

**Housekeeping Amendments to Leichhardt LEP 2013**

Proposal Title : **Housekeeping Amendments to Leichhardt LEP 2013**

Proposal Summary : **The planning proposal seeks to amend the Leichhardt Local Environmental Plan 2013 as follows:**

**Item 1: Amend clause 6.8 'Development in areas subject to aircraft noise' to allow flexibility in the requirement for noise impact reports for minor alterations and additions.**

**Item 2: Amend Land Use Table (RE1 Public Recreation) to allow 'Recreation Area' as permissible without consent and to allow 'Restaurant or Café' as permissible with consent.**

**Item 3: Amend Schedule 1 'Additional Permitted Uses' to allow boarding houses, function centres, hospitals, markets, places of public worship, public administration buildings, residential care facilities, seniors housing, and telecommunications facilities as permissible with consent at 44-46 Smith Street, Rozelle.**

**Item 4: Amend Heritage Map sheet 007 to correctly identify Balmain Hospital (Main Building) as a State heritage listed item.**

**Item 5: Rezone part of 77 Taylor Street and 148 Wigram Road, Annandale from R1 General Residential to RE1 Public Recreation, amend FSR from 0.6:1 to 1:1 and remove the minimum lot size requirement, consistent with the rest of the adjoining RE1-zoned land.**

**Item 6: Rezone part of Leichhardt Park adjacent to 9 Bayview Street, Lilyfield from R1 General Residential to RE1 Public Recreation; amend FSR from 0.5:1 to 1:1; amend Heritage Map to show the site as 'Landscape'; and remove the minimum lot size requirement, consistent with the rest of the adjoining RE1-zoned land.**

PP Number : **PP\_2015\_LEICH\_002\_00**

Dop File No : **15/08644**

**Proposal Details**

Date Planning  
Proposal Received : **22-May-2015**

LGA covered : **Leichhardt**

Region : **Metro(CBD)**

RPA : **Leichhardt Municipal Council**

State Electorate : **BALMAIN**

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

LEP Type : **Housekeeping**

**Location Details**

Street : **44-46 Smith Street**

Suburb : **Rozelle**

City :

Postcode :

Land Parcel : **Lots 1 and 2 DP 782330, Lot 1 DP 782348 and Lot 1 DP 228261**

Street : **Balmain Hospital Main Building (I138)**

Suburb : **Balmain**

City :

Postcode :

Land Parcel : **Lot 11 DP 1006912 and Lot 1 DP 1012848**

Street : **77 Taylor Street and 148 Wigram Road**

Suburb : **Annandale**

City :

Postcode :

Land Parcel : **Lot 2 DP 1185598**

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Street : **Part of Leichhardt Park**  
Suburb : **Lilyfield** City : Postcode :  
Land Parcel : **Part Lot 6643 DP 1137663**

### DoP Planning Officer Contact Details

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### DoP Project Manager Contact Details

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### Land Release Data

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

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

If No, comment : **The Department of Planning and Environment'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 : **Item 1 - Clause 6.8 Development in areas subject to aircraft noise:  
Council seeks discretion in requiring noise attenuation measures for minor development works including alterations and additions, which it regards as unnecessarily onerous for householders in particular.  
The current Standard Instrument Model Clause requires measures to be included in all**

works, to meet Australian Standards. A similar proposal by Marrickville Council was lodged in 2013, and the Planning Team Report for that proposal considered that the model clause should not be amended as it is standard across all LGAs affected by aircraft noise. However, whilst the Gateway Determination for Marrickville Council's proposal did not support amending the wording of the model clause, it did support the intent of the proposal. Consequently, the Gateway Determination (14 March 2014) required the planning proposal to be amended to clarify the preferred approach as being the inclusion of a sub-clause rather than an amendment to the wording of the model clause. Consequently, Marrickville Council exhibited an additional subclause (prepared in consultation with the Department), and Leichhardt Council has used the same subclause for this planning proposal.

This element of the proposal is supported.

**Note:** The Marrickville proposal is the only current example of such a proposed amendment and is yet to be finalised.

**Item 2(a) - Amend Land Use Table (Zone RE1) to allow 'Recreation Area' as permissible without consent:**

This item seeks a 'translation' of Leichhardt LEP 2000, under which the Open Space zone permitted 'recreation areas' and 'playgrounds' amongst other things, without consent, so that Council can facilitate the development of new playgrounds without the expenses relating to the assessment of development applications.

Under Part 2, Division 1 (subdivision 29) of the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, the construction or installation of playground equipment is exempt development, subject to certain criteria. The development of new playgrounds however, is not listed as either exempt or complying development.

Furthermore, under the provisions of the Standard Instrument - Principal Local Environmental Plan, 'Recreation areas' are mandated as 'permitted with consent' in the RE1 Public Recreation zone, in order to control or prevent adverse impacts that may arise from the establishment of uses falling within the definition of 'recreation areas'. Direction 2 of the Instrument states that "specified uses may be added (but not removed from) the list of development that is permitted or prohibited in a zone." Therefore, recreation areas (the Standard Instrument definition of which includes 'children's playgrounds' amongst other uses), cannot be removed and replaced as 'permitted without consent' in the Land Use Table RE1 zone, without an amendment to the Standard Instrument (Local Environmental Plans) Order 2006 and the Standard Instrument - Principal Local Environmental Plan.

Therefore, this element of the planning proposal is not supported and should be deleted from the planning proposal.

**Item 2(b) The inclusion of 'restaurants or cafes' as permissible with consent in the RE1 zone:**

This is consistent with other LEPs and is supported.

**Item 3 - Amend Schedule 1 Additional Permitted Uses (44-46 Smith Street) by including uses which:**

- were permissible under LEP 2000, but which became prohibited with the publication of LEP 2013 and the site's SP2 Infrastructure zoning; or
- fell under the State Environmental Planning Policy (Infrastructure) 2007 (ISEPP) or the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (Seniors SEPP).

Under LEP 2000:

- boarding houses, function centres, markets and places of public worship were permitted with consent but became prohibited when the site became subject to its current SP2 zoning;

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- hospitals, public administration buildings and telecommunications facilities were also permitted with consent, but their permissibility is now covered by the ISEPP, as is, potentially, that of markets (under the description 'any community purpose') at educational establishments. Residential care facilities and seniors housing are currently dealt with under the Seniors SEPP.

Principle 2 of the Practice Note 'Zoning for Infrastructure in LEPs', advises that schools should be zoned the same as the adjoining zone; in this case, R1 General Residential. The Practice Note also states that duplication of the ISEPP is to be avoided.

The option of zoning the site R1 General Residential, has previously been considered by Council and the Department during the preparation of the then draft Leichhardt comprehensive LEP. One of Council's draft LEP-related discussion papers concluded that the R1 zone would be inappropriate, because an R1 zoning could lead to the potential loss of important and/or vulnerable public, community and social/cultural infrastructure, whilst the SP2 zoning would increase community certainty regarding the type of development possible on land previously zoned as 'Public Purpose' under LEP 2000. This position was accepted by the Department and the LEP was finalised on this basis. Consequently, this planning proposal does not consider the use of the R1 zone as an option.

It is anticipated that those uses currently subject to the provisions of the ISEPP, the Seniors SEPP (and potentially, other provisions relating to the temporary use of land), are unlikely to be legally included in the Schedule 1 amending instrument. Consequently, duplication of these SEPPs would be avoided.

Whilst the development of boarding houses, function centres and places of public worship at the site have the potential to result in adverse impacts, the scale of such development or use, and any associated potential impacts could be appropriately dealt with through the development application process.

This element of the planning proposal is therefore supported.

Items 4, 5 and 6 of this planning proposal are relatively minor in nature and generally seek to update and correct anomalies and mapping errors in the LEP 2013. As such, these items are supported.

Council has provided a 'project timeline' which indicated that finalisation could take place within 6 months. Despite the Department's recommendation to amend the planning proposal, 6 months is considered an adequate timeframe within which to complete the amendment, and is supported.

Council has requested the delegation of plan-making functions in relation to this planning proposal. Given the nature of this planning proposal, delegation is supported.

External Supporting  
Notes :

Council supports this planning proposal because it considers that the proposal will update and correct the LEP 2013 and provide for a better translation of provisions from LEP 2000.

## 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 as follows:

Item 1 would allow Council the discretion to exclude minor home extensions and alterations from the current noise insulation requirements.

Item 2 would complete the translation of permissible development from the Open Space Zone in LEP 2000, to the RE1 Public Recreation Zone in LEP 2013.

Item 3 would resolve an anomaly that arose through the translation of LEP 2000 to LEP 2013, where in translating the former Public Purpose zone to SP2 Infrastructure, a number of land uses that were previously permissible with consent became prohibited.

Other permissible uses were removed from LEP 2013 as they became permissible under

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the Infrastructure SEPP 2007 or Seniors Housing SEPP 2004.

Item 4 would correct a mapping error to correctly identify Balmain Hospital Main Building as a State Heritage item.

Item 5 would resolve a historical issue associated with the dedication of land to Council for public recreational space and ensure that the zoning is consistent with the land's use and dedication.

Item 6 would correct mapping anomalies resulting from the translation of LEP 2000 into LEP 2013. The land was incorrectly zoned R1 General Residential instead of RE1 Public Recreation, and consequently subject to incorrect FSR, minimum lot size controls, and heritage controls.

The stated objectives are considered adequate.

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

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

**Comment :**

Item 1 proposes to provide that minor alterations and additions of existing dwellings in the ANEF contour 20 or above can be excluded from the requirement for noise insulation measures to be implemented. Draft subclauses have been provided.

Item 2 proposes to insert 'recreation area' into the Land Use Table for zone RE1 Public Recreation as permissible without consent, and to insert 'restaurant and cafe' as permissible with consent.

Item 3 proposes the insertion of an additional site specific clause into Schedule 1 Additional Permitted Uses. A draft clause has been provided. The site is also to be added to the applicable Additional Permitted Uses Map, a proposed copy of which has been provided.

Item 4 proposes an amendment to LEP Heritage Map sheet 007 to correctly identify the Balmain Hospital Main Building. No amendments to Schedule 5 Environmental heritage are required.

Items 5 and 6 propose amendments to the applicable LEP Zoning, FSR, Heritage and Minimum Lot Size Maps.

This explanation is 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 :

**2.3 Heritage Conservation**

**3.1 Residential Zones**

\* May need the Director General's agreement

**3.4 Integrating Land Use and Transport**

**3.5 Development Near Licensed Aerodromes**

**4.1 Acid Sulfate Soils**

**4.3 Flood Prone Land**

**6.1 Approval and Referral Requirements**

**7.1 Implementation of A Plan for Growing Sydney**

Is the Director General's agreement required? **Yes**

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

d) Which SEPPs have the RPA identified?

**SEPP No 55—Remediation of Land**

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

With regard to Item 3 of the planning proposal, LEP Practice Note PN 10-001 Zoning for Infrastructure in LEPs states that schools should be zoned the same as the adjoining zone, and that duplication of ISEPP provisions, and the introduction or amendment of provisions for development covered by the ISEPP should be avoided.

It is anticipated that, as certain uses proposed to be included in Schedule 1 are currently provided for by the ISEPP (and additionally, the Seniors SEPP), those uses will not ultimately be included in the amending instrument and therefore, duplication of the ISEPP will be avoided.

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

If No, explain :

**Direction 3.1 Residential Zones:**

Items 5 and 6 are inconsistent with this Direction as they propose to rezone residential land. However, these items propose to correct zoning errors and neither site is used for residential purposes. The inconsistency is therefore considered to be of minor significance.

All items are considered consistent with the remaining applicable section 117 Directions and generally consistent with applicable SEPPs.

### Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment :

The planning proposal includes appropriate proposed LEP Heritage, Zoning, FSR and Minimum Lot Size maps where applicable/required.

### Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment :

Council intends for the proposal to be exhibited for a minimum period of 28 days and the Department supports this intention.

### Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

### Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment :

## Proposal Assessment

### Principal LEP:

Due Date :

Comments in relation to Principal LEP :

The Leichhardt Local Environmental Plan 2013 was notified on 23 December 2013 and commenced on 3 February 2014.

### Assessment Criteria

Need for planning proposal :

None of the items that make up the planning proposal are the result of a strategic study. It seeks to remove onerous requirements, correct previous mapping and zoning errors and anomalies, and to provide a better translation of the provisions of Leichhardt LEP 2000 into the current Standard Instrument Leichhardt LEP 2013. A planning proposal is the appropriate mechanism by which to implement the proposed LEP amendments.

Consistency with strategic planning framework :

The Planning Proposal identifies a number of Directions, Actions and Objectives of A Plan for Growing Sydney, and the draft Inner West Subregional Strategy. These Directions and Actions are relatively 'high level', but the planning proposal is considered consistent with the overall aims of these elements of the strategic planning framework.

The planning proposal refers to Council's community strategy 'Leichhardt 2025+' and is considered to be consistent with the aims of this strategy.

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Environmental social  
economic impacts :

Given the relatively minor nature of the planning proposal, it is considered to generally result in neutral, if not positive, environmental, social and economic outcomes.

It is unlikely that critical habitat or threatened species, populations or ecological communities, or their habitats will be adversely affected by this planning proposal, primarily because of the relatively minor nature of the proposal and as the proposal does not apply to any land that has been identified as containing such ecological communities or habitats. Furthermore, any proposed new cafes and restaurants (in relation to Item 2b) will be subject to the requirements of Council's Native Revegetation and Biodiversity Management Plan, which has been incorporated into each Council park's Plan of Management.

Given the nature of the planning proposal, it is not anticipated that any other significant adverse environmental impacts will arise as a result of the planning proposal. The planning proposal does not specify hazards in relation to acid sulfate soils and flood prone land. However, should such issues arise, it is considered that the current LEP controls are sufficient to address any such issues at the development application stage.

### Assessment Process

|                                                   |                                           |                                    |                |
|---------------------------------------------------|-------------------------------------------|------------------------------------|----------------|
| Proposal type :                                   | <b>Routine</b>                            | Community Consultation<br>Period : | <b>28 Days</b> |
| Timeframe to make<br>LEP :                        | <b>6 months</b>                           | Delegation :                       | <b>RPA</b>     |
| Public Authority<br>Consultation - 56(2)<br>(d) : | <b>Office of Environment and Heritage</b> |                                    |                |

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

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

If no, provide reasons :

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

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

Identify any internal consultations, if required :

**No internal consultation required**

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

If Yes, reasons :

### Documents

Document File Name

DocumentType Name

Is Public

## Planning Team Recommendation

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

S.117 directions:      **2.3 Heritage Conservation**  
                                 **3.1 Residential Zones**  
                                 **3.4 Integrating Land Use and Transport**  
                                 **3.5 Development Near Licensed Aerodromes**  
                                 **4.1 Acid Sulfate Soils**  
                                 **4.3 Flood Prone Land**  
                                 **6.1 Approval and Referral Requirements**  
                                 **7.1 Implementation of A Plan for Growing Sydney**

Additional Information :      **It is recommended that the planning proposal be issued a Gateway determination to progress to exhibition, subject to the following conditions:**

- 1. Council, prior to public exhibition, is to amend the planning proposal as follows:**
  - a) In relation to the proposed amendment to the Land Use Table for RE1 Public Recreation, delete the proposal to allow 'recreation areas' as permissible without consent;**
- 2. The planning proposal is to be publicly exhibited for a minimum of 28 days.**
- 3. Consultation with the Office of Environment and Heritage is required:**
- 4. The planning proposal is to be completed within 6 months.**
- 5. The plan-making function be delegated to Leichhardt Council.**
- 6. The Secretary's delegate agrees the inconsistency with Direction 3.1 Residential Zones is of minor significance.**

Supporting Reasons :      **Subject to the recommended revisions to the planning proposal discussed in this report, the proposal is:**  
**a) generally supported because it is of a relatively minor nature and corrects a number of anomalies in the current LEP 2013; and**  
**b) considered to be the most efficient means of achieving its stated objectives.**

Signature:



Printed Name:

Diane Sarkies

Date:

24/7/15