

*The NEW* City of  
**CANTERBURY  
BANKSTOWN**

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Planning Proposal  
PP\_2016\_BANKS\_001

Amend Bankstown Local  
Environmental Plan 2015  
(Clause 4.4A)

## **Part 1–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 in relation to building heights.

## **Part 2–Explanation of Provisions**

Clause 4.4A of Bankstown Local Environmental Plan 2015 currently utilises a floor space bonus scheme to encourage development that achieves higher environmental design outcomes. This clause applies to certain land within the commercial core of the Bankstown Central Business District.

It is proposed to amend clause 4.4A(4)(c) to enable Council to vary the building height standard when accommodating the floor space bonus in building designs, provided the objectives of the clause are met.

It is noted that additional drafting changes may occur to achieve the intended outcome of this planning proposal.

## **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. The review process has identified a certain issue with the implementation of clause 4.4A.

In summary, clause 4.4A utilises a floor space bonus scheme to encourage development that achieves higher environmental design outcomes. This clause applies to certain land within the commercial core of the Bankstown CBD subject to the following criteria:

- the development is on land within 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;
- 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 scheme to encourage large-scale commercial development and mixed use development to comply with certain energy and water targets. In addition, Council may consider an appropriate degree of flexibility to the building height to accommodate the floor space bonus provided the objectives of the clause are met. This may involve the application of clause 4.6 to achieve better built form outcomes.

However, clause 4.4A(4)(c)(i) is written in such a way that it does not allow Council to apply clause 4.6 in relation to building height.

At the Ordinary Meeting of 23 June 2015, Council resolved to make a minor grammatical correction to clause 4.4A(4)(c)(i). This amendment is proposing to allow the application of clause 4.6 in relation to building height by 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) as intended by Council. This amendment is also consistent with the objectives of the clause as it continues to ensure the increase in floor space 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, this planning proposal is the best means of achieving the intended outcome.

**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)?**

This planning proposal is consistent with the Metropolitan Plan, ‘A Plan for Growing Sydney’, namely:

- **Direction 1.7–Grow strategic centres:** This 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.
- **Direction 2.1–Accelerate housing supply across Sydney:** This 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.

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

This planning proposal is consistent with the Bankstown CBD Local Area Plan, which informs the development standards for the Bankstown CBD. In particular, this 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?**

This 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)?**

This 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.

Clause 4(d) of this direction 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.

In accordance with clause 4(d) and the gateway determination dated 9 May 2016, Council consulted the Commonwealth Department of Infrastructure & Regional Development and Bankstown Airport Limited in July 2016.

The Department of Infrastructure & Regional Development and Bankstown Airport Limited have chosen not to give permission in accordance with clause 4(d) for the following reasons:

- **Department of Infrastructure & Regional Development**

*In May 2012, all Australian governments agreed to implement the National Airports Safeguarding Framework. The NSW Government advised that (with the exception of Guideline A relating to aircraft noise) it will incorporate the Framework upon completion of its planning system review. Given this, Council may wish to consider the inclusion of references to the Framework during the review of its planning documents.*

*The Framework provides guidance to State / Territory and local government decision makers, airport operators and developers about recognition of aviation impacts in land use planning decisions. It includes six guidelines relating to the regulation and management of the risks associated with aircraft noise, building generated windshear at airports, and intrusions into the protected operational airspace of airports.*

*As you may be aware this Department administers the Airports Act 1996 and Airports (Protection of Airspace) Regulations 1996 which establish a framework for the protection of airspace at and around leased federal airports such as Bankstown. An activity resulting in an intrusion into an airport's protected airspace is a controlled activity under the Act and requires approval under the Regulations. The Department considers each controlled activity application individually, taking into account advice from a range of stakeholders including the Civil Aviation Safety Authority, Airservices Australia, the airport operator and the building authority concerned.*

*The Act and Regulations do not, however, require or enable the Department to approve planning decisions such as the removal of building height limits. It is instead necessary for the building authority, under paragraph 8 of the Regulations, to refer to specific proposed structures which could constitute a controlled activity to the relevant airport operator so that it can seek the relevant advice from aviation agencies and forward the application to the Department for a decision.*

- **Bankstown Airport Limited**

*Bankstown Airport Limited wishes to reiterate that it is bound by the Airports Act 1996 and the Regulations which supports the Act, in particular the Airports (Protection of Airspace) Regulations 1996 which provides for the protection of airspace at federally-leased airports.*

*Bankstown Airport Limited on 7 July 2016 wrote to the City of Canterbury Bankstown advising that pursuant to subregulation 5(4) of the Regulations, the Prescribed Airspace for Bankstown Airport was published in the Commonwealth of Australia Gazette of 6 June 2016.*

*Bankstown Airport Limited would encourage that any changes to the planning amendments adopted by the City of Canterbury Bankstown are aligned with the Bankstown Airport Prescribed Airspace and that the current protocol of referring proposed developments which may penetrate the Obstacle Limitation Surface and / or the PANS / OPS continue to be referred to Bankstown Airport Limited for assessment.*

## **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?**

This 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 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 the 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. This 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?**

Council consulted the Commonwealth Department of Infrastructure & Regional Development and Bankstown Airport Limited in accordance with the gateway determination dated 9 May 2016 and the Ministerial (117) Direction 3.5–clause 4(d) (see Section B(6) of this planning proposal for a more detailed summary).

A further update to this section of the planning proposal will occur following the exhibition of the planning proposal.

## **Part 4–Mapping**

This planning proposal does not involve any mapping changes.

## **Part 5–Community Consultation**

According to the gateway determination, the exhibition period for this planning proposal is a minimum 28 days and comprises:

- Public notice in the local newspaper that circulates in the area affected by the planning proposal.
- Displays at the Council administration building (Bankstown Branch) and corporate website.
- Notification letter to the Commonwealth Department of Infrastructure & Regional Development and Bankstown Airport Limited.

## **Part 6–Project Timeline**

<b>Project timeline</b>	<b>Dates</b>
Report to Council to commence gateway process	June 2015
Gateway determination	May 2016
Notify the Department of the Commonwealth, or their delegate, responsible for Bankstown Airport prior to the exhibition of the planning proposal	July 2016
Exhibition	August 2016
Report to Council	October 2016
Submit planning proposal to the Department	November 2016



**ATTACHMENT A–State Environmental Planning Policies**

SEPPs (as at August 2016)		Applicable	Consistent
1	Development Standards	Yes	Yes
14	Coastal Wetlands	No	N/A
19	Bushland in Urban Areas	Yes	Yes
21	Caravan Parks	Yes	Yes
26	Littoral Rainforests	No	N/A
30	Intensive Agriculture	Yes	Yes
33	Hazardous & Offensive Development	Yes	Yes
36	Manufactured Home Estates	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
62	Sustainable Aquaculture	Yes	Yes
64	Advertising & Signage	Yes	Yes
65	Design Quality of Residential Apartment Development	Yes	Yes
70	Affordable Housing (Revised Schemes)	No	N/A
71	Coastal Protection	No	N/A
	(Affordable Rental Housing) 2009	Yes	Yes
	(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
	(Mining, Petroleum Production & Extractive Industries) 2007	Yes	Yes

<b>SEPPs (as at August 2016)</b>		<b>Applicable</b>	<b>Consistent</b>
	(Miscellaneous Consent Provisions) 2007	Yes	Yes
	(Penrith Lakes Scheme) 1989	No	N/A
	(Rural Lands) 2008	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
	Sydney REP (Sydney Harbour Catchment) 2005	Yes	Yes

**ATTACHMENT B–Ministerial (117) directions**

Direction & Issue Date		Applicable	Consistent
<b>Employment and Resources</b>			
1.1	Business and Industrial Zones [14/04/16]	Yes	Yes
1.2	Rural Zones [14/04/16]	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
<b>Environment and Heritage</b>			
2.1	Environment Protection Zones [14/04/16]	Yes	Yes
2.2	Coastal Protection [14/04/16]	No	N/A
2.3	Heritage Conservation [01/07/09]	Yes	Yes
2.4	Recreation Vehicle Areas [14/04/16]	Yes	Yes
2.5	Application of E2 and E3 Zones & Environmental Overlays in Far North Coast LEPs [02/03/16]	No	N/A
<b>Housing, Infrastructure and Urban Development</b>			
3.1	Residential Zones [14/04/16]	Yes	Yes
3.2	Caravan Parks & Manufactured Home Estates [14/04/16]	Yes	Yes
3.3	Home Occupations [01/07/09]	Yes	Yes
3.4	Integrating Land Use and Transport [14/04/16]	Yes	Yes
3.5	Development Near Licensed Aerodromes [14/04/16]	Yes	No
3.6	Shooting Ranges [16/02/11]	No	N/A

<b>Hazard and Risk</b>			
4.1	Acid Sulfate Soils [01/07/09]	No	N/A
4.2	Mine Subsidence and Unstable Land [14/04/16]	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
<b>Regional Planning</b>			
5.1	Implementation of Regional Strategies [14/04/16]	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 Highway, North Coast [21/08/15]	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 [14/04/16]	No	N/A
5.9	North West Rail Link Corridor Strategy [30/09/13]	No	N/A
5.10	Implementation of Regional Plans [14/04/16]	Yes	Yes
<b>Local Plan Making</b>			
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
<b>Metropolitan Planning</b>			
7.1	Implementation of A Plan for Growing Sydney [14/01/15]	Yes	Yes
7.2	Implementation of Greater Macarthur Land Release Investigation [22/09/15]	No	N/A