

Bankstown LEP 2015 - amendment to clause 4.4A

Proposal Title : **Bankstown LEP 2015 - amendment to clause 4.4A**

Proposal Summary : **This planning proposal seeks to replace the word 'and' with 'or' in clause 4.4A(4)(c)(i) of Bankstown Local Environmental Plan 2015.**

PP Number : **PP_2016_BANKS_001_00** Dop File No : **15/10892**

Proposal Details

Date Planning Proposal Received : **26-Apr-2016** LGA covered : **Bankstown**

Region : **Metro(Parra)** RPA : **Bankstown City Council**

State Electorate : **BANKSTOWN** Section of the Act : **55 - Planning Proposal**

LEP Type : **Housekeeping**

Location Details

Street :

Suburb : City : Postcode :

Land Parcel : **The proposal applies to certain land in the Bankstown CBD commercial core to which clause 4.4A applies.**

DoP Planning Officer Contact Details

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RPA Contact Details

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DoP Project Manager Contact Details

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Land Release Data

Growth Centre : **N/A** Release Area Name : **N/A**

Regional / Sub Regional Strategy : **Metro West Central subregion** Consistent with Strategy : **Yes**

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MDP Number :	Date of Release :	
Area of Release (Ha) :	Type of Release (eg Residential / Employment land) :	Both
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 :

If No, comment :

Have there been meetings or communications with registered lobbyists? : **Yes**

If Yes, comment : **To the best of the regional teams knowledge there have been no meetings or communications with registered lobbyists with regard to this proposal.**

Supporting notes

Internal Supporting Notes :

External Supporting Notes :

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment : **The intended outcome of the planning proposal is to clarify the implementation of clause 4.4A(4)(c) of Bankstown Local Environmental Plan 2015.**

The statement of intended objectives does not provide any additional detail as to what clarification is intended with this planning proposal.

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

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

Comment : **Council has advised that the intended outcome will be achieved by replacing the word 'and' with the word 'or' in clause 4.4A(4)(c)(i) of Bankstown Local Environmental Plan 2015.**

This is not the only amendment required to the Bankstown Local Environmental Plan 2015 to achieve the intended outcome to provide greater flexibility under this clause.

To achieve this, Council may also need to omit clause 4.6(8)(cb) to enable clause 4.6 to be applied where this clause applies, as currently this provision is excluded from the exceptions to development standard provisions.

There is also potentially the need to address additional unintended impacts from the proposal, including providing more flexibility, but less certainty, as to when certain planning considerations should be addressed, and what outcome is intended from the clause.

This is discussed later in the report.

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

3.5 Development Near Licensed Aerodromes

6.3 Site Specific Provisions

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

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

d) Which SEPPs have the RPA identified?

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

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

If No, explain :

The planning proposal is consistent with all relevant Section 117 Directions, except for:

Section 117 Direction 3.5 - Development near licensed aerodromes.

The planning proposal has been identified as potentially inconsistent with Section 117 Direction 3.5 - Development near Licenced Aerodromes, as the proposal intends to alter a provision relating to land in the vicinity of a licenced aerodrome.

Clause 4(d) of the Direction requires Council to obtain permission from the Commonwealth Government if a planning proposal is to allow development that encroaches above the Obstacle Limitation Surface.

Specifically, the planning proposal proposes will enable certain development to exceed the maximum height of buildings on select sites across the Bankstown CBD to undetermined heights.

Bankstown Council has advised that it has consulted with Commonwealth Department of Infrastructure and Regional Development (CDIRD) on previous planning proposals. CDIRD advised it was unable to provide agreement at the rezoning stage, as all penetrations of the prescribed airspace is to be approved on a case by case basis, subject to safety assessments and advice from the Civil Aviation Safety Authority (CASA) and Airservices Australia. This consultation would occur at the development application stage.

It is recommended that Council consult with the Commonwealth Department of Infrastructure and Regional Development, and Bankstown Airport Limited, and re-address the consistency with this direction following exhibition. An appropriate condition is recommended for attachment to the Determination.

6.3 SITE SPECIFIC PROVISIONS

The direction applies as the planning proposal intends to amend a local provision which would apply to the subject sites across the Bankstown CBD and imposes development standards or requirements in addition to those already contained in the Bankstown Local Environmental Plan 2015.

This provision is currently in the Bankstown Local Environmental Plan 2015, and Council seeks to amend these existing provisions.

In these circumstances, it is considered that this inconsistency is of minor significance and is supported in this instance.

Recommended accordingly for the delegate's consideration.

Mapping Provided - s55(2)(d)

Is mapping provided? **No**

Comment : This is an instrument based amendment only. No changes are proposed to the LEP maps as a result of the planning proposal.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : Council has proposed to exhibit the planning proposal for 14 days as it is a low impact proposal.

It is recommended that the planning proposal be exhibited for 28 days, as the proposal is not merely the resolution of a drafting error, instead has the potential to impact on the environment and the adjoining land surrounding where the clause applies.

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 : There is adequate information to assess the planning proposal.

Proposal Assessment

Principal LEP:

Due Date : **March 2015**

Comments in relation to Principal LEP : Bankstown Local Environmental Plan 2015 was notified on 5 March 2015.

The planning proposal intends to amend existing provisions within the Standard Instrument Local Environmental Plan.

Assessment Criteria

Need for planning proposal :

ORIGINAL PLANNING PROPOSAL

This clause is a translation from clause 30A(4)(c) of the Bankstown Local Environmental Plan 2001, which was added by amendment No. 46 in March 2014, through the CBD planning proposal (PP_2012_BANKS_002_00). In this planning proposal, it was not intended to provide flexibility in building height in relation to the floor space ratio bonus. In particular, page 9 of that planning proposal, it was stated that the provision only applies if 'it does not increase the building height'.

The original planning proposal and amendment to the Bankstown Local Environmental Plan 2001, formed part of the Department's decision not to support the amendment to this clause as part of a section 73A amendment. Council has not provided additional justification or clarification as to the reasoning why the variation to the maximum height of building standards is now required in the clause.

On 14 August 2015, the Department advised Council that it could not amend this clause via a Section 73A amendment.

It is noted, that while the amendment would enable variation to the maximum height of buildings, and was considered to be a significant change from the meaning of the clause, thus it could not proceed as a Section 73A Amendment; the variation to the maximum

height of buildings would be limited by the maximum floor space ratio for the site.

NEED FOR THE PLANNING PROPOSAL

The Bankstown Local Environmental Plan 2015 came into effect on 5 March 2015.

As part of the Plan, a clause was translated from the provisions in the Bankstown Local Environmental Plan 2001 to enable a floor space ratio bonus to development that achieved higher environmental design outcomes in the Bankstown Central Business District (CBD).

The proposal states that in implementing the clause, the intent is to provide an appropriate level of flexibility to the building height, when the requirements of this clause are met.

This clause can only be applied on land which meets the criteria outlined in subclause (2):

(2) This clause applies to development if:

(a) the development is on land in Zone B4 Mixed Use, and

(b) the lot on which the development will be sited is at least 18 metres wide at the front building line, and

(c) the lot on which the development will be sited has a maximum floor space ratio of 3:1 as shown on the Floor Space Ratio Map, and

(d) the development includes the erection of one or more buildings for the purposes of commercial premises or a mixed use development.

If the subject site and proposed development meets the criteria in subclause (2), under clause (3), the consent authority may grant development consent to development to which this clause applies if the gross floor area of the buildings on the development site exceeds the gross floor area otherwise permitted by this Plan by no more than 0.5:1, if the consent authority is satisfied that the considerations in subclause (4) are met.

Subclause (4) requires that:

(4) Before granting development consent to development under this clause, the consent authority must be satisfied that:

(a) the part of any building used for the purposes of commercial premises (whether or not for the purposes of mixed use development) complies with the following standards:

(i) the energy target is a maximum 135 kg/m² per year,

(ii) the water target is a maximum 0.47 kL/m² per year for business premises and office premises and a maximum 1.68 kL/m² per year for shops, restaurants and function centres, and

(b) the part of any building that is a dwelling used for the purposes of mixed use development complies with the following standards:

(i) the energy target is a minimum 10-point increase in the BASIX score compared to current requirements,

(ii) the water target is a minimum BASIX 60, and

(c) any increase in the gross floor area referred to in subclause (3):

(i) does not result in the building exceeding the maximum building height shown for the land on the Height of Buildings Map, and

(ii) does not adversely impact on adjoining and neighbouring land in terms of visual bulk and overshadowing, and

(d) a report prepared by a qualified consultant to the satisfaction of the Council verifies that, if all of the commitments relating to the building design (namely the built form and layout) listed in the report are fulfilled, the development will comply with both the energy and water targets.

The planning proposal cites that when the Plan was finalised, subclause (4)(c)(i), was made with an 'and' instead of an 'or'. With the inclusion of 'and' instead of 'or', it removed flexibility of a development to exceed the maximum height of building as identified on the height of building map.

In some circumstances, a development may not be able to utilise the bonus 0.5:1 gross floor area, without exceeding the maximum height of buildings identified on the subject land. Council would like the potential to exceed the maximum height of buildings, where this clause applies if it can also be demonstrated that the development "does not adversely impact on the adjoining and neighbouring land in terms of visual bulk and overshadowing".

As noted previously, this clause has been translated from Clause 30A of Bankstown Local Environmental Plan 2001, which also includes 'and' instead of 'or'.

'AND' INSTEAD OF 'OR'

There is the potential risk that the consideration of subclause 4.4A(4)(c)(ii) which is to ensure the development 'does not impact on adjoining and neighbouring land in terms of visual bulk and overshadowing' would not occur if the development does not result in a building exceeding the maximum height of building height shown for the land on the Height of Buildings maps.

Consideration of the impact on adjoining and neighbouring land in terms of visual bulk and overshadowing, should be addressed in all development applications, and by changing 'and' to 'or' in clause 4.4A (4)(c)(i), it could be interpreted that if the proposal does not exceed the maximum height of buildings standards applying to the land, consideration of bulk and overshadowing is not required.

It should be clarified in the planning proposal, that the consideration of bulk and overshadowing will occur in all development applications, regardless of whether it exceeds the maximum height of buildings standards or not.

CLAUSE 4.6 - EXCEPTIONS TO DEVELOPMENT STANDARDS

While noting Council's intentions to enable variation to the maximum height of buildings to achieve the bonus floor space ratio, the development standards in the clause can not be varied, as they are currently exempt from variation under clause 4.6 - Exceptions to development standards, under subclause (8)(cb) -

(8) This clause does not allow development consent to be granted for development that would contravene any of the following:
(cb) clause 4.4A.

The intent of this exclusion may be intended to relate to the bonus floor space ratio as the development standard instead of the maximum height of building, however, currently variations to both standards are exempt under this clause. As such, clause 4.6 may need to be varied to omit clause 4.4A from exemptions to the exception to development standards provisions.

This matter will need to be addressed in the drafting process.

FLOOR SPACE RATIO AND GROSS FLOOR AREA

Upon closer review, it appears that the clause itself is referring to two different floor space definitions. Under subclause (2), the clause applies to "the lot on which the development will be sited has a maximum floor space ratio of 3:1 as shown on the Floor Space Ratio Map".

However, subclause (3) enables the consent authority to vary the gross floor area standards

by 0.5:1, instead of the maximum floor space ratio - " the consent authority may grant development consent to development to which this clause applies if the gross floor area of the buildings on the development site exceeds the gross floor area otherwise permitted by this Plan by no more than 0.5:1, if the consent authority is satisfied that the considerations in subclause (4) are met."

It may need to be further clarified if this clause is intended to enable a bonus floor space ratio of 0.5:1, enabling a floor space ratio of 3.5:1, or if it is intended to enable the maximum gross floor area to be multiplied by 0.5:1.

The definition are as follows:

The floor space ratio of buildings on a site is "the ratio of the gross floor area of all buildings within the site to the site area".

gross floor area means "the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor..."

It is recommended that the planning proposal be amended to clarify the intended outcome of this provision, and clarify the clause is intended to provide a bonus 0.5:1 floor space ratio, or enable bonus gross floor area by 0.5:1.

NEED FOR THE AMENDMENT

An amendment to the Bankstown Local Environmental Plan 2015 is the best means of achieving Council's intended outcome of enabling the clause to vary the maximum height of buildings as well as the maximum floor space ratio.

It is recommended that prior to exhibition, the planning proposal be amended to clarify what is intended to be achieved as with the planning proposal, as identified above, the amendment to the Plan may require additional drafting changes than what has been identified in the explanation of provisions.

Consistency with strategic planning framework :

A Plan for Growing Sydney -

The planning proposal is considered to be consistent with A Plan for Growing Sydney. In particular, the proposal is consistent with:

- * Direction 1.7: Grow Strategic Centres - providing more jobs closer to home. The proposal continues to encourage mixed use development in the Bankstown CBD, providing opportunities for additional jobs and houses that meet good design and environmental outcomes; and
- * Direction 2.1 - Accelerate housing supply across Sydney. The planning proposal provides additional opportunity for mixed use development in the Bankstown CBD.

COUNCIL'S LOCAL STRATEGIC PLANS

The planning proposal is consistent with the Bankstown Local Area Plan. In particular, the proposal is consistent with Action L2, which aims to achieve well designed mixed use development to make the Bankstown CBD a model of sustainable renewal and redevelopment.

Environmental social economic impacts :

The planning proposal will not adversely affect any critical habitats or threatened species, populations or ecological communities. The proposal applies to the Bankstown CBD.

The planning proposal is unlikely to have environmental impacts, as the clause is intended to enable the development of sustainable mixed use developments.

Social

The planning proposal has the potential to result in overshadowing with increased bulk and heights. This matter should be assessed as part of any development application.

The planning proposal has the potential to enable mixed use development built around a transport network that does not impact on the social and economic functions of the Bankstown CBD.

Assessment Process

Proposal type : **Routine** Community Consultation Period : **28 Days**

Timeframe to make LEP : **9 months** Delegation : **DDG**

Public Authority Consultation - 56(2)(d) : **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. :

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
Council's covering letter - and,or proposal.pdf	Proposal Covering Letter	Yes
planning proposal - clause 4.4A.pdf	Proposal	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**
3.5 Development Near Licensed Aerodromes
6.3 Site Specific Provisions

Additional Information : **DELEGATION OF THE COMMISSION'S PLAN MAKING FUNCTIONS**
Council has not requested delegation of the Commission's plan making functions. As there are unresolved matters in the planning proposal, it is recommended that delegation of these functions not be issued with the planning proposal.

INCONSISTENCY WITH SECTION 117 DIRECTIONS

It is recommended that the Secretary's delegate agree that the inconsistency with Section 117 Direction 6.3 - Site Specific Provisions, is of minor significance in this instance.

RECOMMENDATION

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

1. Prior to public exhibition, the planning proposal is to be amended to:
 - a. amend the explanation of provisions to clearly explain what is intended in the planning proposal i.e to identify a general statement of intent to provide greater flexibility in the application of height and floor space ratio standards, instead of identifying a textual amendment to clause 4.4A;
 - b. amend the explanation of provisions to identify that additional drafting changes may occur to achieve the intended planning outcome.
 2. Following agency consultation and public exhibition, address the consistency of the planning proposal with Section 117 Direction 3.5 – Development near Licensed aerodromes.
 3. Community consultation is required under sections 56(2)(c) and 57 of the Act as follows:
 - (a) the planning proposal must be made publicly available for a minimum of 28 days; and
 - (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of A Guide to Preparing LEPs (Department of Planning and Infrastructure 2013).
 4. Consultation is required with the following public authorities under section 56(2)(d) of the Act and/or to comply with the requirements of relevant S117 Directions:
 - Commonwealth Department of Infrastructure and Regional Development, and
 - Bankstown Airport Limited
- Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.
5. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
 6. The timeframe for completing the LEP is to be 9 months from the week following the date of the Gateway determination.

Supporting Reasons :

This planning proposal will provide flexibility in the application of height and FSR standards in Bankstown CBD to enable development of more sustainable mixed use developments.

Signature:



Printed Name:

CUAN LAEREN

Date:

9/5/16

