



PLANNING PROPOSAL – CLARIFICATION OF CLAUSE 4.4A(4)(c) OF BANKSTOWN LEP 2015

PART 1 – Objectives or Intended Outcomes

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

PART 2 – Explanation of Provisions

The intended outcome of this planning proposal will be achieved by replacing the word 'and' with 'or' in clause 4.4A(4)(c)(i) of Bankstown Local Environmental Plan 2015.

PART 3 – Justification

Section A–Need for the planning proposal

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

Bankstown Local Environment Plan 2015 came into effect on 5 March 2015. This replaced the former Bankstown Local Environment Plan 2001.

Since this time, Council officers have been checking to ensure the plan is operating as intended and is delivering the outcomes endorsed by Council. This review process has identified a certain issue with the implementation of clause 4.4A.

In summary, clause 4.4A utilises a floor space bonus to encourage development that achieves higher environmental design outcomes.

This clause applies to certain land in the Bankstown CBD commercial core which meets the following criteria:

- *the development is on land in Zone B4 Mixed Use; and*
- *the lot on which the development will be sited is at least 18 metres wide at the front building line; and*
- *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*
- *the development includes the erection of one or more buildings for the purposes of commercial premises or a mixed use development.*

The objectives of this clause are:

- *to encourage building design (namely the built form and layout) of large-scale commercial development and mixed use development in Zone B4 Mixed Use that minimises the consumption of energy and water;*



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- *to provide increased amenity to occupants over the long term;*
- *to ensure the increase in gross floor area is compatible with surrounding buildings in terms of bulk, height and amenity.*

To achieve the objectives, this clause utilises a floor space bonus to encourage the building design of large-scale commercial development and mixed use development to comply with certain energy and water targets, provided the increase in gross floor area is compatible with surrounding buildings in terms of bulk, height and amenity.

In implementing this clause, the intent is to provide an appropriate degree of flexibility to the building height in cases where development can demonstrate the objectives of the clause are met. In particular circumstances, an appropriate degree of flexibility may include the application of clause 4.6 of Bankstown Local Environment Plan 2015 to achieve better built form outcomes.

At present however, clause 4.4A(4)(c)(i) is written in such a way that it does not allow flexibility in the application of clause 4.6 in relation to building height.

At the Ordinary Meeting of 23 June 2015, Council resolved to prepare an LEP Amendment to make a minor grammatical correction to clause 4.4A(4)(c)(i). This amendment is proposing to allow flexibility in the application of clause 4.6 in relation to building height, and involves replacing the word 'and' with 'or' as follows:

- 4.4A(4)(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~~ or*
 - (ii) *does not adversely impact on adjoining and neighbouring land in terms of visual bulk and overshadowing,*

This amendment is justified as it clarifies the implementation of clause 4.4A(4)(c) of Bankstown Local Environmental Plan 2015 as intended by Council. This amendment is also consistent with the objectives of clause 4.4A as it continues to ensure the increase in gross floor area is compatible with surrounding buildings in terms of bulk, height and amenity.

2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

According to the Department of Planning & Environment's letter dated 14 August 2015, the planning proposal is the best means of achieving the intended outcome.



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Section B–Relationship to strategic planning framework

3. Is the planning proposal consistent with the objectives and actions of the applicable regional or subregional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

The planning proposal is consistent with the Metropolitan Plan 'A Plan for Growing Sydney', namely:

- Direction 1.7: Grow strategic centres—providing more jobs closer to home. The planning proposal continues to encourage mixed use development and shop top housing in the Bankstown CBD (which is a nominated strategic centre) to achieve the employment target for the City of Bankstown.
- Direction 2.1: Accelerate housing supply across Sydney. The planning proposal continues to encourage mixed use development and shop top housing in the Bankstown CBD (which is a nominated strategic centre) to achieve the dwelling target for the City of Bankstown.

4. Is the planning proposal consistent with a council's local strategy or other local strategic plan?

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

5. Is the planning proposal consistent with applicable State Environmental Planning Policies?

The planning proposal is consistent with applicable state environmental planning policies as shown in Attachment A.

6. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

The planning proposal is consistent with applicable Ministerial (117) directions as shown in Attachment B.

However, this planning proposal is likely to be inconsistent with Direction 3.5—Development near Licensed Aerodromes. Council's experience with the Commonwealth Department of Infrastructure & Regional Development and Bankstown Airport Limited on previous planning proposals indicates this planning proposal is likely to be inconsistent with this direction, specifically clause 4(d).



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Clause 4(d) requires Council to obtain permission from the Commonwealth Government (or delegate) if a planning proposal is to allow (as permissible with consent) development that encroaches above the Obstacle Limitation Surface.

The Department of Infrastructure & Regional Development and Bankstown Airport Limited have confirmed in writing that it cannot give permission at the rezoning stage.

The reason is the Commonwealth Airports Act 1996 and the Airports (Protection of Airspace) Regulations 1996 require all penetrations of the prescribed airspace to be approved on a case-by-case basis, subject to safety assessments and advice from the Civil Aviation Safety Authority and Airservices Australia. This would occur at the development application stage.

Therefore, the Department of Infrastructure & Regional Development does not support, and the legislation does not allow blanket shielding at the rezoning stage.

Council officers have met with the Department of Planning & Environment to discuss this inconsistency between the Commonwealth and State legislation. The Department of Planning & Environment has advised Council to proceed with planning proposals despite the inconsistency with this direction.



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Section C–Environmental, social and economic impact

- 7. 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?**

The planning proposal will not adversely affect any critical habitat or threatened species, populations or ecological communities, or their habitats.

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

The proposed amendment to clause 4.4A(4)(c)(i) will allow flexibility in the application of clause 4.6 in relation to building height. Clause 4.6 contains appropriate criteria to manage the environmental effects of any development resulting from this planning proposal.

- 9. Has the planning proposal adequately addressed any social and economic effects?**

The Metropolitan Plan 'A Plan for Growing Sydney' nominates the Bankstown CBD as a strategic centre. Strategic centres are areas of intense, mixed economic and social activity that are built around the transport network. The planning proposal is consistent with this direction, and does not impact on the social or economic functions of the Bankstown CBD.

Section D–State and Commonwealth interests?

- 10. Is there adequate public infrastructure for the planning proposal?**

There is adequate public infrastructure for the planning proposal as outlined in the Bankstown CBD Local Area Plan.

- 11. What are the views of State and Commonwealth public authorities consulted in accordance with this gateway determination?**

An update to this section of the planning proposal will occur following consultation with State and Commonwealth public authorities following the gateway determination.



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PART 4 – Mapping

The planning proposal does not involve any mapping changes.

PART 5 – Community Consultation

The planning proposal is considered to be a 'low impact' planning proposal. The 14 day exhibition period for a 'low impact' planning proposal would comprise:

- Public notices in the local newspaper that circulates in the area affected by the planning proposal.
- Displays at the Council administration building and corporate website.

As the proposed amendment to clause 4.4A(4)(c)(i) involves a minor grammatical correction, it is not proposed to send written notification to affected and adjoining property owners, or to public authorities.

PART 6 – Project Timeline

Project timeline	Dates
Report to Council to commence gateway process	June 2015
Gateway Determination	October 2015
Exhibition	November 2015
Report to Council	December 2015
Submit planning proposal to the Department	December 2015



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ATTACHMENT A–State Environmental Planning Policies

SEPPs (as at August 2015)		Applicable	Consistent
1	Development Standards	No	N/A
14	Coastal Wetlands	No	N/A
15	Rural Land Sharing Communities	No	N/A
19	Bushland in Urban Areas	Yes	Yes
21	Caravan Parks	Yes	Yes
26	Littoral Rainforests	No	N/A
29	Western Sydney Recreation Area	No	N/A
30	Intensive Agriculture	No	N/A
32	Urban Consolidation (Redevelopment of Urban Land)	Yes	Yes
33	Hazardous & Offensive Development	Yes	Yes
36	Manufactured Home Estates	No	N/A
39	Spit Island Bird Habitat	No	N/A
44	Koala Habitat Protection	No	N/A
47	Moore Park Showground	No	N/A
50	Canal Estate Development	Yes	Yes
52	Farm Dams & Other Works in Land & Water Management Plan Areas	No	N/A
55	Remediation of Land	Yes	Yes
59	Central Western Sydney Regional Open Space & Residential	No	N/A
62	Sustainable Aquaculture	Yes	Yes
64	Advertising & Signage	Yes	Yes
65	Design Quality of Residential Flat Development	Yes	Yes
70	Affordable Housing (Revised Schemes)	No	N/A
71	Coastal Protection	No	N/A
	(Affordable Rental Housing) 2009	Yes	Yes



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SEPPs (as at August 2015)		Applicable	Consistent
	(Building Sustainability Index: BASIX) 2004	Yes	Yes
	(Exempt & Complying Development Codes) 2008	Yes	Yes
	(Housing for Seniors or People with a Disability) 2004	Yes	Yes
	(Infrastructure) 2007	Yes	Yes
	(Kosciuszko National Park–Alpine Resorts) 2007	No	N/A
	(Kurnell Peninsula) 1989	No	N/A
	(Major Development) 2005	Yes	Yes
	(Mining, Petroleum Production & Extractive Industries) 2007	Yes	Yes
	(Miscellaneous Consent Provisions) 2007	Yes	Yes
	(Penrith Lakes Scheme) 1989	No	N/A
	(Rural Lands) 2008	Yes	Yes
	(SEPP 53 Transitional Provisions) 2011	No	N/A
	(State & Regional Development) 2011	Yes	Yes
	(Sydney Drinking Water Catchment) 2011	No	N/A
	(Sydney Region Growth Centres) 2006	No	N/A
	(Three Ports) 2013	No	N/A
	(Urban Renewal) 2010	No	N/A
	(Western Sydney Employment Area) 2009	No	N/A
	(Western Sydney Parklands) 2009	No	N/A
	Greater Metropolitan REP No 2–Georges River Catchment	Yes	Yes



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ATTACHMENT B–Ministerial (117) directions

Direction & Issue Date		Applicable	Consistent
Employment and Resources			
1.1	Business and Industrial Zones [01/07/09]	Yes	Yes
1.2	Rural Zones [01/07/09]	No	N/A
1.3	Mining, Petroleum Production & Extractive Industries [01/07/09]	No	N/A
1.4	Oyster Aquaculture [01/07/09]	No	N/A
1.5	Rural Lands [01/07/09]	No	N/A
Environment and Heritage			
2.1	Environment Protection Zones [01/07/09]	Yes	Yes
2.2	Coastal Protection [01/07/09]	No	N/A
2.3	Heritage Conservation [01/07/09]	Yes	Yes
2.4	Recreation Vehicle Areas [01/07/09]	Yes	Yes
Housing, Infrastructure and Urban Development			
3.1	Residential Zones [01/07/09]	Yes	Yes
3.2	Caravan Parks and Manufactured Home Estates [01/07/09]	Yes	Yes
3.3	Home Occupations [01/07/09]	Yes	Yes
3.4	Integrating Land Use and Transport [01/07/09]	Yes	Yes
3.5	Development Near Licensed Aerodromes [01/07/09]	Yes	No
3.6	Shooting Ranges [16/02/11]	No	N/A
Hazard and Risk			
4.1	Acid Sulfate Soils [01/07/09]	No	N/A
4.2	Mine Subsidence and Unstable Land [01/07/09]	No	N/A
4.3	Flood Prone Land [01/07/09]	Yes	Yes
4.4	Planning for Bushfire Protection [01/07/09]	No	N/A
Regional Planning			
5.1	Implementation of Regional Strategies [01/07/09]	No	N/A
5.2	Sydney Drinking Water Catchments [03/03/11]	No	N/A
5.3	Farmland of State & Regional Significance on the NSW Far North Coast [01/07/09]	No	N/A
5.4	Commercial & Retail Development along the Pacific Hwy, Nth Coast [29/11/09]	No	N/A
5.5	Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA) (Revoked)	No	N/A
5.6	Sydney to Canberra Corridor (Revoked)	No	N/A
5.7	Central Coast (Revoked)	No	N/A
5.8	Second Sydney Airport: Badgerys Creek [01/07/09]	No	N/A
5.9	North West Rail Link Corridor Strategy [30/09/13]	No	N/A
Local Plan Making			
6.1	Approval and Referral Requirements [01/07/09]	Yes	Yes
6.2	Reserving Land for Public Purposes [01/07/09]	Yes	Yes
6.3	Site Specific Provisions [01/07/09]	Yes	Yes
Metropolitan Planning			
7.1	Implementation of A Plan for Growing Sydney [14/01/15]	Yes	Yes



Mr Matthew Stewart
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BANKSTOWN CITY COUNCIL			
CLASS.	☐ ACK		
DOC NO			
KEYWORD			
REGISTERED BY	19 AUG 2015		
UNIT	21/10/15	1/1/15	INFO
CPE	KR	✓	

15/10762

Attention: Mr Kyou Won Rhee, Strategic Planner

Dear Mr Stewart

Section 73A Submission – Bankstown Local Environmental Plan 2015

Thank you for Council's letter of 29 June 2015 requesting that the Department make an amendment to clause 4.4A(4)(c) of *Bankstown Local Environmental Plan 2015* (the Plan), by replacing the word 'and' with 'or', in accordance with the amendment provisions of Section 73A of the *Environmental Planning and Assessment Act 1979* (the Act).

I have carefully considered the request and I am not able to support the application of Section 73A of the Act in this instance. In my opinion replacement of the word 'and' with 'or' significantly changes the meaning of the clause and, accordingly, does not fall within the parameters intended by Section 73A.

In forming this opinion I have taken into consideration that the current wording is not an 'obvious error', as provided for by Section 73A(1)(a). My understanding is that the provision was directly translated from clause 30A(4)(c) of *Bankstown Local Environmental Plan 2001*, which was introduced by Amendment No 46 to the LEP in March 2014, through the CBD Planning Proposal.

I am also of the opinion that the proposed change is not of a consequential, transitional, machinery or other minor nature, as provided by Section 73A(1)(b) of the Act.

Similarly, as the proposed changes may result in consent for development where it could not previously be granted, I am unable to form the view that this would not have any significant adverse impact on the environment or adjoining land in any circumstances, as provided by Section 73A(1)(c) of the Act.

Consequently, if you wish to pursue this amendment, Council will be required to consider the preparation and adoption of a planning proposal under the provisions of Section 55 of the Act.

Should you wish to discuss my letter, please contact Mr Terry Doran, Team Leader, Metropolitan (Parramatta), at the Department on (02) 9860 1149.

Yours sincerely


(9-8-15)

Simon Manoski
A/General Manager, Metropolitan
Planning Services