

Ms Heather Warton
Director City Planning & Environment
City of Botany Bay
141 Coward
Mascot 2020
Ph: (02) 9366 3552
council@botanybay.nsw.gov.au



REVISED PLANNING PROPOSAL NO. 2/2013

Under Section 56(7) of the EP&A Act 1979
Amendment to the Botany Bay Local Environmental Plan
2013

New Clause 4.4C and amendments to Clauses 4.3 and 4.6

19 November 2014

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INTRODUCTION

The Botany Bay Local Environmental Plan 2013 was gazetted on 21 June 2013 and commenced on 26 June 2013.

Council at its Meeting held 11 December 2013 resolved to prepare a Planning Proposal in accordance with the Environmental Planning & Assessment Act 1979 and its Regulation to amend the Botany Bay Local Environmental Plan 2013 as follows:

- a) Delete Sub-clause (2A) in Clause 4.3 – Height of Buildings relating to a 22 metre height for sites zoned R3 and R4; and
- b) Delete Clause 4.4B as it relates to exceptions to FSR in Zone R3 and R4.

The resolution came about as a result of the impacts resulting from multi unit residential developments in the R3 and R4 Zones where the bonus provisions have applied.

Council at its Meeting held 5 November 2014 resolved to prepare a revised planning proposal in accordance with Section 56(7) of the Environmental Planning and Assessment Act 1979 to include a proposed new clause on building form and scale for development to which Clause 4.3(2A) and Clause 4.4B apply to; to impose a 6 storey height limit to *Clause 4.3 Height of Buildings*; and to restrict the application of *Clause 4.6 Exceptions to development standards* to development which clause 4.3(2A) and 4.4B would apply.

Background

The Botany Bay Local Environmental Plan 2013 was gazetted on 21 June 2013 and commenced on 26 June 2013.

Council at its Meeting held 11 December 2013 resolved to prepare a Planning Proposal in accordance with the Environmental Planning & Assessment Act 1979 and its Regulation to amend the Botany Bay Local Environmental Plan 2013 as follows:

- c) Delete Sub-clause (2A) in Clause 4.3 – Height of Buildings relating to a 22 metre height for sites zoned R3 and R4; and
- d) Delete Clause 4.4B as it relates to exceptions to FSR in Zone R3 and R4.

The resolution came about by reason of the assessed impacts that the additional height and FSR has raised within the Botany Bay LGA community. Not only has the development standards resulted in additional building bulk and height it has also presented as potential amenity impacts resulting from new developments not being in context with existing urban environments particularly where they adjoin R2 Low Density Residential zones.

The bonus provisions do not provide for an acceptable transition between the sites zoned R2 Low Density Residential and land zoned R3 and R4. Where the R3 and R4 Residential Zones are immediately adjoining R2 low density residential zones, the increased building height and building bulk presents adverse impacts to the prevailing streetscape and results in overshadowing and overlooking impacts.

Furthermore, the FSR bonus in the Botany Bay LEP 2013 has not been implemented as intended and in some cases this has been exploited by developers. The joint use of both provisions (22m height and the 1.65:1 FSR) has impacted upon the Botany Bay community and has caused concern within that community.

A copy of the Council's Resolution dated 11 December 2013 and an extract from the Ordinary Council Business Paper which contains the report dated 12 November 2013 is attached as **Attachment 1**.

Council at its Meeting held 26 February 2014 reaffirmed its resolution dated 11 December 2013 resolving to retain its position that both clauses be deleted from the Botany Bay LEP 2013.

Council received the Gateway Determination dated 18 March 2014 on 20 March 2014. A copy of the Gateway Determination is contained in **Attachment 2**. In summary the Gateway Determination required that the two clauses be retained but Council be permitted to insert into its LEP, a clause that addresses both urban form and urban design for assessment of transition principles between low density development and medium to high density development.

Council at its Development Meeting held 2 April 2014 considered the Gateway Determination. The Committee adopted the Director's report dated 21 March 2014 which recommended that draft LEP provisions be prepared. Council adopted the Committee's recommendation at its Meeting held 23

April 2014. Council at its Development Committee Meeting held 14 May 2014 considered the draft provisions that were prepared by officers and resolved again to refer the provisions to the Council Solicitors for review and comment; and after review, that the provisions be referred to the Department.

On 5 June 2014 Council forwarded the provisions to the DP&E, see **Attachment 3**.

A reply was received from the Department on 24 October 2014. In summary the letter states that a review of a Gateway Determination must be requested within 14 days from the date of that determination. The letter also states that the following actions should be addressed:

- Prepare an explanation of the intent of proposed *Clause 4.4C Building Form and Scale* and outline in prose form what the clause is aiming to achieve/address rather than present it as a draft clause.
- Reconsider proposed amendments to add a 6 storey limit to *Clause 4.3 Height of buildings* and to restrict the application of *Clause 4.6 Exceptions to development standards* to development which clause 4.3(2A) and 4.4B would apply. These changes may constitute an amended planning proposal, requiring a Gateway revision under section 56(7) of the Environmental Planning & Assessment Act.
- Reconsider the amendments to Clause 6.16 Design excellence as these clauses may be best addressed in Clause 4.4C Building Form and Scale.

Council at its Development Committee Meeting held 5 November 2014 considered the matter and resolved to prepare a revised planning proposal in accordance with Section 56(7) of the Environmental Planning & Assessment Act 1979 to address proposed new Clause 4.4C, the 6 storey limit to Clause 4.3 Height of buildings and to restrict the application of Clause 4.6 Exceptions to development standards to development which clause 4.3(2A) and 4.4B would apply. Council also resolved to include the amendments to Clause 6.16 Design Excellence in the 2015 housekeeping amendment. A copy of the report and resolution is contained as **Attachment 4**.

PART 1 - OBJECTIVES OR INTENDED OUTCOMES

Objectives

- To introduce urban form and urban design provisions for sites that have an area of 2000m² or over which are zoned R3 or R4.
- To introduce a maximum 6 storey height limit for development of land over 2000m² zoned R3 or R4 Zones.
- To prevent the use of Clause 4.6 for developments to which Clauses 4.3(2A) and 4.4B(3) apply to.

Intended Outcomes

The intended outcomes of the Planning Proposal are outlined in the following table:

Table 1 – Intended Outcomes

Clause	Resolution of Council	Intended Outcome
Clause 4.3 – Height of Buildings	(2A) Despite subclause (2), if an area of land in Zone R3 Medium Density Residential or Zone R4 High Density Residential exceeds 2,000 square metres, the height of a building on that land may exceed the maximum height shown for the land on the Height of Buildings Map but must not exceed 22 metres <i>and must be a maximum of six (6) storeys.</i>	The bonus provisions (Clauses 4.3(2A) & 4.4(2A) in the Botany Bay LEP 2013) for additional height and FSR for sites zoned R3 or R4 which have an amalgamated area of 2000m² was developed from the 2010 Neustein Urban Study. A copy of the Study has been previously forwarded to the Department and also can be found on Council's website at http://www.botanybay.nsw.gov.au/index.php/council-services/services/city-planning/strategic-a-supporting-studies With respect to the height the intent outlined within the 2010 Neustein Urban Study was that increased floor to ceiling heights would be required on the ground floor and first floor to accommodate commercial/retail development with residential above. This would provide for an overall building height of 22 metres within 6 storeys. However developments within the R3 and R4 Residential zones are not required to accommodate commercial/retail development (though it is permitted) on the ground and first floor, the consequence of which gave rise to 7 storey building heights within the 22m height cap where the development is pure residential. This has caused amenity impacts from new developments not being in context with existing urban environments particularly adjoining low density R2 Residential zones. Furthermore the increased building height presents adverse impacts to the prevailing streetscape and adjoining R2 low density residential zones, resulting in overshadowing and overlooking impacts.

Clause	Resolution of Council	Intended Outcome
		Therefore the intended outcome of the Planning Proposal with respect to the 6 storey limit is to ensure that the recommendation of the Neustein Urban Study is upheld, and the impact of residential unit development is addressed.
New Clause 4.4C Building Form and Scale	New Clause <i>1) This clause applies to land to which clause 4.3(2A) and clause 4.4B applies.</i> <i>(2) Development consent must not be granted to development on land to which this clause applies, unless the consent authority is satisfied:</i> <i>(a) The building form and scale at property boundaries achieve acceptable amenity outcomes, to adjoining land and buildings,</i> <i>(b) The building form provides adequate landscape setback to lower scale built forms,</i> <i>(c) A transition in building scale is achieved at property boundaries, and zone interface,</i> <i>(d) The development will be compatible with the character of the area in terms of bulk and scale, and</i> <i>(e) The objectives of clause 4.3 and 4.4B have been met.</i>	As indicated above the bonus provisions (Clauses 4.3(2A) & 4.4(2A) in the Botany Bay LEP 2013) for additional height and FSR for sites zoned R3 or R4 which have an amalgamated area of 2000m2 was developed from the 2010 Neustein Urban Study. Clause 4.4B in the BBLEP 2013 provides additional bonus FSR for sites over 2000m2 of 10% above the exhibited FSR development standard of 1.5:1 – a FSR of 1.65:1 if the site is affected by three or more of the following constraints: • Site contamination; • Aircraft Noise; • Rail Noise; • Road noise; • Demolition; • Groundwater; • Acid Sulphate Soils. The bonus provision allows no transition between the sites zoned R2 Low Density Residential and land zoned R3 and R4. It has been noted that a number of pre-approval discussions in the R3 Residential zone are immediately adjoining R2 low density residential zones and the increased building height presents adverse impacts to the prevailing streetscape and adjoining R2 low density residential zones, resulting in overshadowing and overlooking impacts. The bonus provisions have resulted in the likelihood of a real built scale imbalance between the R2 and the R3 zones at their interface. The increase in the FSR for sites over 2000m2 and zoned R3 or R4 has also led to increased bulk and scale of development adjacent to R2 Low Density Residential zoned areas, causing unacceptable streetscape impacts. Therefore, the intended outcome of the new provision is to ensure that development which utilise Clauses 4.3(2A) and 4.4B has the following characteristics: • The building form and scale at property boundaries with land zoned R2 are reduced in height to prevent overlooking and overshadowing; • The building form and scale at the street elevation is reduced in height so as to maintain a low density streetscape elevation; • The building form provides for adequate landscape setbacks at side, rear and front boundaries; • There is a transition in building scale achieved at property boundaries, and zone interface;

Clause	Resolution of Council	Intended Outcome
		- The development will be compatible with the future character of the area in terms of bulk and scale; and - The objectives of clause 4.3 and 4.4B have been met
4.6 – Exceptions to development standards	(8) This clause does not allow development consent to be granted for development that would contravene any of the following: (a) a development standard for complying development, (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated, (c) clause 5.4 (d) <i>clause 4.3(2A)</i> (e) <i>clause 4.4B(3)</i>	To ensure that applications that have the benefit of Clauses 4.3(2A) and 4.4B do not seek variation to the development standards as those applications already seek to use the bonus clauses above what is permitted on the FSR Map and the Height of Building Map.

In summary Council seeks to strengthen consideration of the boundary conditions where scale relationships change; and to ensure that development is compatible with lower scaled surrounding development. The intended outcome of the Planning Proposal is to address character, compatibility and fit – to ensure that development that utilise the bonus clauses fits and is compatible with the character of an area in relation to building height, setback and landscape.

PART 2 - EXPLANATION OF PROVISIONS

Existing Provisions

Botany Bay Local Environmental Plan 2013

The Botany Bay Local Environmental Plan 2013 was gazetted on 21 June 2013 and commenced on 26 June 2013.

The relevant clauses which apply to **R3 and R4 Zones** are outlined in **Table 2** as follows:

Table 2 – FSR & Height Provisions relating to R3 and R4 Zones

Clause in Botany Bay LEP 2013	Summary of Provisions	Source of provision
4.3 – Height of Buildings	(2) - The height of a building on any land is not to exceed the maximum shown for land on the Height of Buildings Map (HOB Map).	Heights are generally a maximum of 10 to 14 metres depending on the locality of the site. Heights in the HOB Map were based on surveys carried out by Council of existing heights of development in the R3 and R4 Zones. In the HOB Map the following maximum heights apply to land zoned R3 and R4: • Mascot – 11 to 12 metres; • Botany – around Daphne and Street, Myrtle/Jasmine Streets; Wilson/Pemberton Street & Edgehill Avenue – 10 metres; • Eastlakes – 14 metres; and • Hillsdale – 12 metres.
	(2A) - Notwithstanding the HOB Map land in R3 or R4 Zone which exceeds 2000m ² in area the height can exceed that on the height of HOB Map but must not exceed 22m.	This bonus provision was developed from the 2010 Neustein Urban Study. This subclause applies to sites with an area over 2000m² in the R3 and R4 Zones provided for a building height of 6 storeys (22 metres).
	(2C) – applies to 12 and 14 Daniel Street & 41 Daphne Street, Botany – allows a maximum height of 12 metres.	The HOB Map permits a maximum height of 10 metres. Council received a request for additional height on 23/09/2011 for

Clause in Botany Bay LEP 2013	Summary of Provisions	Source of provision
		an amalgamated site of 1900m² in area consisting of Nos. 12 and 14 Daniel Street & 41 Daphne Street. The submission was considered by the Council's Policies & Priorities Committee on 25/01/2012. Council at that meeting agreed to an additional 2 metre increase in height (ie maximum of 12m) for an amalgamated site of 1900m² in area. However should the land be developed as three individual lots a height limit of only 10 metres will apply to each lot.
4.4 – Floor Space Ratio	(2) - The maximum FSR for a building on any land is not to exceed the FSR shown for the land on the FSR Map.	FSR are generally a maximum of 0.85:1 depending on the locality of the site.
	(2A) - Notwithstanding the FSR Map land in R3 or R4 Zone which exceeds 2000m ² in area the FSR can exceed that on the FSR Map but must not exceed 1.5:1m.	Justification for this bonus provision was developed from the 2010 Neustein Urban Study.
	(2C) – applies to 12 and 14 Daniel Street & 41 Daphne Street, Botany – allows a maximum FSR of 1.5:1.	The FSR Map permits a maximum FSR of 0.85:1. Council received a request for additional FSR on 23/09/2011 for an amalgamated site of 1900m² – 12 and 14 Daniel Street & 41 Daphne Street. The submission was considered by the Council's Policies & Priorities Committee on 25/01/2012. Council at that meeting agreed to an additional 0.65:1 increase in FSR (ie maximum FSR of 1.5:1) for an amalgamated site of 1900m² in area. However should the land be developed as three individual parcels a FSR 0.85 metres for each parcel will apply.

Clause in Botany Bay LEP 2013	Summary of Provisions	Source of provision
4.4B – Exceptions to FSR in Zone R3 and R4	- Despite clause 4.4, a FSR for the purposes of multi dwelling housing and residential flat buildings on land to which this clause applies that results in a floor space ratio that does not exceed 1.65:1 if: - the site area is equal to or greater than 2,000 square metres, and - the site area is land identified on the Acid Sulfate Soils Map, and - the consent authority considers that the development is, or is likely to be, adversely affected by any of the following: contamination, noise (including aircraft, rail or road noise). Council has to be satisfied that: - the development will be compatible with the desired future character in terms of building bulk and scale, and - the development will contribute to the amenity of the surrounding locality, and - any consolidation of lots for the purposes of this clause is not likely to result in adjoining lots that cannot be developed in accordance with this Plan.	Council at its Development Meeting held 1 August 2012 resolved to include the provision in the exhibited draft Botany Bay Local Environmental Plan 2012. The provision provides additional bonus FSR for sites over 2000m² of 10% above the exhibited FSR development standard of 1.5:1 – a FSR of 1.65:1 if the site is affected by three or more of the following constraints: <i>Site contamination;</i> <i>Aircraft Noise;</i> <i>Rail Noise;</i> <i>Road noise;</i> <i>Demolition;</i> <i>Groundwater;</i> <i>Acid Sulphate Soils.</i> Council was advised that in the determination of Development Applications in recent times for multi unit housing (including residential flat buildings) it had become apparent that to achieve the long term outcomes of the Council and utilise land previously used for an industrial purpose for a reuse, it generally comes with a legacy of contamination, high groundwater levels and industrial building stock that contains elements in their construction of hazardous materials (asbestos). It has also been found that in addition to the above matters the sites are affected by transport noise (road/aircraft) that collectively give rise to development constraints. This all adds to the costs of development. Therefore, an incentive of up to 10% above the exhibited FSR development standard of 1.5:1 for larger sites of over 2000m² was proposed.
4.6 – Exceptions to development standards	This clause does not allow development consent to be granted for development that would contravene any of the following:	Standard Template LEP Clause

Clause in Botany Bay LEP 2013	Summary of Provisions	Source of provision
	(a) a development standard for complying development, (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated, (c) clause 5.4.	

Note: The bonus provisions above do not apply to the British American Tobacco (BATA) Site at 128 Bunnerong Road, Pagewood as the BATA site has its own maximum permitted FSRs and heights – refer to Clauses 4.3(2B) and 4.4(2B).

Development Control Plan

Council's previous Development Control Plan No. 35 – Multi Unit Housing & Residential Flat Buildings and Council's current Botany Bay Development Control Plan 2013 have consistent provisions relating to urban form for the larger sites in the R3 and R4 zones - that that they include two storey townhouses plus attic to the street edge and higher building located to the rear of the development site.

Since the changes in the legislation relating to development control plans – ie they are not statutory documents (refer to Section 64BA(1) of the Environmental Planning & Assessment Act 1979) - Council is unable to require low rise at the street and adjoining R2 zoned land.

As Council is unable to uphold its DCP provisions for the larger sites zoned R3 and R4, a planning proposal is proposed that ensures that the streetscape is considered for these larger sites.

Proposed amendment

The Planning Proposal seeks the following amendments to the Botany Bay Local Environmental Plan 2013:

1. To amend **Clause 4.3(2A) – Height of Buildings** in **red** below:

*Despite subclause (2), if an area of land in Zone R3 Medium Density Residential or Zone R4 High Density Residential exceeds 2,000 square metres, the height of a building on that land may exceed the maximum height shown for the land on the [Height of Buildings Map](#) but must not exceed 22 metres **and must be a maximum of six (6) storeys.***

2. To include a new provision to strengthen consideration of the boundary conditions where scale relationships change; and to ensure that development is compatible with lower scaled surrounding development. The new clause will address the following matters:
 - That the building form and scale at property boundaries with land zoned R2 is reduced in height to prevent overlooking and overshadowing;
 - That the building form and scale at the street elevation is reduced in height so as to maintain a low density streetscape elevation;
 - That the building form provides for adequate landscape setbacks at side, rear and front boundaries;
 - That there is a transition in building scale achieved at property boundaries, and zone interface;
 - That the development will be compatible with the future character of the area in terms of bulk and scale; and
 - To ensure that the objectives of clause 4.3 and 4.4B have been met
3. To amend Clause 4.6(8) – Exceptions to development standards in red below:

This clause does not allow development consent to be granted for development that would contravene any of the following:

- (a) *a development standard for complying development,*
- (b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
- (c) *clause 5.4,*
- (d) *clause 4.3(2A), and*
- (e) *clause 4.4B(3).*

PART 3 – JUSTIFICATION

Section A - Need for the planning proposal

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

As indicated above in **Table 2** the bonus provisions (Clauses 4.3(2A) & 4.4(2A) in the Botany Bay LEP 2013) for additional height and FSR for sites zoned R3 or R4 which have an amalgamated area of 2000m² was developed from the 2010 Neustein Urban Study. A copy of the Study has been previously forwarded to the Department and also can be found on Council's website at <http://www.botanybay.nsw.gov.au/index.php/council-services/services/city-planning/strategic-a-supporting-studies>

With respect to the **height** the intent outlined within the 2010 Neustein Urban Study was that increased floor to ceiling heights would be required on the ground floor and first floor to accommodate commercial/retail development with residential above. This would provide for an overall building height of 22 metres within 6 storeys. However developments within the R3 and R4 Residential zones are not required to accommodate commercial/retail development (though it is permitted) on the ground and first floor, the consequence of which gave rise to 7 storey building heights within the 22m height cap where the development is pure residential.

This was not the intent of the 2010 Neustein Urban Study and the bonus height control of 22m has raised issues within the community. Not only has this development standard resulted in additional building height than what was envisaged by the 22m height control it has also presented as potential amenity impacts resulting from new developments not being in context with existing urban environments particularly adjoining low density R2 Residential zones. The bonus provision allows no transition between the sites zoned R2 Low Density Residential and land zoned R3 and R4. It has been noted that a number of pre-approval discussions in the R3 Residential zone are immediately adjoining R2 low density residential zones and the increased building height presents adverse impacts to the prevailing streetscape and adjoining R2 low density residential zones, resulting in overshadowing and overlooking impacts. The bonus provisions have resulted in the likelihood of a real built scale imbalance between the R2 and the R3 zones at their interface.

The increase in the FSR for sites over 2000m² and zoned R3 or R4 has also led to increased bulk and scale of development adjacent to R2 Low Density Residential zoned areas, causing unacceptable streetscape impacts.

The matter was reported to the Council Meeting held on 11 December 2013 and a copy of the report is contained in **Attachment 1**. The Council resolved to:

1. Delete Sub-clause (2A) relating to a 22 metre height for sites zoned R3 and R4 in Clause 4.3 – Height of Buildings; and
2. Delete Clause 4.4B as it relates to exceptions to FSR in Zone R3 and R4.

Council received the Gateway Determination dated 18 March 2014 on 20 March 2014. A copy of the Gateway Determination is contained in **Attachment 2**. In summary the Gateway Determination required that the two clauses be retained but Council be permitted to insert into its LEP, a clause that addresses both urban form and urban design for assessment of transition principles between low density development and medium to high density development.

Council at its Development Meeting held 2 April 2014 considered the Gateway Determination. The Committee adopted the Director's report dated 21 March 2014 which recommended that draft LEP provisions be prepared. Council adopted the Committee's recommendation at its Meeting held 23 April 2014. Council at its Development Committee Meeting held 14 May 2014 considered the draft provisions that were prepared by officers and resolved again to refer the provisions to the Council Solicitors for review and comment; and after review, that the provisions be referred to the Department.

On 5 June 2014 Council forwarded the provisions to the DP&E, see **Attachment 3**.

A reply was received from the Department on 24 October 2014. In summary the letter states that a review of a Gateway Determination must be requested within 14 days from the date of that determination. The letter also states that the following actions should be addressed:

- Prepare an explanation of the intent of proposed Clause 4.4C Building Form and Scale and outline in prose form what the clause is aiming to achieve/address rather than present it as a draft clause.
- Reconsider proposed amendments to add a 6 storey limit to Clause 4.3 Height of buildings and to restrict the application of Clause 4.6 Exceptions to development standards to development which clause 4.3(2A) and 4.4B would apply. These changes may constitute an amended planning proposal, requiring a Gateway revision under section 56(7) of the Environmental Planning & Assessment Act.
- Reconsider the amendments to Clause 6.16 Design excellence as these clauses may be best addressed in Clause 4.4C Building Form and Scale.

Council at its Development Committee Meeting held 5 November 2014 considered the matter and resolved to prepare a revised planning proposal in accordance with Section 56(7) of the Environmental Planning & Assessment Act 1979 to address proposed new Clause 4.4C, the 6 storey limit to Clause 4.3 Height of buildings and to restrict the application of Clause 4.6 Exceptions to development standards to development which clause 4.3(2A) and 4.4B would apply. Council also resolved to include the amendments to Clause 6.16 Design Excellence in the 2015 housekeeping amendment. A copy of the report and resolution is contained as **Attachment 4**.

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 best means of achieving the objectives or intended outcomes for the following reasons:

- The intent of the 2010 Neustein Urban Study has not been realised and the bonus height limit of 22 metres has raised transition and streetscape issues within the community.
- Applicants are seeking 7 storeys within the 22m height cap, which is contrary to the work behind the bonus clauses and the accompanying Botany Bay Development Control Plan 2013 of 6 storeys.
- The existing clauses are not constructed to require a transition zone between development on the bonus sites and adjoining R2 Low Density Residential Zoned land. The inclusion of the building form and scale provision will strengthen consideration of the boundary conditions where scale relationships change; and to ensure that development is compatible with lower scaled surrounding development.
- The inclusion of a maximum of 6 storeys in Clause 4.3(2A) will ensure that development will not exceed the intent of the provision.
- The adverse impacts of the joint utilisation of the bonus provisions over the one site has resulted in the overdevelopment of such sites, with impacts overspilling to adjoining properties. The inclusion of Clauses 4.3(2A) and 4.4B(3) in Clause 4.6(8) will ensure that applications that have the benefit of Clauses 4.3(2A) and 4.4B do not seek variation to the development standards as those applications already seek to use the bonus clauses above what is permitted on the FSR Map and the Height of Building Map.
- To balance amenity between properties within the area.
- The planning proposal exhibition would provide an opportunity to consider the range of the community views in relation to the amended controls and the new control.

3 Is there a net community benefit?

It is envisaged that the planning proposal will provide a net community benefit, which will outweigh the cost of implementing and administering the planning proposal.

Table 3 below addresses the evaluation criteria for conducting a net community benefit test from the Draft Centres Policy (2009) as required by the Department's guidelines.

Table 3 – Consistency with Net Community Benefit Evaluation Criteria

Evaluation Criteria	Comment
Will the LEP be compatible with agreed State and regional strategic direction for development in the area (eg. Land release, strategic corridors, development within 800m of a transit node)?	The planning proposal is consistent with agreed State and Regional strategic directions for development in the area. Council will meet its employment and housing targets in the draft East Subregional Strategy. The additional controls on the residential bonus provisions will not affect the employment and housing targets.
Is the LEP located in a global / regional city, strategic centre or corridor nominated within the Metropolitan Strategy or other regional/sub regional strategy?	The sites that would be affected by the planning proposal are zoned R3 Medium Density Residential and R4 High Density Residential. They are mainly infill sites previously zoned for non-residential uses such as industrial.
Is the LEP likely to create a precedent or create or change the expectations of the landowners or other landholders?	The LEP will change the expectation of landowners of the R3 and R4 zoned sites. However there has been a community concern against the bonus provisions which has resulted from development applications being lodged with Council seeking a bulk and scale that is inconsistent with the streetscape, bulk and scale. The bonus FSR and height provisions will still apply; however development will be required to meet the additional provision relating to building form and scale and will not be able to seek a Clause 4.6 variation over the 22m height limit nor the 1.65:1 FSR bonus.
Have the cumulative effects of other spot rezoning proposals in the locality been considered? What was the outcome of these considerations?	There are no other spot rezonings proposed.
Will the LEP facilitate a permanent employment generating activity or result in a loss of employment lands?	The planning proposal will not facilitate a permanent employment generating activity or result in loss of employment lands.
Will the LEP impact upon the supply of residential land and therefore housing supply and affordability?	Medium to high density residential development will still occur within the LGA. The Planning Proposal does not seek to reduce the amount of land zoned for medium to high density residential development. The planning proposal will not have any impact on the supply of

Evaluation Criteria	Comment
	residential land or affordability. The planning proposal will correct urban design and bulk and scale issues that have arisen with the bonus provisions for land zoned R3 and R4. In summary: • The Planning Proposal will not stifle residential development. • The Neustein Urban Study (2010) forecasted an increased residential dwelling capacity of 7,460 to 8,242 dwellings (between 2004 to 2031) with 1,015 already constructed at the time of preparation of the Study. • The number of new dwellings completed between 2003/04 to 2012/13 is 2258. A total of 4533 dwellings can be supplied by Council in the next 10 years from sites that were <u>not</u> included in the Neustein Urban Study and therefore are additional to the increased residential dwelling capacity of 7,460 to 8,242 dwellings forecasted by Neustein Urban in 2010. • There are currently 1152 dwellings under construction within the newly rezoned western section of the Mascot Station Precinct with an additional 870 dwellings approved or have a DA lodged • There are limited sites zoned R3 or R4 with a consolidated site area of 2000m2 left redevelopment.
Is the existing public infrastructure (roads, rail and utilities) capable of servicing the proposal site? Is there good pedestrian and cycling access? Is public transport currently available or is there infrastructure capacity to support future public transport?	There would be no change to existing public infrastructure. There is adequate pedestrian and cycling access and public transport is available to a majority of the R3 and R4 sites.
Will the proposal result in changes to the car distances travelled by customers, employees and suppliers? If so, what are the likely impacts in terms of greenhouse gas emissions, operating costs and road safety?	There will be no impact on distances travelled by customers, employees and suppliers. There will be no impacts in terms of greenhouse gas emissions, operating costs and road safety.
Are there significant Government investments in infrastructure or services in the area whose patronage will be affected by the proposal? If so, what is the expected impact?	No impacts are expected.
Will the proposal impact on land that the Government has identified a need to protect (eg. Land with high biodiversity values) or have other environmental impacts? Is the land constrained	No significant environmental impacts are envisaged.

Evaluation Criteria	Comment
by environmental factors such as flooding?	
Will the LEP be compatible / complementary with surrounding land uses? What is the impact on amenity in the location and wider community? Will the public domain improve?	The planning proposal will be compatible with surrounding landuses. It will address the impact of the amenity and public domain in the streets where there is an R2/R3 or R2/R4 interface and will protect the wider community.
Will the proposal increase choice and competition by increasing the number of retail and commercial premises operating in the area?	N/A
If a stand-alone proposal and not a centre, does the proposal have the potential to develop into a centre in the future?	N/A
What are the public interest reasons for preparing the draft plan? What are the implications of not proceeding at that time?	The planning proposal has been prepared for public interest reasons as follows: • The intent of the 2010 Neustein Urban Study has not been realised and the bonus height limit of 22 metres has raised transition and streetscape issues within the community. The 22m height limit has permitted an extra storey over that envisaged when the height bonus was being considered by Council. The inclusion of a maximum of 6 storeys in Clause 4.3(2A) will ensure that development will not exceed the intent of the provision. • The existing clauses are not worded to require a transition zone between development on the bonus sites and adjoining R2 Low Density Residential Zoned land. The inclusion of the building form and scale provision will strengthen consideration of the boundary conditions where scale relationships change; and to ensure that development is compatible with lower scaled surrounding development. • The inclusion of Clauses 4.3(2A) and 4.4B(3) in Clause 4.6(8) will ensure that applications that have the benefit of Clauses 4.3(2A) and 4.4B do not seek variation to the development standards as those applications already seek to use the bonus clauses above what is permitted on the FSR Map and the Height of Building Map. • Development potential to take into account the pre existing site constraints and policy considerations. • The adverse impacts of the joint utilisation of the bonus provisions over the one site has resulted in the overdevelopment of such sites, with impacts overspilling to adjoining

Evaluation Criteria	Comment
	properties.

Section B – Relationship to strategic planning framework.

- 1. 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 strategy)?**

Metropolitan Plan for Sydney 2036

Metropolitan Plan for Sydney 2036 establishes a long-term planning framework to manage Sydney's growth in a sustainable manner and strengthen its economic development whilst enhancing the unique lifestyle, heritage and environment of Sydney.

The planning proposal is consistent with the relevant objectives and actions of the Plan as follows:

- *Objective D1 To ensure an adequate supply of land and sites for residential development:* Council is not reducing the supply of land and sites for residential development. No rezonings are proposed by the planning proposal.
- *Objective D2 To produce housing that suits our expected future needs:* Council is not reducing the supply of land and sites for residential development. No rezonings are proposed by the planning proposal. Housing will still be supplied that suits expected future needs.
- *Objective D3 To improve housing affordability:* There will be no loss of housing affordability.
- *Objective D4 To improve the quality of new housing development and urban renewal:* The planning proposal will address the quality of housing and urban renewal as it will force applicants to design developments that fit in with the streetscape. Since the changes in the legislation relating to development control plans – ie they are not statutory documents (Section 64BA(1) of the EP&A Act 1979) - Council is unable to require low rise developed at the street and adjoining R2 zoned land.

Draft Metropolitan Strategy for Sydney to 2031

The draft Metropolitan Strategy for Sydney is a new plan to guide our Sydney's growth to 2031. The draft Metropolitan Strategy is a consultation document and was placed on public exhibition until 28 June 2013.

The planning proposal is consistent with the relevant objectives and actions of the Plan as follows:

- *Objective 5: Deliver new housing to meet Sydney's growth:* Council is not reducing the supply of land and sites for residential development. No rezonings are proposed by the planning proposal.
- *Objective 6: Deliver a mix of well-designed housing that meets the needs of Sydney's population:* The planning proposal does not change the mix of housing stock in the Botany Bay LGA.
- *Objective 7: Deliver well-designed and active centres that attract investment and growth:* The Botany Bay LEP 2013 and the Botany Bay DCP 2013 will deliver well designed and active centres.

Draft East Subregional Strategy

The draft *East Subregional Strategy* is an intermediate step in translating the Metropolitan Plan at a local level and acts as a broad framework for the long-term development of the area, guiding government investment and linking local and state planning issues.

The planning proposal is consistent with the relevant objectives and actions of the Plan as follows:

- *C1 Ensure adequate supply of land and sites for residential development:* Council is not reducing the supply of land and sites for residential development. No rezonings are proposed by the planning proposal.

In summary the planning proposal is consistent with the *Metropolitan Plan for Sydney 2036*, the *draft Metropolitan Strategy for Sydney to 2031* and the *draft East Subregional Strategy*. The Botany Bay LEP 2013 will meet the Draft East Subregional Strategy housing target of 6,500 extra dwellings between 2004 and 2031. Most of this redevelopment is close to transport nodes such as the Mascot Train Station and the bus interchange at Eastgardens Westfields. Medium to high density residential development will still occur within the LGA. The Planning Proposal does not seek to reduce the amount of land zoned for medium to high density residential development. The planning proposal will not have any impact on the supply of residential land or affordability. The planning proposal will correct an issue that has arisen with the bonus provisions for land zoned R3 and R4.

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

The planning proposal is consistent with the objectives relating to residential development in the Council's Community Strategic Plan as follows:

- 11.10 Encourage high-quality planning and urban design outcomes that enhance the character and local needs of the community
- 11.20 Encourage environmentally sustainable developments
- 11.30 Identify, preserve and protect items of heritage value

A copy of Council's Community Strategic Plan can be found at

<http://www.botanybay.nsw.gov.au/index.php/council-services/information-directory/corporate-services>

3. Is the planning proposal consistent with applicable state environmental planning policies?

Attachment 5 summarises the Planning Proposal's consistency with State Environmental Planning Policies (SEPPs) and relevant deemed SEPPs. The Planning Proposal is consistent with SEPPs, and relevant deemed SEPPs.

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

The planning proposal is consistent with the applicable section 117 directions.

Attachment 6 outlines compliance with each of the section 117 directions.

Section C – Environmental, social and economic impact.

1. 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?

The proposal will not impact upon any critical habitat, threatened species, populations or ecological communities or their habitats.

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

The planning proposal is of minor significance, and it is not envisaged that there will be any adverse environmental effects. The planning proposal will address a concern raised in the community with the height and bulk of development on sites over 2000m² in area zoned R3 or R4.

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

Social effects: The planning proposal will result in a positive social effect to the community by requiring development in keeping with the streetscape and character of the area.

Economic effects: The proposal will not have any negative economic effect.

Section D – State and Commonwealth interests

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

There will be no net change in the demands on public infrastructure for any of the sites as a result of this planning proposal.

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

State and Commonwealth public authorities will be consulted in accordance with the Gateway Determination.

PART 4 - COMMUNITY CONSULTATION

Council proposes that the planning proposal be exhibited as follows:

- In accordance with section 57 of the *Environmental Planning and Assessment Act 1979* (EP&A Act), the planning proposal will be placed on public exhibition for 28 days; and
- Any other requirements as determined by the Gateway under section 56 of the EP&A Act.

PART 5 - MAPPING

No mapping is required for the Planning Proposal

PART 6 – PROJECT TIMELINE

The project timeline for the Planning Proposal is outlined in Table 4 below.

Table 4 – Draft Timeline

	Timeframe ¹
Anticipated commencement date	30 January 2014
Anticipated timeframe for the completion of required technical information	TBA advised by Department as to what technical information may be required.
Report back to Council on Gateway Determination	2 April 2014 5 November 2014
Timeframe for government agency consultation (pre and post exhibition as required by Gateway determination)	December/January 2014-2015
Commencement and completion dates for public exhibition period	March 2015 to April 2015
Dates for public hearing (if required)	N/A
Timeframe for consideration of submissions	By end of April 2015
Date of submission to the Department to finalise the LEP	By end of May 2015
Anticipate date RPA will make the plan (if delegated)	End of June 2015
Anticipated date RPA will forwarded to the Department for notification	End of June 2015

¹ Subject to the Department of Planning & Infrastructure approval and timeframe

PART 7 – CONCLUSION

In summary, the Planning Proposal seeks the following amendments:

The Planning Proposal seeks the following amendments to the Botany Bay Local Environmental Plan 2013:

1. To amend **Clause 4.3(2A) – Height of Buildings** in red below:

Despite subclause (2), if an area of land in Zone R3 Medium Density Residential or Zone R4 High Density Residential exceeds 2,000 square metres, the height of a building on that land may exceed the maximum height shown for the land on the [Height of Buildings Map](#) but must not exceed 22 metres and must be a maximum of six (6) storeys.

2. To include a new provision to strengthen consideration of the boundary conditions where scale relationships change; and to ensure that development is compatible with lower scaled surrounding development. The new clause will address the following matters:
 - That the building form and scale at property boundaries with land zoned R2 is reduced in height to prevent overlooking and overshadowing;
 - That the building form and scale at the street elevation is reduced in height so as to maintain a low density streetscape elevation;
 - That the building form provides for adequate landscape setbacks at side, rear and front boundaries;
 - That there is a transition in building scale achieved at property boundaries, and zone interface;
 - That the development will be compatible with the future character of the area in terms of bulk and scale; and
 - To ensure that the objectives of clause 4.3 and 4.4B have been met

3. To amend Clause 4.6(8) – Exceptions to development standards in red below:

This clause does not allow development consent to be granted for development that would contravene any of the following:

- (a) *a development standard for complying development,*
- (b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
- (c) *clause 5.4,*
- (d) *clause 4.3(2A), and*
- (e) *clause 4.4B(3).*

As detailed in this planning proposal, the resolution has come about as a result of the impacts that the additional height and FSR has raised within the Botany Bay LGA community. Not only has the development standards resulted in additional building bulk and height it has also presented as potential amenity impacts resulting from new developments not being in context with existing urban environments particularly where they adjoin R2 Low Density Residential zones.

The bonus provisions do not provide for a transition between the sites zoned R2 Low Density Residential and land zoned R3 and R4. Where the R3 and R4 Residential Zones are immediately adjoining R2 low density residential zones, the increased building height and building bulk presents adverse impacts to the prevailing streetscape and results in overshadowing and overlooking impacts.

Council is not opposed to bonuses or variations to height and FSR if there is merit. However the combination of the two bonus controls – 22m height and 1.65:1 FSR –has resulted in the overdevelopment of sites and impacts on adjoining properties.

This Planning Proposal seeks to strengthen consideration of the boundary conditions where scale relationships change; and to ensure that development is compatible with lower scaled surrounding development. The intended outcome of the Planning Proposal is to address character, compatibility and fit – to ensure that development that utilise the bonus clauses fits and is compatible with the character of an area in relation to building height, setback and landscape.

ATTACHMENTS

1. Council's Resolution dated 11 December 2013 and an extract from the Ordinary Council Business Paper which contains the report dated 12 November 2013
2. Gateway Determination dated 18 March 2014
3. Draft Provisions forwarded to the Department on 5 June 2014
4. Council's resolution and report for 5 November 2014 Development Committee Meeting
5. List of State Environmental Planning Policies
6. Ministerial Directions