

Botany Bay LEP 2013 (Deletion of clause 4.3(2A) and 4.4B)

Proposal Title : **Botany Bay LEP 2013 (Deletion of clause 4.3(2A) and 4.4B)**

Proposal Summary : **The planning proposal seeks to amend the Botany Bay Local Environmental Plan 2013 by:**
a) deleting sub-clause (2A) in Clause 4.3 – Height of Buildings relating to a
22m height limit for sites greater than 2000 sq m zoned R3 and R4; and
b) deleting Clause 4.4B - Exceptions to FSR in zones R3 and R4, which
permits an FSR of 1.65:1 for sites greater than 2000 sqm, subject to
certain criteria

PP Number : **PP_2014_BOTAN_001_00**

Dop File No : **qA279651**

Proposal Details

Date Planning
Proposal Received : **23-Dec-2013**

LGA covered : **Botany Bay**

Region : **Sydney Region East**

RPA : **The Council of the City of Botany Bay**

State Electorate : **HEFFRON
MAROUBRA**

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

LEP Type : **Housekeeping**

Location Details

Street :

Suburb :

City :

Postcode :

Land Parcel : **Amendment applies to entire local government area**

DoP Planning Officer Contact Details

Contact Name : **Charlene Nelson**

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RPA Contact Details

Contact Name : **Cathy McMahon**

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Contact Email : **mcmahonc@botanybay.nsw.gov.au**

DoP Project Manager Contact Details

Contact Name :

Contact Number :

Contact Email :

Land Release Data

Growth Centre :	N/A	Release Area Name :	
Regional / Sub Regional Strategy :	Metro East subregion	Consistent with Strategy :	Yes
MDP Number :		Date of Release :	
Area of Release (Ha) :		Type of Release (eg Residential / Employment land) :	
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 :			
Have there been meetings or communications with registered lobbyists? : No			
If Yes, comment : The Department is not aware of any meetings or communications with registered lobbyists concerning this proposal.			

Supporting notes

Internal Supporting Notes : **Council sought to include bonus provisions in the Botany Bay LEP 2013 (BBLEP 2013) to allow for increased heights of up to 22m and FSR of 1.65:1 for larger sites (exceeding 2000 sqm) and zoned R3 (Medium Density Residential) and R4 (High Density Residential).**

Since BBLEP 2013 has come into force, Council has reviewed development applications using these bonus provisions and considers that the operation of the clause is not meeting their original intent. Council is concerned that the provisions do not allow for the appropriate transition of heights for sites adjacent to the R2 Low Density Residential zone and that adverse impacts are evident with regard to streetscape and overshadowing, which are of particular concern to the community. Council is consequently seeking to amend the BBLEP 2013 to remove the bonus height and FSR provisions.

The removal of the bonus FSR of 1.65:1 and height of 22m will still allow the redevelopment of infill sites zoned R3 and R4 that are greater than 2000 sqm. The maximum FSR permitted on sites over 2000 sqm zoned R3 or R4 will be 1.5:1 (permitted under Cl 4.4(2A)). The height of redevelopment will be consistent or in scale with surrounding heights.

Development applications for land in the R3 and R4 zones can still apply for variations to maximum height or FSR under Clause 4.6 Exceptions to Development Standards of BBLEP 2013 and these requests will be considered on the merits of each application.

External Supporting Notes :

Adequacy Assessment

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

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

Comment : **The objectives of the planning proposal are to:**

- 1. delete the 22 metre maximum height control for sites which have an area over 2000m² and which are zoned R3 Medium Density Residential or R4 High Density Residential;**
- 2. delete the 1.65:1 bonus FSR for sites which have a site area over 2000sqm and are affected by acid sulfate soils, contamination, and noise;**
- 3. address the interface between the R2/R3 and R2/R4 zones within the Botany Bay Local Government Area; and**
- 4. reduce the amenity impacts resulting from the additional bulk and scale.**

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

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

Comment : **The deletion of the bonus Sub-clause 4.3(2A) provision allowing up to 22m maximum height for sites greater than 2000m² zoned R3 Medium Density Residential or R4 High Density Residential, will restrict development to a maximum height of between 10 and 14 metres, depending on locality (equivalent to approx.3-4 storeys).**

The deletion of Clause 4.4B Exception to FSR in zone R3 and R4, which allows FSR of 1.65:1 for sites greater than 2000 sqm, will restrict the maximum permitted FSR on these sites to 1.5:1.

Justification - s55 (2)(c)

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

b) S.117 directions identified by RPA :

3.1 Residential Zones

* May need the Director General's agreement

3.4 Integrating Land Use and Transport

7.1 Implementation of the Metropolitan Plan for Sydney 2036

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 6—Number of Storeys in a Building
SEPP No 22—Shops and Commercial Premises
SEPP No 32—Urban Consolidation (Redevelopment of Urban Land)
SEPP No 33—Hazardous and Offensive Development
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 (Affordable Rental Housing) 2009**

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

The planning proposal states consistency with all SEPPs and S. 117 Directions.

Have inconsistencies with items a), b) and d) being adequately justified? **Yes**

If No, explain :

It is agreed with Council that the planning proposal has no inconsistencies with any S.117 Directions or SEPPs identified.

Mapping Provided - s55(2)(d)

Is mapping provided? **No**

Comment : **No map changes required.**

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : **Given the LEP will change the expectation of landowners of R3 & R4 zoned sites, Council's recommended 28 day exhibition period is agreed with.**

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 : **June 2013**

Comments in
relation to Principal
LEP :

BBLEP 2013 was notified on 21 June 2013 and commenced on 26 June 2013.

Bonus height provision

The bonus provision of up to a maximum of 22m was initially sought by Council to be included in BBLEP 2013 on the basis of the 'Neustein Urban Study 2010'. The intent of the bonus provision was to encourage increased floor to ceiling heights to accommodate commercial/retail at ground floor level, with residential above.

However, Council has advised that as a consequence of this provision, 7 storey residential buildings have resulted with no ground level commercial or retail uses. Although ground floor commercial or retail uses are permitted in the zone, these uses are not required to be provided in the R3/R4 zones.

Council considers that this clause is not operating in accordance with the intent of the provision and that amenity impacts have resulted from new developments not being in context with existing development, particularly where they adjoin R2 Low Density Residential zones. The provision does not allow transition between sites zoned R2 Low Density Residential and R3 or R4.

Bonus FSR provision

This was included following exhibition of the draft Botany Bay LEP 2013. The provision allows an FSR of 1.65:1, which is 10% above the exhibited FSR development standard of 1.5:1, for sites exceeding 2000 sqm in the R3 and R4 zones.

The provision was intended as a cost off-set and an incentive for larger sites or site amalgamations that exceed 2000 sqm, where the redevelopment of land for residential development in R3 and R4 zones is affected by site constraints including site contamination, aircraft noise, rail noise, road noise, acid sulphate soils or groundwater. Council considers that the clause is not operating in accordance with its intent and has resulted in amenity impacts in new developments that are of concern to the community.

Development proposals in the R3 & R4 zones can still use Clause 4.6 Exceptions to Development Standards in the Botany Bay LEP 2013, to apply for heights or FSRs exceeding the maximum controls, and these requests will be considered on the merits of

the proposal.

Assessment Criteria

Need for planning proposal :	the Council seeks to remove bonus height and FSR provisions in the Botany Bay LEP 2013, as the provisions are not operating in accordance with the intent of the controls. A planning proposal is required to remove these provisions from the LEP.
Consistency with strategic planning framework :	The planning proposal is consistent with the 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 bonus controls to be deleted will not affect employment and housing targets. Council advised that the bonus provisions were not factored into meeting the residential targets under the draft East Subregional strategy. Council considers that it will meet its dwelling target of 6500 by 2031 without requiring the bonus incentives of 22m height limit and 1.65:1 FSR.
Environmental social economic impacts :	The proposal will not impact upon any critical habitat, threatened species, populations or ecological communities or their habitats. The proposal is of minor significance and it is not envisaged that there will be any adverse environmental effects. The planning proposal will have a positive social effect on the community by requiring development in keeping with the streetscape and character of the area.

Assessment Process

Proposal type :	Routine	Community Consultation Period :	28 Days
Timeframe to make LEP :	9 months	Delegation :	RPA
Public Authority Consultation - s56(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			

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

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
Planning Proposal (Final).pdf	Proposal	No
Cover Letter.pdf	Proposal Covering Letter	No
Attachment A - Council's Resolution and Report.pdf	Proposal	No
Attachment B - List of State Environmental Planning Policies.pdf	Proposal	No
Attachment C - Section 117 Direction Compliance.pdf	Proposal	No

Planning Team Recommendation

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

S.117 directions: **3.1 Residential Zones**
 3.4 Integrating Land Use and Transport
 7.1 Implementation of the Metropolitan Plan for Sydney 2036

Additional Information : **DELEGATION OF PLAN MAKING FUNCTION**

While Council has not requested to do so, it is recommended that the plan making function be delegated to Botany Council, as the matter is considered to be of minor significance.

RECOMMENDATIONS AND CONDITIONS

It is recommended that the planning proposal should proceed, subject to the following conditions:

- 1. The planning proposal be exhibited for 28 days.**
- 2. The planning proposal be completed within 9 months.**
- 3. The plan making function be delegated to Botany Council.**

The RPA should be advised that:

- 1. The planning proposal is considered to be consistent with S117 Directions 3.1 Residential Zones, 3.4 Integrating Landuse and Transport and 7.1 Implementation of the Metropolitan Plan for Sydney 2036 and no further consideration of any other S117 Directions is required.**
- 3. No further consultation with government agencies or further studies is required.**

Supporting Reasons : **Council considers that the assessed impacts of the additional height and FSR allowed under the current bonus provisions have resulted in building bulk and height out of context particularly in relation to adjoining R2 zones, and raised community concerns.**

Council advised that the removal of the bonus provisions will not affect achieving Botany Bay's dwelling targets under the draft East Subregional Strategy.

Council also considers that variations to height and FSR development standards would be better dealt with on a merit basis under Clause 4.6 Exceptions to Development Standards under BBLEP 2013, rather than through the application of bonus provisions.

The proposal to remove the bonus 22m maximum height and 1.65:1 FSR provisions under BBLEP 2013 applying to sites greater than 2000 sqm is therefore supported.

Signature:



Printed Name:

TIM ARCHER

Date:

24.1.14

