



City of Canterbury

City of Cultural Diversity

**PLANNING PROPOSAL TO AMEND
CANTERBURY LOCAL ENVIRONMENTAL
PLAN 2012**

Medical Centres in business zones

**City Planning Division
January 2015**

Table of Contents

1	Background	2
Part 1	Objectives or intended outcomes	3
Part 2	Explanation of the provisions	4
Part 3	Justification	6
Part 4	Mapping	8
Part 5	Community Consultation	8
Part 6	Project Timeline	9
Appendix 1	State Environmental Planning Policies	10
Appendix 2	Section 117 Directions	12
Attachment 1	Information Checklist	13
Attachment 2	Council Resolution 27 November 2014	14
Attachment 3	Evaluation Criteria for the Delegation of Plan Making Functions	15

1. BACKGROUND

Council on 27 November 2014 considered a report in relation to the implications of Clause 6.7 in the Canterbury LEP 2012. Clause 6.7 was introduced as an amendment on 8 November 2013 to allow Medical Centres to be situated within a mixed use development in our business Centre zones. An unintended consequence of the Clause, now apparent, allows the ground floor of the mixed use development to occupy a substantial component of the ground floor as residential accommodation where a medical centre is proposed in the business centre zones.

At the meeting it was resolved that a planning proposal be prepared to amend the Canterbury LEP 2012 to clarify that development consent must not be granted for residential accommodation as part of a mixed use development that includes a Medical Centre and a dwelling at the ground level in the B1, B2 and B5 zones.

Council has now prepared a planning proposal in line with this resolution, in accordance with Section 55 of the Environmental Planning and Assessment Act 1979 and the Department of Planning and Infrastructure's "*A guide to preparing planning proposals*". A Gateway Determination under Section 56 of the Act is requested.

PART 1 OBJECTIVES OR INTENDED OUTCOMES

The purpose of the Planning proposal is to amend Clause 6.7 mixed use development in business zones (the Clause) of CLEP 2012 to clarify that residential accommodation as part of a mixed use development that includes a medical centre and a dwelling at the ground level are not permitted in the B1, B2 and B5 zones.

PART 2 EXPLANATION OF PROVISIONS

Clause 6.7 Mixed use development in business zones

Council considered that Medical Centres were an appropriate land use within the B1, B2 and B5 zones, and consequently, Amendment 1 to the CLEP 2012 was gazetted on 8 November 2013, which amongst other matters, inserted a provision that allowed a medical centre as part of a mixed use development incorporating residential accommodation in the B1, B2 and B5 zones.

The clause is set out below.

- 6.7 *Mixed use development in business zones*
- (1) *This clause applies to land in the following zones:*
 - (a) *Zone B1 Neighbourhood Centre*
 - (b) *Zone B2 Local Centre*
 - (c) *Zone B5 Business Development*
 - (2) *Despite any other provisions of this plan, development consent may be granted to a mixed use development, on land to which this clause applies, incorporating residential accommodation and a medical centre.*

The original intent of the Clause was to overcome a constraint in the Standard LEP definition and permissibility of 'shop top housing' in the business centre zones which prohibited Medical Centres in mixed use developments in the business centre zones. The LEP definition of shop top housing only permits dwellings above retail or business at ground floor. A medical centre is not classed as either retail or a business premises. Clause 6.7 sought to overcome this by allowing medical centres as part of a mixed use development in business centres (B1, B2, and B5) where shop top housing is a permitted use.

Unintended Consequence

Within B1 and B2 zones, residential development is prohibited on the ground level. Residential development is only allowed as "shop top housing". Shop top housing requires the ground floor to be retail or business uses. That is, no residential dwellings are allowed on the ground floor. The Land and Environment Court (*Hsro v Canterbury Council No 2 [2014/NSWLEC 121]*) recently affirmed that shop top housing does not allow for residential accommodation on the ground floor. The intention of this is to ensure that the viability of business centres is not eroded by business development being tokenistic in nature, in favour of residential development occupying the majority of the site at ground level.

Since Amendment 1 (Cl 6.7) to the CLEP has been in place, Council has seen a disproportionate number of development applications for mixed use development in the B1 and B2 zones where a Medical Centre and residential accommodation is provided at ground level, rather than the development proposals being for shop top housing. Proponents are attempting to maximise residential development over retail or business development, as this is where the higher profits are usually made.

Should this continue, there is the potential for Canterbury's Neighbourhood and Local centres incrementally losing retail and business floor areas to medical centres (many of which are likely to remain untenanted when initial demand for medical centres has been met) and increasing residential. This would not be sustainable in the long term and would also be contrary to the objectives within both of these zones included in the CLEP 2012 as follows:

Zone B1 Neighbourhood Centre Objectives

- *To provide a range of small scale retail, business and community uses that serve the needs of the people who live or work in the surrounding neighbourhood*

Zone B2 Local Centre Objectives

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To facilitate and support investment, economic growth and development for active and well designed centres.*

The objectives for both zones focus on retail and business opportunities within our centres, and for the centres to serve the needs of the local communities. Development which results in the incremental loss of retail, business and community uses would be contrary to the objectives of the B1 and B2 zones and would have a long term adverse impact on Canterbury's neighbourhood and local centres.

B5 zones along Canterbury Road

The CLEP 2012 Schedule 1 Additional Permitted Uses identifies sites zoned B5 along Canterbury Road as Key Sites "A" and that development for the purpose of residential accommodation is permitted with consent, but only as part of a mixed use development. As such, Amendment 1 to CLEP 2012, while referring to B5 zones, is only relevant to B1 and B2 zones. Currently the proposed amendments would not apply to B5 zoned land identified as "Key Sites A" identified along Canterbury Road, as these are subject to another clause which does permit residential accommodation at ground level as part of a mixed use development.

Proposed amendments

It is recommended an additional clause to limit the residential component (subject to parliamentary counsel drafting) to read as follows:

- (3) *Development consent must not be granted for residential accommodation, as part of a mixed use development, with dwellings at the ground level.*

PART 3 JUSTIFICATION

SECTION A: Need for the Planning Proposal

1. Is the planning proposal the result of any strategic study or report?

The planning proposal is the result of a previous amendment (amendment 1) to the CLEP 2012 to allow medical centres as part of a mixed use development in business centre zones where shop top housing is permitted. An unintended consequence of this amendment is that the provision is being used in the B1 and B2 zones to minimise the commercial/business uses at ground floor, by including a medical centre, with the remainder of the development being residential development, both at ground level and above.

2. Is the Planning Proposal the best means of achieving the objectives or intended outcomes or is there a better way?

Clause 6.7 in the LEP will impact on the growth of our Neighbourhood and Local Centres through the incremental loss of retail and business floor areas to medical centres and residential floor areas. The only way to achieve the objectives and intended outcomes is through an LEP amendment.

SECTION B: Relationship to strategic planning framework

3. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including 'A plan for growing Sydney')?

The Strategic planning context for consideration of this Planning Proposal includes:

- A Plan for Growing Sydney

The planning proposal is considered to be consistent with the objectives and provisions of the strategic planning framework. The Planning Proposal's compliance with the relevant regional and sub-regional strategies is set out in the **table 1** below.

Table 1 consistency with regional and sub-regional planning framework

Provision	Comment
A Plan for Growing Sydney	
The Government's vision for Sydney is: a strong global city, a great place to live.	The key goals of the Plan that is relevant to the planning proposal is:
To achieve this vision, the Government has set down goals that Sydney will be:	<i>Direction 3.1: Revitalise existing suburbs</i>
• A competitive economy with world class services and transport; • A city of housing choice with homes that meet our needs and lifestyles; • A city of housing choice with homes that meet our needs and lifestyles; • A great place to live with communities that are strong, healthy and well connected; and • A sustainable and resilient city that protects the natural environment and has a balanced approach to the use of land and resources.	The Plan aims to create more vibrant places and revitalise suburbs where people want to live – welcoming places and centres with character and vibrancy that offer a sense of community and belonging. The planning proposal will clarify a Clause in the CLEP 2012 that will meet the aims of this goal by revitalising our existing centres and improving resident's access to housing, jobs, services and recreation.

4. Is the Planning Proposal consistent with the local Council's community strategic plan, or other local strategic plan?

Council's Community Strategic Plan 2014-2023 (Community Plan) which was adopted in February 2014 sets the vision for the Canterbury LGA into the next decade and aims to promote sustainable living. The relevant themes and long term goal that relates to this Planning Proposal are:

- 1.3.1 *Town Centres are vibrant, with a variety of shops and entertainment venues in main shopping centres, busy cafes and restaurants, outdoor dining areas, and an attractive village-feel to local shopping areas';*
- 1.3.2 *Business in our City are prosperous and growing, and there are more local jobs, particularly in professional fields.*

The amendments to Clause 6.7 of the CLEP 2012 will help achieve the objectives of the Plan. Our business centres will be able to be developed as intended for the zone and continue to provide a range of small-scale retail, business and community uses that serve the needs of people who live and work in the surrounding neighbourhood.

6. Is the planning proposal consistent with applicable state environmental planning policies?

As a minor change to the CLEP, State Environmental Planning Policies do not affect this Planning proposal to a great extent. An assessment indicating compliance with the relevant SEPPs has been made (see appendix 1).

7. Is the planning proposal consistent with applicable Ministerial Directions (s117 directions)?

This planning proposal is consistent with all Ministerial Section 117 Directions. An assessment indicating compliance with Section 117 Directions has been made (see appendix 2).

SECTION C: Environmental, social and economic impact

8. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

No. There is no likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the Planning Proposal.

9. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

There are no likelihood of adverse environmental impact as a result of this planning proposal.

10. How has the planning proposal adequately addressed any social and economic effects?

The purpose of the planning proposal is to address an anomaly present within the LEP 2012 by reinforcing council's position for mixed use development and medical centres in our business centre zones.

The planning proposal will have a positive economic effect by ensuring our business centres continue to grow by encouraging appropriate retail and commercial floor space thereby improving the economy of our town and neighbourhood centres. The positive social effect of the planning proposal includes; shopping and employment within close proximity to public transport, centre revitalisation and improved housing choice.

SECTION D: State and Commonwealth interests

11. Is there adequate public infrastructure for the planning proposal?

Yes. The planning proposal does not generate any need to upgrade or improve public infrastructure.

12. What are the views of the State and Commonwealth public authorities consulted in accordance with the gateway determination?

Consultation with any State and Commonwealth public authorities has not yet been undertaken. Council will engage any such public authority if required in accordance with the Gateway Determination.

PART 4 MAPPING

The planning proposal does not involve any changes to the CLEP 2012 maps.

PART 5 COMMUNITY CONSULTATION

The Planning proposal will be placed on public exhibition in accordance with the Gateway Determination.

Notice of the public exhibition on the planning proposal will be prepared and will involve the following:

- Advertisement to the local newspaper (ie Torch, Valley Times)
- Notification letters to relevant State Agencies and other authorities nominated by the Department, if required.
- Advertise the proposal on Council's website.
- Copies of the Planning Proposal to be available at Council's administration building.

PART 6: PROJECT TIMELINE

This is outlined in the table below:

Planning proposal stage	Timeframe
Gateway determination issued by Department of Planning and Infrastructure	February 2015
Preparation for public exhibition	March 2015
Government agency consultation Public exhibition	March 2015
Public submissions report to Council	April 2015
Anticipated date the Council will make the plan (if delegated)	June 2015

APPENDIX 1: State Environmental Planning Policies

State Environmental Planning Proposal	Comments
SEPP 1 – Development Standards	Not Applicable
SEPP 14 – Coast Wetlands	Not Applicable
SEPP 15 – Rural Landscaping	Not Applicable
SEPP 19 – Bushfire in Urban Areas	Not Applicable
SEPP 21 – Caravan Parks	Not Applicable
SEPP 26 – Littoral Rainforests	Not Applicable
SEPP 29 – Western Sydney Recreation Area	Not Applicable
SEPP 30 – Intensive Agriculture	Not Applicable
SEPP 32 – Urban Consolidation (Redevelopment of Urban Land)	The planning proposal does not contain provisions that would affect the application of this SEPP.
SEPP 33 – Hazardous and Offensive Development	Not Applicable
SEPP 36 – Manufactured Home Estates	Not Applicable
SEPP 39 – Spit Island Bird Habitat	Not Applicable
SEPP 44 – Moore Park Showground	Not Applicable
SEPP 50 – Canal Estate Development	Not Applicable
SEPP 52 – Farm Dams and other works in Land and Water Management Plan Areas	Not Applicable
SEPP 55 – Remediation of Land	Not Applicable
SEPP 59 – Central Western Sydney Regional Open Space and Residential	Not Applicable
SEPP 62 – Sustainable Aquaculture	Not Applicable
SEPP 64 – Advertising and Signage	Not Applicable
SEPP 65 – Design Quality of Residential Flat building	The planning proposal does not contain provisions that would affect the application of this SEPP.
SEPP 70 – Affordable Housing	Not Applicable
SEPP 71 – Coastal Protection	Not Applicable

SEPP (Affordable Rental Housing) 2009	Not Applicable
SEPP (Building Sustainability Index BASIX) 2004	The planning proposal does not contain provisions that would affect the application of this SEPP.
SEPP (Exempt and Complying) 2008	Not Applicable
SEPP (Housing for Seniors or People with a Disability) 2004	Not Applicable
SEPP (Infrastructure) 2007	The planning proposal does not contain provisions that would affect the application of this SEPP.
SEPP (Kosciusko National Park – Alpine Resorts) 2007	Not Applicable
SEPP (Major Developments)	Not Applicable
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	Not Applicable
SEPP (Miscellaneous Consent Provisions) 2007	Not Applicable.
SEPP (Penrith Lakes Scheme) 1989	Not Applicable
SEPP (Port Botany and Port Kembla) 2013	Not Applicable
SEPP (Rural Lands) 2008	Not Applicable
SEPP (SEPP 53 Transitional Provisions) 2011	Not Applicable
SEPP (State and Regional Development) 2011	Not Applicable
SEPP (Drinking Water Catchment) 2011	Not Applicable
SEPP (Urban Renewal) 2010	Not Applicable
SEPP (Western Sydney Employment Area) 2009	Not Applicable
SEPP (Sydney Western Parklands) 2009	Not Applicable

APPENDIX 2: Section 117 Directions

Section 117 Directions	Consistency	Comments
<i>Employment and Resources</i>		
1.1 Business and Industrial zones	Consistent	The proposed changes relate to the clarification of an existing Clause that have been introduced to allow medical centres in mixed use developments in our business zones. The planning proposal will clarify a clause that is consistent with the objectives of this direction by protecting employment lands, encourage growth and reflect existing uses thereby supporting the viability of Canterbury's business centres.
<i>Housing, Infrastructure and Urban Development</i>		
3.1 Residential zones	Consistent	The planning proposal is consistent with this direction as it does not contain provisions which will reduce the permissible density of the land, in accordance with the requirements of the Ministerial Direction. Residential accommodation will still be permitted in the Business Centre zones in the form of 'shop top housing'.
3.4 Integrating Land Use and Transport	Consistent	The proposal is consistent with this direction as it will improve access to housing, jobs and services by reinforcing the role of Canterbury's business centres by retaining the areas of and locations of existing business zones.
<i>Metropolitan Planning</i>		
7.1 Implementation of A Plan for Growing Sydney	Consistent	It is considered that the planning proposal is shown to be consistent with the NSW Government's A Plan for Growing Sydney. This has been well demonstrated within this overall submission.