

Removal of 'Shop Top Housing' as a permitted land use in zone B7 Business Park of the Marrickville LEP 2011

Proposal Title : **Removal of 'Shop Top Housing' as a permitted land use in zone B7 Business Park of the Marrickville LEP 2011**

Proposal Summary : **The proposal addresses an anomaly in the Marrickville Local Environmental Plan 2011 (Marrickville LEP) whereby 'shop top housing' is specifically permitted with consent in the B7 Business Park zone. Permitting shop top housing is considered to be inconsistent with the main intent of the zone which is to encourage employment opportunities and employment uses, such as business, office and light industrial premises for, among others, the purposes of creative industries, and to allow some small scale residential development associated with these employment uses.**

The proposal also responds to a Land and Environment Court ruling which concluded that clause 6.13 'Dwellings and residential flat buildings in Zone B7 Business Park' of Marrickville LEP, and the residential floor space restriction in the Marrickville Development Control Plan (Marrickville DCP) relating to the B7 zone do not apply to shop top housing.

PP Number : **PP_2017_IWEST_006_00**

Dop File No : **17/04144**

Proposal Details

Date Planning Proposal Received : **16-Mar-2017**

LGA covered : **Inner West**

Region : **Metro(CBD)**

RPA : **Inner West Council**

State Electorate : **MARRICKVILLE**

Section of the Act : **55 - Planning Proposal**

LEP Type : **Housekeeping**

Location Details

Street :

Suburb :

City :

Postcode :

Land Parcel : **B7 Business Park zone - LGA wide.**

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DoP Planning Officer Contact Details

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Land Release Data

Growth Centre :	N/A	Release Area Name :	N/A
Regional / Sub Regional Strategy :	Metro Inner West subregion	Consistent with Strategy :	Yes
MDP Number :		Date of Release :	
Area of Release (Ha) :	0.00	Type of Release (eg Residential / Employment land) :	N/A
No. of Lots :	0	No. of Dwellings (where relevant) :	0
Gross Floor Area :	0	No of Jobs Created :	0

The NSW Government Lobbyists Code of Conduct has been complied with : **Yes**

If No, comment : **The Department of Planning and Environment's Code of Practice in relation to communication and meetings with lobbyists has been complied with. Sydney Region East has not met any lobbyists in relation to this proposal, nor has the Director been advised of any meetings between other Department officers and lobbyists concerning this proposal.**

Have there been meetings or communications with registered lobbyists? : **No**

If Yes, comment :

Supporting notes

Internal Supporting Notes : **The planning proposal seeks to remove 'shop top housing' as a permitted land use by amending the Land Use Table for the B7 Business Park zone.**

Clause 6.13 of Marrickville LEP limits residential development in the B7 zone to dwellings and residential flat buildings that are part of a mixed use development that includes business premises, office premises or light industry on the ground floor. The extent of residential development permitted in the B7 zone is further controlled by the Marrickville DCP provisions which specify a maximum of 40% of gross floor area for residential

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development in the B7 zone.

The proposal also refers to and seeks to address a Land and Environment Court decision which concluded that the operation of clause 6.13 of Marrickville LEP together with Council's DCP limit on residential floorspace do not apply to shop top housing. As a consequence of the Court's decision, the quantum of shop top housing floorspace is unconstrained and risks undermining the intent and objectives of the B7 zone.

The proposal is supported because it:

- supports the objectives and intent of the B7 zone;
- supports the operation of clause 6.13 of the Marrickville LEP and DCP provisions that limit residential development in the B7 zone; and
- reflects the Land and Environment Court determination.

DELEGATION OF PLAN MAKING FUNCTIONS

Council is seeking delegation to carry out the Minister's plan-making functions under section 59 of the Environmental Planning and Assessment Act 1979 (the EP&A Act).

Given the minor/housekeeping nature of the proposed amendment, delegation is supported in this instance.

External Supporting
Notes :

Council has prepared the planning proposal to address an anomaly in the B7 Business Park zone of Marrickville Local Environmental Plan 2011 (Marrickville LEP) which permits shop top housing. Council considers that permitting shop top housing is inconsistent with the main intent of the B7 Business Park zone, which is to permit employment uses, such as business, office and light industrial premises for, among others, the purposes of creative industries, and to allow some types of small scale residential development associated with those employment uses.

The proposal also responds to a Land and Environment Court ruling which concluded that clause 6.13 'Dwellings and residential flat buildings in Zone B7 Business Park' of Marrickville LEP, and the residential floor space restriction in the Marrickville Development Control Plan relating to the B7 zone, do not apply to shop top housing.

Council considers that not proceeding with the proposed amendment would compromise the intended outcomes for the B7 Business Park zone by allowing more extensive residential development than is desired for what is predominantly an employment zone.

Adequacy Assessment

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

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

Comment : The objectives and intended outcomes are clearly stated in the proposal, and include the protection of employment land and support of the viability of commercial activities in the zone, and to address the anomaly as described earlier in this report.

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

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

Comment : The explanation of provisions is clearly stated in the proposal which seeks to remove 'Shop Top Housing' as 'Permitted with consent' from the land use table for zone B7 Business Park zone land use table.

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

3.4 Integrating Land Use and Transport

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6.1 Approval and Referral Requirements

7.1 Implementation of A Plan for Growing Sydney

Is the Director General's agreement required? **No**

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

d) Which SEPPs have the RPA identified?

SEPP No 1—Development Standards
SEPP No 19—Bushland in Urban Areas
SEPP No 21—Caravan Parks
SEPP No 30—Intensive Agriculture
SEPP No 33—Hazardous and Offensive Development
SEPP No 50—Canal Estate Development
SEPP No 55—Remediation of Land
SEPP No 62—Sustainable Aquaculture
SEPP No 64—Advertising and Signage
SEPP No 65—Design Quality of Residential Flat Development
SEPP (Building Sustainability Index: BASIX) 2004
SEPP (Exempt and Complying Development Codes) 2008
SEPP (Housing for Seniors or People with a Disability) 2004
SEPP (Infrastructure) 2007
SEPP (Mining, Petroleum Production and Extractive Industries) 2007
SEPP (Temporary Structures and Places of Public Entertainment) 2007
SEPP (Affordable Rental Housing) 2009

e) List any other matters that need to be considered :

An assessment of the applicable SEPPs and Directions is discussed below.

Land and Environment Court case 2016 NSWLEC 1618 (Tab A).

Have inconsistencies with items a), b) and d) being adequately justified? **N/A**

If No, explain :

State Environmental Planning Policies

Council has identified a range of SEPPs as being relevant to the proposal (see (d) above). However, it is considered that the nominated SEPPs are not relevant to the consideration of this planning proposal, and as such, it is recommended that the planning proposal be updated prior to exhibition to remove reference to them.

Section 117 Directions

1.1 Business and Industrial Zones:

The proposal is consistent with this Direction as it will remove an anomaly that would allow greater levels of residential development ('Shop top housing') in the B7 zone in the former Marrickville local government area, the prime objective of which is to provide for employment related uses. To remove 'Shop top housing' from the zone's permissible uses would assist in the protection of employment land in this zone.

3.1 Residential Zones:

In relation to this planning proposal, this Direction applies to planning proposals that affect land within an existing zone (other than in an existing or proposed residential zone) in which significant residential development is permitted or proposed.

The Direction does not apply to this planning proposal as the B7 zone is primarily employment/business focussed. The zoning provides for limited residential development in conjunction with permissible active ground floor uses, as opposed to 'significant' residential development; significant residential development is neither permitted nor proposed.

Land and Environment Court case 2016 NSWLEC 1618:

This case related to an appeal to modify the approval for a housing development containing live-work units, so that ground floor retail tenancies could be created.

In summary, the Court found that whilst the Marrickville LEP 2011 B7 zone seeks to limit residential uses by prohibiting the large range of residential uses included in the

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definition of 'residential accommodation', the B7 zone does however specifically allow some residential uses, including shop-top housing.

Consequently, the Court found that clause 6.13(3) 'Dwellings and residential flat buildings in Zone B7 Business Park', and part 6.6 of the DCP, which seek to limit residential development in the B7 zone, do not apply and the appeal was upheld.

The planning proposal seeks to prohibit the development of 'Shop top housing' in the B7 zone by deleting it from the list of permissible uses in the Land Use Table.

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment : While the proposal does not require any map amendments, the planning proposal includes two maps indicating the locations of land/sites zoned B7 Business Park under Marrickville LEP 2011.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : Council considers the proposal is low impact overall and would be exhibited in accordance with any requirements of the Gateway Determination.

Given the minor/housekeeping nature of the proposal and its relatively low impact, a 14 day community consultation period is considered appropriate.

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? **Yes**

If No, comment :

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP : Marrickville Local Environmental Plan 2011 was notified on 12 December 2011.

Assessment Criteria

Need for planning proposal : Without the proposed amendment, there is currently no constraint on the amount of shop top housing that could be provided in the development of sites within the B7 zone. Consequently, not proceeding with the proposal would compromise the intended planning outcomes for the B7 Business Park zone by allowing more extensive residential development than is desired by this predominantly employment-related zone.

The planning proposal is the appropriate mechanism by which to achieve its stated objectives.

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Consistency with strategic planning framework :

The planning proposal is considered to be consistent with the strategic planning framework, particularly the employment-related objectives of A Plan for Growing Sydney, draft Central District Plan and the former Marrickville Council's local/community strategic plan which defines the long term aspirations and strategic directions for the community.

Environmental social economic impacts :

Environmental:

The planning proposal is not seeking to increase development potential within the zone, nor to facilitate any particular development proposal and relates to largely developed sites within an urban area. This, and the housekeeping nature of the proposal means that it is unlikely that any critical habitat or threatened species, populations or ecological communities or their habitats will be affected by the proposal.

Social/Economic:

The proposal would result in the 'correction' of the anomaly described earlier in this report. By seeking to close the current 'loophole' which allows shop top housing at the expense of the zone objectives, the proposal protects employment land from excessive and unconstrained residential development within the zone, whilst still allowing modest residential development consistent with zone objectives. It is therefore considered unlikely that there will be any significant adverse social/economic impacts.

Assessment Process

Proposal type : **Routine** Community Consultation Period : **14 Days**

Timeframe to make LEP : **3 months** Delegation : **RPA**

Public Authority Consultation - 56(2)(d)

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

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons :

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

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

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 :

Documents

Document File Name

DocumentType Name

Is Public

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Planning Proposal Marrickville.pdf
LEC Judgement.pdf
Council Recommendation.pdf

Proposal
Proposal
Proposal

Yes
Yes
Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions: **1.1 Business and Industrial Zones**
 3.1 Residential Zones
 3.4 Integrating Land Use and Transport
 6.1 Approval and Referral Requirements
 7.1 Implementation of A Plan for Growing Sydney

Additional Information : **It is recommended that the planning proposal proceed, subject to the following conditions:**

- 1. Prior to public exhibition, the planning proposal is to be updated to remove reference to State Environmental Planning Policies that are not relevant to the planning proposal.**
- 2. The planning proposal be publicly exhibited for a period of not less than 14 days.**
- 3. A public hearing is not required.**
- 4. The planning proposal is to be finalised within 6 months from the date of the gateway determination.**

Supporting Reasons : **The outcome of this planning proposal is supported because it:**
 - supports the objectives and intent of the B7 zone;
 - supports the operation of clause 6.13 of the Marrickville LEP and DCP provisions that limit residential development in the B7 zone; and
 - reflects the Land and Environment Court determination.

Signature:



Printed Name:

MARTIN COOPER

Date:

28/03/2017

