

Attachment 2: Section 117(2) Directions

The planning proposal has been assessed against all relevant section 117(2) Directions. The planning proposal has been assessed as follows:

The planning proposal is inconsistent with the following section 117(2) Directions:

- 1.1 Business and Industrial Zones
- 6.3 Site Specific Provisions

The planning proposal is consistent with the following section 117(2) Directions:

- 2.3 Heritage Conservation
- 3.1 Residential Zones
- 3.4 Integrating Land Use and Transport
- 3.5 Development Near Licensed Aerodromes
- 6.1 Approval and Referral Requirements
- 7.1 Implementation of the Metropolitan Plan for Sydney 2036

A detailed assessment of all relevant section 117(2) Directions is as follows:

1.1 Business and Industrial Zones

Objectives

- (1) *The objectives of this direction are to:*
 - (a) *encourage employment growth in suitable locations,*
 - (b) *protect employment land in business and industrial zones, and*
 - (c) *support the viability of identified strategic centres.*

Where this direction applies

- (2) *This direction applies to all relevant planning authorities.*

When this direction applies

- (3) *This direction applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed business or industrial zone (including the alteration of any existing business or industrial zone boundary).*

What a relevant planning authority must do if this direction applies

- (4) *A planning proposal must:*
 - (a) *give effect to the objectives of this direction,*
 - (b) *retain the areas and locations of existing business and industrial zones,*
 - (c) *not reduce the total potential floor space area for employment uses and related public services in business zones,*
 - (d) *not reduce the total potential floor space area for industrial uses in industrial zones, and*
 - (e) *ensure that proposed new employment areas are in accordance with a strategy that is approved by the Director-General of the Department of Planning.*

Consistency

- (5) *A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are:*
- (a) *justified by a strategy which:*
 - (i) *gives consideration to the objective of this direction, and*
 - (ii) *identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and*
 - (iii) *is approved by the Director-General of the Department of Planning, or*
 - (b) *justified by a study (prepared in support of the planning proposal) which gives consideration to the objective of this direction, or*
 - (c) *in accordance with the relevant Regional Strategy or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or*
 - (d) *of minor significance.*

Assessment

This direction is relevant to this planning proposal as it proposes the rezoning of land located within an existing industrial zone. The planning proposal aims to rezone land from IN2 Light Industrial to B5 Business Development within the MLEP 2011.

It is considered that the planning proposal is not inconsistent with the objective of the direction to protect employment land in business and industrial zones as employment is to be maintained on the site at ground level via the inclusion of commercial floor area within the proposed development.

The planning proposal is inconsistent with the direction as it does reduce the total potential floor space area for industrial uses. However, this inconsistency is considered to be of a minor nature applying to a small site specific land parcel.

It is also inconsistent with the direction as the planning proposal is not in accordance with a strategy that is approved by the Director-General of the Department of Planning due to its inconsistency with the draft South Subregional Strategy (dSSS). The dSSS designated the subject site and surrounding IN2 Light Industrial zoned sites as land to be retained for industrial purposes to provide for local services. However, this document was released as a draft in 2005 and has not been updated or finalised since this time. It is considered that this information, which is nearly ten years old, is outdated and needs to be reviewed. Further, Council has resolved to consider alternative options for this land as a result of landowner submissions.

On balance, it is considered that any inconsistencies with Direction 1.1 are of minor significance.

2.3 Heritage Conservation

Objective

- (1) *The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.*

Where this direction applies

- (2) *This direction applies to all relevant planning authorities.*

When this direction applies

- (3) *This direction applies when a relevant planning authority prepares a planning proposal.*

What a relevant planning authority must do if this direction applies

- (4) *A planning proposal must contain provisions that facilitate the conservation of:*
 - (a) *items, places, buildings, works, relics, moveable objects or precincts of environmental heritage significance to an area, in relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item, area, object or place, identified in a study of the environmental heritage of the area,*
 - (b) *Aboriginal objects or Aboriginal places that are protected under the National Parks and Wildlife Act 1974, and*
 - (c) *Aboriginal areas, Aboriginal objects, Aboriginal places or landscapes identified by an Aboriginal heritage survey prepared by or on behalf of an Aboriginal Land Council, Aboriginal body or public authority and provided to the relevant planning authority, which identifies the area, object, place or landscape as being of heritage significance to Aboriginal culture and people.*

Consistency

- (5) *A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that:*
 - (a) *the environmental or indigenous heritage significance of the item, area, object or place is conserved by existing or draft environmental planning instruments, legislation, or regulations that apply to the land, or*
 - (b) *the provisions of the planning proposal that are inconsistent are of minor significance.*

Assessment

This direction applies to all relevant planning authorities when they prepare a planning proposal. The planning proposal comprises a site specific amendment to the MLEP 2011. MLEP 2011 contains heritage protection provisions as per the Environmental Planning and Assessment Act 1979. This planning proposal does not propose any amendments to these provisions.

It is considered this planning proposal is consistent with this direction.

3.1 Residential Zones

Objectives

- (1) *The objectives of this direction are:*
 - (a) *to encourage a variety and choice of housing types to provide for existing and future housing needs,*
 - (b) *to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and*
 - (c) *to minimise the impact of residential development on the environment and resource lands.*

Where this direction applies

- (2) *This direction applies to all relevant planning authorities.*

When this direction applies

- (3) *This direction applies when a relevant planning authority prepares a planning proposal that will affect land within:*
 - (a) *an existing or proposed residential zone (including the alteration of any existing residential zone boundary),*
 - (b) *any other zone in which significant residential development is permitted or proposed to be permitted.*

What a relevant planning authority must do if this direction applies

- (4) *A planning proposal must include provisions that encourage the provision of housing that will:*
 - (a) *broaden the choice of building types and locations available in the housing market, and*
 - (b) *make more efficient use of existing infrastructure and services, and*
 - (c) *reduce the consumption of land for housing and associated urban development on the urban fringe, and*
 - (d) *be of good design.*
- (5) *A planning proposal must, in relation to land to which this direction applies:*
 - (a) *contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and*
 - (b) *not contain provisions which will reduce the permissible residential density of land.*

Consistency

- (6) *A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are:*
 - (a) *justified by a strategy which:*
 - (i) *gives consideration to the objective of this direction, and*
 - (ii) *identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and*
 - (iii) *is approved by the Director-General of the Department of Planning, or*
 - (b) *justified by a study prepared in support of the planning proposal which gives consideration to the objective of this direction, or*

- (c) *in accordance with the relevant Regional Strategy or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or*
- (d) *of minor significance.*

Assessment

This direction is considered relevant to this planning proposal as it relates to land in any other zone in which residential development is proposed to be permitted. Although this planning proposal seeks to rezone land from IN2 Light Industrial to B5 Business Development, it also seeks to permit residential flat buildings as an additional permitted use. Therefore, although the proposed zone does not permit residential development, this planning proposal seeks to permit a type of residential development on the subject site via Schedule 1 of MLEP 2011.

The planning proposal is consistent with this direction as the subject site is located in close proximity to an existing commercial centre with well-established infrastructure. Therefore, it will reduce the consumption of land for housing as it is located within an existing developed area.

The planning proposal will set development controls for the subject site as deemed suitable within its context.

It is considered that the planning proposal is consistent with objectives of this direction.

3.4 Integrating Land Use and Transport

Objective

- (1) *The objective of this direction is to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve the following planning objectives:*
 - (a) *improving access to housing, jobs and services by walking, cycling and public transport, and*
 - (b) *increasing the choice of available transport and reducing dependence on cars, and*
 - (c) *reducing travel demand including the number of trips generated by development and the distances travelled, especially by car, and*
 - (d) *supporting the efficient and viable operation of public transport services, and*
 - (e) *providing for the efficient movement of freight.*

Where this direction applies

- (2) *This direction applies to all relevant planning authorities.*

When this direction applies

- (3) *This direction applies when a relevant planning authority prepares a planning proposal that will create, alter or remove a zone or a provision relating to urban land, including land zoned for residential, business, industrial, village or tourist purposes.*

What a relevant planning authority must do if this direction applies

- (4) *A planning proposal must locate zones for urban purposes and include provisions that give effect to and are consistent with the aims, objectives and principles of:*
 - (a) *Improving Transport Choice – Guidelines for planning and development (DUAP 2001), and*
 - (b) *The Right Place for Business and Services – Planning Policy (DUAP 2001).*

Consistency

- (5) *A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are:*
 - (a) *justified by a strategy which:*
 - (i) *gives consideration to the objective of this direction, and*
 - (ii) *identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and*
 - (iii) *is approved by the Director-General of the Department of Planning, or*
 - (b) *justified by a study prepared in support of the planning proposal which gives consideration to the objective of this direction, or*
 - (c) *in accordance with the relevant Regional Strategy or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or*
 - (d) *of minor significance.*

Assessment

This planning proposal seeks to rezone the subject site to permit other land uses. It is considered that this planning proposal is consistent with the objectives of this direction to improve access to housing, jobs and services by walking, cycling and public transport;

increasing the choice of available transport and reducing dependence on cars; reducing travel demand; and supporting viable public transport services. The subject site is located within close proximity of an existing commercial centre. It is well located to services and public transport options, for example Petersham and Lewisham railway stations, Lewisham West light rail stop and several bus routes.

It is considered that this planning proposal is consistent with the aims and objectives of this direction.

3.5 Development Near Licensed Aerodromes

Objectives

- (1) *The objectives of this direction are:*
 - (a) *to ensure the effective and safe operation of aerodromes, and*
 - (b) *to ensure that their operation is not compromised by development that constitutes an obstruction, hazard or potential hazard to aircraft flying in the vicinity, and*
 - (c) *to ensure development for residential purposes or human occupation, if situated on land within the Australian Noise Exposure Forecast (ANEF) contours of between 20 and 25, incorporates appropriate mitigation measures so that the development is not adversely affected by aircraft noise.*

Where this direction applies

- (2) *This direction applies to all relevant planning authorities.*

When this direction applies

- (3) *This direction applies when a relevant planning authority prepares a planning proposal that will create, alter or remove a zone or a provision relating to land in the vicinity of a licensed aerodrome.*

What a relevant planning authority must do if this direction applies

- (4) *In the preparation of a planning proposal that sets controls for the development of land in the vicinity of a licensed aerodrome, the relevant planning authority must:*
 - (a) *consult with the Department of the Commonwealth responsible for aerodromes and the lessee of the aerodrome,*
 - (b) *take into consideration the Obstacle Limitation Surface (OLS) as defined by that Department of the Commonwealth,*
 - (c) *for land affected by the OLS:*
 - (i) *prepare appropriate development standards, such as height, and*
 - (ii) *allow as permissible with consent development types that are compatible with the operation of an aerodrome*
 - (d) *obtain permission from that Department of the Commonwealth, or their delegate, where a planning proposal proposes to allow, as permissible with consent, development that encroaches above the OLS. This permission must be obtained prior to undertaking community consultation in satisfaction of section 57 of the Act.*
- (5) *A planning proposal must not rezone land:*
 - (a) *for residential purposes, nor increase residential densities in areas where the ANEF, as from time to time advised by that Department of the Commonwealth, exceeds 25, or*
 - (b) *for schools, hospitals, churches and theatres where the ANEF exceeds 20, or*
 - (c) *for hotels, motels, offices or public buildings where the ANEF exceeds 30.*
- (6) *A planning proposal that rezones land:*
 - (a) *for residential purposes or to increase residential densities in areas where the ANEF is between 20 and 25, or*
 - (b) *for hotels, motels, offices or public buildings where the ANEF is between 25 and 30, or*
 - (c) *for commercial or industrial purposes where the ANEF is above 30, must include a provision to ensure that development meets AS 2021 regarding interior noise levels.*

Consistency

- (7) *A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are:*
- (a) *justified by a strategy which:*
 - (i) *gives consideration to the objectives of this direction, and*
 - (ii) *identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and*
 - (iii) *is approved by the Director-General of the Department of Planning, or*
 - (b) *justified by a study prepared in support of the planning proposal which gives consideration to the objective of this direction, or*
 - (c) *in accordance with the relevant Regional Strategy or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or*
 - (d) *of minor significance.*

Assessment

This direction states that planning proposal must not rezone land:

- (d) for residential purposes, nor increase residential densities in areas where the ANEF, as from time to time advised by that Department of the Commonwealth, exceeds 25.

This planning proposal is consistent with this part of the direction. The subject site is affected by ANEF 20-25.

The direction also states that a planning proposal that rezones land for residential purposes or to increase residential densities in areas where the ANEF is between 20 and 25 must include a provision to ensure that development meets AS 2021 regarding interior noise levels.

This part of the direction applies to the subject site as it lies within ANEF 20-25. MLEP 2011 contains Clause 6.5 (Development in areas subject to aircraft noise) which addresses noise attenuation criteria for certain properties in AS 2021.

It is considered that this planning proposal is consistent with this direction.

6.1 Approval and Referral Requirements

Objective

- (1) *The objective of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development.*

Where this direction applies

- (2) *This direction applies to all relevant planning authorities.*

When this direction applies

- (3) *This direction applies when a relevant planning authority prepares a planning proposal.*

What a relevant planning authority must do if this direction applies

- (4) *A planning proposal must:*
- (a) *minimise the inclusion of provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority, and*
 - (b) *not contain provisions requiring concurrence, consultation or referral of a Minister or public authority unless the relevant planning authority has obtained the approval of:*
 - (i) *the appropriate Minister or public authority, and*
 - (ii) *the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General),*
prior to undertaking community consultation in satisfaction of section 57 of the Act, and
 - (c) *not identify development as designated development unless the relevant planning authority:*
 - (i) *can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the class of development is likely to have a significant impact on the environment, and*
 - (ii) *has obtained the approval of the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) prior to undertaking community consultation in satisfaction of section 57 of the Act.*

Consistency

- (5) *A planning proposal must be substantially consistent with the terms of this direction.*

Assessment

This direction aims to minimise approval and referral requirements within planning proposals. This planning proposal does not propose any additional referral or concurrence requirements. Therefore, the planning proposal is consistent with this direction.

6.3 Site Specific Provisions

Objective

- (1) *The objective of this direction is to discourage unnecessarily restrictive site specific planning controls.*

Where this direction applies

- (2) *This direction applies to all relevant planning authorities.*

When this direction applies

- (3) *This direction applies when a relevant planning authority prepares a planning proposal that will allow a particular development to be carried out.*

What a relevant planning authority must do if this direction applies

- (4) *A planning proposal that will amend another environmental planning instrument in order to allow a particular development proposal to be carried out must either:
 - (a) *allow that land use to be carried out in the zone the land is situated on, or*
 - (b) *rezone the site to an existing zone already applying in the environmental planning instrument that allows that land use without imposing any development standards or requirements in addition to those already contained in that zone, or*
 - (c) *allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended.**
- (5) *A planning proposal must not contain or refer to drawings that show details of the development proposal.*

Consistency

- (6) *A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are of minor significance.*

Assessment

This direction applies to this planning proposal as it aims to allow a site specific development to be carried out on the subject site. The planning proposal seeks to rezone the subject site to another zone, whilst also permitting an additional land use via MLEP 2011 Schedule 1.

The aim of applying the B5 Business Development zone, with an additional permitted use of residential flat buildings, is to permit a development comprising commercial/office uses, as well as residential accommodation, at ground level. Other options, such as permitting 'shop top housing' on the subject site are not suitable for this development as it does not permit any residential accommodation at ground floor level. The B5 Business Development zone is considered appropriate for the subject site as it permits commercial uses but prohibits retail uses. Therefore, any undesired extension of the existing commercial centre on New Canterbury Road is not permissible, but other commercial uses are permissible at ground level and will assist in street activation and overall amenity improvement.

However, the inclusion of 'residential flat buildings' as an additional permitted use for the subject site creates a situation where a stand-alone residential flat building would be permissible with consent on the site. This is clearly not the intent of the planning proposal, nor would it result in a development desirous to Council or the community. Therefore, additional provisions are deemed necessary to ensure that Council and the community receives the desired outcome for the subject site. It is considered appropriate to place these

additional provisions within Schedule 1 of the MLEP 2011 in addition to within the MDCP 2011. This is a result of commencement of the *Environmental Planning and Assessment Amendment Act 2012* (the "Amendment Act") on 1 March 2013, which seeks to reduce to status of development control plans to guideline documents. Consequently, Council does not deem the additional controls proposed for Schedule 1 (to ensure appropriately sized commercial uses and includes at ground level as part of the development) as 'guidelines' but controls which need to be adhered to. Exclusion of these controls from the MLEP 2011 in favour of the MDCP 2011 places Council at risk of unintended outcomes of amending MLEP 2011 to support this planning proposal.

The Schedule 1 provisions are not considered to be onerous or unnecessarily restrictive. Rather, they are necessary to ensure Council has certainty regarding the outcome of the proposed MLEP 2011 amendments.

Although the planning proposal is inconsistent with this direction, it is considered to be a minor and necessary inconsistency to ensure Council can support the planning proposal and control its outcome.

7.1 Implementation of the Metropolitan Plan for Sydney 2036

Objective

- (1) *The objective of this direction is to give legal effect to the vision, transport and land use strategy, policies, outcomes and actions contained in the Metropolitan Plan for Sydney 2036.*

Where this direction applies

- (2) *This direction applies to land comprising of the following local government areas:*

<i>Ashfield</i>	<i>Holroyd</i>	<i>Pittwater</i>
<i>Auburn</i>	<i>Hornsby</i>	<i>Randwick</i>
<i>Bankstown</i>	<i>Hunters Hill</i>	<i>Rockdale</i>
<i>Baulkham Hills</i>	<i>Hurstville</i>	<i>Ryde</i>
<i>Blacktown</i>	<i>Kogarah</i>	<i>Strathfield</i>
<i>Blue Mountains</i>	<i>Ku-ring-gai</i>	<i>Sutherland</i>
<i>Botany Bay</i>	<i>Lane Cove</i>	<i>Warringah</i>
<i>Burwood</i>	<i>Leichhardt</i>	<i>Waverley</i>
<i>Camden</i>	<i>Liverpool</i>	<i>Willoughby</i>
<i>Campbelltown</i>	<i>Manly</i>	<i>Wollondilly</i>
<i>Canada Bay</i>	<i>Marrickville</i>	<i>Woollahra</i>
<i>Canterbury</i>	<i>Mosman</i>	
<i>City of Sydney</i>	<i>North Sydney</i>	
<i>Fairfield</i>	<i>Parramatta</i>	
<i>Hawkesbury</i>	<i>Penrith</i>	

When this direction applies

- (3) *This direction applies when a Relevant Planning Authority prepares a planning proposal.*

What a Relevant Planning Authority must do if this direction applies

- (4) *Planning proposals shall be consistent with:
the NSW Government's Metropolitan Plan for Sydney 2036 published in December 2010 ("the Metropolitan Plan").*

Consistency

- (5) *A planning proposal may be inconsistent with the terms of this direction only if the Relevant Planning Authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General), that the extent of inconsistency with the Metropolitan Plan:*
- (a) is of minor significance, and*
 - (b) the planning proposal achieves the overall intent of the Plan and does not undermine the achievement of its vision, land use strategy, policies, outcomes or actions.*

Assessment

This planning proposal assists in the creation of additional residential development well located in close proximity to an existing centre. This is consistent with the overall objective of the Metropolitan Plan for Sydney 2036 for the majority of new residential development to be located within existing centres.

It is considered that the planning proposal is consistent with this direction.