
Hurstville City Council – Council Meeting Wednesday, 20 May 2015

CCL681-15 PLANNING PROPOSAL FOR AMENDMENTS TO HURSTVILLE LOCAL ENVIRONMENTAL PLAN 2012 - NON-RESIDENTIAL FLOOR SPACE RATIO AND ACTIVE STREET FRONTAGE CONTROLS

Report Author/s	Director Planning and Development, Mr M Watt		
File	15/561		
Previous Reports Referenced	No		
Community Strategic Plan Pillar	Economic Prosperity		
Existing Policy?	Yes	New Policy Required?	No
Financial Implications	Within Budget		
Reason for Report	For Approval		
Interested Parties	Not Required		
Company Extract included	Not required		

EXECUTIVE SUMMARY

The purpose of this Planning Proposal is to repeal the current Clause 4.4A – Non-Residential Floor Space Ratio and amend Clause 6.6 – Active Street Frontage of Hurstville Local Environmental Plan 2012 (HLEP). This is required in order to clarify and maintain the original intention of the HLEP, in ensuring an appropriate presence of non-residential floor space is maintained in B1 Neighbourhood Centre and B2 Local Centre zoned land and to clarify the relationship with SEPP (Affordable Rental Housing) 2009 and SEPP (Housing for Seniors) 2004.

AUTHOR RECOMMENDATION

THAT Council supports the Planning Proposal for “Amendment to Clause 4.4A and Clause 6.6 in Hurstville Local Environmental Plan 2012” prepared by City Plan Strategy and Development Pty Ltd.

THAT the Planning Proposal be forwarded to the Minister for a Gateway Determination under Section 56 of the Environmental Planning and Assessment Act 1979; and

FURTHER THAT the Planning Proposal be referred to Council upon the Minister’s decision.

REPORT DETAIL

Background

This Planning Proposal (PP) has been prepared by City Plan Strategy and Development Pty Ltd on behalf of Hurstville City Council.

This proposal explains the intended effect of, and justification for, the repeal of Clause 4.4A and the proposed amendment to Clause 6.6 of the Hurstville Local Environmental Plan (HLEP) 2012. It has been prepared in accordance with Section 55 of the Environmental Planning and Assessment Act, 1979 (EP&A Act) and the relevant Department of Planning Guidelines including “A Guide to Preparing Local Environmental Plans” and “A Guide to Preparing Planning Proposals”.

This PP seeks to repeal Clause 4.4A and amend Clause 6.6. The aim of the amendments are to ensure that the HLEP is not inconsistent with the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009 and SEPP (Housing for Seniors or People with a Disability) 2004 in terms of maintaining its requirement for non-residential development within the B1 and B2 zones.

Objectives

The objectives of this proposal are:

- To maintain the integrity of the B1 and B2 zones as described in the objectives of those zones by requiring an appropriate amount of non-residential development, inclusive of active street frontages, in all development in those zones; and
- To avoid any inconsistency with SEPP (ARH) 2009 and SEPP (Housing for Seniors) to clarify that the relevant clauses in those SEPPs restricting ground level residential uses apply to the B1 and B2 zones.

Proposed Amendments

It is proposed that Clause 4.4A – “*Exceptions to floor space ratios for buildings on land in certain zones*” be repealed as outlined below.

Current Clause 4.4A	Proposed amendment to Clause 4.4A
(1) Despite clause 4.4, development consent must not be granted for development on land in Zone B1 Neighbourhood Centre or Zone B2 Local Centre, unless the non-residential floor space ratio is at least 0.5:1 (2) In this clause, non-residential floor space ratio means the ratio of the gross floor area of that part of a building used or proposed to be used for any purpose other than a residential purposed in a building on the site to the site area.	Repeal clause.

It is also proposed to amend Clause 6.6 - *Active Street Frontages*, as follows (amendments highlighted bold).

Current Clause 6.6	Proposed Amendment to Clause 6.6
(1) The objective of this clause is to promote uses that attract pedestrian traffic along certain ground floor street frontages in Zone B2 Local Centre. (2) This clause applies to land identified as “Active street frontage” on the <u>Active Street Frontages Map</u>. (3) Development consent must not be granted to the erection of a building, or a change of use of a building, on land to which this clause applies unless the consent authority is satisfied that the building will have an active street frontage after its erection or change of use. (4) Despite subclause (3), an active street frontage is not required for any part of a building that faces a service lane or is used for any of the following: (a) entrances and lobbies (including as part of mixed use development), (b) access for fire services,	(1) The objectives of this clause are: (a) to promote uses that attract pedestrian traffic along certain ground floor street frontages in Zone B1 Neighbourhood Centre and Zone B2 Local Centre. (b) to ensure adequate non-residential floor space is provided to satisfy the objectives of Zone B1 Neighbourhood Centre or Zone B2 Local Centre. (2) (Delete) (3) Development consent must not be granted to the erection of a building, or a change of use of a building, unless the consent authority is satisfied that the building will have an active street frontage after its erection or change of use. (4) Despite subclause (3), an active street frontage is not required for any part of a building that faces a service lane or is used for any of the following:

(c) vehicular access. (5) In this clause, a building has an active street frontage if all premises on the ground floor of the building facing the street are used for the purposes of business premises or retail premises.	(a) entrances and lobbies (including as part of mixed use development), (b) access for fire services, (c) vehicular access. (5) In this clause, a building has an active street frontage if: (a) all premises on the ground floor of the building facing the street on land identified as "Active street frontage" on the Active Street Frontage Map are used for the purposes of business premises or retail premises; and (b) all premises on the ground floor of the building facing the street on any other land in Zone B1 Neighbourhood Centre or Zone B2 Local Centre are used for non-residential purposes.
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Need for the Planning Proposal

As indicated in the attached consultant's report the Planning Proposal (PP) "is not a result of any strategic study or report. The PP has been prepared in response to the Land and Environment Court proceedings in *Badaoui v Hurstville Council* (LEC10559/14).

In *Badaoui*, the Court held that there is an inconsistency between Clause 4.4A of the HLEP 2012 and SEPP (Affordable Rental Housing) 2009. As a consequence, Clause 4.4A of the HLEP 2012 has no effect in relation to boarding house development under the SEPP.

Council's lawyers HWL Ebsworth, have reviewed the judgment and has recommended Council consider:

- *"Redrafting of Clause 4.4A - the clause is unclear as it does not itself require the provision of non-residential floor space and the wording is ambiguous;*
- *A requirement that the location of non-residential floor space be provided at street frontage of ground level;*
- *Consideration of the Affordable Rental Housing SEPP and implications of inconsistency principle with clauses of the LEP."*

It is noted that there is a similar clause (Clause 19) in SEPP (Housing for Seniors or People with a Disability) 2004 (SEPP (Housing for Seniors)), that may establish a similar situation in relation to permitting a seniors' housing development without a non-residential component.

During the course of the *Badaoui* proceedings, questions were raised as to the evidence base supporting the FSR requirement under Clause 4.4A. Council's planning department considers that in the absence of a robust evidence base, it may be difficult to uphold a numerical standard such as this in the face of well-argued requests for variations.

Clause 6.6 in the HLEP has a complementary objective in terms of maintaining the integrity of certain key streets in Zone B2 Local Centre zoned areas.

Therefore, in order achieve a more robust and effective mechanism to realise the objectives of all business zones within the Hurstville LGA, this PP proposes to repeal Clause 4.4A and to amend Clause 6.6 in the manner described in the table above.

The amendment to Clause 6.6, which confirms that there should be no substantive residential development on the ground floor of premises in the business zones, overcomes any inconsistencies with the above identified Clauses of the SEPPs and enables full effect to be given to the LEP clause.

These amendments, which assist in clarifying and simplifying the provisions of the HLEP, should in turn assist in streamlining Council's development assessment processes and making them less prone to successful technical legal challenges."

APPENDICES

Appendix [View](#)1

Planning Proposal - Clauses 4.4A 6.6 - City Plan Services - 27 April 2015

**CCL681-15 Planning Proposal for Amendments to Hurstville Local
Environmental Plan 2012 - Non-Residential Floor Space Ratio and
Active Street Frontage Controls (15/561)**

(Report by Director Planning and Development, Mr M Watt)

Minute No. 337

RESOLVED THAT Council supports the Planning Proposal for “Amendment to Clause 4.4A and Clause 6.6 in Hurstville Local Environmental Plan 2012” prepared by City Plan Strategy and Development Pty Ltd.

THAT the Planning Proposal be forwarded to the Minister for a Gateway Determination under Section 56 of the Environmental Planning and Assessment Act 1979; and

FURTHER THAT the Planning Proposal be referred to Council upon the Minister’s decision.

(Moved Councillor V Badalati / Councillor P Sansom)

For: His Worship the Mayor, Councillor C Hindi, Councillor P Sansom, Councillor D Sin, Deputy Mayor, Councillor M Stevens, Councillor C Wu, Councillor V Badalati, Councillor C Drane, Councillor R Kastanias, Councillor N Liu

Against:

It was noted that the motion was carried unanimously.