

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

Proposal Details

Date Planning Proposal Received :	28-May-2015	LGA covered :	Botany Bay
Region :	Metro(CBD)	RPA :	The Council of the City of Botany
State Electorate :	HEFFRON MAROUBRA	Section of the Act :	55 - Planning Proposal
LEP Type :	Policy		

Location Details

Street :			
Suburb :	Botany	City :	Sydney
		Postcode :	2020
Land Parcel :	Applies to R3 and R4 zones across the Local Government Area		

DoP Planning Officer Contact Details

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Land Release Data

Growth Centre :	N/A	Release Area Name :	N/A
Regional / Sub Regional Strategy :	Metro East 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) :	N/A
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 : **Yes**

If No, comment :

Have there been meetings or communications with registered lobbyists? : **No**

If Yes, comment : **The Department is not aware of any meetings or communications with registered lobbyists concerning the proposal.**

Supporting notes

Internal Supporting Notes :

Council introduced clause 4.3(2A) height and clause 4.3B FSR bonus provisions into Botany's comprehensive LEP, which commenced on 26 June 2013. The bonus height clause allows an increase of maximum height from 10/14 to 22 metres on sites with an area greater than 2,000 square metres and zoned R3 Medium or R4 High Density Residential. These sites previously had maximum heights ranging from 11 to 14 metres.

The inclusion of the bonus FSR was to provide an incentive for larger sites where the redevelopment of land for residential development may be affected by site constraints including contamination, aircraft, rail or road noise, acid sulphate soils or groundwater issues.

Council has since submitted two planning proposals seeking to delete the height and FSR bonus provisions on the basis of amenity impacts arising from new development, resulting in poor interface with adjoining R2 Low Density Residential areas. Council considered the bonus clauses were not operating in accordance with their original intent.

ORIGINAL PLANNING PROPOSAL

On 23 December 2013, Botany Bay Council (Council) submitted a planning proposal (PP_2014_BOTAN_001_00) requesting the deletion of clauses 4.3(2A) and 4.4B of the LEP.

On 18 March 2014, the Gateway determination issued for that planning proposal did not allow the removal of these clauses, instead requiring Clauses 4.3(2A) and 4.4B to be retained, and requiring a proposed design clause 4.4C to be included in the LEP to address the transition between low and medium-high density residential areas. The Gateway determination supported the retention of the bonus clauses on the grounds that deletion would not necessarily resolve the perceived issues and would limit the LGA's capacity to deliver additional residential development.

On 19 December 2014, the Gateway determination was revised at Council's request, to limit the application of clause 4.6 Exceptions to development standards, whereby no further variations could be made if the bonuses provided under these clauses are utilised.

The planning proposal was exhibited with new clause 4.4C between 10 February and 13 March 2015 and submitted to Parliamentary Counsel for finalisation under Council's delegation on 25 March 2015.

CURRENT PLANNING PROPOSAL

On 26 February 2015, Council forwarded a second planning proposal, again seeking to delete clauses 4.3(2A) and 4.4B from the Botany Bay LEP 2013 (the LEP) and is essentially a reconsideration of the original Gateway decision to not to allow the deletion of the clauses. The objectives and intended outcomes of both planning proposals are identical.

Clauses 4.3(2A) and 4.4B allow height and floor space ratio bonuses for the development of amalgamated sites exceeding 2000 sqm on land zoned R3 (Medium Density Residential) and R4 (High Density Residential) under the LEP.

Clause 4.3(2A) offers a bonus height of up to 22 metres for such sites. Heights would otherwise be limited to 10-14 metres depending on location. The objective of this clause is to allow increased densities on larger or amalgamated sites in medium to high density residential zones. This bonus height was introduced in the LEP following a recommendation for additional height for opportunity sites in the 'Neustein Urban Study 2010', which informed the LEP.

Clause 4.4B offers a bonus floor space ratio (FSR) of 1.65:1 as a cost off-set and an incentive to amalgamate and develop sites over 2,000 sqm zoned R3 and R4 and affected by constraints including acid sulfate soils, and either contamination or noise (aircraft, rail, road). An FSR of 1.5:1 under Clause 4.4(2A) would otherwise be available, which is also a bonus, for larger or amalgamated sites exceeding 2000 sqm. The FSR would be limited to 0.85:1 depending on location, for sites under 2000 sqm on land zoned R3 and R4.

Council is seeking to delete these bonus clauses as it considers they have not been implemented as intended, regardless of suitability of sites for higher density, resulting in poor planning outcomes due to their excessively generous nature, particularly with regard to height. Council believes the proposed urban design clause 4.4C to be added under the original planning proposal will aid in the assessment of applications, but will not go far enough in managing impacts and has therefore again requested the deletion of the bonus provisions.

It should be noted that if the bonus provisions were to be deleted:

- * clause 4.4(2A) still provides a bonus 1.5:1 FSR for sites over 2,000 sqm; and
- * developers could still apply for height or FSR variations under clause 4.6 Exceptions to development standards, which would be considered by Council on a merit basis.

ADDITIONAL SUPPORTING INFORMATION

As additional supporting information for the subject planning proposal, Council has also prepared an analysis of sites zoned R3 and R4 affected by these provisions. The analysis has been undertaken to identify sites which would be affected should the bonus clauses be deleted, including:

- 11 sites currently larger than 2000 sqm (5 being owned by DoH);
- 15 sites that could be consolidated to be more than 2000 sqm;
- 7 sites with a DA currently under assessment, including those subject to an appeal in the Land and Environment Court.

Council's methodology commenced by excluding all land within zones R3 and R4 which was already subject to strata title development, given the difficulty this form of ownership poses to site amalgamation. This initial step therefore already excluded a large part of the land zoned R3 and R4 from consideration of suitability for application of the bonus provisions.

Council then proceeded to assess the 26 identified sites (11 already amalgamated, plus 15 which could be), excluding sites subject to the pending development applications. Factors used to assess the suitability of the sites for denser development included:

- * number of lots required for amalgamation;
- site depth - whether there is enough to meet the Botany Bay DCP 2013 controls for RFBs development;
- * degree of compatibility with surrounding streetscape (eg single story);

- * proximity to local centres and public transport;
- * flooding, groundwater, acid sulphate soil and ANEF contour risks; privacy issues;
- * traffic and access aspects;
- * other factors, including heritage, Quantitative Risk Analysis for Denison Street, Botany/Randwick Industrial Land Area Safety Study (2001) and high pressure gas line zone of influence;

While identifying two potentially viable sites, Council's final analysis of these sites concluded that none were suitable for the use of the bonus clauses, particularly given the potential for undesirable transitional issues.

On 8 April 2015, the Department joined Council to inspect the majority of the sites identified by Council that the bonus clauses may apply to. The Department's view was that a number of the sites appeared to have development potential and could be subject to further consideration, and that existing DAs should continue to be considered against the existing LEP controls.

Since submission of the subject planning proposal, the Department and Council have met on a number of occasions to discuss the matter, and Council has provided additional information. In addition, Council has forwarded copies of submissions from NSW Ports and the EPA, both of which support the deletion of the bonus clauses, as they are seen to increase land use conflict by intensifying residential development near Port, industrial and commercial areas.

It is also noted that representations have been made to the Department by developer interests, particularly in relation to continuance of the current planning controls for pending development proposals.

External Supporting
Notes :

The planning proposal seeks to delete clauses 4.3(2A) and 4.4B from the LEP.

Note: There is another Planning Proposal (PP_2014_BOTAN_001_00) that has been delegated to the City of Botany Bay to insert an urban design clause into the LEP. This is a separate planning proposal to that original proposal and is considered separately.

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:

- delete the 22m height bonus for sites over 2000 sqm and zoned R3 Medium Density Residential or R4 High Density Residential;
- delete the 1.65:1 bonus FSR for sites over 2000 sqm and affected by acid sulfate soils, contamination and noise; and
- reduce the amenity impacts resulting from the additional bulk and scale.

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

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

Comment :

The planning proposal seeks to amend the LEP by:

- deleting sub-clause 2A in clause 4.3 Height of buildings, relating to the 22m height bonus for sites zoned R3 and R4; and
- deleting Clause 4.4B, Exceptions to FSR, relating the 1.65:1 FSR bonus for all land zoned R3 and R4.

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

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

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

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

d) Which SEPPs have the RPA identified?

SEPP No 6—Number of Storeys in a Building

SEPP No 22—Shops and Commercial Premises

SEPP No 32—Urban Consolidation (Redevelopment of Urban Land)

SEPP No 33—Hazardous and Offensive Development

SEPP No 55—Remediation of Land

SEPP No 64—Advertising and Signage

SEPP No 65—Design Quality of Residential Flat Development

SEPP (Building Sustainability Index: BASIX) 2004

SEPP (Exempt and Complying Development Codes) 2008

SEPP (Housing for Seniors or People with a Disability) 2004

SEPP (Infrastructure) 2007

SEPP (Affordable Rental Housing) 2009

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

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

If No, explain :

It is considered the draft plan is consistent with all the relevant SEPPs and S.117 directions, with the exception of the following:

3.1 Residential Zones

Council states the proposal is consistent with this direction, as it:

*** does not alter any existing residential zone boundary;**

*** is consistent with the objectives of the direction as the planning proposal does not affect the variety and choice of housing types, use of existing infrastructure and services, access to infrastructure and services; and**
*** will minimise the impact of residential development on the surrounding environment.**

Council states the planning proposal would:

*** not have any impact on the supply of residential land or affordability, as it would not reduce the amount of land zoned for medium or high density residential development;**

*** not affect achieving the LGA's existing residential targets well in advance, as the current trend indicates; and**

*** achieve better redevelopment outcomes, as each application will be assessed on a merit basis.**

However, sub-clause (5) of the Direction specifies a planning proposal must not contain provisions which will reduce the permissible residential density of land. Although the planning proposal would not technically include any new provisions, it is inconsistent with this direction, as it is seeking to remove bonus provisions allowing increased residential density on residential land. Council has not justified this in relation to sub-clause 6 relating to consistency through: an approved strategy, a sufficiently comprehensive study or a Departmental Strategy; or in demonstrating the proposal is of minor significance.

As outlined in the internal supporting notes section, the Botany Bay LGA is currently trending to supply residential development at nearly double the average rate for Central Sub-region LGAs, without the potential yield from the use of the bonus clauses. Provided this trend continues, it could be concluded that the loss of density from deletion of the bonus clauses could be justified as a minor inconsistency.

The Department therefore recommends a condition should be included in the Gateway determination requiring Council to amend the planning proposal to address this inconsistency for exhibition purposes.

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment : There are no mapping changes required as part of the planning proposal.

Council has undertaken some additional site specific analysis, which includes maps of sites where the bonus provisions could apply (but are considered inappropriate), and sites subject to pending development applications relying on these provisions.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : Council proposes to exhibit the planning proposal for 28 days in accordance with section 57 of the EP&A Act. This is considered appropriate.

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 :

The LEP was made on 21 June 2013 and commenced on 26 June 2013 and the clause 4.3(2A) and 4.4B bonus provisions were introduced as part of this plan.

The height provisions were developed from the 2010 Neustein Urban Study, which informed the comprehensive LEP. Council considers the intent of the Study has not been realised and the assessed impacts of the additional height has resulted in amenity impacts and raised community concerns. Council considers the bonus FSR has not been implemented as intended and the joint use of both provisions has resulted in over-development.

Assessment Criteria

Need for planning proposal :

Council submitted the subject planning proposal (PP_2015_BOTAN_001_00) as a new planning proposal seeking to delete clauses 4.3(2A) and 4.4B from the LEP, with additional supporting information including an analysis of sites potentially able to utilise the bonus provisions. This essentially seeks a reconsideration of the 18 March 2014 Gateway decision to not allow the deletion of the clauses from the LEP under the previous planning proposal (PP_2014_BOTAN_001_00), but to include a design clause in the LEP to address

the transition between low and medium-high density residential areas.

Council considers that while the urban design clause will aid in the assessment of applications, it will not go far enough in managing potential transition impacts. Therefore, Council is requesting the Department to reconsider its position and allow the clauses to be deleted.

Consistency with strategic planning framework :

The subject planning proposal states that the proposal is consistent with A Plan for Growing Sydney, particularly in relation to the Central Sub-regional housing supply priority, because Council is not reducing the supply of land for residential development and that the LGA has already provided 2,258 dwellings since 2003/4, equating to one third of its 6,500 dwelling target to 2031 under the draft South Sub-regional Strategy, with 17 years to go. This was achieved without the inclusion of any potential yield from the bonus clauses, and was as anticipated by the Neustein Study.

Council's submission has supported the above with data from five major development sites, which will yield an additional 4,533 dwellings above that indicated in the Neustein Study, over the next 5-10 years. This does not include shop top housing or other infill sites in the LGA.

A Plan for Growing Sydney was launched after the submission of the original planning proposal, and collaboration with councils on future land use scenarios has progressed. Recently released data has confirmed Council's dwelling supply argument is on trend, showing Botany LGA has almost doubled the average annual central sub-regional dwelling completions for 2004/5-2013/14 and 2012/13 to 2013/14.

The Department considers that provided the trend continues, this result reduces the imperative to maintain any potential yield from the bonus clauses, as stated in the Gateway determination for the previous planning proposal, particularly in the face of the strong community reaction to the local amenity issues resulting through the bonus clauses.

The subject planning proposal is also consistent with Council's Community Strategic Plan objectives relating to residential development, as it encourages high-quality planning and urban design outcomes that enhance the character and local needs of the community, encourages environmentally sustainable developments, and identifies, preserves and protects items of heritage value.

Environmental social economic impacts :

Council considers the deletion of the bonus provisions will provide a net community benefit, given high community concerns about development from proposals utilising the bonus provisions being out of character with surrounding development. Council does not consider the proposal would have any negative economic outcomes.

Notwithstanding, it has not been clearly considered whether there could be some potentially adverse economic impacts including:

- possible reduced land values from the loss of the bonus residential yield;
- loss of potential additional housing within walking distance of public transport; and
- potential delay of site amalgamation and higher density development from loss of incentives to off-set the cost of attenuation of constraints such as contamination and noise.

These potential impacts could be seen as being off-set by the positive amenity value gained from ameliorating negative transition and other issues resulting from the bonus provisions, as well as Botany LGA's strong above-trend performance in providing residential accommodation elsewhere.

It is therefore 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 should not have the bonus provisions applying to them. Should the Council and/or the Department consider any such sites have sufficient merit, they could be included in

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Schedule 1 of the LEP and have the current bonus provisions and associated design clause apply to them.

Submissions from NSW Ports and the EPA have supported deletion of the bonus provisions, which are seen to contribute to adverse social amenity due to transition issues with not only smaller scale residential development, but also Port-related development in some cases. Therefore the planning proposal would reduce the potential for adverse social impacts in the LGA.

Additionally, in view of the significant changes to the development outcomes resulting from deleting the bonus clauses, it is recommended that the Gateway determination require Council to review any implications of the LEP removing the bonus height provision but retaining the bonus FSR provision of 1.5:1 (clause 4.4(2A)) for sites over 2,000 sqm for the likely subsequent built form.

It is agreed with Council that the proposal will not impact upon any critical habitat, threatened species, populations or ecological communities.

Assessment Process

Proposal type :	Inconsistent	Community Consultation Period :	28 Days
Timeframe to make LEP :	12 months	Delegation :	DDG
Public Authority Consultation - 56(2)(d) :	Family and Community Services - Housing NSW Transport for NSW - Roads and Maritime Services		

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **No**

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 :

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 letter dated 26 February 2015 to DP&E_PP1-2015.pdf	Proposal Covering Letter	Yes
Planning Proposal (for Gateway).pdf	Proposal	Yes

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Evaluation criteria for the delegation of plan making functions.pdf	Proposal	Yes
Map 4 - Zone R3 and R4 - All Sites Over 2000sqm.pdf	Proposal	Yes
Attachment A - Report to Policies and Priorities Meeting held 25 February 2015.pdf	Proposal	Yes
Case Studies_updated_17March 2015.pdf	Proposal	Yes

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

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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.

Signature: _____

Printed Name: _____

Date: _____