

Blacktown Local Environmental Plan 1988 Amendment No.236

Proposal Title : **Blacktown Local Environmental Plan 1988 Amendment No.236**

Proposal Summary : **This Planning Proposal seeks to amend clause 42A (1)(ab) of the Blacktown Local Environmental Plan 1988 to increase the separation distance required between brothels from 200 metres to 400 metres in industrial zones.**

PP Number : **PP_2011_BLACK_008_00** Dop File No : **11/20876**

Proposal Details

Date Planning Proposal Received : **17-Nov-2011** LGA covered : **Blacktown**

Region : **Sydney Region West** RPA : **Blacktown City Council**

State Electorate : **BLACKTOWN** Section of the Act : **55 - Planning Proposal**

LEP Type : **Policy**

Location Details

Street : **Blacktown**

Suburb : **Blacktown** City : **Blacktown** Postcode : **2148**

Land Parcel : **Blacktown Local Government Area**

DoP Planning Officer Contact Details

Contact Name : **Claire Mirow**

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RPA Contact Details

Contact Name : **Glennys James**

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DoP Project Manager Contact Details

Contact Name :

Contact Number :

Contact Email :

Land Release Data

Growth Centre : **Sydney North West** Release Area Name : **Riverstone**

Regional / Sub Regional Strategy : **Metro North West subregion** Consistent with Strategy : **Riverstone West**

Yes

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MDP Number :

Date of Release :

Area of Release (Ha)
:Type of Release (eg
Residential /
Employment land) :

No. of Lots : 0

No. of Dwellings : 0
(where relevant) :

Gross Floor Area : 0

No of Jobs Created : 0

The NSW Government No
Lobbyists Code of
Conduct has been
complied with :If No, comment : At this time, to the best of the Regional Team's knowledge, there has been no meetings or
communications with lobbyists regarding this planning proposal.Have there been No
meetings or
communications with
registered lobbyists? :

If Yes, comment :

Supporting notesInternal Supporting
Notes :**BACKGROUND**

On 5 August 2011, Council wrote to the Department's Sydney West Regional Director advising of its resolution at Ordinary Council Meeting on 8 June 2011 to prepare a Planning Proposal to increase the distance separation provisions for brothels under the Blacktown Local Environmental Plan 1988. In that letter, Council requested preliminary advice from the Department on:

- the likely prospects of the proposed Planning Proposal being supported at the Gateway Determination stage;
- the policy position on this matter; and
- the supporting documentation which would be required to be submitted with the proposal to enable a Gateway Determination to occur.

(Refer to Council's letter to the Department dated 5.8.11 as attached)

DP&I ADVICE

On 31 August 2011, the Sydney West Regional Director provided the following advice to Council:

- Comment on the likelihood of the proposal being supported is unable to be provided until such time as a Planning Proposal is submitted to the Department, undergoes the review process and proceeds to the Gateway Determination stage;
- The Planning Proposal would be assessed on its merits and against the relevant strategic planning framework, as per all other Planning Proposals;
- The former Minister for Planning, Craig Knowles, wrote to all Councils in 1995 requiring sex services be permitted in premises in some capacity in all LGAs, given it is a legal activity. Under the terms of this advice, council is able to decide the location of where brothels are permitted, as well as any relevant development and design controls. However, Councils must still demonstrate that sex services premises are able to be developed in their LGA;

- To submit a map showing the areas where sex services premises are able to be developed currently in the LGA, and where sex services premises will be able to be developed under the new distance separation criteria as outlined in Councils resolution;
- Provide an outline of why the [current] controls are not operating in a satisfactory matter; and that the
- Planning Proposal documentation should include a copy of the Planning Proposal, Council report and resolution.

(See attached letter from the Department dated 31.8.11).

NOTE:

*The Sydney West Team has forward a copy of the Planning Proposal to the Growth Centres Team (Land Release Planning and Delivery) for review.

POLITICAL DONATIONS DISCLOSURE STATEMENT

Political donation disclosure laws commenced on 1 October 2008. The legislation requires the public disclosure of donations or gifts for certain circumstances relating to the Planning system.

"The disclosure requirements under the new legislation are triggered by the making of relevant planning applications and relevant public submissions on such applications.

The term relevant planning application means:

- A formal request to the Minister, a council or the Director-General to initiate the making of an environmental planning instrument..."

Planning Circular PS 08-009 specifies that a person who makes a public submission to the Minister or Director General is required to disclose all reportable political donations (if any).

No disclosures were provided for this planning proposal.

External Supporting
Notes :

The Planning Proposal outlines that the existing 200 metre separation distance between brothels became effective on 7 November 2008 pursuant to Blacktown LEP 1988 Amendment No.199.

BACKGROUND TO BLEP 1988 AMENDMENT NO. 199

- The draft LEP was initially exhibited with a proposed distance separation provision of 300 metres between approved brothels, which was supported by the NSW Police (Quakers Hill) and Department of Education & Training.

- Council amended the draft LEP post exhibition, to increase the distance separation between brothels from 300 to 500 metres and require brothels to be distanced at least 500 metres from schools.

***On 7 October 2004, The Department advised Council that the proposed changes were UNDULY RESTRICTIVE.

- In March 2007, Council agreed to reduce the distance back to 300 metres.
- In July 2008, Council agreed to reduce the 300 metre distance separation to 200 metres.

(Refer to pages 1-2 of attached Planning Proposal).

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment : It is considered that the statement of objectives need to be revised to include a specific reference to the spatial context of this planning proposal as it applies to development for the purpose of brothels, which are currently only permitted with consent in the 4(a) General Industrial and 4(b) Light Industrial zones under the Blacktown Local Environmental Plan 1988.

The intended outcomes of the Planning Proposal are generally consistent with the criteria outlined in the Department's 'Guide to Preparing Planning Proposals'.

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment : Council considers the current provisions of the Blacktown LEP 1998, which prescribes a 200 metre straight line separation distance between brothels, to be inadequate in preventing the potential proliferation of brothels in the key employment areas of the Blacktown LGA.

To ensure clarity of how the objectives of the planning proposal are achieved, the 'explanation of provisions' would need to be revised by Council to include the following paragraph:

'The Planning Proposal seeks to achieve a separation distance of 400 metres between brothels in the 4(a) General Industrial and 4(b) Light Industrial zones of the Blacktown Local Government Area by amending clause 42A (1)(ab) of the Blacktown Local Environmental Plan 1988 to read:

"(ab) within a straight line distance of 400 metres of any other premises in relation to which consent has been granted for development for the purpose of a brothel, or".

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **No**

b) S.117 directions identified by RPA : **1.1 Business and Industrial Zones**

* May need the Director General's agreement **3.1 Residential Zones**

6.3 Site Specific Provisions

7.1 Implementation of the Metropolitan Plan for Sydney 2036

Is the Director General's agreement required? **Yes**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified? **N/A**

e) List any other **SECTION 117 DIRECTIONS**

matters that need to be considered : **1.1 BUSINESS AND INDUSTRIAL ZONES:**

It is considered that this Planning Proposal is consistent with this direction as it seeks to protect employment land within industrial zones in the Blacktown LGA.

It is considered that the use of industrial land for the purpose of sex services premises (brothels) is not inadequately detracting from the overall use of employment lands within the Blacktown LGA, however, it is not the preferred area for location of this type of land use. Notwithstanding, the Planning Proposal is not inconsistent with the Direction.

3.1 RESIDENTIAL ZONES:

Part 3 of the Planning Proposal indicates that the Planning Proposal is consistent with this Direction, however, this direction only applies to 'land within: an existing or proposed residential zone (including the alteration of any existing residential zone boundary), or any other zone in which significant residential development is permitted or proposed to be permitted.

As the planning proposal relates to provisions for brothels (which are only permitted with consent in the 4(a) and 4(b) zones under the BLEP 1988), this direction does not apply.

6.3 SITE SPECIFIC PROVISIONS:

Part 3 of the Planning Proposal does identifies this Direction as being 'not applicable' to this planning proposal.

However, this Direction requires applies when a relevant planning authority prepares a planning proposal that will allow a particular development to be carried out.

In this light, this Direction is a matter for consideration and should be addressed in the planning proposal as this planning proposal involves amending a provision which restricts development for the purpose of brothels to be carried out with consent within a designated area of the Blacktown LGA.

Further, the planning proposal is therefore inconsistent with the Direction. However, given the Planning Proposal seeks to amend an existing clause and numerical standard, it is considered that any departure from this direction is of minor significance.

7.1 IMPLEMENTATION OF THE METROPOLITAN PLAN FOR SYDNEY 2036:

The Planning Proposal is generally consistent with the vision, land use strategy, policies, outcomes and actions of the Metropolitan Plan.

STANDARD INSTRUMENT (LEPs) ORDER 2006

The planning proposal may be inconsistent with the LEP template under the Standard Instrument (LEPs) Order 2006 as it prescribes a numerical standard for the location of sex services premises within the Blacktown LGA, which may legally constitute a subzone.

However, given that it is simply amending an existing clause, the Department will continue to work with Council to review the clause and discuss a way that the matter can be addressed in the future Principal Blacktown LEP.

RELEVANT STATE ENVIRONMENTAL PLANNING POLICIES

Part 3 of the Planning Proposal indicates that the Planning Proposal is not inconsistent with any State Environmental Planning Policies, as Council considers there to be no SEPPs of relevance to this proposal.

However, this planning proposal relates to all land zoned 4(a) and 4(b) industrial within the Blacktown LGA (as these are the land use zones where brothels are currently permitted in the Blacktown LGA) and there are areas of land zoned for such purposes that are located within the Riverstone Precinct and Riverstone West Precinct in the North West Growth Centre, to which SEPP (Sydney Region Growth Centres) 2006 applies.

It is considered that this proposal is not inconsistent with the aims of SEPP (Sydney Region Growth Centres) 2006 with respect to the Riverstone and Riverstone West Precinct Plans.

The planning proposal is not inconsistent with the proposed indicative zoning plans for these precincts as:

- The subject land located west of the Riverstone Parade is earmarked as an Industrial zone within the Riverstone West Indicative Layout Plan; and
- The zoning controls applying to the subject land located east of Riverstone Parade are identified as 'unchanged' in the indicative Riverstone Precinct Layout Plan.

In this regard, should the proposal be approved for progression, Part 3 of the Planning Proposal would need to be amended to identify State Environmental Planning Policy (Sydney Region Growth Centres) 2006 as an applicable plan for consideration, and demonstrate consistency of the Planning Proposal with this SEPP.

Have inconsistencies with items a), b) and d) being adequately justified? No

If No, explain : **SECTION 117 DIRECTIONS**

6.3 Site Specific Provisions

Council have not identified this Direction as being relevant to this Planning Proposal, and as such, have not identified whether the proposal is consistent or otherwise, with this Direction.

It is considered that the Planning Proposal is inconsistent with this Direction but could be justified as being of 'minor significance' as the Planning Proposal seeks to amend the numeric standard within an existing clause [Clause 42A(1)(AB)] in the Blacktown LEP 1988.

Mapping Provided - s55(2)(d)

Is mapping provided? Yes

Comment : Council have submitted a number of maps in support of this Planning Proposal, as previously advised by the Department. The maps provided identify the current the location of the 4(a) and 4(b) land use zones under the Blacktown LEP 1988, the existing and proposed land available for development for the purpose of brothels in the Blacktown LGA, and the potential number of brothels that will be able to be developed under the proposed 400 metres distance separation criteria.

It is recommended the maps be amended to include the suburb boundaries (for consultation purposes), to ensure that the location of the existing and proposed land available for development of brothels within the Blacktown LGA can be easily identified.

Community consultation - s55(2)(e)

Has community consultation been proposed? Yes

Comment : Council considers this planning proposal to be of 'low impact' and intends to advertise the Planning Proposal for a period of 14 days in the local newspaper. Council proposes to exhibit the planning proposal at Council and on Councils website (Refer to page 10 of the attached Planning Proposal).

Additional Director General's requirements

Are there any additional Director General's requirements? No

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? No

If No, comment : It is recommended that the planning proposal not proceed (as outlined further in the next section of this report).

Proposal Assessment

Principal LEP:

Due Date : July 2012

Comments in relation to Principal LEP : Blacktown Council recently received funding under the Local Environmental Plan Priority Program to assist in finalising its Principal Local Environmental Plan.

The Principal Local Environmental Plan will now proceed in two (2) stages.

(Stage 1) - A Planning Proposal for the Blacktown CBD has been submitted separately and received a Gateway Determination on 2 November 2011. The Planning Proposal was issued with a 9 month timeframe for completion. Consultation is expected to commence in the first week of December 2011.

(Stage 2) - Remainder of the LGA. It is scheduled that a s64 submission will be submitted in early January 2012, and s68 submitted by mid 2012, to the Department.

Assessment Criteria

Need for planning proposal :

The Sydney West Regional Director previously wrote to Council on 31 August 2011 advising that Council 'provide an outline of why the [current] controls [relating to separation distances for brothels] are not operating in a satisfactory manner'.

Currently there are two approved brothels operating in the Blacktown LGA, including one at 40 Forge Street, Blacktown, and one at Carnegie Place, Blacktown, which are located within a 280 metres straight line distance from one another. If the planning proposal was to proceed, the only 2 approved brothels in Blacktown LGA would become prohibited, meaning they would rely on existing use rights and that Blacktown LGA would have no permissible approved brothels in the LGA.

Council have identified that the Planning Proposal is the direct result of a recent application for a proposed 24 hour sex services premises at 18 Forge Street, Blacktown (which was proposed to be located 280 metres away from the existing brothel at 40 Forge Street).

At an Ordinary Meeting on 8 June 2011, Council resolved to seek an increase in the distance separation provisions relating to brothels under the Blacktown Local Environmental Plan 1988, from 200 metres to 400 metres (Refer to page 3-5 of the Planning Proposal).

Council has expressed their concern that the current 200 metre distance separation criteria, provided in Clause 42A(1)(ab) of the Blacktown LEP 1988, is inadequate in preventing proliferation of brothels in the industrial sites in the Blacktown LGA which have been identified as employment land in the Draft North West Subregional Strategy.

In light of the above, the Sydney West Team consider Council's reasoning for the proposed amendment to be inadequate as Council has not provided a clear explanation as to why the current controls are not operating in a satisfactory manner to stop 'red light' districts from emerging.

It is considered that the existing 200 metre separation distance criteria for brothels is acceptable in preventing the potential proliferation of brothels and creation of a 'red light' district in the Blacktown, given that there are currently only two approved brothels

(located more than 200 metres straight line distance from one another)operating in the LGA.

The Sydney West Team is of the opinion that the proposed 400 metre separation distance criteria for brothels will place unnecessary additional restrictions on brothels, given that these uses are currently only permitted with consent within an limited area in the Blacktown LGA under the Blacktown LEP 1988.

Consistency with strategic planning framework :

The planning proposal is generally consistent with the strategic planning framework, including the Sydney Metropolitan Strategy and Draft North West Subregional Strategy (Refer to pages 5 and 6 of the Planning Proposal).

The Draft North West Subregional Strategy identifies a number of industrial sites in the Blacktown LGA (including areas where brothels are currently permitted under BLEP 1988), as employment lands to be retained for industrial purposes. The planning proposal seeks to retain these areas for industrial land uses by reducing the potential for brothels from becoming the primary economic activity within these zones.

Environmental social economic impacts :

It is not expected that the planning proposal will adversely affect any critical habitat or threatened species, populations or ecological communities.

By reducing the concentration of brothels within one area, the planning proposal seeks to reduce incidences of 'red light' districts from emerging, and the negative social impacts that are often associated. The theoretical analysis provided by Council illustrates that the proposed application of a 400 separation distance criteria for brothels will allow for up to 35 of additional brothels to be accommodated within the Blacktown LGA (Refer to maps attached to Planning Proposal).

However, it is considered that the potential number of additional brothels to be accommodated in Blacktown may be less than 35, as the theoretical analysis provides a a 'best case scenario' and is not entirely realistic in terms of where the brothels may potentially be located within the LGA.

For example, some of the potential locations for brothels identified by Council were inaccessible and quite isolated, which may pose a potential safety issue for workers and their clients. In addition, the analysis does not indicate the 'on ground' scenario and the type of buildings already located within each area and it is difficult to determine whether those areas identified could realistically house a brothel land use.

It is suggested that if Council seeks to progress this matter attempting to introduce further limitations of the locations of brothels, that it be required to undertake a study which:

- identifies how many brothels does Blacktown need to satisfy its own demand; and
- provides strategic justification for the proposed 400 metre separation distance criteria.

Assessment Process

Proposal type :	Minor	Community Consultation Period :	14 Days
Timeframe to make LEP :	6 Month	Delegation :	DDG
Public Authority Consultation - 56(2)(d) :	Department of Education and Communities Department of Health NSW Police Force		

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Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **No**

If no, provide reasons : **Not to proceed. Council has not provided adequate strategic justification for the proposed 400 metre separation distance criteria for brothels. This information was specified in the Department's letter to Council dated 31 August 2011.**

Resubmission - s56(2)(b) : **No**

If Yes, reasons : **NA**

Identify any additional studies, if required. :

Other - provide details below

If Other, provide reasons :

Should Council wish to pursue this matter and submit a new planning proposal, Council should be advised that an appropriate supporting study/ analysis on the demand for brothels in the Blacktown LGA needs to be submitted with a future proposal to demonstrate the need for such a proposal and its limiting controls.

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons : **NA**

Documents

Document File Name	DocumentType Name	Is Public
Letter from Blacktown City Council to DP&I_17-11-2011.pdf	Proposal Covering Letter	Yes
Planning Proposal for 400m Distance Separation Between Brothels.pdf	Proposal	Yes
Attachment 1 & 2 - Existing and proposed land available for brothels in the Blacktown LGA.pdf	Map	Yes
Attachment 3_ Theoretical analysis_ Blacktown.pdf	Map	Yes
Attachment 3_ Theoretical analysis_ Arndell Park.pdf	Map	Yes
Attachment 3_ Theoretical analysis_ Glendenning.pdf	Map	Yes
Attachment 3_ Theoretical analysis_ Riverstone.pdf	Map	Yes
Attachment 3_ Theoretical analysis_ Seven Hills.pdf	Map	Yes
Council Resolution_ Ordinary Meeting 8 June 2011.pdf	Study	Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Not Recommended**

S.117 directions: **1.1 Business and Industrial Zones
3.1 Residential Zones
6.3 Site Specific Provisions
7.1 Implementation of the Metropolitan Plan for Sydney 2036**

Additional Information : **It is recommended that the planning proposal not proceed and be advised that should Council wish to submit a new planning proposal seeking to increase the limitation required between brothels, that it carry out an initial demand analysis or study to demonstrate the need for the increase in restricting the legitimate land use to give merit to such a proposal.**

Supporting Reasons : **It is considered that the planning proposal as submitted fails to demonstrate the merit and need (justification) for it's objective. In this regard the planning proposal is considered inadequate for the following reasons:**

1. The key strategic planning matter for which this planning proposal needs in order to

demonstrate initial merit has not been demonstrated. This information and justification was specified by the Department in its letter dated 31 August 2011;

2. An analysis (demand) or otherwise has not been carried out or provided to demonstrate the need to further limit brothels, or indicate the existing 200 metre limitation is unsatisfactory leading to the creation (or could lead to) of 'red light districts';

3. Based on the information provided, it is not considered that two (2) existing approved legitimate brothels and (a further 2 development applications) in different locations is leading to or demonstrates that an area will become a 'red light district';

4. Based on the information (and similar to a previous decision in 2008 by the Department), the proposed increase in controls would place unnecessary restrictions on the ability to carry out a legitimate land use (if there is a demand for the land use); and

5. The current 200metre controls appear to be working in an effective, satisfactory manner based on the information provided (two existing approved brothels within the Blacktown LGA).

In addition, the following minor matters in the planning proposal are inconsistent with existing policies and strategies:

1. the planning proposal does not adequately address the SEPP (Sydney Region Growth Centres) 2006;

2. the planning proposal does not consider s.117 Direction 6.3 - Site Specific Provisions; and

3. minor discrepancies and changes would be required to Parts 1 and 2 as outlined in this report to be consistent with the relevant Planning Proposal and Local Environmental Plan Guidelines.

Signature: _____



Printed Name: _____

STEPHEN GARDINER

Date: _____

28/11/11