

5.2 UPDATE ON PLANNING PROPOSAL NO. 2/2013 AND NEW PLANNING PROPOSAL NO. 1/2015 TO DELETE RESIDENTIAL BONUS CLAUSES IN BOTANY BAY LEP 2013

File No: S15/65

Attachments: Background
Existing FSR and Height Provisions in the BBLEP2013
Planning Proposal - Alteration of Gateway Determination
December 2014
Planning Proposal (Draft VI)
Analysis of Sites - Case Studies and Maps

Responsible Officer: Heather Warton - Director of City Planning & Environment

Date of Preparation: 17 February 2015

EXECUTIVE SUMMARY

This report provides an update on the current Planning Proposal (No. 2/2013) to add urban design clauses to the bonus clause provisions of the Botany Bay Local Environmental Plan 2013 (BBLEP 2013) and recommends that Council prepare a separate Planning Proposal (1/2015) to seek the deletion of the bonus clauses.

Background

Council at its Meeting held 11 December 2013 resolved to prepare a Planning Proposal (No. 2/2013) in accordance with the Environmental Planning & Assessment Act (EP&A Act) 1979 and its Regulation to amend the Botany Bay Local Environmental Plan 2013 to delete the 'bonus' clause provisions in the LEP, as follows:

- Delete Sub-clause (2A) in Clause 4.3 – Height of Buildings relating to a 22 metre height for sites zoned R3 – Medium Density Residential and R4 – High Density Residential; and
- Delete Clause 4.4B as it relates to exceptions to FSR in Zone R3 – Medium Density Residential and R4 – High Density Residential.

The resolution has come about as a result of the impacts resulting from multi unit residential developments in the R3 and R4 Zones where the bonus provisions have applied.

The progress of this Planning Proposal and its various iterations from December 2013 to December 2014 is outlined in **Attachment A**.

Attachment B contains a list of the current applicable FSR and height clauses from the Botany Bay Local Environmental Plan 2013.

Issue***Status of Design Clauses Planning Proposal***

An amended Gateway approval was issued by the Department on 19 December 2014, see **Attachment C**. The outcome of the amended Gateway approval is that the Planning Proposal is now renamed to be *Amendments with regard to Residential Bonus Clauses (Clauses 4.3(2A) and 4.4B of the Botany Bay Local Environmental Plan 2013)*; as well as the following changes (in red and italics) to the BBLEP 2013:

- A new Clause 4.4C which states:

- (1) *This clause applies to land to which clause 4.3(2A) and clause 4.4(B) applies.*
- (2) *Development consent must not be granted to development on land to which this clause applies, unless the consent authority is satisfied that:*
 - (a) *The building form and scale at property boundaries with land zoned R2 is reduced in height to prevent overlooking and overshadowing;*
 - (b) *The building form and scale at the street elevation is reduced in height so as to maintain a low density streetscape elevation;*
 - (b) *The building form provides adequate landscape setbacks at side, rear and front boundaries;*
 - (c) *There is a transition in building scale achieved at property boundaries, and zone interface;*
 - (d) *The development will be compatible with the character of the area in terms of bulk and scale; and*
 - (e) *The objectives of clause 4.3 and 4.4B have been met.*

- Amend Clause 4.6 to read:

This clause does not allow development consent to be granted for development that would contravene any of the following:

- (a) a development standard for complying development,
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which [*State Environmental Planning Policy \(Building Sustainability Index: BASIX\) 2004*](#) applies or for the land on which such a building is situated,
- (c) clause 5.4.
- (d) *clause 4.3(2A)*
- (e) *clause 4.4B(3)*

In addition the timeframe for completing the LEP is now June 2015.

Council had resolved that in subclause (2A) to **Clause 4.3 Height of Buildings** that a reference be made to limiting development to six storeys only – ie that the subclause (2A) be amended to read as follows:

*(2A) Despite subclause (2), if an area of land in Zone R3 Medium Density Residential or Zone R4 High Density Residential exceeds 2,000 square metres, the height of a building on that land may exceed the maximum height shown for the land on the [Height of Buildings Map](#) but must not exceed 22 metres **and must be a maximum of six (6) storeys.***

However, the Department did not agree to this, as it was seen to be anomalous as more than 6 storeys can be built in 22 metres. Council's officers had explained to the Department officers the reasoning behind the six storeys, that the 22 metre limit was based on buildings having ground level commercial uses (with a higher floor to ceiling height). However, this was not accepted given that several developments have already been approved with seven storeys (22 metres) that are wholly residential.

It is noted that as part of the Planning Proposal, there will be no provision for the use of clause 4.6 to vary the height of 22 metres. Even for a minor non-compliance, the consent authority will not be able to approve a development that exceeds 22 metres. The use of clause 4.6 to vary the FSR will still be possible, as the non-application of Clause 4.6 to Clause 4.4(2A) which permits a FSR of up to 1.5:1 (for sites over 2000m² and zoned R3/R4) was never a part of the proposed Planning Proposal.

Council resolved on 5 November 2014 that following the decision to give Gateway approval, the Planning Proposal could be placed on exhibition. This has now occurred, and the Planning Proposal is on community consultation from 10 February 2015 to 13 March 2015.

New Planning Proposal

Whilst the proposed changes to the BBLEP 2013 currently on public exhibition will reduce the impact of the bonus provisions, the preferred position is to remove the bonus provision altogether. This is because the provisions may result in a poor planning outcome, due to the excessively generous nature of the bonus, particularly with regard to height, regardless of the suitability of the site for such higher density.

The bonus in height allows for development to go from 10/14 metres to 22 metres; and from FSR 0.85:1 (depending on locality) to 1.5/1.65:1. The impact of this was evident in the DA for 15-19 Edgehill Avenue, that was determined by the JRPP on 20 November 2014. Such was the JRPP's concern over the provisions that the Chairman of the Panel wrote to the Department expressing his concerns.

The urban design clauses will aid in the assessment of applications, and will enable the consent authority to better refuse unsuitable development. Notwithstanding that there are controls in the DCP, having the controls on the LEP will reinforce that the height and FSR provisions as a result of the bonus are not "as right" and that the other tests need to be met.

However, the urban design clauses do not go far enough and therefore this report has been prepared so that a new planning proposal can be referred to the Department seeking the deletion of Clauses 4.3(2A) and 4.4B of the BBLEP 2013.

New Planning Proposal – deletion of Bonus Clauses

A copy of draft Planning Proposal No. 1/2015 is attached as **Attachment D**.

The Planning Proposal seeks to delete Sub-clause (2A) in Clause 4.3 – Height of Buildings relating to a 22 metre height for sites zoned R3 Medium Density Residential and R4 High Density Residential; and Delete Clause 4.4B as it relates to exceptions to FSR in the Zone R3 and R4.

The intent of the Planning Proposal is not to stop medium to high density residential development on land zoned R3 and R4, nor is the intent to limit the capacity of the Botany Bay LEP 2013 to deliver additional residential development.

The intent in requesting the deletion of the bonus clause relating to 22 metres is to allow it to consider a merit based objection to the Height of Building (HOB) Map standard. If a height is sought over that height on the HOB LEP Map, an exception to the development standard will be required under Clause 4.6 of the Botany Bay LEP 2013. This provides Council with flexibility based on the particular site characteristics. The intent behind the removal of the bonus FSR of 1.65:1 is to reduce overdevelopment of the sites. The maximum FSR permitted on sites over 2000m² zoned R3 or R4 will still be a maximum of 1.5:1 (permitted under Clause 4.4(2A)) and this can be varied on a case by case analysis through a Clause 4.6 objection.

The Planning Proposal does not seek to reduce the amount of land zoned for medium to high density residential development. The planning proposal will not have any impact on the supply of residential land or affordability.

To support this Planning Proposal, an analysis has been undertaken of all lands that are zones R3 and R4, to identify that sites that would be affected, should the bonus clause provisions be deleted. This identified:

- Sites with area over 2000 square metres; and
- Sites that could be consolidated to be more than 2000 square metres:
 - Whether the site has already been developed or not for residential units;
 - Whether if developed already, if the site is strata titled, being sites that would be unlikely to use the bonus clauses; and
- Sites that have a DA in that is already under assessment; and
- Sites where there is a development that is subject to an appeal in the Land and Environment Court.

This analysis is shown in **Attachment E**. The analysis illustrates the advantages and disadvantages of allowing development on each site to utilise the bonus provisions of Height 22m and FSR 1.65:1. Whilst many of the remaining sites are likely to undergo redevelopment or regeneration in the future, it is advised that an approach involving Multi-Unit Housing and smaller scale RFB designs would be more appropriate for many of the sites, whilst still achieving the desired outcomes outlined in the BBDCP2013 and BBLEP2013.

In conclusion there are no new sites identified by the analysis that would be suitable for the additional bonuses under the BBLEP 2013. Sites would benefit from developments which are more sensitive to their surroundings and are in keeping with the controls outlined in the BBLEP2013. This analysis supports the deletion of the two bonus clauses.

Conclusion

- Planning Proposal (No. 2/2013) to add urban design clauses to the bonus clause provisions of the Botany Bay Local Environmental Plan 2013 (BBLEP 2013) is on exhibition until 13 March 2015. A report will be referred to the April Development Committee on the results of the community consultation.
- It is recommended that Council resolve to prepare a new Planning Proposal to seek the deletion of Sub-clause (2A) in Clause 4.3 – Height of Buildings relating to a 22 metre height for sites zoned R3 Medium Density Residential and R4 High Density Residential; and Clause 4.4B as it relates to exceptions to FSR in the Zone R3 and R4.
- Council may still consider a merit based objection to the Height of Building (HOB) Map standard. If a height is sought over that height on the HOB LEP Map, an exception to the development standard will be required under Clause 4.6 of the Botany Bay LEP 2013.
- The intent behind the removal of the bonus FSR of 1.65:1 is to prevent overdevelopment of the sites. The maximum FSR permitted on sites over 2000m² zoned R3 or R4 will still be a maximum of 1.5:1 (permitted under Clause 4.4(2A)) and this can be varied on a case by case analysis through a Clause 4.6 objection.
- This means that the height and bulk of development can be assessed on a merit based site by site analysis which will result in development more in keeping with the scale of adjoining development and the proper treatment of the development where it is adjacent to land zoned R2 Low Density Residential. Council can take into account the impact of such development, rather than the bonus height and FSR being taken as a “right” by the provisions of the LEP. Council can consider the pre-existing conditions of a site in assessing the merits of a height of FSR increase.

RECOMMENDATION

THAT:

1. The Council note the update on Planning Proposal No. 2/2013 and that a report be submitted to the April Development Committee Meeting at the conclusion of the exhibition;

2. Council resolve to prepare a Planning Proposal (as outlined in **Attachment D**) in accordance with Section 55 of the Environmental Planning & Assessment Act 1979 to seek the deletion of Clauses 4.3(2A) and 4.4B of the BBLEP 2013;
3. The Planning Proposal be referred to the Department of Planning & Environment for a Gateway Determination;
4. Council request an Authorisation from the Department to exercise delegation; and
5. If the Gateway Determination is positive, that the Planning Proposal be placed on public exhibition.

**10.4 MINUTES OF THE POLICIES AND PRIORITIES
COMMITTEE MEETING HELD ON 25 FEBRUARY 2015**

File No: S15/52

On the motion of Councillor Troy, seconded Councillor Glinatsis

THAT: The Minutes of the Policies and Priorities Committee Meeting held on 25 February 2015 be received and the recommendations contained therein be approved and adopted.