

Botany Bay LEP 2013 - Deletion of Clauses 4.3(2A) and 4.4B

Proposal Title : **Botany Bay LEP 2013 - Deletion of Clauses 4.3(2A) and 4.4B**

Proposal Summary : **The planning proposal seeks to delete Clauses 4.3(2A) and 4.4B from the Botany Bay LEP 2013 (the LEP).**

PP Number : **PP_2015_BOTAN_001_00**

Dop File No : **15/05645**

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions : **2.3 Heritage Conservation
3.1 Residential Zones
3.4 Integrating Land Use and Transport
3.5 Development Near Licensed Aerodromes
4.1 Acid Sulfate Soils
7.1 Implementation of A Plan for Growing Sydney**

Additional Information : **It is recommended the planning proposal proceeds subject to the following:**

1. The plan making function is to be retained by the Department, given the the planning proposal is controversial and of more than local significance.
2. Council is to revise the planning proposal submission to provide justification for the inconsistency with S117 Direction 3.1(5)(b) for exhibition purposes.
3. Council includes in the exhibition materials a review of the implications of the LEP having 1.5:1 FSR, but no extra height controls for sites over 2,000 sqm and likely subsequent built form.
4. Council is to exhibit its site analysis to give the community an opportunity to express interest in any sites which could be developed using the bonus provisions.
5. Council is required to consult all land owners potentially affected by the deletion of the bonus provisions - ie all owners of R3 and R4 land.
6. Council undertakes pre-exhibition consultation with the Department of Housing.
7. Council provides an estimate of the number of dwellings theoretically foregone if the bonus provisions are removed.
8. The planning proposal is to be exhibited for 28 days.
9. The planning proposal is to be completed within 12 months.
10. The planning proposal is considered to be consistent with all relevant S117 Directions, except for 3.1 Residential zones, and no further consideration of the other relevant consistent directions is required.
11. The Secretary's delegate agrees that the inconsistency with S117 Direction 3.1(5)(b) is considered to be of minor significance and justifiable.
12. Consultation is required with:
 - Family and Community services - Housing NSW
 - Transport for NSW - Roads and Maritime Services.
13. Following exhibition, it is expected that Council would prepare a merit-based response to any submissions identifying potential sites wishing to utilise the bonus provisions, and if it considers any sites identified as being of interest by the community for re-development, these sites could continue to be developed under the bonus clauses.

Supporting Reasons : **The previous planning proposal (PP_2014_BOTAN_001_00), which has now been**

submitted for finalisation, addresses impacts raised by the community and Council about development adjoining low density residential zones, by providing a design clause and without deleting the bonus provisions.

It is considered reasonable to consider the deletion of the bonus provisions, through a public exhibition process, on the proviso that:

- * the community is generally transparently consulted about the planning proposal;
- * the community is given an opportunity to express interest in the development of any of the sites Council has assessed as part of the planning proposal, with a view to the possibility of these being included in Schedule 1 of the LEP, together with the bonus provisions, as well as the proposed urban design clause 4.4C; and
- * a savings provision is introduced to save the current planning controls applying to current development applications.

Panel Recommendation

Recommendation Date : **11-Jun-2015**

Gateway Recommendation : **Passed with Conditions**

Panel

Recommendation :

- The matter was considered by the Local Environmental Plan Review Panel (Panel) on 11 June 2015. The Panel consisted of:
 - o Simon Manoski, Acting General Manager (Chair);
 - o James Matthews, Team Leader, Planning Services;
 - o David Rowland, General Manager, Hunter & Central Coast Region; and
 - o David Green, Land Use Planning Manager, Wollongong City Council.
- The Panel supported the Regional office planning team's support for the planning proposal for the reasons identified in the planning team report.
- It was acknowledged that Council had undertaken considerable analysis of the sites affected by the bonus provisions and the potential amenity impacts. The Panel also noted that Council was meeting its dwelling targets without the need for the bonus provisions.
- The Panel supported the need for consultation with Housing NSW prior to exhibition and to ensure consultation with all relevant land owners. Further, transitional arrangements would be required for pending DAs.
- It is recommended that the planning proposal proceed to the next stage of consultation and exhibition, but that plan making powers be retained by the Department.

Therefore, an amendment to the Botany Bay Local Environmental Plan 2013 to delete bonus provisions under clauses 4.3(2A) and 4.4B, should proceed subject to the following conditions:

1. Prior to exhibition, the planning proposal is to be updated to:
 - address the inconsistencies of the planning proposal with S117 Direction 3.1 Residential Zones;
 - consider the implications of removing the bonus height provision under Clause 4.3(2A) but retaining the bonus FSR provision of 1.5:1 under Clause 4.4(2A) on the subsequent built form for sites over 2,000 sqm; and
 - include an estimation of the potential number of dwellings theoretically foregone with the removal of the bonus clauses.
2. Council's additional site analysis information is to be included for the purposes of public exhibition, to give the community an opportunity to consider the implications of the planning proposal to the affected sites.
3. Community consultation is required under sections 56(2)(c) and 57 of the EP&A 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 & Environment 2013).
4. Council is to consult in writing with all land owners potentially affected by the deletion

of the bonus provisions – i.e. all owners of R3 and R4 zoned land. Council is to amend the planning proposal to respond to any submissions from landowners, having particular regard to submissions that may have sought to utilise the bonus provisions to achieve potential future higher density of residential development on the affected land.

5. Consultation is required with the following public agencies prior to exhibition, in accordance with section 56(2)(d) of the Act:

- Department of Family and Community Services - Housing NSW;
- Transport for NSW - Roads and Maritime Services;
- NSW Ports; and
- Environment Protection Authority.

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, or to indicate that they will require additional time to comment.

6. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A 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).

7. The timeframe for completing the LEP is to be 12 months from the week following the date of the Gateway determination.

Signature:



Printed Name:

Simon Menzies

Date:

7.9.15

