

Item No: C0217 Item 5

Subject: DRAFT MARRICKVILLE LOCAL ENVIRONMENTAL PLAN 2011
(AMENDMENT NO. X) - CHANGE TO THE LAND USE TABLE FOR THE B7
BUSINESS PARK ZONE

File Ref: 17/4718/13047.17

Prepared By: Peter Wotton - Strategic Planning Projects Coordinator, Marrickville

Authorised By: Gill Dawson - Group Manager Strategic Planning

SUMMARY

This report recommends that Council resolves to prepare a draft Planning Proposal to make an amendment to *Marrickville Local Environmental Plan 2011* to delete shop top housing as a permissible use within the B7 Business Park zone.

The purpose of the planning proposal is to address the consequences of a recent Land and Environment Court (LEC) decision concerning the application of Council's planning controls to shop top housing development within the B7 zone.

RECOMMENDATION

THAT:

1. The report be received and noted;
 2. Council resolves to prepare a Planning Proposal to amend MLEP 2011 to delete "shop top housing" as a permissible use within the B7 Business Park zone and nominate itself as the Relevant Planning Authority;
 3. Council submits the draft Planning Proposal to the Department of Planning and Environment for Gateway determination; and
 4. Council resolves to publicly exhibit the draft Planning Proposal.
-

BACKGROUND

Marrickville Local Environmental Plan 2011 (MLEP 2011) was gazetted on 12 December 2011 and includes the B7 Business Park zone. 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 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. These are supplemented by provisions in Marrickville Development Control Plan 2011 (MDCP 2011) discussed below, particularly parts 6.5 and 6.6 thereof.

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/dwellings (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.*

DISCUSSION

Marrickville Local Environmental Plan 2011 and Leichhardt Local Environmental Plan 2013 both contain land zoned B7 Business Park whereas no land is zoned B7 Business Park under Ashfield Local Environmental Plan 2013. 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.

This objective is achieved via Clause 6.13 of MLEP 2011, 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 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.

Note: Draft Marrickville Local Environmental Plan 2011 (Amendment No. 4) proposes to relocate these MDCP provisions into Clause 6.13 of MLEP 2011 due to the Environmental Planning Assessment Act 1979 Amendments that limit the role of DCPs to derogate from the provisions of LEPs.

Since draft Marrickville Local Environmental Plan 2011 (Amendment No. 4) was considered by the former Marrickville Council, a recent Land and Environment Court matter ([2016] NSWLEC 1618) has identified an additional issue concerning the operation of Clause 6.13 of MLEP 2011.

The additional issue relates to shop top housing. Specifically, shop top housing is permitted with consent in land use tables for the B7 zone. The Court construed the operation of Clause 6.13 of MLEP 2011 together with the MDCP and concluded that the relevant provisions in the MDCP do not apply to shop top housing developments. As a consequence, the limitation on the quantum of residential floor space specified in the B7 Business Park zone (included as part of Amendment 4) only applies to residential flat buildings and dwellings. Shop top housing remains unconstrained in terms of the quantum of commercial floor space.

The listing of the term shop top housing as a use permitted with consent in the land use table for the B7 Business Park zone under MLEP 2011 is an anomaly particularly as the main intent of the zone is to permit employment uses such as business and office premises for the purposes of certain art, technology, production and design sectors and not shops.

In order to address the Court's decision, the planning controls require amendment as a matter of urgency to prohibit *shop top housing*.

This outcome will be consistent with the aims and objectives of the B7 Business Park zone and so this report recommends that a Planning Proposal be prepared and endorsed that amends the Land Use Table for the B7 zone under MLEP 2011 to prohibit shop top housing in the zone.

Not proceeding with the recommended amendment would compromise the intended planning outcomes for the B7 Business Park zone by allowing more extensive residential development than is desired for the predominantly employment zone.

FINANCIAL IMPLICATIONS

Nil.

OTHER STAFF COMMENTS

The General Counsel has provided input into this report regarding the relevant decision of the Court and its implication.

PUBLIC CONSULTATION

Public consultation will occur as part of the public exhibition of the planning proposal, in accordance with the requirements of the Environmental Planning and Assessment Act 1979.

CONCLUSION

This report recommends that Council resolve to prepare and publicly exhibit a planning proposal to amend Marrickville Local Environmental Plan 2011 to delete "*shop top housing*" from Part 3 Permitted with consent of the Land Use Table for the B7 Business Park zone.

ATTACHMENTS

Nil.