



**Amendments to Clause 4.3A Landscaped Area for Residential Development in Zone R1
(Amendment No. 3)**

Proposal Title : Amendments to Clause 4.3A Landscaped Area for Residential Development in Zone R1
(Amendment No. 3)

Proposal Summary : The planning proposal seeks to amend the landscaped area control, Clause 4.3A Landscaped Area for Residential Development in Zone R1, of the Leichhardt Local Environmental Plan 2013, to provide a two-tier control dependent on site area, and to specify areas that are included or excluded from the calculation.

PP Number : PP_2014_LEICH_005_00 **Dop File No :** 14/07631

Proposal Details

Date Planning Proposal Received : 24-Apr-2014 **LGA covered :** Leichhardt

Region : Sydney Region East **RPA :** Leichhardt Municipal Council

State Electorate : BALMAIN **Section of the Act :** 55 - Planning Proposal

LEP Type : Housekeeping

Location Details

Street :

Suburb : **City :** **Postcode :**

Land Parcel : Applies to all land that is zoned R1 General Residential

DoP Planning Officer Contact Details

Contact Name : Helen Wilkins

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RPA Contact Details

Contact Name : Vasiliki Andrews

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DoP Project Manager Contact Details

Contact Name : Diane Sarkles

Contact Number : 0285754111

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Land Release Data

Growth Centre : **Release Area Name :**

Regional / Sub Regional Strategy : **Consistent with Strategy :**

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MDP Number :

Date of Release :

Area of Release
(Ha) :

Type of Release (eg
Residential /
Employment land) :

No. of Lots : 0

No. of Dwellings : 0
(where relevant) :

Gross Floor Area : 0

No of Jobs Created : 0

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

If No, comment : The Department's Code of Conduct has been complied with. Metropolitan Delivery (CBD) has not met with or communicated with any lobbyist in relation to this planning proposal.

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

If Yes, comment :

Supporting notes

Internal Supporting Notes :

The planning proposal has been prepared in response to a review by Council of the accuracy of the translation of the landscaped area planning controls from the Leichhardt Local Environmental Plan 2000 to the new Standard Instrument Leichhardt Local Environmental Plan 2013. It consists of administrative changes to ensure the proposed amended controls reflect the former controls.

Note: This planning proposal was previously lodged as Item 2 of planning proposal PP_2013_LEICH_002_00. Council then exercised their authority under section 59(4) of the Act to defer Item 2 from the written instrument and to finalise Items 1, 3, 4 and 5. Council's reasoning was that, following a review by Council of how the landscaped area and site coverage controls would operate in practice, Clause 4.3A needed to be further amended to more closely reflect the provisions of Leichhardt LEP 2000 whilst still being consistent with the provisions of the Standard Instrument. This planning proposal was delegated to Council.

The wording of the current Leichhardt LEP 2013 landscaped area clause and the version proposed in this planning proposal are attached to this report. Refer to the separate document 'Proposed changes to text Clause 4.3A' provided by Council.

The proposed amended Clause 4.3A will provide a tighter, two tier control on the landscaped areas to be provided on residential lots in Zone R1. The first tier relates to sites up to 235sqm: the second tier relates to sites above this. The proposed change ensures the objective and integrity of the former provisions are maintained. Refer to the separate document 'Justification' provided by Council.

The project timeline accompanying the planning proposal indicates that Council will submit the draft instrument to the Department for finalisation in August 2014.

As this planning proposal is minor and administrative in nature, and was previously delegated to Council, it is recommended that the plan making function be delegated to Council.

For information, the following Tables are attached to this Report:

- Proposed changes to wording of Clause 4.3A;
- Further justification provided by Council.

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External Supporting
Notes :

Council supports this planning proposal because it will deliver the same outcome as Council's landscaped area control Clause 19(3) of the Leichhardt LEP 2000 and definition of landscape. The originally exhibited Clause 4.3A of the draft Leichhardt LEP 2013 would have permitted significantly more built structures on a site whilst still technically meeting the exhibited landscaped area control and was therefore not an accurate translation. The proposed amended Clause 4.3A will ensure that the objective and integrity of the former provisions are maintained.

Adequacy Assessment

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

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

Comment :

The objective of the planning proposal is to:

- Ensure that the landscape area control in the Leichhardt Local Environmental Plan 2013 is an accurate translation of Council's former landscaped area control: Clause 19(3) and definition of landscaped areas in the Leichhardt Local Environmental Plan 2000;
- Ensure that the municipality retains existing landscaped corridors, tree canopy and urban amenity; and
- encourage site responsive design.

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

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

Comment :

Council has provided an explanation for the changes to Clause 4.3A, which are considered adequate.

Justification - s55 (2)(c)

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

b) S.117 directions identified by RPA :

* May need the Director General's agreement

- 2.1 Environment Protection Zones
- 2.3 Heritage Conservation
- 2.4 Recreation Vehicle Areas
- 3.1 Residential Zones
- 3.2 Caravan Parks and Manufactured Home Estates
- 3.3 Home Occupations
- 3.4 Integrating Land Use and Transport
- 3.5 Development Near Licensed Aerodromes
- 4.1 Acid Sulfate Soils
- 4.3 Flood Prone Land
- 4.4 Planning for Bushfire Protection
- 5.1 Implementation of Regional Strategies
- 6.1 Approval and Referral Requirements
- 6.2 Reserving Land for Public Purposes
- 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?

N/A

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

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

If No, explain :

The planning proposal is not inconsistent with any s117 Directions or SEPPs.

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Mapping Provided - s55(2)(d)

Is mapping provided? **No**

Comment : **The planning proposal does not relate to Leichhardt LEP 2013 maps.**

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : **The planning proposal is a low impact proposal. Council is, however, seeking to exhibit the planning proposal for 28 days minimum. This request is considered reasonable.**

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 : **December 2013**

Comments in relation to Principal LEP : **Leichhardt LEP 2013 was notified on 23 December 2013.**

Assessment Criteria

Need for planning proposal : **The planning proposal is a result of Council's internal review of the draft Leichhardt LEP 2013. Council advises that the internal review revealed that the exhibited controls (primarily intended to be a translation of current controls) would not deliver the same outcome as the current landscaped area clause 19(3) of Leichhardt LEP 2000: the exhibited controls would permit significantly more building/structures and a reduction in the areas required for landscaping.**

Consistency with strategic planning framework : **The amendments are minor in nature and considered to be consistent with the objectives and strategies of the Metropolitan Plan for Sydney 2036, the draft Metropolitan Strategy for Sydney 2031, and the Inner West Draft Subregional Strategy**

The planning proposal is consistent with the objectives within Council's Community Strategic Plan Leichhardt 2025+.

The planning proposal is consistent with all relevant s117 Directions and SEPPs.

Environmental social economic impacts : **None of the amendments apply to land that has been identified as containing critical habitat or threatened species, populations or ecological communities, or their habitats. The planning proposal is administrative in nature and is not expected to have any adverse environmental or social impacts effects.**

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Assessment Process

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

Timeframe to make LEP : **6 months** Delegation : **RPA**

Public Authority Consultation - 56(2) (d) :

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

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

If no, provide reasons :

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

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

Identify any internal consultations, if required :

No internal consultation required

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

If Yes, reasons : **The planning proposal is administrative in nature and has no public infrastructure implications.**

Documents

Document File Name	DocumentType Name	Is Public
PP - Amendments to Clause 4.3A.pdf	Proposal	Yes
Cover letter.pdf	Proposal Covering Letter	Yes
Proposed community consultation and project timeline.pdf	Proposal	Yes
Justification.pdf	Proposal	Yes
Attachment 4 - Evaluation criteria for delegation.pdf	Proposal	Yes
Proposed changes to text Clause 4.3A (1).pdf	Proposal	Yes

Planning Team Recommendation

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

S.117 directions:

- 2.1 Environment Protection Zones**
- 2.3 Heritage Conservation**
- 2.4 Recreation Vehicle Areas**
- 3.1 Residential Zones**
- 3.2 Caravan Parks and Manufactured Home Estates**
- 3.3 Home Occupations**
- 3.4 Integrating Land Use and Transport**

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3.5 Development Near Licensed Aerodromes
4.1 Acid Sulfate Soils
4.3 Flood Prone Land
4.4 Planning for Bushfire Protection
5.1 Implementation of Regional Strategies
6.1 Approval and Referral Requirements
6.2 Reserving Land for Public Purposes
7.1 Implementation of the Metropolitan Plan for Sydney 2036

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

1. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act.
2. The planning proposal is to be placed on public exhibition for a minimum of 14 days.
3. The timeframe for completing the LEP is 6 months from the week following the date of the gateway determination.
4. A written authorisation to exercise delegation under section 59 of the Environmental Planning and Assessment Act 1979 is issued to Council in relation to the planning proposal.

Supporting Reasons : The planning proposal is supported for the following reasons:

- It is consistent with Council's strategic plans and the NSW strategic planning framework;
- It provides a more accurate translation of Council's existing clauses.

Signature:



Printed Name:

Diane Sarkies

Date:

16/5/14

ATTACHMENT 4

Leichhardt LEP 2013 (Amendment 2) – Justification for proposed modifications to Planning Proposal Item 2: Amendments to Clause 4.3A Landscaped Area for residential accommodation in Zone R1

Amendments proposed to Clause 4.3A identified in blue	Justification
Omit clause 4.3A (3). Insert instead: (3) Development consent must not be granted to development to which this clause applies unless: (a) the development includes landscaped area that comprises: (i) at least 15 34% of the site area—in the case of lots of not more than 235 square metres in area, or (ii) at least 20 40 % of the site area—in the case of lots of more than 235 square metres in area, and (b) the site coverage does not exceed 60% of the site area.	It has become apparent that the requirement for 30/40% soft landscaping will be difficult to achieve. Subclause 5 (outlined below) was intended to mitigate this increase but the assessment of DAs has demonstrated that it will not work as intended because it effectively changes the definition of landscaped area. This inadvertently would allow built structures such as above ground terraces to be defined as landscaped area. <i>"(5) Despite subclause (3), the minimum landscaped area may be reduced by not more than 50% for the purpose of accommodating pathways, patios, decks, pergolas, awnings, terrace, pools and the like but not for the purposes of carports or hard stand areas for the parking of motor vehicles"</i> It is proposed that the landscaped area figures are reduced by half and subclause (5) deleted which in effect achieves the same outcome without interfering with the definitions of landscaped area and site coverage.
(4) For the purposes of subclause (3): (a) subject to this subclause the site area is to be calculated in accordance with clause 4.5, and (b) any area that has a length or width of less than 1 metre is not to be included in calculating the portion of the landscaped area, and (c) any area greater than 500mm above ground level (existing) is not to be included in calculating the portion of the landscaped area. (d) a deck or balcony and the like (whether enclosed or unenclosed) is excluded from the calculation of site coverage if: (i) the finished floor level is 500mm or less above ground level (existing) or (ii) is a minimum of 2.4 metres above ground level (existing) (measured from the underside of the structure), with the space below able to be used separately for recreational and/or landscape purposes.	The aim of the amendment LEP 2013 was to translate as closely as possible the provisions of Clause 19(3) in conjunction with the definition of landscape area in the former LEP 2000 into the Standard Instrument format. See below. The assessment of DAs has demonstrated that the exhibited clause does not meet the intent of LEP 2000. LEP 2000 19 (3) <i>Except where the development is carried out in accordance with clause 23 (1):</i> (a) <i>the minimum landscaped area for residential development is 40% of the site area, and</i> (b) <i>25% of the landscaped area required under paragraph (a):</i> (i) <i>is to be on natural or unpaved ground that is not overhung by or on top of any structure, and</i> (ii) <i>is to be permeable, and</i> (iii) <i>is to be appropriate for substantial deep planting.</i> <i>Landscaped area means the part of a site area at ground level:</i> (a) <i>not occupied by any building above or below ground, and</i> (b) <i>not overhung by part of a building with a clearance of less than 2.4 metres, and used for recreation, lawns, gardens and substantial planting. It does not include balconies, driveways and parking areas, but includes decks where they have a direct connection to ground level and are no higher than 500 millimetres above ground level.</i> These proposed additional subclauses (c) & (d) are required to more closely reflect the provisions of LEP 2000 and aim to: - encourage soft landscaping at or near natural ground level; - maintain and provide useful areas for outdoor recreation and landscaping - ensure substantial deep rooted planting; - minimise the amenity impacts of filled lands; and - encourage site responsive design.

Part 4 - Mapping

Table 1: The proposed changes to Clause 4.3A Landscaped areas for residential accommodation in Zone R1

Leichhardt Local Environmental Plan 2000	Leichhardt Local Environmental Plan 2013	Proposed Change
Clause 19 General provisions for the development of land (3) Except where the development is carried out in accordance with clause 23 (1): (a) the minimum landscaped area for residential development is 40% of the site area, and (b) 25% of the landscaped area required under paragraph (a): (i) is to be on natural or unpaved ground that is not overhung by or on top of any structure, and (ii) is to be permeable, and (iii) is to be appropriate for substantial deep planting. Schedule 3 Glossary Landscaped area means the part of a site area at ground level: (a) not occupied by any building above or below ground, and (b) not overhung by part of a building with a clearance of less than 2.4 metres, and used for recreation, lawns, gardens and substantial planting. It does not include balconies, driveways and parking areas, but includes decks where they have a direct connection to ground level and are no higher than 500mm above ground level. Clause 17 Objectives The objectives of the Plan in relation to housing are as follows: (a) to provide development standards to ensure that the density and landscaped areas of new housing are complementary to and compatible with the style, orientation and pattern of surrounding buildings, works and landscaping and to take into account the suite of controls in Leichhardt Development Control Plan 2000 to achieve the desired future character, (b) to provide landscaped areas that are suitable for substantial tree planting and of a size and location suitable for the use and enjoyment of residents,	Clause 4.3A Landscaped areas for residential accommodation in Zone R1 (1) The objectives of this clause are as follows: (a) to provide landscaped areas that are suitable for substantial tree planting and for the use and enjoyment of residents, (b) to maintain and encourage a landscaped corridor between adjoining properties, (c) to ensure that development promotes the desired future character of the neighbourhood, (d) to encourage ecologically sustainable development by maximising the retention and absorption of surface drainage water on site and by minimising obstruction to the underground flow of water, (e) to control site density, (f) to limit building footprints to ensure that adequate provision is made for landscaped areas and private open space. (2) This clause applies to development for the purpose of residential accommodation on land in Zone R1 General Residential. (3) Development consent must not be granted to development to which this clause applies unless: (a) the development includes landscaped area that is at least 1 metre wide and comprises at least 10% of the site area, and (b) the site coverage does not exceed 60% of the site area.	Clause 4.3A Landscaped areas for residential accommodation in Zone R1 (1) The objectives of this clause are as follows: (a) to provide landscaped areas that are suitable for substantial tree planting and for the use and enjoyment of residents, (b) to maintain and encourage a landscaped corridor between adjoining properties, (c) to ensure that development promotes the desired future character of the neighbourhood, (d) to encourage ecologically sustainable development by maximising the retention and absorption of surface drainage water on site and by minimising obstruction to the underground flow of water, (e) to control site density, (f) to limit building footprints to ensure that adequate provision is made for landscaped areas and private open space. (2) This clause applies to development for the purpose of residential accommodation on land in Zone R1 General Residential. (3) Development consent must not be granted to development to which this clause applies unless: (a) the development includes landscaped area that is at least 1 metre wide and comprises at least 10% of the site area, the development includes landscaped area that comprises: (i) at least 15 % of the site area – in the case of lots of not more than 235 square metres in area, or (ii) at least 20% of the site area – in the case of lots of more than 235 square metres in area, and (b) the site coverage does not exceed 60% of the site area. (4) for the purposes of subclause (3): (a) subject to this subclause the site area is to be calculated in accordance with clause 4.5, (b) any area that has a length or width of less than 1 metre is not to be included in calculating the portion of the landscaped area, (c) any area greater than 500mm above ground level (existing) is not to be included in calculating the portion of the landscaped area, and (d) a deck or balcony and the like (whether enclosed or unenclosed) is excluded from the calculation of site coverage if: (i) the finished floor level is 500mm or less above ground level (existing) or (ii) is a minimum of 2.4 metres above ground level (existing) (measured from the underside of the structure), with the space below able to be used separately for recreational and/or landscape purposes.