

**PLANNING PROPOSAL TO AMEND
MARRICKVILLE LOCAL ENVIRONMENTAL PLAN 2011 (MLEP 2011)
180 PRINCES HIGHWAY, ST PETERS**

DECEMBER 2016

Introduction

This planning proposal seeks Gateway approval to amend Marrickville Local Environmental Plan 2011 (MLEP 2011) to reclassify a parcel of land known as 180 Princes Highway, St Peters, owned by the former Bankstown City Council, from Community Land to Operational Land.

At its meeting on 5 April 2016 Council considered a report which recommended that Council resolve to prepare a draft Planning Proposal to make a number of amendments to Marrickville Local Environmental Plan 2011. The proposed amendments were referred to as Draft Marrickville Local Environmental Plan 2011 (Amendment No. 4).

One of those amendments recommended related to a request from the former Bankstown City Council to prepare a planning proposal to change the classification of a parcel of land they own at 180 Princes Highway, St Peters from Community Land to Operational Land.

An extract from the report considered by Council in relation to the matter is reproduced below:

SCHEDULE 4 Classification and reclassification of public land

180 Princes Highway, St Peters (land owned by Bankstown City Council)

A planning proposal has been received from the former Bankstown City Council seeking approval to change the classification of a parcel of land they own at 180 Princes Highway, St Peters from Community Land to Operational Land.

The subject land has a property description of Lot 4 DP 818380. The land is currently used as a KFC store. Bankstown City Council purchased the KFC site at 180 Princes Highway, St Peters in late 2003.

Bankstown City Council advised (in part) that:

Council has owned the subject site since late 2003, and by default under the Local Government Act 1993, the land became classified as Community Land. For Council to be able to appropriately manage the land into the future, the land is required to be reclassified to Operational Land, as was originally intended for this site.

Council obtained legal advice (from the Office of Local Government) that detailed that the reclassification process should be undertaken by Marrickville Council, as the subject site is within their local jurisdiction.

Bankstown City Council considered a report on 180 Princes Highway, St Peters at its meeting on 28 July 2015 when it resolved (in part) that:

1. *In accordance with the relevant provisions of the Local Government Act 1993, Council commences the reclassification process of its property at 180 Princes Highway, St Peters to Operational Land, as outlined in this report.*

The subject land is public land within the meaning of the Local Government Act 1993, and is currently classified *community* for the purposes of Part 2 of Chapter 6 of that Act. Pursuant to Section 28 of the Local Government Act, the reclassification must be done by way of a local environmental plan (LEP). Pursuant to Section 54(1)(a) of the Environmental Planning and Assessment Act 1979, Marrickville Council is the relevant planning authority in respect of the LEP.

It should be noted that the subject land is zoned B6 Enterprise Corridor under MLEP 2011. The planning proposal from Bankstown City Council does not seek to rezone the subject land.

Bankstown City Council acquired the subject land after 1 July 1993. Under Clause 31(2) of the Local Government Act 1993 Bankstown City Council had 3 months after it acquired the land to resolve that the land be classified as community land or operational land. Bankstown City Council did not resolve to classify the land within that period, and consequently by virtue of Clause 31(2A) of the Local Government Act 1993 the subject land is "taken to have been classified under a local environmental plan as community land."

Recommendation L-Sch. 4-Part 1(01):

That the following entry be added in Part 1 – Land classified, or reclassified, as operational land – no interests changed of Schedule 4 of MLEP 2011:

Column 1	Column 2
Locality	Description
180 Princes Highway, St Peters	Lot 4 DP 818380

PART 1: OBJECTIVE OR INTENDED OUTCOME

The objective of the Planning Proposal is:

- i. To reclassify a parcel of land known as 180 Princes Highway, St Peters, owned by the former Bankstown City Council, from Community Land to Operational Land.

PART 2: EXPLANATION OF THE PROVISIONS

The Planning Proposal seeks to reclassify a parcel of land known as 180 Princes Highway, St Peters, owned by the former Bankstown City Council, from Community Land to Operational Land.

PART 3: JUSTIFICATION

Section A – Need for the planning proposal

1. Is the planning proposal the result of any strategic study or report?

The planning proposal is not the result of any strategic study. A report considered by the former Bankstown City Council resolved to commence the

reclassification process of its property at 180 Princes Highway, St Peters from Community Land to Operational Land.

The planning proposal is required by virtue of Section 28 of the Local Government Act, which requires the reclassification of land to be done by way of a local environmental plan.

2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The planning proposal is the only statutory means available to reclassify the subject land.

3. Is there a net community benefit?

As the subject land was acquired by the former Bankstown City Council for investment purposes, the net community benefit from the planning proposal is that proposed reclassification would reflect the purpose for which the land was acquired by Bankstown City Council and would afford Canterbury Bankstown Council the ability to continue to lease the site for commercial purposes.

Section B – Relationship to strategic planning framework

4. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

The planning proposal is not inconsistent with the objectives and actions contained within the applicable regional or sub-regional strategy including the Sydney Metropolitan Strategy.

5. Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?

The planning proposal seeks to reclassify a parcel of land known as 180 Princes Highway, St Peters, owned by the former Bankstown City Council, from Community Land to Operational Land.

The planning proposal is not inconsistent with Marrickville Council's Strategic Plan, Marrickville Community Strategic Plan (Our Place, Our Vision) which defines the long term aspirations and strategic directions for the community.

6. Is the planning proposal consistent with applicable State Environmental Planning Policies (SEPPs)?

The planning proposal has been assessed against all relevant State Environmental Planning Policies (SEPPs) as detailed below. Based on that assessment, Council has concluded that overall, the planning proposal is consistent with all relevant SEPPs as follows:

- **SEPP No. 1 – Development Standards**

This SEPP makes development standards more flexible. It allows councils to approve a development proposal that does not comply with a set standard where this can be shown to be unreasonable or unnecessary. No matters within this planning proposal relate to amendments to development standards. Notwithstanding the above, by virtue of Clause 1.9(2) of MLEP 2011, SEPP No. 1 does not apply to land to which MLEP 2011 applies.

- SEPP No. 19 - Bushland in Urban Areas

This SEPP aims to protect and preserve bushland within certain urban areas as part of the natural heritage or for recreational, educational and scientific purposes. It is designed to protect bushland in public open space zones and reservations, and to ensure that bush preservation is given a high priority when local environmental plans for urban development are prepared. No matters within this Planning Proposal alter the degree to which urban bushland will be protected under MLEP 2011. The Planning Proposal is consistent with this SEPP.

- SEPP No. 21 - Caravan Parks

This SEPP ensures that where caravan parks or camping grounds are permitted under an environmental planning instrument, movable dwellings, as defined in the Local Government Act 1993, are also permitted. The specific kinds of movable dwellings allowed under the Local Government Act in caravan parks and camping grounds are subject to the provisions of the Caravan Parks Regulation. The policy ensures that development consent is required for new caravan parks and camping grounds and for additional long-term sites in existing caravan parks. It also enables, with the council's consent, long-term sites in caravan parks to be subdivided by leases of up to 20 years. This planning proposal does not include any provisions relating to caravan parks. The Planning Proposal is consistent with the SEPP.

- SEPP No. 30 - Intensive Agriculture

This SEPP requires development consent for cattle feedlots having a capacity of 50 or more cattle or piggeries having a capacity of 200 or more pigs. The policy sets out information and public notification requirements to ensure there are effective planning control over this export-driven rural industry. The policy does not alter if, and where, such development is permitted, or the functions of the consent authority. The Planning Proposal is consistent with this SEPP.

- SEPP No. 33 - Hazardous and Offensive Development

This SEPP amends the definitions of hazardous and offensive industries and includes provisions relating to such developments. The definitions apply to all planning instruments, existing and future. The new definitions enable decisions to approve or refuse a development to be based on the merit of the proposal. The consent authority must carefully consider the specifics the case, the location and the way in which the proposed activity is to be carried out. The policy also requires specified matters to be considered for proposals that are *potentially hazardous* or *potentially offensive* as defined in the policy. The definitions contained within the SEPP were incorporated into the Standard Instrument and the Dictionary to MLEP 2011 includes those definitions. The planning proposal does not relate to any of those uses and is therefore consistent with the objectives of the SEPP.

- SEPP No. 50 - Canal Estate Development

This SEPP aims to prohibit canal estate development in order to ensure that the environment is not adversely affected by the creation of new developments of that kind. The Planning Proposal is consistent with this SEPP.

- SEPP No. 55 - Remediation of Land

This SEPP introduced a State wide planning approach to the remediation of contaminated land across NSW. The policy states that land must not be developed if it is unsuitable for a proposed use because it is contaminated. If the land is unsuitable, remediation must be undertaken before the land is developed. Some sites within this planning proposal may be affected by this SEPP due to their past uses. The planning proposal does not include any provisions relating to the remediation of land. The Planning Proposal is consistent with this SEPP.

- SEPP No. 62 - Sustainable Aquaculture

This SEPP encourages the sustainable expansion of the aquaculture industry in NSW. The policy implements the regional strategies already developed by creating a simple approach to identify and categorise aquaculture development on the basis of its potential environmental impact. The SEPP also identifies aquaculture development as a designated development only where there are potential environmental risks. The Planning Proposal is consistent with this SEPP.

- SEPP No. 64 - Advertising and Signage

This SEPP aims to ensure that outdoor advertising is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations and is of high quality design and finish. The Planning Proposal is consistent with this SEPP.

- SEPP No. 65 - Design Quality of Residential Apartment Development

This SEPP aims to improve the quality of design of residential apartment development across the NSW through the application of design principles. It provides for the establishment of Design Review Panels to provide independent expert advice to councils on the merit of residential apartment development and involvement of a qualified designer throughout the design, approval and construction stages. The Planning Proposal is consistent with this SEPP.

- SEPP (Housing for Seniors or People with a Disability) 2004

This SEPP encourages the development of quality accommodation for the ageing population and for people who have disabilities, in keeping with the local neighbourhood. The Planning Proposal does not include any provisions that would, directly or indirectly, affect housing for seniors or people with a disability, nor would it affect any provision within the SEPP. The Planning Proposal is consistent with this SEPP.

- SEPP (Building Sustainability Index: BASIX) 2004

This SEPP operates in conjunction with EP&A Amendment (Building Sustainability Index: BASIX) Regulation 2004 to implement consistent building sustainability provisions across NSW. The Planning Proposal does not include any provisions that would, directly or indirectly, affect BASIX or any provision that relates to building sustainability. The Planning Proposal is consistent with this SEPP.

- SEPP (State Significant Precincts) 2005

This SEPP aims to facilitate the development, redevelopment or protection of important urban, coastal and regional sites of economic, environmental or social significance to the State so as to facilitate the orderly use, development or conservation of those State significant precincts for the benefit of the State, and to facilitate service delivery outcomes for a range of public services and to provide for the development of major sites for a public purpose or redevelopment of major sites no longer appropriate or suitable for public purposes.

The Planning Proposal does not include any provisions that would, directly or indirectly, affect any provision within the SEPP. The Planning Proposal is consistent with this SEPP.

- SEPP (Mining, Petroleum Production and Extractive Industries) 2007

This Policy aims to provide for the proper management and development of mineral, petroleum and extractive material resources for the social and economic welfare of the State. The Policy establishes appropriate planning controls to encourage ecologically sustainable development. The Planning Proposal is consistent with this SEPP.

- SEPP (Temporary Structures) 2007

This SEPP provides for the erection of temporary structures and the use of places of public entertainment while protecting public safety and local amenity. None of the matters in this Planning Proposal raise issues in relation to the SEPP. The Planning Proposal is consistent with this SEPP.

- SEPP (Infrastructure) 2007

This SEPP provides a consistent planning regime for infrastructure and the provision of services across NSW. It is intended to provide greater flexibility in the location of infrastructure and service facilities along with improved regulatory certainty and efficiency. The Planning Proposal is consistent with this SEPP.

- SEPP (Exempt and Complying Development Codes) 2008

This SEPP simplifies assessment processes for development that complies with specified development standards. It identifies types of minor development that may be carried out without development consent, or carried out in accordance with a complying development certificate. The Planning Proposal is consistent with this SEPP.

- SEPP (Affordable Rental Housing) 2009

This SEPP establishes a consistent planning regime for the provision of affordable rental housing. The planning proposal is not inconsistent with this SEPP.

- SEPP (State and Regional Development) 2011

The aims of this Policy are to identify development that is State significant development or State significant infrastructure and critical State significant infrastructure and to confer functions on joint regional planning panels to determine development applications. The Planning Proposal is consistent with this SEPP.

7. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

An assessment of the planning proposal against all relevant s.117 Directions is provided below. From that assessment, Council has concluded that the planning proposal is consistent with all applicable Ministerial Section 117 Directions.

1. Employment and Resources

- Direction 1.1: Business & Industrial Zones

This Direction aims to encourage employment growth in suitable locations, protect employment land in business and industrial zones and support the viability of identified strategic centres. The Direction applies when a planning proposal will affect land within an existing or proposed business or industrial zone, including the alteration of any existing business or industrial zone boundary.

The subject land is zoned B6 Enterprise Corridor under MLEP 2011 and as such the subject direction technically applies. However the planning proposal only seeks to reclassify the subject land, which is owned by Bankstown City Council, from *community land* to *operational land*. The planning proposal does not seek to rezone the subject land. As such the planning proposal is consistent with Direction 1.1.

7. Metropolitan Planning

- Direction 7.1: Implementation of A Plan for Growing Sydney

This Direction applies to the planning proposal. The Plan for Growing Sydney *"provides key directions and actions to guide Sydney's productivity, environmental management, and liveability – including the delivery of housing, employment, infrastructure and open space"*.

The planning proposal is considered to be consistent with the NSW Government's ***A Plan for Growing Sydney***, and as such Council considers the planning proposal to be consistent with this Direction.

Section C – Environmental, social and economic impact

8. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

All significant issues in relation to critical habitat or threatened species, populations or ecological communities, or their habitats were taken into account in the making of MLEP 2011. The planning proposal does not include any proposed amendments to those controls. Consequently it is considered little likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, would be adversely affected as a result of the proposal.

9. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

There are unlikely to be environmental effects, either individually or cumulatively, as a result of the planning proposal.

10. How has the planning proposal adequately addressed any social and economic effects?

The planning proposal only seeks to reclassify the subject land, which is owned by Bankstown City Council, from *community land* to *operational land*. The proposed reclassification would reflect the purpose for which the land was acquired by Bankstown City Council and would afford the Council the ability to continue to lease the site for commercial purposes. As such the planning proposal would not cause any social or economic impacts.

Section D – State and Commonwealth Interests

11. Is there adequate public infrastructure for the planning proposal?

The planning proposal seeks to reclassify the subject land, which is owned by Bankstown City Council, from *community land* to *operational land*. The proposal does not seek to rezone the subject land. The usage of the land would remain unchanged and as such would not generate any additional demand for public infrastructure.

12. What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?

As this planning proposal has not yet proceeded to Gateway determination, the views of State and Commonwealth public authorities have not been sought, nor is this required at this stage. In accordance with the Gateway determination process, the Department of Planning and Environment will inform Council which State and Commonwealth authorities are to be formally consulted during the public exhibition period.

PART 4: MAPPING

The planning proposal does not involve any map amendments.

PART 5: COMMUNITY CONSULTATION

The planning proposal would be publicly exhibited in accordance with the requirements of any Gateway determination issued.

A public hearing in relation to the proposed reclassification of the land would be held in accordance with the requirements under the Local Government Act.

PART 6: PROJECT TIMELINE

Following are estimated dates (month/year) for completion of key tasks in the planning proposal process:

- anticipated commencement date (date of Gateway determination) – December 2016/January 2017;
- anticipated timeframe for the completion of required technical information – January 2017;
- timeframe for government agency consultation (pre and post exhibition as required by Gateway determination) – to be determined after Gateway determination;
- commencement and completion dates for public exhibition period – February/March 2017;

- dates for public hearing (if required) – to be determined at end of public exhibition period;
- timeframe for consideration of submissions – March 2017;
- timeframe for the consideration of the proposal post exhibition – April/May 2017;
- date of submission to the Department to finalise the LEP – May 2017; and
- anticipated date RPA will forward to the Department for notification – May 2017.

Attachment 4 – Evaluation criteria for the delegation of plan making functions

Checklist for the review of a request for delegation of plan making functions to councils
Local Government Area: Inner West Council (Plan only relates to land in the former Marrickville LGA)
Name of draft LEP: Marrickville Local Environmental Plan 2011 (Amendment No. X)
Address of Land (if applicable): 180 Princes Highway, St Peters
Intent of draft LEP:
The intent of the draft LEP is:
i. To reclassify a parcel of land known as 180 Princes Highway, St Peters, owned by the Former Bankstown City Council, from Community Land to Operational Land.
Additional Supporting Points/Information:
Applicant's Planning Proposal request (Trim 110266.15) Applicant's response to the matters contained in the Department's <i>Attachment 1 – Information Checklist for Proposals to Classify or Reclassify Public Land through an LEP</i> (Trim 140853.16)

Marrickville Local Environmental Plan 2011 (Amendment No. X)

Evaluation criteria for issuing an Authorisation				
(NOTE – where the matter is identified as relevant and the requirement has not been met, council is to attach information to explain why the matter has not been addressed)	Council response		Department	
	Y/N	Not relevant	Agree	Not agree
Is the planning proposal consistent with the Standard Instrument Order, 2006?	Yes			
Does the planning proposal contain an adequate explanation of the intent, objectives, and intended outcome of the proposed amendment?	Yes			
Are appropriate maps included to identify the location of the site and the intent of the amendment?		N/A		
Does the planning proposal contain details related to proposed consultation?	Yes			
Is the planning proposal compatible with an endorsed regional or sub-regional planning strategy or a local strategy endorsed by the Director-General?		N/A		
Does the planning proposal adequately address any consistency with all relevant S117 Planning Directions?		N/A		
Is the planning proposal consistent with all relevant State Environmental Planning Policies (SEPPs)?	Yes			
Minor Mapping Error Amendments	NO			
Does the planning proposal seek to address a minor mapping error and contain all appropriate maps that clearly identify the error and the manner in which the error will be addressed?		N/A		
Heritage LEPs	NO			
Does the planning proposal seek to add or remove a local heritage item and is it supported by a strategy/study endorsed by the Heritage Office?		N/A		
Does the planning proposal include another form of endorsement or support from the Heritage Office if there is no supporting strategy/study?		N/A		

Evaluation criteria for issuing an Authorisation				
(NOTE – where the matter is identified as relevant and the requirement has not been met, council is to attach information to explain why the matter has not been addressed)	Council response		Department	
	Y/N	Not relevant	Agree	Not agree
Does the planning proposal potentially impact on an item of State Heritage Significance and if so, have the views of the Heritage Office been obtained?		N/A		
Reclassifications	YES			
Is there an associated spot rezoning with the reclassification?	No			
If yes to the above, is the rezoning consistent with an endorsed Plan of Management (POM) or strategy?		N/A		
Is the planning proposal proposed to rectify an anomaly in a classification?	Yes The planning proposal includes a recommendation to reclassify a parcel of land that the former Bankstown City Council owns in the LGA, which contains a fast food outlet, from "community land" to "operational land."			
Will the planning proposal be consistent with an adopted POM or other strategy related to the site?	Bankstown City Council resolved on 28 July 2015 "In accordance with the relevant provisions of the Local Government Act 1993, Council commences the reclassification process of its property at 180 Princes Highway, St Peters to Operational Land."			
Will the draft LEP discharge any interests in public land under section 30 of the Local Government Act, 1993?	Refer to attached submission from Canterbury Bankstown City Council			
If so, has council identified all interests; whether any rights or interests will be extinguished; any trusts and covenants relevant to the site; and, included a copy of the title with the planning		N/A		

Evaluation criteria for issuing an Authorisation				
(NOTE – where the matter is identified as relevant and the requirement has not been met, council is to attach information to explain why the matter has not been addressed)	Council response		Department	
	Y/N	Not relevant	Agree	Not agree
proposal?				
Has the council identified that it will exhibit the planning proposal in accordance with the department's Practice Note (PN 16-001) Classification and reclassification of public land through a local environmental plan and Best Practice Guideline for LEPs and Council Land?	Refer to attached submission from Canterbury Bankstown City Council			
Has council acknowledged in its planning proposal that a Public Hearing will be required and agreed to hold one as part of its documentation?	Yes A public hearing concerning the reclassification of the land is to be held by Canterbury Bankstown Council			
Spot rezonings	NO			
Will the proposal result in a loss of development potential for the site (i.e. reduced FSR or building height) that is not supported by an endorsed strategy?		N/A		
Is the rezoning intended to address an anomaly that has been identified following the conversion of a principal LEP into a Standard Instrument LEP format?		N/A		
Will the planning proposal deal with a previously deferred matter in an existing LEP and if so, does it provide enough information to explain how the issue that lead to the deferral has been addressed?		N/A		
If yes, does the planning proposal contain sufficient documented justification to enable the matter to proceed?		N/A		
Does the planning proposal create an exception to a mapped development standard?		N/A		
Section 73A Matters	NO			
Does the proposed instrument a. correct an obvious error in the principal instrument consisting of a misdescription, the inconsistent numbering of provisions, a		N/A		

Evaluation criteria for issuing an Authorisation

(NOTE – where the matter is identified as relevant and the requirement has not been met, council is to attach information to explain why the matter has not been addressed)	Council response		Department	
	Y/N	Not relevant	Agree	Not agree
wrong cross-reference, a spelling error, a grammatical mistake, the insertion of obviously missing words, the removal of obviously unnecessary words or a formatting error?; b. address matters in the principal instrument that are of a consequential, transitional, machinery or other minor nature?; or c. deal with matters that do not warrant compliance with the conditions precedent for the making of the instrument because they will not have any significant adverse impact on the environment or adjoining land? (NOTE – the Minister (or Delegate) will need to form an Opinion under section 73(A1)(c) of the Act in order for a matter in this category to proceed).				

NOTES

- Where a council responds 'yes' or can demonstrate that the matter is 'not relevant', in most cases, the planning proposal will routinely be delegated to council to finalise as a matter of local planning significance.
- Endorsed strategy means a regional strategy, sub-regional strategy, or any other local strategic planning document that is endorsed by the Director-General of the department.