

**PLANNING PROPOSAL TO AMEND  
MARRICKVILLE LOCAL ENVIRONMENTAL PLAN 2011 (MLEP 2011)  
Residential accommodation in the B7 Business Park zone and in mixed use  
developments in certain key sites and Masterplan Areas**

**FEBRUARY 2017**

**Introduction**

This planning proposal seeks Gateway approval to amend Marrickville Local Environmental Plan 2011 (MLEP 2011) to amend the planning controls relating to limited residential accommodation in the B7 Business Park zone and in mixed use developments in certain key sites and Masterplan Areas.

The planning proposal seeks to strengthen planning controls to protect employment land and support the viability of commercial activities in the B7 Business Park zone and on other business zoned land by limiting the extent of residential development permitted on such land.

The planning controls limiting residential accommodation on such land are currently contained in Marrickville Development Control Plan 2011 (MDCP 2011). The planning proposal essentially seeks to incorporate those existing MDCP 2011 provisions into MLEP 2011.

**Background**

At its meetings on 1 December 2015 and 5 April 2016 the former Marrickville Council considered reports which recommended that Council resolve to prepare a draft Planning Proposal to make a number of amendments to Marrickville Local Environmental Plan 2011. The proposed amendments were referred to as Draft Marrickville Local Environmental Plan 2011 (Amendment No. 4).

Two of those amendments recommended related to:

- i. Residential accommodation in the B7 Business Park zone; and
- ii. Residential accommodation in mixed use developments in certain key sites and Masterplan Areas.

Extracts from the reports considered by Council in relation to those matters are reproduced below:

**i. Residential accommodation in the B7 Business Park zone**

**“Clause 6.13 Dwellings and residential flat buildings in Zone B7 Business Park**

Clause 6.13 of MLEP 2011 reads as follows:

**6.13 Dwellings and residential flat buildings in Zone B7 Business Park**

- (1) The objective of this clause is to provide for limited residential development for small scale live-work enterprises, to assist in the revitalisation of employment areas and to provide a transition between adjoining land use zones.
- (2) This clause applies to land in Zone B7 Business Park.
- (3) Development consent must not be granted to development for the purpose of a dwelling or a residential flat building on land to which this clause applies unless the consent authority is satisfied that the development is part of a mixed use development that includes business premises or office premises or light industry on the ground floor.

The following types of “*residential accommodation*” are permitted in the B7 Business Park zone under MLEP 2011:

- *Dwelling houses* (under Clause 6.11, but only purpose built dwelling houses existing on the land that were erected before the commencement of MLEP 2011);
- *Residential flat buildings* (under Clause 6.13, but only as “*part of a mixed use development that includes business premises or office premises or light industry on the ground floor*”); and
- *Shop top housing*.

Part of the objective of the clause is “*to provide for limited residential development for small scale live-work enterprises*”. Under the provisions of the clause the only limiting factor on the residential development in the B7 Business Park zone is that the residential development has to be “*part of a mixed use development that includes business premises or office premises or light industry on the ground floor*.”

The objective of the clause refers to “*small scale live-work enterprises*”, a term not specifically defined or used elsewhere in the instrument.

MDCP 2011 supplements the provisions of MLEP 2011 and provides more detailed provisions to guide future development including some provisions which place restrictions, or limitations, on residential development in the B7 Business Park zone. Those controls are primarily contained in Part 6 – Industrial Development of MDCP 2011 and include:

**“C78** *The area of the premises used for small scale creative industries must not exceed 300m2 of gross floor area.*

**C87** *Dwellings (including live/work studios) must not be an individual lot in a strata plan or community title scheme.*

**C88** *A minimum of 60% of the total gross floor area must be used for non-residential purposes.”*

It is unclear as to whether the small scale work enterprises referred to in the objective are the “*small scale creative industries*” referred to in C78 above. It is also open to interpretation as to whether the term “*premises*” in the subject control relates to each individual “*small scale creative industry*” or the combined area of all small scale creative industries, when more than one creative industry is located within the premises.

MLEP 2011 and MDCP 2011 came into effect in December 2011. The instruments were made before the State Government brought in amendments to the EP&A Act 1979 introducing a further matter for consideration under Section 79C of the Act in the assessment of applications relating to the provisions contained in DCPs. The amendment came into effect on 1 March 2013. The new matter for consideration reads as follows:

**(3A) Development control plans**

*If a development control plan contains provisions that relate to the development that is the subject of a development application, the consent authority:*

- if those provisions set standards with respect to an aspect of the development and the development application complies with those standards - is not to require more onerous standards with respect to that aspect of the development, and*
- if those provisions set standards with respect to an aspect of the development and the development application does not comply with those standards - is to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development, and*
- may consider those provisions only in connection with the assessment of that development application.*

The following points are made in relation to the B7 Business Park zone:

- The B7 Business Park zone is an employment zone.

- The land is primarily intended to be used for employment purposes with a minor residential component that allows people to live and work on the same site.
- Limited residential development permitted in zone (maximum percentage of residential permitted = 40% of GFA).
- The residential limit was originally in the LEP but was required to be placed in DCP as part of the original Gateway determination for MLEP 2011.
- 186 properties (or parts of properties) are zoned B7 Business Park under MLEP 2011.
- 60 of those properties zoned B7 Business Park are located in the St Peters Triangle.
- No land zoned B7 Business Park is located on the Key Sites Map.
- Nearly all of the land zoned B7 Business Park is located in an ANEF Contour of 25 or greater.

The provisions in MLEP 2011 relating to the B7 Business Park zone are an innovative feature of the LEP intended to support creative and innovative industries and to assist in revitalising some industrial areas by allowing small scale opportunities for people to live and work in one place.

The Australian Centre of Excellence for Local Government Discussion Paper “Creative Councils for Creative Communities” (July 2015) provides good background to the issue and the development of the controls.

*“Marrickville Council has also recognised the role played by creative industries in establishing the area’s unique character and is increasing local employment opportunities through the Marrickville Urban Strategy that includes the aim of supporting creative and innovative industries (Marrickville Council 2007). The council recognised that creative industries, often operating as start-up micro businesses, are highly sensitive to price increases and that renewal of industrial areas posed a threat to the ability of creative industries to operate as land values increased. The council attempted to minimise these impacts by identifying ways in which planning controls could be used to support existing creative industries and encourage new ones as part of the development of the ‘Marrickville Local Environmental Plan 2011’.*

*Accordingly, the council developed a definition for creative industries, and identified areas suitable for their operation. Once defined, creative industries were identified as an appropriate land use buffer between traditional heavy industrial areas and residential development, and were identified as being suited to light industrial areas in the Marrickville LGA, which are largely situated adjacent to residential development.*

*Business development zones were also identified as locations suitable for live-work enterprises and were considered to have the potential to help reduce the costs of creative industries, maintain active street frontages and, in some cases, promote the adaptive reuse of existing buildings.....” (pages 7 and 8)*

Council’s website includes a section on “Creative Industries” which reads as follows:

*“Marrickville Council’s Local Environmental Plan 2011 recognises that the Marrickville area is the centre of Sydney’s independent arts scene and is home to many artists, studios, commercial art galleries, artist-run initiatives, theatres and festivals.*

*The LEP includes a ‘B7 Business Park’ zone that has the objective of providing for creative industries such as the arts, technology, production and design sectors. It is an employment zone that permits limited residential development in conjunction with employment uses at the ground floor.*

*The ‘IN2 Light Industrial’ zone will allow for certain creative industries which take the form of business premises or office premises in the arts, technology, production and design sectors.*

*The creative industries provided for include:*

- audio-visual, media and digital media
- advertising

- *craft, visual arts and Indigenous arts*
- *design*
- *film and television*
- *music*
- *publishing*
- *performing arts*
- *cultural heritage institutions*

The B7 Business Park zone also permits creative industries such as those referred to above permitted in the IN2 Light Industrial zone.

A review was undertaken of the B7 Business Park zoning provisions of a number of other Council's LEPs prepared under the Standard Instrument. Council's B7 Business Park zoning provisions are unique in terms of what residential accommodation is permitted within the zone. Most of the environmental planning instruments of other Councils reviewed listed "*residential accommodation*" as "*Prohibited*" in the Land Use Table for the B7 Business Park zone. Where residential accommodation was permitted it was limited to a single dwelling. For example Clause 6.12 of Leichhardt Local Environmental Plan 2013 permits development for the purpose of a dwelling where the "*dwelling is part of a mixed use development that includes office premises or light industries on the ground floor*" and "*the dwelling and ground floor premises will be occupied by the same person or persons*". The objective of the subject clause "*is to provide for ancillary residential accommodation for small-scale live-work enterprises, to assist in the revitalisation of employment areas and to provide a transition between adjoining land use zones*". "*Shop top housing*" is listed as "*Prohibited*" in the Land Use Table for the zone.

The provisions in MLEP 2011 relating to the B7 Business Park zone are unique when compared to other Council's environmental planning instruments.

The changes recommended to Clause 6.13 in the original report were as follows:

***"6.13 Dwellings and residential flat buildings in Zone B7 Business Park***

- (1) *The objective of this clause is to provide for limited residential development for small scale live-work enterprises, to assist in the revitalisation of employment areas and to provide a transition between adjoining land use zones.*
- (2) *This clause applies to land in Zone B7 Business Park.*
- (3) *Development consent must not be granted to development for the purpose of a dwelling or a residential flat building on land to which this clause applies unless the consent authority is satisfied that:*
  - (a) *no part of the ground floor of the development that fronts a street will be used for residential purposes (excluding access, car parking and waste storage),*
  - (b) *a minimum of 60% of the total gross floor area of the development is to be used for non residential purposes."*

In reporting back on the Councillor Conference, officers were requested to examine ways to incorporate changes to the proposed amendment to clarify what constitutes gross floor area used for "non-residential purposes".

An additional matter could be included in Clause 6.13 specifying that amenities such as kitchen and bathrooms associated with the work area of any live/work occupancy may be excluded from the residential floor area of the development. Other changes could be made to the clause to make it more user friendly and easier to understand.

As standalone residential development is prohibited in the zone, a provision could be included in the clause to the effect that the residential development is required to be part of a mixed use development that includes a non-residential use permitted in zone. A provision could also be

included that a dwelling permitted under the clause can't be on a separate lot (in accordance with Control **C87** in Part 6 – Industrial Development of MDCP 2011). That provision could read:

*“Dwellings permitted by this clause as part of a mixed use development must be on the same title as the non-residential use and must not be on an individual lot in a strata plan or an individual lot in a community title scheme.”*

Control C87 in Part 6 – Industrial Development of MDCP 2011 reads as follows:

“C87 Dwellings (including live/work studios) must not be an individual lot in a strata plan or community title scheme.”

It should be noted that the control was originally in the LEP but the Department required the clause to be placed in the DCP. Accordingly, the recommended amendment is not a policy change from current provisions.

The following revised recommendation incorporates the matters raised above:

**Recommendation L-6.13:** That Clause 6.13 of MLEP 2011 be amended to read as follows:

**“6.13 Dwellings and residential flat buildings in Zone B7 Business Park**

- (1) *The objective of this clause is to provide for limited residential development in association with non-residential uses permitted in Zone B7 Business Park, including small scale live-work enterprises, to assist in the revitalisation of employment areas and to provide a transition between adjoining land use zones.*
- (2) *This clause applies to land in Zone B7 Business Park.*
- (3) *Development consent must not be granted to development for the purpose of a dwelling or a residential flat building on land to which this clause applies unless the consent authority is satisfied that:*
  - (a) *the residential development is part of a mixed use development that includes a non-residential use permitted in Zone B7 Business Park,*
  - (b) *no part of the ground floor of the development that fronts a street will be used for residential purposes (excluding access, car parking and waste storage),*
  - (c) *a minimum of 60% of the total gross floor area of the development is to be used for non-residential purposes.*
- (4) *For the purposes of determining the percentage of the total gross floor area of the development used for non-residential purposes under Clause (3) (c), area(s) used for amenities, such as kitchen and bathroom facilities, in conjunction with the non-residential use(s), do not constitute gross floor area used for residential purposes.*
- (5) *Dwellings permitted by this clause as part of a mixed use development must be on the same title as the non-residential use and must not be on an individual lot in a strata plan or an individual lot in a community title scheme.”*

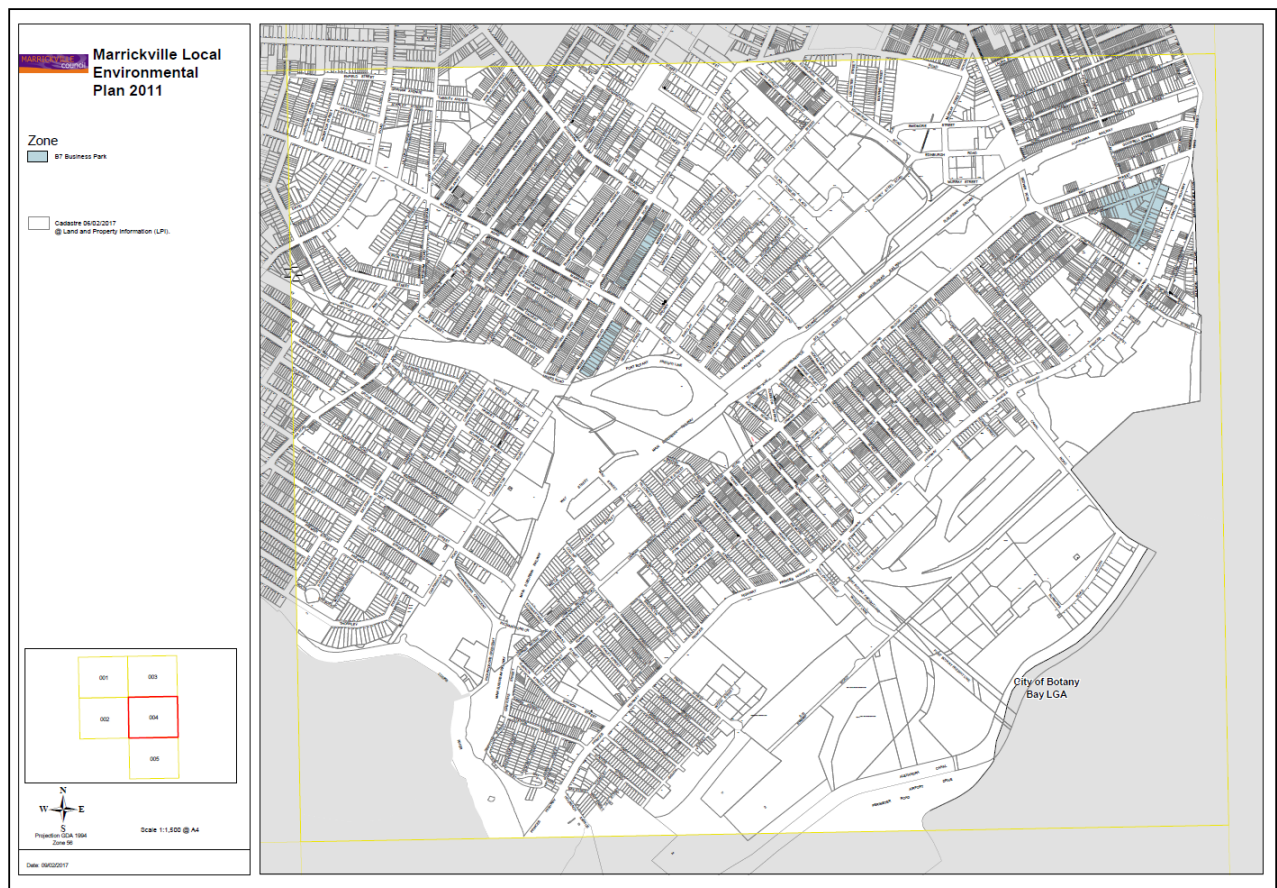


**Recommendation L-6.16 – Land to which clause relates:**

**Map 1: Land zoned B7 Business Park under MLEP 2011 on Land Zoning Map LZN\_003**



**Map 2: Land zoned B7 Business Park under MLEP 2011 on Land Zoning Map LZN\_004**



## ii. Residential accommodation in mixed use developments in certain key sites and Masterplan Areas

### "New Clause – Mixed Use Developments in certain key sites and Masterplanned Areas"

Limited residential accommodation is permitted with consent, as part of a mixed use development, under Council's planning controls on certain land identified on the Key Sites Maps and in certain Masterplan Areas.

The provisions limiting the extent residential development permitted on such land are contained in the Strategic Context controls in Part 9 of Marrickville Development Control Plan 2011.

Those provisions are as follows:

#### Part 9.8 Enmore North and Newtown Central Precinct

##### 9.8.5.1 76 Wilford Street, Newtown

***"C4 The residential component of the development must be no greater than 70 percent of the total gross floor area."***

#### Part 9.25 St Peters Triangle Precinct

##### 9.25.6 Precinct-specific planning controls

*"To manage mixed use development along the Princes Highway and May Street the following controls apply."*

***C2 On land coloured blue and identified as "E" on the MLEP 2011 Key Sites Map, residential accommodation is permitted with consent but only as part of a mixed use development where the residential component comprises a maximum of 80% of the total gross floor area.***

***C3 On land coloured blue and identified as "F" or "G" on the MLEP 2011 Key Sites Map, residential accommodation is permitted with consent but only as part of a mixed use development where the residential component comprises a maximum of 60% of the total gross floor area.***

***C4 On land coloured blue and identified as "H" on the MLEP 2011 Key Sites Map development is permitted with consent for the purpose of:***  
*i. Retail premises which, in total, does not comprise more than 30% of the total gross floor area; and*  
*ii. Residential accommodation which, in total, does not comprise more than 30% of the total gross floor area."*

#### Part 9.45 McGill Street Precinct

##### 9.45.7 Future land use

*"In the B5 Business Development zone located along Old Canterbury Road residential use is permitted subject to the following control which ensures that business and office uses remain a viable component of development within the precinct."*

***C6 Residential development is permitted with consent but only as part of a mixed use development where the residential component comprises a maximum of 60% of the total gross floor area."***

**NB** The B5 Business Development zoned land along Old Canterbury Road, Lewisham referred to above, is land identified as "A" on the Key Sites Map.

No development has taken place on the property 76 Wilford Street, Newtown or on the land coloured blue and identified "E" or "G" on the MLEP 2011 Key Sites Map, and limited development has taken place on the land coloured blue and identified "F" or "H" on the MLEP 2011 Key Sites Map.

Much development has taken place/ or has been approved/ or development applications lodged but yet to be determined in the McGill Street Precinct, including the B5 Business Development zoned land along Old Canterbury Road, Lewisham (i.e. the land coloured blue and identified "A" on the MLEP 2011 Key Sites Map.

In relation to amending its planning documents, Council needs to be mindful of decisions it has made and the resulting precedents it has set since the coming into effect of MLEP 2011 and MDCP 2011. Of particular relevance in relation to the McGill Street Precinct, is the decision Council made on 13 August 2013, in relation to an application under Section 96 of the Environmental Planning and Assessment Act, relating to the property 120A-120B Old Canterbury Road, Lewisham which sought approval to change of use of Level 1 of that development from commercial to residential.

The report considered by Council recommended refusal of the application for a number of reasons including:

- "1. The proposed development is contrary to Part 9.45.7 of Marrickville Development Control Plan 2011, proposing a land use mix of 80 per cent residential and 20 per cent non-residential that is inconsistent with the desired future character of the McGill Street Precinct."*

Council approved the application. Council's action in approving that application which departed from the maximum residential component controls in MDCP 2011 has made the application of these provisions for other land subject to these provisions in the McGill Street Precinct unenforceable.

It should be noted however that the McGill Street Precinct has a different locational context than the other areas referred to above. Accordingly, without a planning argument that justifies abandoning these provisions elsewhere it is appropriate that the maximum residential components in those other areas be retained.

**Recommendation L-6.16:**

That the following clause titled "Clause 6.16 Residential accommodation, as part of a mixed use development, on certain land identified on the Key Sites Maps and in certain Masterplan Areas" be inserted in MLEP 2011 at the end of Clause 6.15:

**6.16 Residential accommodation, as part of a mixed use development, on certain land identified on the Key Sites Maps and in certain Masterplan Areas**

- (1) The objective of this clause is to limit the density of residential development in certain business zones to ensure an appropriate proportion of residential accommodation as part of mixed use developments on that land.
- (2) This clause applies to the following land:
  - (a) on land identified as "E" on the Key Sites Map,
  - (b) on land identified as "F" on the Key Sites Map,
  - (c) on land identified as "G" on the Key Sites Map,
  - (d) on land identified as "H" on the Key Sites Map,
  - (e) land at 76 Wilford Street, Newtown, being Lot 1, DP 617685.
- (3) Development consent must not be granted to development for the purpose of residential accommodation on land to which this clause applies unless the consent authority is satisfied that:
  - (a) no part of the ground floor of the development that fronts a street will be used for residential purposes (excluding access, car parking and waste storage),
  - (b) the percentage of the total gross floor area of the development to be used for non residential purposes is not less than:



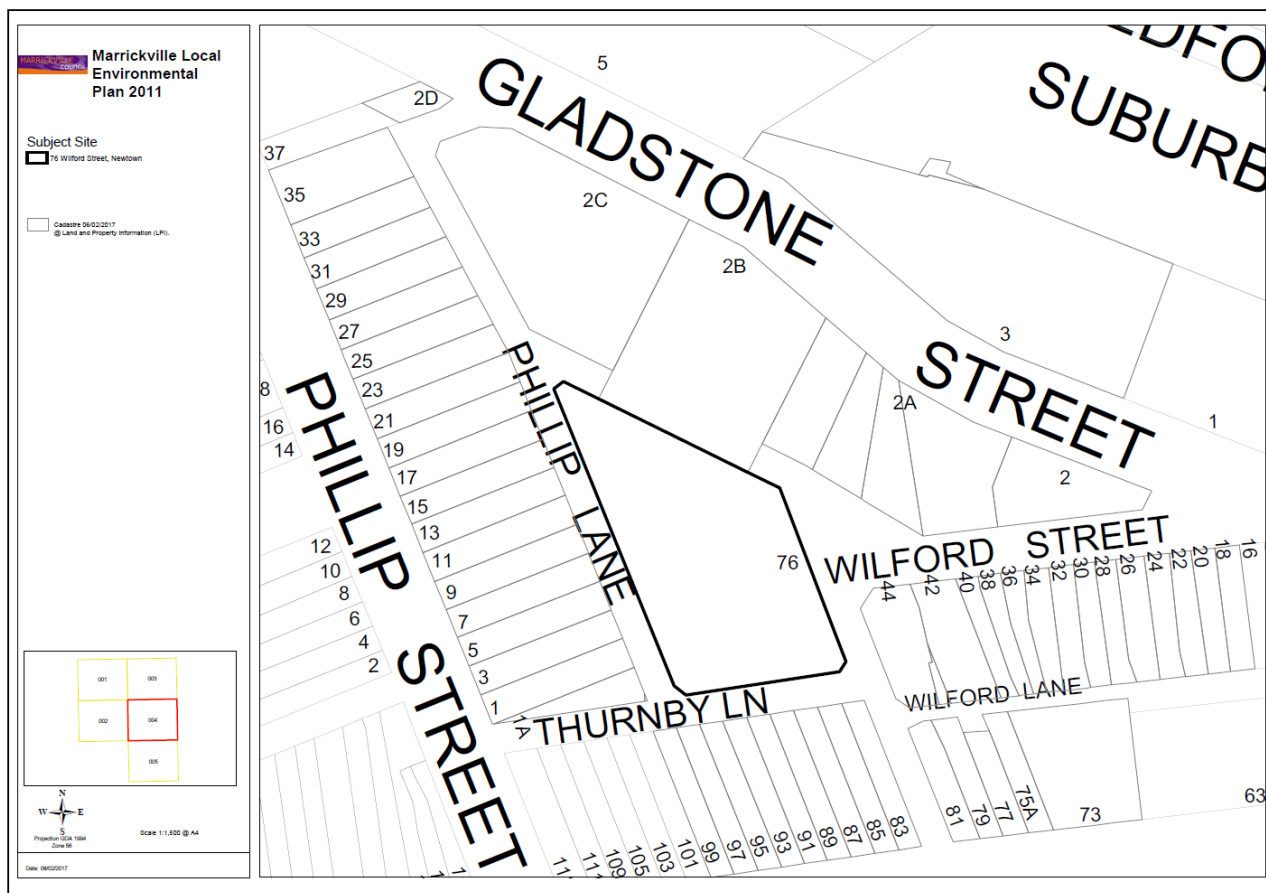
- (i) 20% on land identified as “E” on the Key Sites Map,
- (ii) 40% on land identified as “F” or “G” on the Key Sites Map,
- (iii) 70% on land identified as “H” on the Key Sites Map,
- (iv) 30% on land at 76 Wilford Street, Newtown, being Lot 1, DP 617685.”

**Recommendation L-6.16 – Land to which clause relates:**

**Map 3: Land identified as “E”, “F”, “G” or “H” on the Key Sites Map  
(Clause 6.16 (2) (a), (b), (c) and (d))**



**Map 4: Land known as 76 Wilford Street, Newtown**  
(Clause 6.16 (2) (e))



## PART 1: OBJECTIVE OR INTENDED OUTCOME

The objectives of the Planning Proposal are:

- i. To protect employment land and support the viability of commercial activities in the B7 Business Park zone and on other business zoned land;
- ii. To refine the provisions relating to dwellings and residential flat buildings in the B7 Business Park zone in Clause 6.13 of MLEP 2011 to relate to the objective of clause; and
- iii. To incorporate a provision in MLEP 2011 limiting the extent of residential accommodation permitted in mixed use developments in certain land identified on the Key Sites Maps and in certain Masterplan Areas under Marrickville Development Control Plan 2011.

## PART 2: EXPLANATION OF THE PROVISIONS

The former Marrickville Council's planning controls include provisions to protect employment land and support the viability of commercial activities in the B7 Business Park zone and on other business zoned land.

The B7 Business Park zone is for employment uses but has been adapted in MLEP 2011 to include innovative provisions supporting creative and population serving industries and to assist in revitalising some industrial areas by allowing small scale opportunities for people to live and work in one place.

One of the objectives of the zone is:

*"To provide for limited residential development in conjunction with active ground floor uses."*

The provisions in MLEP 2011 relating to the B7 Business Park zone are unique and have been designed to achieve specific outcomes.

The main outcome sought in MLEP 2011 is to allow some types of small scale residential development in the B7 Business Park zone in order to promote live/work creative industries and to revitalise those areas.

The controls relating to the provision of limited residential development in the zone are contained in "Clause 6.13 - Dwellings and residential flat buildings in Zone B7 Business Park" of MLEP 2011. Those controls are supplemented by provisions in Marrickville Development Control Plan 2011 (MDCP 2011).

The extent of residential development permitted is further controlled via MDCP 2011 provisions that specify a maximum of 40% of GFA for residential development in the B7 Business Park zone.

Other planning controls limit the density of residential development in certain business zones to ensure an appropriate proportion of residential accommodation as part of mixed use developments on that land, in order to protect employment land and support the viability of commercial activities. Those planning controls are also contained in MDCP 2011.

In order to strengthen the planning controls to protect employment land and support the viability of commercial activities in the B7 Business Park zone and on other business zoned land, this planning proposal essentially seeks to incorporate those existing DCP provisions into the LEP.

### **PART 3: JUSTIFICATION**

#### **Section A – Need for the planning proposal**

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

Strategic studies were commissioned by Marrickville Council to inform the making of Marrickville Local Environmental Plan 2011. MLEP 2011 was developed to be consistent with overriding strategic studies as well as those strategic studies commissioned by Council.

The planning proposal is consistent with those studies, and with the objectives of the Plan.

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

The planning proposal is considered the best way of achieving the desired objective of protecting employment land and support the viability of commercial activities in the B7 Business Park zone and on certain other business zoned land.

The controls protecting employment land and support the viability of commercial activities in the B7 Business Park zone and on other business zoned land are currently contained within Marrickville Development Control Plan 2011. Those controls have been successfully challenged in the Land and Environment Court.

The Court's decision has undermined the intent of the controls to protect employment land. Council does not wish that outcome to persist and consequently seeks to have the planning controls incorporated into the LEP.

##### **3. Is there a net community benefit?**

The net community benefit from the planning proposal is to protect employment land in the B7 Business Park zone and on certain other business zoned land.

#### **Section B – Relationship to strategic planning framework**

##### **4. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?**

The planning proposal is not inconsistent with the objectives and actions contained within the applicable regional or sub-regional strategy including the Sydney Metropolitan Strategy.

The planning proposal is consistent with the State Government's current Metropolitan Plan *A Plan for Growing Sydney*. The following direction and action outlined in the table below are of particular relevance:

<b>A Plan for Growing Sydney</b>	
<b>Objective</b>	<b>Comment</b>
<b>GOAL 1: A competitive economy with world-class services and transport</b>	
Direction 1.7: Grow strategic centres - providing more jobs closer to home	Action 1.7.1 supports planning initiatives to grow jobs and housing and create vibrant hubs of activity. One of the principles is to provide a large number of jobs to increase jobs close to where people live. Whilst the planning proposal does not relate to land within strategic centres identified in The Plan for Growing Sydney the planning proposal seeks to protect employment land and support the viability of commercial activities to revitalise those areas with small scale residential development to "increase jobs close to where people work".

The Greater Sydney Commission's Draft Central District Plan includes provision 3.5.2 *Protect and manage employment and urban services land*. The Plan states that we "need to ensure that our employment lands are effectively managed and protected across Greater Sydney and within the Central District." (page 68)

The Planning Proposal is consistent with the subject provision in that the proposal seeks to strengthen the planning controls to protect employment land and support the viability of commercial activities in the B7 Business Park zone and on other business zoned land by limiting the extent of residential development permitted on such land.

#### **5. Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?**

The *Marrickville Community Strategic Plan (Our Place, Our Vision)* was adopted in 2010 to define the long term aspirations and strategic directions for the community. That document, the result of an extensive community engagement process, established four 'key result areas' that summarise the objectives and strategies for the Marrickville community over the next decade. The plan was reviewed and updated in 2012/2013. The Plan's 4 key result areas are as follows:

- "a diverse community that is socially just, educated, safe and healthy;
- a creative and cultural Marrickville;
- a vibrant economy and well planned, sustainable urban environment and infrastructure; and
- an innovative, effective, consultative and representative Council".

The planning proposal is not inconsistent with Marrickville Council's Strategic Plan, Marrickville Community Strategic Plan (Our Place, Our Vision) which defines the long term aspirations and strategic directions for the community.

#### **6. Is the planning proposal consistent with applicable State Environmental Planning Policies (SEPPs)?**

The planning proposal has been assessed against all relevant State Environmental Planning Policies (SEPPs) as detailed below. Based on that assessment, Council has concluded that overall, the planning proposal is consistent with all relevant SEPPs as follows:

- SEPP No. 1 – Development Standards

This SEPP makes development standards more flexible. It allows councils to approve a development proposal that does not comply with a set standard where this can be shown to be unreasonable or unnecessary. No matters within this planning proposal relate to

amendments to development standards. Notwithstanding the above, by virtue of Clause 1.9 (2) of MLEP 2011, SEPP No. 1 does not apply to land to which MLEP 2011 applies.

- SEPP No. 19 - Bushland in Urban Areas

This SEPP aims to protect and preserve bushland within certain urban areas as part of the natural heritage or for recreational, educational and scientific purposes. It is designed to protect bushland in public open space zones and reservations, and to ensure that bush preservation is given a high priority when local environmental plans for urban development are prepared. No matters within this Planning Proposal alter the degree to which urban bushland will be protected under MLEP 2011. Council has concluded that the Planning Proposal is consistent with this SEPP.

- SEPP No. 21 - Caravan Parks

This SEPP ensures that where caravan parks or camping grounds are permitted under an environmental planning instrument, movable dwellings, as defined in the Local Government Act 1993, are also permitted. The specific kinds of movable dwellings allowed under the Local Government Act in caravan parks and camping grounds are subject to the provisions of the Caravan Parks Regulation. The policy ensures that development consent is required for new caravan parks and camping grounds and for additional long-term sites in existing caravan parks. It also enables, with the council's consent, long-term sites in caravan parks to be subdivided by leases of up to 20 years. This planning proposal does not include any provisions relating to caravan parks. Council has concluded that the Planning Proposal is consistent with the SEPP.

- SEPP No. 30 - Intensive Agriculture

This SEPP requires development consent for cattle feedlots having a capacity of 50 or more cattle or piggeries having a capacity of 200 or more pigs. The policy sets out information and public notification requirements to ensure there are effective planning control over this export-driven rural industry. The policy does not alter if, and where, such development is permitted, or the functions of the consent authority. Council has concluded that the Planning Proposal is consistent with this SEPP.

- SEPP No. 33 - Hazardous and Offensive Development

This SEPP amends the definitions of hazardous and offensive industries and includes provisions relating to such developments. The definitions apply to all planning instruments, existing and future. The new definitions enable decisions to approve or refuse a development to be based on the merit of the proposal. The consent authority must carefully consider the specifics the case, the location and the way in which the proposed activity is to be carried out. The policy also requires specified matters to be considered for proposals that are 'potentially hazardous' or 'potentially offensive' as defined in the policy. The definitions contained within the SEPP were incorporated into the Standard Instrument and the Dictionary to MLEP 2011 includes those definitions. The planning proposal does not relate to any of those uses and is therefore consistent with the objectives of the SEPP.

- SEPP No. 50 - Canal Estate Development

This SEPP aims to prohibit canal estate development in order to ensure that the environment is not adversely affected by the creation of new developments of that kind. The planning proposal, and the Council resolution, do not propose any changes in the instrument relating to provisions for canal estate developments. Therefore, Council has concluded that the Planning Proposal is consistent with this SEPP.

- SEPP No. 55 - Remediation of Land

This SEPP introduced a State wide planning approach to the remediation of contaminated land across NSW. The policy states that land must not be developed if it is unsuitable for a proposed use because it is contaminated. If the land is unsuitable, remediation must be undertaken before the land is developed. Some sites within this planning proposal may be affected by this SEPP due to their past uses. The planning proposal does not include any provisions relating to the remediation of land. No provisions contained within the planning proposal are considered to be inconsistent with the aims and objectives of the SEPP. Therefore, Council has concluded that the Planning Proposal is consistent with this SEPP.

- SEPP No. 62 - Sustainable Aquaculture

This SEPP encourages the sustainable expansion of the aquaculture industry in NSW. The policy implements the regional strategies already developed by creating a simple approach to identify and categorise aquaculture development on the basis of its potential environmental impact. The SEPP also identifies aquaculture development as a designated development only where there are potential environmental risks. Council has concluded that the Planning Proposal is consistent with this SEPP.

- SEPP No. 64 - Advertising and Signage

This SEPP aims to ensure that outdoor advertising is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations and is of high quality design and finish. None of the matters in this Planning Proposal raise issues in relation to this SEPP. Council has concluded that the Planning Proposal is consistent with this SEPP.

- SEPP No. 65 - Design Quality of Residential Apartment Development

This SEPP aims to improve the quality of design of residential apartment development across the NSW through the application of design principles. It provides for the establishment of Design Review Panels to provide independent expert advice to councils on the merit of residential apartment development and involvement of a qualified designer throughout the design, approval and construction stages. Council has concluded that the Planning Proposal is consistent with this SEPP.

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

This SEPP encourages the development of quality accommodation for the ageing population and for people who have disabilities, in keeping with the local neighbourhood. The Planning Proposal does not include any provisions that would, directly or indirectly, affect housing for seniors or people with a disability, nor would it affect any provision within the SEPP. Council has concluded that the Planning Proposal is consistent with this SEPP.

- SEPP (Building Sustainability Index: BASIX) 2004

This SEPP operates in conjunction with EP&A Amendment (Building Sustainability Index: BASIX) Regulation 2004 to implement consistent building sustainability provisions across NSW. The Planning Proposal does not include any provisions that would, directly or indirectly, affect BASIX or any provision that relates to building sustainability. Council has concluded that the Planning Proposal is consistent with this SEPP.

- SEPP (State Significant Precincts) 2005

This SEPP aims to facilitate the development, redevelopment or protection of important urban, coastal and regional sites of economic, environmental or social significance to the State so as to facilitate the orderly use, development or conservation of those State significant precincts for the benefit of the State, and to facilitate service delivery outcomes for a range of public services and to provide for the development of major sites for a public



purpose or redevelopment of major sites no longer appropriate or suitable for public purposes.

The Planning Proposal does not include any provisions that would, directly or indirectly, affect any provision within the SEPP. Council has concluded that the Planning Proposal is consistent with this SEPP.

- SEPP (Mining, Petroleum Production and Extractive Industries) 2007

This Policy aims to provide for the proper management and development of mineral, petroleum and extractive material resources for the social and economic welfare of the State. The Policy establishes appropriate planning controls to encourage ecologically sustainable development. Council has concluded that the Planning Proposal is consistent with this SEPP.

- SEPP (Temporary Structures) 2007

This SEPP provides for the erection of temporary structures and the use of places of public entertainment while protecting public safety and local amenity. None of the matters in this Planning Proposal raise issues in relation to the SEPP, and Council has concluded that the Planning Proposal is consistent with this SEPP.

- SEPP (Infrastructure) 2007

This SEPP provides a consistent planning regime for infrastructure and the provision of services across NSW. It is intended to provide greater flexibility in the location of infrastructure and service facilities along with improved regulatory certainty and efficiency.

The Planning Proposal does not raise any issues in relation to the SEPP. Council has concluded that the Planning Proposal is consistent with this SEPP.

- SEPP (Exempt and Complying Development Codes) 2008

This SEPP simplifies assessment processes for development that complies with specified development standards. It identifies types of minor development that may be carried out without development consent, or carried out in accordance with a complying development certificate. Council has concluded that the Planning Proposal is consistent with this SEPP.

- SEPP (Affordable Rental Housing) 2009

This SEPP establishes a consistent planning regime for the provision of affordable rental housing. The planning proposal is consistent with this SEPP.

- SEPP (State and Regional Development) 2011

The aims of this Policy are to identify development that is State significant development or State significant infrastructure and critical State significant infrastructure and to confer functions on joint regional planning panels to determine development applications. None of the matters in the Planning Proposal raise issues in relation to this SEPP, and Council has concluded that the Planning Proposal is consistent with this SEPP.

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

An assessment of the planning proposal against all relevant s.117 Directions is provided below. From that assessment, Council has concluded that the planning proposal is consistent with all applicable Ministerial Section 117 Directions.

### **1. Employment and Resources**

- Direction 1.1: Business & Industrial Zones

This Direction aims to encourage employment growth in suitable locations, protect employment land in business and industrial zones and support the viability of identified strategic centres. The Direction applies when a planning proposal will affect land within an existing or proposed business or industrial zone, including the alteration of any existing business or industrial zone boundary.

The prime objective of the planning proposal is to protect employment land and support the viability of commercial activities in the B7 Business Park zone and in certain business zoned land identified on the Key Sites Maps and in certain Masterplan Areas under Marrickville Development Control Plan 2011. As such the planning proposal is consistent with Direction 1.1.

### **3. Housing, Infrastructure and Urban Development**

- Direction 3.1: Residential Zones

The objectives of this direction are:

- “(a) to encourage a variety and choice of housing types to provide for existing and future housing needs,*
- (b) to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and*
- (c) to minimise the impact of residential development on the environment and resource lands.”*

This direction applies when a relevant planning authority prepares a planning proposal that will affect land within either an existing or proposed residential zone (including the alteration of any existing residential zone boundary) or any other zone in which significant residential development is permitted or proposed to be permitted.

Council considers the planning proposal to not be inconsistent with this Direction.

- Direction 3.4: Integrating Land Use and Transport

The objectives of this direction *“is to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve the following planning objectives:*

- “(a) improving access to housing, jobs and services by walking, cycling and public transport, and*
- (b) increasing the choice of available transport and reducing dependence on cars, and*
- (c) reducing travel demand including the number of trips generated by development and the distances travelled, especially by car, and*
- (d) supporting the efficient and viable operation of public transport services, and*
- (e) providing for the efficient movement of freight.”*

This direction applies to a planning proposal that *“will create, alter or remove a zone or a provision relating to urban land, including land zoned for residential, business, industrial, village or tourist purposes”*.

The planning proposal includes amendments that *“will create, alter or remove a zone or a provision relating to urban land.”*

The proposed amendments are essentially incorporating existing Marrickville Development Control Plan 2011 provisions relating to protecting employment land and supporting the viability of commercial activities into MLEP 2011.

Consequently the planning proposal is consistent with the aims and objectives of this Direction.

## **6. Local Plan Making**

- Direction 6.1: Approval & Referral Requirements

The objective of this direction is *“to ensure that LEP provisions encourage the efficient and appropriate assessment of development.”*

This Direction applies when a relevant planning authority prepares a planning proposal and states, inter alia, that the planning proposal must minimise the inclusion of provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority, and not contain provisions requiring concurrence, consultation or referral of a Minister or public authority unless the relevant planning authority has obtained the approval of the appropriate Minister or public authority, and the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General).

The planning proposal is consistent with this Direction.

## **7. Metropolitan Planning**

- Direction 7.1: Implementation of A Plan for Growing Sydney

The objective of this direction is *“to give legal effect to the planning principles; directions; and priorities for subregions, strategic centres and transport gateways contained in A Plan for Growing Sydney.”*

This Direction applies to the planning proposal. The Plan for Growing Sydney *“provides key directions and actions to guide Sydney’s productivity, environmental management, and liveability – including the delivery of housing, employment, infrastructure and open space”*.

The planning proposal is consistent with one of principles under the plan to *“increase jobs close to where people work”*.

Council considers the planning proposal to be consistent with the NSW Government’s ‘A Plan for Growing Sydney’, and as such Council considers the planning proposal to be consistent with this Direction.

## **Section C – Environmental, social and economic impact**

### **8. 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?**

All significant issues in relation to critical habitat or threatened species, populations or ecological communities, or their habitats were taken into account in the making of MLEP 2011. The planning proposal does not include any proposed amendments to those controls. Consequently it is considered little likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, would be adversely affected as a result of the proposal.

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

There are unlikely to be environmental effects, either individually or cumulatively, as a result of the planning proposal.

**10. How has the planning proposal adequately addressed any social and economic effects?**

The planning proposal is essentially a housekeeping amendment to incorporate existing Marrickville Development Control Plan 2011 provisions relating to protecting employment land and supporting the viability of commercial activities into MLEP 2011. In view of the circumstances it is considered that the planning proposal would not cause any social or economic impacts.

**Section D – State and Commonwealth Interests**

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

As discussed above, the planning proposal is essentially a housekeeping amendment and in view of the nature of the proposal it is considered that there is adequate public infrastructure for the planning proposal.

**12. What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?**

As this planning proposal has not yet proceeded to Gateway determination, the views of State and Commonwealth public authorities have not been sought, nor is this required at this stage. In accordance with the Gateway determination process, the Department of Planning and Environment will inform Council which State and Commonwealth authorities are to be formally consulted during the public exhibition period.

**PART 4: MAPPING**

The planning proposal does not involve any map amendments.

**PART 5: COMMUNITY CONSULTATION**

The former Marrickville Council considered the planning proposal would have a low impact overall. The planning proposal would not create the need for any additional infrastructure servicing.

The planning proposal would be publicly exhibited in accordance with the requirements of any Gateway determination issued.

**PART 6: PROJECT TIMELINE**

Following are estimated dates (month/year) for completion of key tasks in the planning proposal process:

- anticipated commencement date (date of Gateway determination) – January 2017;
- anticipated timeframe for the completion of required technical information – January 2017;
- timeframe for government agency consultation (pre and post exhibition as required by Gateway determination) – to be determined after Gateway determination;
- commencement and completion dates for public exhibition period – February /March 2017;
- dates for public hearing (if required) – N/A at this stage;
- timeframe for consideration of submissions – April 2017;
- timeframe for the consideration of a proposal post exhibition – May 2017;
- date of submission to the Department to finalise the LEP – May 2017; and
- anticipated date RPA will forward to the Department for notification – May 2017.