that the proposed controls can achieve the intended outcome, being improved amenity and design, while not obstructing the provision of boarding houses in the LGA.

Council should therefore include recent examples of boarding house developments that were subject to the proposed site area controls in the former Bankstown LGA as part of its required analysis on the impacts on boarding house supply. The examples should have regard to local character and improved amenity outcomes. This will enable better clarity and understanding by the public about the strategic impact of these provisions visually.

It is considered that the proposal's consistency with Direction 6.3 remains unresolved until this information is provided.

State environmental planning policies

Affordable Rental Housing SEPP 2009

The ARHSEPP applies to the entire State and aims to incentivise the delivery of affordable rental housing through expanded zoning permissibility, bonuses and development standards which cannot be used to refuse boarding houses.

Clause 29 of the SEPP refers to non-discretionary development standards for boarding houses and includes floor space area, building height, solar access etc. However, clause 29 is silent on the controls outlined in the proposal being lot consolidation, minimum lot sizes and frontage width. Therefore, there is no specific provision of the ARHSEPP that is inconsistent with the controls proposed.

Further, the report highlights that other forms of affordable housing permitted under the SEPP, such as dual occupancies, multi-dwelling housing and residential flat buildings are not subject to the lot provisions in the planning proposal and can continue to be developed accordingly. Similarly, Site Compatibility Certificates (SCCs) under the ARHSEPP may allow development for the purposes of residential flat buildings on land within 800m of a railway of light rail station where the LEP normally prohibits this form of housing, such as the B6 Business Enterprise zone.

Despite this, it is acknowledged that the proposal could impact the supply of this form of housing and therefore could potentially undermine objectives of the ARHSEPP. As noted above, Council will be required to provide further analysis of the perceived impact of the provisions on boarding house supply, and justification for these outcomes.

The proposal is otherwise consistent with all SEPPs and deemed SEPPs.

SITE-SPECIFIC ASSESSMENT

Social

Social impacts are the potential consequences experienced by people due to the changes proposed by the planning proposal. These impacts can be both negative and positive and can be experienced differently by different people within the community.

The proposal highlights the social benefits of introducing site area controls for boarding houses for those currently living in the community, and benefits to future residents of boarding houses. These relate to visual privacy, solar access and improved amenity and retention of local character.

The proposal also recognises that there will be a small proportion of parcels of land that will not be able to be redeveloped for boarding houses and development for this purpose will generally require amalgamation of two parcels of land. The potential negative social impacts of this reduction in available land for boarding house development has not been adequately addressed, and further justification is required.

Environmental

The planning proposal will not affect any critical habitat or threatened species, populations or ecological communities or their habitats, nor is it expected to have any adverse environmental impacts.

Economic

The proposal is unlikely to create any adverse economic impacts; however as previously noted Council will need to provide further analysis on the feasibility of boarding house development resulting from the proposed controls.

Infrastructure

The proposal does not impact on infrastructure services.

CONSULTATION

Community

The Planning Proposal indicates that community consultation will be undertaken and nominates a 28-day consultation timeframe. This is considered an appropriate length of time given community participation requirements under Schedule 1 of the Act.

Agencies

No consultation is required with public authorities under section 3.34 (2)(d) of the Act.

TIME FRAME

Council has stated that a timeframe of 12 months is required for the completion of the LEP, however has also provided an indicative project timeline ending in October 2018. The Department considers a timeframe of 12 months appropriate. It is recommended as a condition of Gateway that the project timeline be amended to reflect the 12-month period.

LOCAL PLAN-MAKING AUTHORITY

Council submitted the proposal to the Department of Planning and Environment prior to amendments to the *Environmental Planning and Assessment Act 1979*. Council has therefore sought delegation to carry out the Greater Sydney Commission's plan-making functions under section 59 (s 3.36) of the Act.

Given the potential impact on state government housing policy, it is recommended that Council should not be authorised to be the local plan-making authority to make this plan.

CONCLUSION

It is recommended that the planning proposal should proceed subject to conditions for the following reasons:

- it seeks to harmonise controls of the former Canterbury Council with those of the former Bankstown Council; and
- it does not affect the permissibility of boarding house developments but rather seeks to ensure that the lot size and site width are adequate to minimise any likely adverse impacts on the amenity of the area and neighbouring properties.

RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. note that consistency with Section 9.1 Directions 3.1 Residential zones, and 6.3 Site specific provisions remains unresolved until further justification is provided to the Department.

It is recommended that the delegate of the Greater Sydney Commission, determine that the planning proposal should proceed subject to the following conditions:

1. Prior to community consultation the planning proposal is to be amended to:
 - (a) reflect the updated *Environmental Planning and Assessment Act 1979*;
 - (b) demonstrate consistency with A Metropolis of Three Cities - the Greater Sydney Region Plan and the South District Plan;
 - (c) update the timeline to reflect a 12-month timeframe for completion of the LEP;
 - (d) remove boarding house provisions that relate to the B6 Business Enterprise Zone;