

Repeal of Clause 4.4A - Exceptions to floor space ratios for buildings on land in certain zones, and amendment to Clause 6.6 - Active street frontages, in Hurstville Local Environmental Plan 2012.

Proposal Title :	Repeal of Clause 4.4A - Exceptions to floor space ratios for buildings on land in certain zones, and amendment to Clause 6.6 - Active street frontages, in Hurstville Local Environmental Plan 2012.		
Proposal Summary :	The planning proposal seeks to ensure the ground floor of buildings with an active street frontage in zones B1 Neighbourhood Centre and B2 Local Centre is used for non-residential purposes only by amending Clause 6.6 - Active street frontages, in Hurstville LEP 2012. The planning proposal also seeks to remove the non-residential floor space requirement of 0.5:1 for development in zone B1 Neighbourhood Centre and zone B2 Local Centre by repealing Clause 4.4A - Exceptions to floor space ratios for buildings on land in certain zones.		
PP Number :	PP_2015_HURST_002_00	Dop File No :	15/09494

Proposal Details

Date Planning Proposal Received :	15-Jun-2015	LGA covered :	Hurstville
Region :	Metro(CBD)	RPA :	Hurstville City Council
State Electorate :	KOGARAH	Section of the Act :	55 - Planning Proposal
LEP Type :	Policy		

Location Details

Street :			
Suburb :		City :	Postcode :
Land Parcel :	Land identified as 'active street frontage' on the Active Street Frontage Map within zone B1 Neighbourhood Centre and zone B2 Local Centre		

DoP Planning Officer Contact Details

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Land Release Data

Growth Centre :		Release Area Name :	
Regional / Sub Regional Strategy :		Consistent with Strategy :	
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 of Planning and Environment is not aware of any meetings or communications with registered lobbyists concerning this Planning Proposal.**

Supporting notes

Internal Supporting Notes :	The planning proposal is supported as it: • ensures a non-residential floor space component for buildings with an active street frontage in zone B1 Neighbourhood Centre and B2 Local Centre; • ensures consistency with State Environmental Planning Policy (Affordable Rental Housing) 2009 (the Affordable Rental Housing SEPP) and State Environmental Planning Policy (Housing for Seniors and people with a Disability) 2004 (the Seniors Housing SEPP), which prohibit the ground floor of a boarding housing or seniors housing development fronting the street being used for residential purposes; and • removes the non-residential floor space requirement of 0.5:1 for development in zone B1 Neighbourhood Centre and zone B2 Local Centre, deemed inconsistent with the Affordable Rental Housing SEPP by the Land and Environment Court [Badaoui v Hurstville Council (LEC10559/14)].
External Supporting Notes :	The planning proposal reflects Hurstville City Council's Resolution of 20 May 2015. Council resolved to support the planning proposal to repeal Clause 4.4A Exceptions to floor space ratios for buildings on land in certain zones and amend Clause 6.6 Active street frontages of Hurstville LEP 2012.

The planning proposal is required to:

- clarify and maintain the original intent of Hurstville LEP 2012, in ensuring development in zone B1 Neighbourhood Centre and zone B2 Local Centre has a component of non-residential floor space;
- clarify the relationship with the Affordable Rental Housing SEPP the Seniors Housing SEPP; and
- overcome the inconsistency of Clause 4.4A in Hurstville LEP 2012, which requires development in zone B1 Neighbourhood Centre and zone B2 Local Centre to have a non-residential floor space of 0.5:1, with the Affordable Rental Housing SEPP and the Seniors Housing SEPP.

Repeal of Clause 4.4A - Exceptions to floor space ratios for buildings on land in certain zones, and amendment to Clause 6.6 - Active street frontages, in Hurstville Local Environmental Plan 2012.

Council does not wish to exercise its Plan making delegation for the planning proposal.

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:**
• 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
• avoid any inconsistency with SEPP (Affordable Rental Housing) 2009 and SEPP (Housing for Seniors or People with a Disability) 2004 to clarify that the relevant clauses in those SEPPs restricting ground level residential uses apply to the B1 and B2 zones.

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

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

Comment : **The planning proposal seeks to make the following amendments to Hurstville LEP 2012:**
1. Repeal Clause 4.4A Exceptions to floor space ratios for buildings on land in certain zones.
2. Amend the objectives and clarify the application of Clause 6.6 Active street frontages as follows:
(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; and
(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)
(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.

Justification - s55 (2)(c)

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

b) S.117 directions identified by RPA : **1.1 Business and Industrial Zones**
* May need the Director General's agreement **7.1 Implementation of A Plan for Growing Sydney**

Is the Director General's agreement required?

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

d) Which SEPPs have the RPA identified? **SEPP (Housing for Seniors or People with a Disability) 2004**
 SEPP (Affordable Rental Housing) 2009

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

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

If No, explain : **The planning proposal is not inconsistent with applicable section 117 Directions and SEPPs.**

Repeal of Clause 4.4A - Exceptions to floor space ratios for buildings on land in certain zones, and amendment to Clause 6.6 - Active street frontages, in Hurstville Local Environmental Plan 2012.

Mapping Provided - s55(2)(d)

Is mapping provided? **No**

Comment : The planning proposal is not accompanied by maps, however it applies to land identified as "Active street frontage" on the Active Street Frontage Map within zone B1 Neighbourhood Centre and zone B2 Local Centre. It is recommended the Gateway condition exhibition of the Hurstville LEP 2012 Active Street Frontage Map series with the planning proposal.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : The planning proposal recommends community consultation for a minimum of 14 days. This is supported by the Department.

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 : Hurstville LEP 2012 was notified on 7 December 2012

Assessment Criteria

Need for planning proposal : The planning proposal has been prepared in response to the Land and Environment Court proceedings in *Badaoui v Hurstville Council* (LEC10559/14), in which the Court held that there is an inconsistency between Clause 4.4A of the Hurstville LEP 2012 and Clause 30 of 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.

Clause 4.4A of Hurstville LEP 2012 requires a minimum non-residential floor space of 0.5:1 for development in zones B1 Neighbourhood Centre and B2 Local Centre. During the course of the Badaoui proceedings, questions were raised as to the evidence base supporting the floor space ratio requirement under Clause 4.4A.

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 to 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.

These amendments, which assist in clarifying and simplifying the provisions of the Hurstville LEP 2012, should in turn assist in streamlining Council's development assessment processes and make them less prone to successful technical legal challenges.

Repeal of Clause 4.4A - Exceptions to floor space ratios for buildings on land in certain zones, and amendment to Clause 6.6 - Active street frontages, in Hurstville Local Environmental Plan 2012.

Consistency with strategic planning framework :

Consistency with relevant SEPPs

Under Clause 30 (1)(g) of SEPP (Affordable Rental Housing) 2009 and Clause 19 of SEPP (Housing for Seniors or People with a Disability) 2004, no part of the ground floor of a boarding housing or seniors housing development that fronts the street may be used for residential purposes.

The proposed 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, is consistent with the relevant provisions of the two SEPPs.

A Plan for Growing Sydney

Whilst the Plan contains no specific actions relevant to the planning proposal, the proposal is considered to generally accord with the principles of the Plan in that requiring the ground floor of development with an active street frontage to be used for non-residential purposes:

- increases the prospect for economic growth and job creation in local and neighbourhood centres; and
- provides for shops and services to support the local community.

Environmental social economic impacts :

There are no likely environmental impacts of the planning proposal. The planning proposal will not produce any adverse economic and social outcomes.

Assessment Process

Proposal type : Minor Community Consultation Period : 14 Days

Timeframe to make LEP : 6 months Delegation : Nil

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 :

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Documents

Document File Name	DocumentType Name	Is Public
Letter to the Department of Planning and Environment ~ Planning Proposal for the Amendment to Clause 4.4a and 6.6 of the ~1.pdf	Proposal Covering Letter	Yes
Planning Proposal - Clauses 4.4A 6.6 - City Plan Services - 27 April 2015.pdf	Proposal	Yes
Council Report CCL681-15 and Minutes - Planning Proposal for Amendments to Clause 4.4a and Clause 6.6 of HLEP 2012.pdf	Determination Document	Yes

Planning Team Recommendation

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

S.117 directions: **1.1 Business and Industrial Zones**
7.1 Implementation of A Plan for Growing Sydney

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

- 1. The Hurstville LEP 2012 Active Street Frontage Map series are to be exhibited with the planning proposal.**
- 2. The planning proposal is to be publicly exhibited for a minimum of 14 days.**
- 3. The planning proposal be completed within 6 months of the Gateway Determination.**
- 4. A public hearing is not required to be held into the matter.**

Supporting Reasons : **The planning proposal is supported as it:**

- **ensures a non-residential floor space component for buildings with an active street frontage in zone B1 Neighbourhood Centre and B2 Local Centre; and**
- **ensures consistency with relevant provisions of the Affordable Rental Housing SEPP and the Seniors Housing SEPP, which prohibit the ground floor of a boarding housing or seniors housing development fronting the street being used for residential purposes.**

Signature:



Printed Name:

Diane Sarkies

Date:

14/7/15