

# Planning Team Report

# Amendment of Schedule 1 Additional Permitted Uses to enable airport-related land uses.

Proposal Title:

Amendment of Schedule 1 Additional Permitted Uses to enable airport-related land uses.

Proposal Summary:

The planning proposal seeks to introduce additional permitted uses relating to Sydney Airport on land currently zoned B5 Business Development, B7 Business Park and IN1 General Industrial, located to the north of the airport at Mascot, to enable a wider range of uses related

to and compatible with the operation of the airport.

PP Number :

PP\_2015\_BOTAN\_003\_00

Dop File No:

15/12507

# **Proposal Details**

Date Planning

23-Oct-2015

LGA covered :

**Botany Bay** 

Proposal Received:

Metro(CBD)

RPA:

The Council of the City of Botan

State Electorate

HEFFRON MAROUBRA Section of the Act:

55 - Planning Proposal

LEP Type :

Region:

**Precinct** 

# **Location Details**

Street:

Suburb:

City:

Postcode:

Land Parcel:

Land bounded by Gardeners Road and Coward Street, Alexandra Canal, O'Riordan Street and

Joyce Drive/Qantas Drive, Mascot

# **DoP Planning Officer Contact Details**

Contact Name:

**Andrew Watkins** 

Contact Number:

0292286558

Contact Email:

andrew.watkins@planning.nsw.gov.au

# **RPA Contact Details**

Contact Name:

Stephanie Lum

Contact Number:

0293663564

Contact Email:

lums@botanybay.nsw.gov.au

## **DoP Project Manager Contact Details**

Contact Name :

**Diane Sarkies** 

Contact Number :

0292286522

Contact Email:

diane.sarkies@planning.nsw.gov.au

## **Land Release Data**

Growth Centre :

Release Area Name :

Regional / Sub

Consistent with Strategy:

Regional Strategy:

MDP Number:

Date of Release:

Area of Release (Ha)

Type of Release (eg

.

Residential / Employment land):

No. of Lots:

0

No. of Dwellings

Gross Floor Area

0

(where relevant):

No of Jobs Created

0

The NSW Government Yes

Lobbyists Code of Conduct has been complied with:

If No, comment :

The Department is not aware of any meetings or communications with registered lobbyists concerning this planning proposal.

Have there been meetings or communications with registered lobbyists?:

No

If Yes, comment:

# **Supporting notes**

Internal Supporting Notes :

On 12 August 2014 Council submitted a planning proposal to introduce a new 'SP1 Airport related development' zone. On 20 March 2015 the planning proposal was withdrawn as it raised the following issues:

- the SP1 Special Activities zone should not be used to group a number of distinct land uses and unrelated lots of land in the way that was proposed;
- 'Airport-related' is not a Standard Instrument LEP Dictionary term; and
- 'Airport-related land uses' and 'Airport-related industry' are not types of development for the purposes of permitting or prohibiting development according to Direction 5 of the Standard Instrument LEP.

Council was advised that should they wish to proceed with the matter, they should prepare a revised planning proposal consistent with A Plan for Growing Sydney and the Standard Instrument LEP, permitting additional land uses under Schedule 1 Additional Permitted Uses. On 10 August 2015 Council subsequently submitted a revised planning proposal seeking to introduce additional permitted uses into Schedule 1, to enable a wider range of uses related to and compatible with the operation of Sydney Airport.

On 23 October 2015, following concerns expressed by the Department over the potential introduction of incompatible commercial uses into the IN1 zone, and the erosion of the intent of the current zonings, the Department received a revision to the planning proposal, proposing the deletion of 'commercial premises' and replacement by 'business premises' and 'office premises'. Consequently the revised proposal now comprises the following elements:

Item 1: Replacement of existing clause 9A in Schedule 1 with a new clause to allow additional permitted uses for land mapped as the 'subject area', which includes B5, B7 and IN1 zoned land. This proposed clause would permit:

- 'business premises', 'office premises', function centres', 'information and education facilities', 'passenger transport facilities' and 'tourist and visitor accommodation' or any other purposes relating to the use of the airport;
- services related to the following uses carried out at the Airport: the assembly, storage or land transport of air freight; the accommodation, or transportation by air or land of air passengers or air crew; the storage, operation, maintenance or repair of aircraft components; the administrative functions associated with the airport, and the functions of government departments and authorities related to air passengers and air freight; and
- services provided for hotel or motel guests, including banking, dry cleaning, hairdressing and the like, that are located within the confines of the hotel/motel building.

Item 2: Replacement of existing clause 10A with a new clause to allow additional permitted uses only for land zoned B5 Business Development and B7 Business Park within the subject area. This proposed clause would permit:

- 'freight transport facilities', 'industrial training facilities', 'general industries', 'light industries', 'storage premises' and 'transport depots'.

Included in both proposed clauses is a requirement that the proposed uses would be related to the use of the Airport, and when determining applicable development applications, the consent authority must consider any impacts upon the role of the airport and its 'environs', and viability of adjoining industrial uses.

Item 3: Amendment to clause 4.4(2D) Floor Space Ratio (FSR) accordingly to correctly cross-reference the relevant proposed clauses in Schedule 1.

Amendment No 1 to Botany Bay BLEP 2013 (relating to Qantas-owned IN1-zoned land) introduced the current Clauses 9A and 10A into Schedule 1. The current proposal's 'subject area' encompasses the Qantas-owned land and proposes replacing clauses 9A and 10A of Schedule 1. The wording, permissible uses and other provisions of the current planning proposal are the same as the existing clauses 9A and 10A, except that:

- the proposed clauses apply to much wider areas than existing clauses 9A and 10A; and
- 'commercial premises' has been replaced by 'business premises' and 'office premises'.

Whilst the term 'Airport-related' is not a Standard Instrument term, for the purposes of assessment of the planning proposal, 'airport-related uses' are considered to be those that perform a directly related role, or provide a directly related service, in support of the day-to-day operation of the Airport, and which are able to generate employment and/or protect long term employment viability.

External Supporting Notes:

The planning proposal results from the translation of the Botany Local Environmental Plan 1995 (BLEP 1995) into BBLEP 2013. The Standard Instrument did not provide an equivalent zone for BLEP 1995's 'airport related' zones, therefore under BBLEP 2013, 'best match' Standard Instrument zones were used. Council considers the Standard Instrument B5, B7 and IN1 zones fail to acknowledge the importance of the Airport.

The planning proposal reflects Botany Bay City Council's resolution of 5 August 2015 to endorse a request to introduce additional permitted uses relating to Sydney Airport on land located north of the Airport. Council has since confirmed the proposed replacement of 'Commercial premises' with 'Business premises' and 'Office premises' in the proposed clause differs to Council's resolution. This revision to the proposal is intended to remove the potential for inappropriate retail uses to locate within the subject area.

### 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 introduce additional permitted uses relating to the Airport to enable a wide range of compatible uses; to support and encourage Airport-related uses in proximity of the Airport; and to acknowledge the importance of the subject properties in supporting the role of the Airport and its environs.

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

Is an explanation of provisions provided? Yes

Comment:

The following amendments to Botany Bay LEP 2013 are proposed:

a) replacement of the current Schedule 1 clause 9A relating to specified land at Mascot (Qantas land), with the same wording, but replace 'commercial premises' with 'business premises' and office premises'; and expand its application across a wider area (the subject

b) replacement of the current Schedule 1 clause 10A relating to a specific lot at King

Street, Mascot, but expand its application to B5 Business Development and B7 Business Park-zoned land within the subject area; and

c) amend clause 4.4(2D) Floor Space Ratio to correctly 'cross-reference' the relevant clauses in Schedule 1.

It is recommended that prior to exhibition, Council prepares and then exhibits a plain English explanation version of the intention of the proposed provisions.

# 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
- 1.1 Business and Industrial 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
- 6.3 Site Specific Provisions
- 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 No 55—Remediation of Land

SEPP No 64—Advertising and Signage

SEPP (Building Sustainability Index: BASIX) 2004

SEPP (Exempt and Complying Development Codes) 2008

SEPP (Infrastructure) 2007

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

Practice Note PN 11-002 Preparing LEPs using the Standard Instrument: Standard Zones

- the IN1 (General Industrial) zone is generally intended to accommodate a wide range of industrial and warehouse uses and to protect industrial land for industrial uses;
- the B5 (Business Development) zone is to provide for business, warehouse and bulky goods retail uses requiring a large floor area that are close to, and that support the viability of centres; and
- the B7 (Business Park) zone is generally intended for land that primarily accommodates office and light industrial uses, and a range of ancillary facilities and services to support the day to day needs of workers.

The inclusion of some of the proposed uses within the IN1, B5 and B7 zones are inconsistent with the intent of the zones, as identified by the Practice Note, and with the current zone objectives in the BBLEP 2013. The Department is concerned the extension of permissibility of certain uses into zones where they are currently prohibited may potentially result in non-industrial and non-business zone uses predominating, thus reducing the area of land used for Land Use Table industrial and business uses.

Council has provided justification for the inclusion of each specific proposed use in Schedule 1, but the Department considers the justification is insufficient to warrant the inclusion of some of the proposed uses. Tab A - 'Summary table of Council's justification for proposed Schedule 1 uses' sets out Councils' justification for, and the Department's position in relation to, the proposed Schedule 1 uses. In summary, Council should exclude the following uses from the planning proposal:

- 'Business premises', 'Function centres' and 'Information and education facilities' which are already permissible in the B5 and B7 zones, but are not considered appropriate in the IN1 zone; and
- 'Tourist and visitor accommodation' which is already permissible in the B5 zone, but is not considered appropriate in the B7 or IN1 zones.

Council should also delete the following proposed subclauses from the planning proposal:

'a) services related to any of the following uses carried out at Sydney (Kingsford Smith)

## Airport:

- i. the assembly, storage or land transport of air freight,
- ii. the accommodation, or transportation by air or land, of air passengers or air crew,
- iii. the storage, operation, maintenance or repair of aircraft or aircraft components,
- iv. the administrative functions associated with the airport, such as airport management and security,
- v. the functions of government departments and authorities related to air passengers and air freight' and
- 'b) services provided for hotel or motel guests, including banking, dry cleaning, hairdressing and the like, that are located within the confines of the hotel or motel building.'

Where the Department supports uses that are considered to be potentially Airport-related, sufficiently robust principles against which to ensure development proposals are genuinely Airport-related are required. Prior to public exhibition, Council should update the planning proposal to delete those elements specified in the Table at Tab A, and to provide appropriate overarching principles for approval of development applications, to ensure that only genuinely Airport-related uses would be granted development consent.

Have inconsistencies with items a), b) and d) being adequately justified? No

#### If No, explain:

Direction 1.1 Business and Industrial Zones and Direction 7.1 Implementation of A Plan for Growing Sydney:

Direction 1.1 seeks to encourage employment growth in suitable locations, protect employment land in business and industrial zones and support the viability of identified strategic centres. Direction 7.1 seeks to give legal effect to the planning principles, directions and priorities contained in A Plan for Growing Sydney.

The proposal is potentially inconsistent with Direction 1.1 as the extension of permissibility of certain uses into zones where they are currently prohibited may undermine the intent of the zones and consequently employment of that type in the subject area. However, the proposal's consistency with Direction 7.1, as further discussed in 'Consistency with strategic planning framework' is considered sufficient to justify the inconsistency with Direction 1.1, in relation to those proposed uses which are supported by the Department (as discussed in Tab A).

# **Direction 3.5 Development Near Licensed Aerodromes:**

The Direction applies when a planning proposal will create, alter or remove a zone or a provision relating to land in the vicinity of a licensed aerodrome, and requires consultation with the Department of Commonwealth responsible for aerodromes, and consideration of the Obstacle Limitation Surface (OLS) as part of the preparation of a planning proposal. Whilst there are no proposed changes to existing height controls, most of the sites within the subject area are between the 25 and 30 ANEF contours. This triggers a requirement under the Direction, for the inclusion of a provision to ensure that development meets AS 2021 regarding interior noise levels for development for 'residential purposes or human occupation.' As the Department does not support the additional permitted use of 'tourist and visitor accommodation' in the B7 or IN1 zones, this Direction is not triggered.

# 4.1 Acid Sulfate Soils:

The Direction requires that a relevant planning authority must consider an acid sulfate soils study assessing the appropriateness of the change of land use, if an intensification of land uses on land identified as having a probability of containing acid sulfate soils is proposed. Botany Bay's Acid Sulfate Soils Map identifies the subject area as having Class 2 and 4 acid sulfate soils. Clause 6.1 of the BBLEP 2013 requires an acid sulfate soils management plan at development application stage, before carrying out any development on such land. The inconsistency with this Direction is therefore considered to be minor and justifiable.

# 4.3 Flood Prone Land

This Direction seeks to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the Floodplain

Development Manual 2005; and the provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land. The BBLEP 2013 does not identify any flood prone land, but the planning proposal states that "some of the properties are subject to flooding". It is considered this results in an inconsistency with the Direction, but the application of BBLEP 2013 clause 6.3 Stormwater Management is considered sufficient to address potential flooding issues. The inconsistency is therefore considered minor and justifiable.

The planning proposal is considered consistent with all other applicable SEPPS and section 117 Directions.

# Mapping Provided - s55(2)(d)

Is mapping provided? No

Comment:

No maps require amending as a result of the planning proposal.

An extract of the current zoning map and an aerial photo identifying the site have been provided. The aerial photo also outlines the Qantas land, and an area of land zoned RE1 Public Recreation (Coleman Reserve) which is not subject to this planning proposal. Prior to exhibition, Council should update the aerial map to clearly identify the subject area relating to this planning proposal to clarify where the proposal applies.

# Community consultation - s55(2)(e)

Has community consultation been proposed? Yes

Comment:

The planning proposal recommends community consultation for a minimum period of 28

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:

Botany Bay LEP 2013 was notified on 21 June 2013 and commenced on 26 June 2013.

# **Assessment Criteria**

Need for planning proposal :

Council considers the introduction of additional permitted uses will provide certainty to aviation-related activities and uses presently undertaken at these properties and those that are planned in the future. A planning proposal is the only means of achieving the

objectives and intended outcomes.

Consistency with strategic planning framework:

A Plan for Growing Sydney:

The Plan identifies the Airport as one of Australia's most significant transport gateways and seeks to:

- enhance the capacity of Sydney's gateways and freight networks, and support the operation of the Airport precinct;
- identify and protect strategically important industrial-zoned land in and near the Airport Precinct:
- protect the Airport's function as an international gateway for passengers and freight, and support airport-related land uses and infrastructure in the area around the Airport; and
- prepare and deliver a Structure Plan for the Airport precinct to support its growth.

The amended planning proposal is largely consistent with the intent of A Plan for Growing Sydney in that it intends to:

- retain existing industrial and business zoned land;
- support the airport by enabling a range of Airport-related uses and development;
- enable increased economic and employment capacity in the Airport precinct;
- protect and strengthen the function and operations of the Airport; and
- develop and implement a strategy for the Airport and Port Botany precincts to support their operation, taking into account land uses and the proposed road transport investments.

Note that given there are no direct proposed changes to the affected zones, zone objectives or the Land Use Table, the proposal does not remove opportunities for business and industrial-type uses from locating within the subject area.

Notwithstanding, the proposal also demonstrates inconsistency with A Plan for Growing Sydney in that the extension of permissibility of certain uses into zones where they are currently prohibited may potentially undermine the intent of the business and industrial zones, and consequently employment of that type in the subject area. Whilst not supported at this time, further work in relation to District planning and the preparation of a Structure Plan for the Airport (and Botany Bay) precinct, as identified in A Plan for Growing Sydney, may provide opportunity or justification for the expansion of these uses in the future. With regard to the remaining proposed uses, the planning proposal is considered consistent with the Airport-related elements of A Plan for Growing Sydney's 'Priorities for Central Subregion' and 'Priorities for Transport Gateways'.

Council has verbally advised that, given the range and variety of specified Schedule 1 uses, an exhaustive set of criteria against which the assessment of a development proposal's support of the operation of the airport would be made is not possible. Council's intention is to make this assessment on the basis of information to be provided by proponents, such as letters of confirmation from the Airport operator itself, and details of contract arrangements between the proponents and the Airport operator. Whilst the Department is concerned the proposal does not currently facilitate sufficiently robust assessment to ensure inappropriate uses would not be approved, the planning proposal is largely consistent with the Plan's Priorities for Transport Gateways.

For those uses that the Department supports, it is recommended that Council provide overarching principles to ensure that proposed development for those purposes is Airport-related. Without such principles, it is possible that uses lacking a definite or direct 'supporting' link to, or relationship with the Airport may be sought, and may erode the intent of the current zonings.

It is considered the Proposal (as amended, and subject to the Department's recommendations) will serve A Plan for Growing Sydney's higher policy priority for the Airport.

Botany Bay Planning Strategy 2031 (2009):

The stated intent and objectives of the planning proposal are consistent with Direction 5 of the Strategy, which seeks to protect existing employment areas near the Airport for related activity; and support the development of new off-site employment locations near the Airport to accommodate the growth in demand for Airport-related activity. Action 5.1.1 of

the Strategy is particularly relevant as it seeks to facilitate the transition of specific land north of the Airport for airport-related business activities.

Council has also verbally advised that:

- the SGS Economics and Planning background paper (as part of the preparation of Council's Botany Bay Planning Strategy 2009) concluded that by 2025, there will be a demand for 14ha of off-Airport site land to be used for 'Airport-related' purposes which will not be met by the current supply of such land; and
- there is sufficient B5, B7 and IN1-zoned land located elsewhere in the LGA to prevent any significant 'loss' of land available for Land Use Table uses.

# Environmental social economic impacts:

#### Environmental:

The planning proposal states there are no known critical habitats or threatened species populations or ecological communities, or their habitats affecting the subject area. Given the highly urbanised nature of the subject land, the Department considers the proposal is unlikely to significantly impact the environment in this regard.

The planning proposal states the subject area will remain zoned as employment lands and as such, will be unlikely to generate additional traffic movements. However, the Department is concerned an extension of the permissibility of uses such as 'freight transport facilities', 'general industries' and 'transport depots' could potentially result in an increase in traffic volume and movements, and associated adverse environmental impacts. It is recommended that further consideration is given to this matter in the planning proposal. Consultation with NSW Roads and Maritime Services is also recommended.

### Social:

The proposed additional uses are unlikely to generate any additional permanent population, and it is considered unlikely that there will be any significant social impacts, such as increased pressure on social/community infrastructure.

The Airport and its surroundings make a significant contribution to the NSW economy. Council has provided information to suggest that its financial contribution to the economy and level of employment generated is expected to grow considerably to 2033 and there will be a future demand for 14ha of land required for off-site Airport-related land uses. As discussed earlier in this report, the proposal has the potential to safeguard existing Airport-related uses and enable future growth to be accommodated.

# Assessment Process

Proposal type:

Precinct

Community Consultation

28 Days

Period:

Timeframe to make

12 months

Delegation :

**RPA** 

**Public Authority** 

Transport for NSW - Roads and Maritime Services

Consultation - 56(2)(d)

LEP:

**Sydney Ports Corporation** 

Sydney Water **Adjoining LGAs** 

Other

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.

Other - provide details below

If Other, provide reasons:

Identify any internal consultations, if required:

**Employment Lands (ELDP)** 

Metropolitan and Regional Strategy

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

If Yes, reasons:

### Documents

Document File Name	DocumentType Name	ls Public
Cover Letter.pdf	Proposal Covering Letter	Yes
Planning Proposal.pdf	Proposal	Yes
Council Report.pdf	Proposal	Yes
Letter to DP&E 2015 Oct 23 - Airport-Related Land Uses	Proposal Covering Letter	Yes
Planning Proposal - Request for amendment to clause.pdf		
Revised Planning Proposal 2015 Oct 23 - Airport Related Land Uses v3 (Oct 2015) (amended for Gateway	Proposal	Yes
Determination) (including attachments).pdf		
Revised Airport-Related Land Uses Planning Proposal 2015 Oct 23 - Summary of land uses.pdf	Proposal	Yes
Tab A to PTR - Summary Table Botany Airport related.docx	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
- 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
- 6.3 Site Specific Provisions
- 7.1 Implementation of A Plan for Growing Sydney

Additional Information:

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

- 1. Prior to exhibition, the planning proposal should be updated to:
- a) prepare and exhibit with the planning proposal, a plain English explanation of the intended effect of the proposed provisions; and
- b) provide a corrected aerial photo and site location map to clearly identify the subject area relating to this planning proposal.
- 2. Prior to exhibition, the planning proposal should be updated regarding A Plan for Growing Sydney and section 117 Direction 1.1 Business and Industrial Zones as follows:
- provide over-arching principles of how the planning proposal will:
- ensure the protection of existing Airport-related uses;
- prevent potentially incompatible uses from encroaching into the subject area and undermining the intent of the subject area's current zones; and
- ensure that only genuinely Airport-related land uses will be granted development
- provide further consideration of any likely traffic and transport-related impacts resulting

from the planning proposal, particularly from the introduction of 'freight transport facilities', general industries' and 'transport depots'.

- 3. Prior to public exhibition, Council is to remove the following uses from the planning proposal:
- 'Business premises', 'Function centres', 'Tourist and visitor accommodation' and 'Information and education facilities'.
- 4. Prior to public exhibition, Council is to remove the following subclauses from the planning proposal:
- 'Development is to be permitted for the purpose of a building or place used for the provision of any of the following services:
- a) services related to any of the following uses carried out at Sydney (Kingsford Smith) Airport:
- i. the assembly, storage or land transport of air freight,
- ii. the accommodation, or transportation by air or land, of air passengers or air crew,
- iii. the storage, operation, maintenance or repair of aircraft or aircraft components,
- iv. the administrative functions associated with the airport, such as airport management and security,
- v. the functions of government departments and authorities related to air passengers and air freight' and
- 'b) services provided for hotel or motel guests, including banking, dry cleaning, hairdressing and the like, that are located within the confines of the hotel or motel building.'
- 5. Council is to retain the current clauses 9A and 10A applying to Qantas-owned land, and propose additional clauses to address the intent of the planning proposal to apply to the expanded area.
- 6. The planning proposal is to be exhibited for 28 days.
- 7. The planning proposal is to be completed within 12 months of the Gateway Determination.
- 8. Consultation is required with the following public authorities:
- a. Transport for NSW Roads and Maritime Services;
- b. Marrickville Council
- c. Rockdale Council;
- d. City of Sydney Council; and
- e. Sydney Ports Corporation / NSW Ports.
- 9. A public hearing is not required to be held into the matter.

Supporting Reasons:

The planning proposal is supported (subject to the above conditions) given the importance of the Airport, as recognised by A Plan for Growing Sydney.

Signature:	J. Sakirs	
Printed Name:	Diane Sarkies Date:	14/12/15