

Appendix D – Assessment of Part 5 Amendments

Proposed Clause 5.1A - Development on land intended to be acquired for public purposes

Explanation of Provision

This clause is currently part of the Rockdale LEP 2011. This clause seeks to limit development on certain land intended to be acquired for a public purpose and is applied to land identified on the Land Reservation Acquisition Map, specified in Column 1 of the Table to that clause and that has not been acquired by the relevant authority as specified in the clause.

This clause seeks to ensure that development consent is not granted to any development on land to which this clause applies other than development for a purpose specified opposite that land in Column 2 of that Table.

Council Justification

Council seeks to include this clause in areas currently zoned under the Botany Bay LEP 2013 as it seeks to prevent development on land intended for a public purpose. As an example, this seeks to prevent a residential development on land identified for road widening.

Department Comment

The inclusion of the clause in the Bayside LEP 2020 is satisfactory, because it seeks to ensure the development, other than that intended by the nominated land acquisition, occurs. This clause will also assist development being undertaken in an orderly manner, consistent with the objectives of the EP&A Act 1979.

Removal of Clause - 5.3 Development near zone boundaries under Botany Bay LEP 2013

Explanation of Provision

This clause is currently part of the Botany Bay LEP 2013. This clause seeks to provide flexibility where the investigation of a site and its surroundings reveals that a use allowed on the other side of a zone boundary would enable a more logical and appropriate development of the site and be compatible with the planning objectives and land uses for the adjoining zone.

This clause does not apply to—

- land in Zone RE1 Public Recreation, Zone E1 National Parks and Nature Reserves, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone W1 Natural Waterways, or
- land within the coastal zone, or
- land proposed to be developed for the purpose of sex services or restricted premises.

The consent authority is satisfied that—

- the development is not inconsistent with the objectives for development in both zones, and

- the carrying out of the development is desirable due to compatible land use planning, infrastructure capacity and other planning principles relating to the efficient and timely development of land.

This clause does not prescribe a development standard that may be varied under this Plan.

Council Justification

Council considers that this clause undermines the identified land use zones under this plan. Similarly, the existing clause, when compared to the comparable clauses in neighbouring LEPs is generous in applying to all zones, except those excluded, rather than just applying to the Infrastructure zones.

Department Comment

The exclusion of the clause in the Bayside LEP 2020 is satisfactory, because the Standard Instrument considers this clause to be an optional inclusion into a LEP. As such, the appropriateness of this clause and its inclusion within the Bayside LEP 2020 is considered to be a matter for Council and the community consultation process.

Proposed Clause 5.4 Controls relating to miscellaneous permissible uses

This clause sets controls relating to miscellaneous permissible uses. It is proposed to consolidate the existing controls from the Legacy LEPs under the Bayside LEP 2020. Those controls which are being amended to facilitate this consolidation are discussed in **Table 1** below:

Miscellaneous Use	Rockdale LEP 2011 control	Botany Bay LEP 2013 control	Bayside LEP 2020 control
Home businesses	the business must not involve the use of more than 60 square metres of floor area.	the business must not involve the use of more than 50 square metres of floor area.	the business must not involve the use of more than 60 square metres of floor area.
Home Industries	the home industry must not involve the use of more than 60 square metres of floor area.	the home industry must not involve the use of more than 50 square metres of floor area.	the home industry must not involve the use of more than 60 square metres of floor area.
Kiosks	the gross floor area must not exceed 15 square metres.	the gross floor area must not exceed 30 square metres.	the gross floor area must not exceed 30 square metres.
Neighbourhood shops	the retail floor area must not exceed 80 square metres.	the retail floor area must not exceed 100 square metres.	the retail floor area must not exceed 100 square metres.
Secondary dwellings	the total floor area of the dwelling (excluding any area used for parking) must not exceed whichever of the following is the greater— a) 60 square metres; b) 43% of the total floor area of the principal dwelling.	the total floor area of the dwelling (excluding any area used for parking) must not exceed whichever of the following is the greater— a) 60 square metres; b) 20% of the total floor area of the principal dwelling.	the total floor area of the dwelling (excluding any area used for parking) must not exceed whichever of the following is the greater— c) 60 square metres; d) 20% of the total floor area of the principal dwelling.
Artisan food and drink industry exclusion.	the floor area used for retail sales (not including any cafe or restaurant area) must not exceed—	the floor area used for retail sales (not including any cafe or restaurant area) must not exceed—	the floor area used for retail sales (not including any cafe or restaurant area) must not exceed—

Miscellaneous Use	Rockdale LEP 2011 control	Botany Bay LEP 2013 control	Bayside LEP 2020 control
	30% of the gross floor area of the industry, or 400 square metres, whichever is the lesser.	10% of the gross floor area of the industry, or 400 square metres, whichever is the lesser.	30% of the gross floor area of the industry, or 400 square metres, whichever is the lesser.

Table 1: Changes in controls related to miscellaneous permissible uses under this planning proposal

Council Justification

Council, to ensure no net loss in development potential for these uses under the Bayside LEP 2020, has adopted the more generous of the existing controls, with the exception of secondary dwelling controls.

Council considers that for secondary dwellings, a maximum of 20% of the total floor area of the principle dwelling or 60m² whichever is greater to be consistent with the Affordable Rental Housing SEPP (the SEPP). Council states that this will allow a slightly higher gross floor area for secondary dwellings when compared with the SEPP, depending on the size of the principle dwelling on site. Council states that this will provide slightly more flexibility than GFA controls specified by the SEPP, but also ensure that secondary dwellings within the Bayside LGA are of an appropriate size and scale.

Department Comment

The proposed consolidation of these controls under the Bayside LEP 2020 is satisfactory, because:

- the selection of the higher standard, in most instances, facilitates development of these miscellaneous permissible uses;
- the adoption of the lower floor area control (i.e. 20% compared to 43% of floor area) for secondary dwellings is considered acceptable and responds appropriately to the provisions of the Affordable Rental Housing SEPP.

It is also noted that Council is currently preparing a LHS which will involve the Department's endorsement. The LHS will have to consider an evidence base constituting and of relevance to this application; demographic factors, the supply and demand for housing, and local land use opportunities and constraints, among other factors. This will inform the LHS to ensure it adequately addresses the designated principles within the District Plan, being:

- Housing need;
- Diversity;
- Market preferences;
- Alignment of infrastructure;
- Displacement;
- Amenity;
- Engagement; and
- Efficiency.

This will ensure that any loss in potential residential density and diversity within the residential zones will be addressed through more suitable zonings which permit these forms of development.