



# INNER WEST COUNCIL

## PLANNING PROPOSAL

### MARRICKVILLE LOCAL ENVIRONMENTAL PLAN 2011 (AMENDMENT NO. 4)

#### PART A: PROPOSED WRITTEN INSTRUMENT AMENDMENTS

##### PROPOSED AMENDMENTS

##### **MLEP 2011: Part 2 Permitted or prohibited development and Part 6 Additional local provisions**

##### Part 2 Land Use Tables Generally

Presently certain uses in the LEP land use tables are listed as “*Permitted with consent*” when those uses are only permitted in specific circumstances via separate clauses in the LEP.

This approach was required by the then Department of Planning and Infrastructure. It has caused many interpretation issues (and in some cases litigation issues for Council) in the assessment of development applications for certain types of developments that are subject to provisions of some State Environmental Planning Policies.

To address these issues an amended approach to the application of the additional local provisions of MLEP 2011 was prepared and advice was sought from the Department of Planning and Environment as to whether it had any objection to such an approach.

The specific amendments sought involved deleting those uses that are only permitted in specific circumstances from being listed in the land use tables in the LEP as “*Permitted with consent*” and amending the additional local provisions in Part 6 of the LEP relating to those uses.

A copy of the correspondence forwarded to the Department is attached as **ATTACHMENT 1**.

The correspondence to the Department included additional justification in support of Marrickville Council's case including a review undertaken of some of the more recently gazetted LEPs of other council's instruments, prepared under the Standard Instrument. Examples were provided from some of those recently gazetted LEPs which contained additional local provisions that permit some development types which are not permitted in the Land Use Table for the zone.

The Department, by email dated 16 June 2015, advised (in part) as follows:

*“I refer to ..... request for advice regarding the above, specifically a proposal to delete uses that are permitted only in specific circumstances from being listed in the land use MLEP 2011 LUT (Land Use Table) as ‘permitted with consent’ - and amending the additional local provisions in Part 6 of the MLEP relating to those developments.*

*As .... correctly pointed out, the rationale for including those uses in the LUT was to avoid the creation of sub-zones with provisions over-riding the LUT.*

*It is the Department's view that Council's .... proposed approach to ameliorating the ‘unfriendly’ difficulties experienced with the current provisions would unfortunately not avoid the sub-zone scenario.*

*While Council's need is appreciated, the MLEP is a document designed to respond to the applicable legislative parameters, including the Standard Instrument, which takes precedence over being 'user friendly'.*

*However, Council may wish to consider submitting a planning proposal to transfer the uses permitted in specific circumstances to Schedule 1 of the MLEP, which is considered to be a legitimate avenue for responding to council's issue. Council's submission would need to cover all necessary information on the uses in question, including how many are involved and cumulative effects."*

As detailed above, Council officers' preferred approach to address the issue, as detailed in **ATTACHMENT 1**, was not supported by the Department.

The Department suggested that transferring the uses permitted in specific circumstances to Schedule 1 - Additional permitted uses of MLEP 2011 was "*a legitimate avenue for responding to council's issues*".

The uses that the problem applies to are:

- i. **Multi dwelling housing, office premises and residential flat buildings in residential zones** in buildings that were designed and constructed for an industrial or warehouse purpose (Clause 6.9);
- ii. **Office premises, shops, restaurants or cafes or take away food and drink premises in residential zones** in buildings that were designed and constructed for the purpose of a shop (Clause 6.10); and
- iii. **Purpose built dwelling houses in certain business zones and industrial zones** (Clause 6.11).

Amendments to MLEP 2011 have been developed based on the approach recommended by the Department "*to transfer the uses permitted in specific circumstances to Schedule 1 of the MLEP.*"

The amendments required to MLEP 2011 provisions to remove those uses from the relevant land use tables and other consequential changes necessary to MLEP 2011 to address the issue are detailed in the following section under the heading "MLEP 2011 AMENDMENTS – Changes to Land Use Tables and other consequential changes.

#### **MLEP 2011 AMENDMENTS – Changes to Land Use Tables and other consequential changes**

##### **i. Amendments relating to industrial/warehouse conversion provisions**

###### **Land use table changes:**

###### **R1 General Residential Zone**

- i. Delete the last objective of the zone reading:  
*"To provide for office premises in existing buildings designed and constructed for commercial purposes or as part of the conversion of existing industrial or warehouse buildings."*; and
- ii. Include "*offices premises*" in the land use table for the zone in Part 4 Prohibited.

###### **R2 Low Density Residential Zone**

- i. Delete the fourth and fifth objectives of the zone reading:  
*"To provide for multi dwelling housing and residential flat buildings but only as part of the conversion of existing industrial or warehouse buildings."*; and  
*"To provide for office premises but only as part of the conversion of existing industrial or warehouse buildings or in existing buildings designed and constructed for commercial purposes."*; and

- ii. Include “multi dwelling housing”, “offices premises” and “residential flat buildings” in the land use table for the zone in Part 4 Prohibited.

### R3 Medium Density Residential Zone

- i. Delete the fourth and fifth objectives of the zone reading:  
“To provide for residential flat buildings but only as part of the conversion of existing industrial or warehouse buildings.”; and  
“To provide for office premises but only as part of the conversion of existing industrial or warehouse buildings or in existing buildings designed and constructed for commercial purposes.”
- ii. Include “offices premises” and “residential flat buildings” in the land use table for the zone in Part 4 Prohibited.

### R4 High Density Residential Zone

- i. Delete the fourth objective of the zone reading:  
“To provide for office premises but only as part of the conversion of existing industrial or warehouse buildings or in existing buildings designed and constructed for commercial purposes.”; and
- ii. Include “offices premises” in the land use table for the zone in Part 4 Prohibited.

## **Part 6 Additional local provisions changes:**

Under Clause 6.9 (4) of MLEP 2011 development carried out under the clause is not subject to any height or floor space ratio limits shown on the Height of Buildings Map or the Floor Space Ratio Map. The subject subclause has caused some issues in relation to the conversion of buildings, that were designed and constructed for an industrial or warehouse purpose that were erected before the commencement of MLEP 2011, on R2 Low Density Residential and R3 Medium Density Residential zoned land to residential flat buildings.

To address those issues it is recommended that such conversions be subject to the height of buildings and floor space ratio controls that apply to those properties under MLEP 2011.

It should be noted that the conversion of industrial and warehouse buildings on R1 General Residential and R4 High Density Residential zoned land to residential flat buildings are subject to the height and floor space ratio limits shown on the Height of Buildings Map and the Floor Space Ratio Map for the respective properties.

Consequently it is recommended that Clause 6.9 of MLEP 2011 be amended to read as follows:

### **6.9 Converting industrial or warehouse buildings to multi dwelling housing, office premises or residential flat buildings in residential zones**

- (1) The objective of this clause is to provide matters for consideration in the assessment of applications relating to developments permitted under Parts 23, 24 and 25 of Schedule 1 of this Plan for multi dwelling housing, office premises and residential flat buildings in residential zones where they are part of an adaptive reuse of existing industrial buildings or warehouse buildings.
- (2) In determining whether to grant development consent for developments permitted under Parts 23, 24 and 25 of Schedule 1 of this Plan, the consent authority must consider the following:
  - (a) the impact of the development on the scale and streetscape of the surrounding locality,
  - (b) the suitability of the building for adaptive reuse,
  - (c) the degree of modification of the footprint and facade of the building.

## Schedule 1 Additional permitted uses changes

Insert the following additional matters in Schedule 1 Additional permitted uses of MLEP 2011 reading as follows:

### 23 Use of certain residentially zoned land in the Marrickville Local Government Area

- (1) This clause applies to all land zoned R2 Low Density Residential and R3 Medium Density Residential that contains a building that was designed and constructed for an industrial or warehouse purpose, and was erected before the commencement of this Plan.
- (2) Development for the adaptive reuse of the building for the purposes of a residential flat building is permitted with consent.

### 24 Use of certain residentially zoned land in the Marrickville Local Government Area

- (1) This clause applies to all land zoned R1 General Residential, R2 Low Density Residential, R3 Medium Density Residential and R4 High Density Residential that contains a building that was designed and constructed for an industrial or warehouse purpose, and was erected before the commencement of this Plan.
- (2) Development for the adaptive reuse of the building for the purposes of office premises is permitted with consent.

### 25 Use of certain residentially zoned land in the Marrickville Local Government Area

- (1) This clause applies to all land zoned R2 Low Density Residential, that contains a building that was designed and constructed for an industrial or warehouse purpose, and was erected before the commencement of this Plan.
- (2) Development for the adaptive reuse of the building for the purposes of multi dwelling housing is permitted with consent.

### ii. Amendments relating to use of existing non-residential buildings in residential zones

#### Land use table changes:

##### R1 General Residential Zone

- i. Delete the fourth objective of the zone reading:  
*"To provide for retail premises in existing buildings designed and constructed for commercial purposes.";* and
- ii. Include *"retail premises"* in the land use table for the zone in Part 4 Prohibited.

##### R2 Low Density Residential Zone

- i. Delete the last objective of the zone reading:  
*"To provide for retail premises in existing buildings designed and constructed for commercial purposes.";* and
- ii. Include *"retail premises"* in the land use table for the zone in Part 4 Prohibited.

##### R3 Medium Density Residential Zone

- i. Delete the last objective of the zone reading:  
*"To provide for retail premises in existing buildings designed and constructed for commercial purposes.";* and

- ii. Include “*retail premises*” in the land use table for the zone in Part 4 Prohibited.

#### R4 High Density Residential Zone

- i. Delete the fifth objective of the zone reading:  
“*To provide for retail premises in existing buildings designed and constructed for commercial purposes.*”; and
- ii. Include “*retail premises*” in the land use table for the zone in Part 4 Prohibited.

**NB** “*Neighbourhood shops*” are a mandated permitted with consent use under the Standard Instrument in the R1 General Residential, R3 Medium Density Residential and R4 High Density Residential zones. The amendments recommended above would not change the permissibility of “*neighbourhood shops*” in those zones.

“*Shop top housing*” is a mandated permitted with consent use under the Standard Instrument in the R1 General Residential and R4 High Density Residential zones. The amendments recommended above would mean that the retail component of any “*shop top housing*” development in those zones would be restricted to “*neighbourhood shops*”. (“*Shop top housing*” is prohibited in the R2 Low Density Residential and R3 Medium Density Residential zones under MLEP 2011).

#### **Part 6 Additional local provisions changes:**

Amend Clause 6.10 of MLEP 2011 to read as follows:

##### **6.10 Use of existing non-residential buildings in residential zones**

- (1) The objective of this clause is to provide matters for consideration in the assessment of applications relating to developments permitted under Part 26 of Schedule 1 of this Plan for office premises, shops, restaurants or cafes or take away food and drink premises.
- (2) Development consent must not be granted to development for the purposes of office premises, shops, restaurants or cafes or take away food and drink premises permitted under Part 26 of Schedule 1 of this Plan applies unless the consent authority has considered the following:
  - (a) the impact of the development on the amenity of the surrounding locality,
  - (b) the suitability of the building for adaptive reuse,
  - (c) the degree of modification of the footprint and facade of the building.

#### **Schedule 1 Additional permitted uses changes**

Insert the following additional matter in Schedule 1 Additional permitted uses of MLEP 2011 reading as follows:

##### **26 Use of certain residentially zoned land in the Marrickville Local Government Area**

- (1) This clause applies to all land zoned R1 General Residential, R2 Low Density Residential, R3 Medium Density Residential and R4 High Density Residential that contains a building that was designed and constructed for the purpose of a shop, and was erected before the commencement of this Plan.
- (2) Development for the purposes of office premises, shops, restaurants or cafes or take away food and drink premises is permitted with consent.

##### **iii. Amendments relating to use of dwelling houses in business and industrial zones**

## **Land use table changes:**

### **B1 Neighbourhood Centre Zone**

- i. Delete the last objective of the zone reading:  
*"To enable a purpose built dwelling house to be used in certain circumstances";* and
- ii. Delete *"dwelling houses"* in the land use table for the zone from Part 3 Permitted with consent.

### **B4 Mixed Use Zone**

- i. Delete the second last objective of the zone reading:  
*"To enable a purpose built dwelling house to be used in certain circumstances";* and
- ii. Delete *"dwelling houses"* in the land use table for the zone from Part 3 Permitted with consent.

### **B5 Business Development Zone**

- i. Delete the second objective of the zone reading:  
*"To enable a purpose built dwelling house to be used in certain circumstances";* and
- ii. Delete *"dwelling houses"* in the land use table for the zone from Part 3 Permitted with consent.

### **B6 Enterprise Corridor Zone**

- i. Delete the last objective of the zone reading:  
*"To enable a purpose built dwelling house to be used in certain circumstances";* and
- ii. Delete *"dwelling houses"* in the land use table for the zone from Part 3 Permitted with consent.

### **B7 Business Park Zone**

- i. Delete the last objective of the zone reading:  
*"To enable a purpose built dwelling house to be used in certain circumstances";* and
- ii. Delete *"dwelling houses"* in the land use table for the zone from Part 3 Permitted with consent.

### **IN1 General Industrial Zone**

- i. Delete the last objective of the zone reading:  
*"To enable a purpose built dwelling house to be used in certain circumstances";* and
- ii. Delete *"dwelling houses"* in the land use table for the zone from Part 3 Permitted with consent.

### **IN2 Light Industrial Zone**

- i. Delete the last objective of the zone reading:  
*"To enable a purpose built dwelling house to be used in certain circumstances";* and
- ii. Delete *"dwelling houses"* in the land use table for the zone from Part 3 Permitted with consent.

## **Part 6 Additional local provisions changes:**

Amend Clause 6.11 of MLEP 2011 to read as follows:

### **6.11 Use of dwelling houses in business and industrial zones**



- (1) The objective of this clause is to provide matters for consideration in the assessment of applications relating to developments permitted under Part 27 of Schedule 1 of this Plan for dwelling houses.
- (2) Development consent must not be granted to development for the purpose of a dwelling house permitted under Part 27 of Schedule 1 of this Plan applies unless the consent authority is satisfied that the building will offer satisfactory residential amenity.

## **Schedule 1 Additional permitted uses changes**

Insert the following additional matter in Schedule 1 Additional permitted uses of MLEP 2011 reading as follows:

### **27 Dwelling houses in certain business and industrial zones in the Marrickville Local Government Area**

- (1) This clause applies to all land zoned B1 Neighbourhood Centre, B4 Mixed Use, B5 Business Development, B6 Enterprise Corridor, B7 Business Park, IN1 General Industrial and IN2 Light Industrial that contains a building that was designed and constructed for the purpose of a dwelling house, and was erected before the commencement of this Plan.
- (2) Development for the purposes of a dwelling house is permitted with consent.

The following recommendations are a combination of the land use table changes (Part 2 of MLEP 2011), additional local provisions (Part 6 of MLEP 2011) and Schedule 1 Additional permitted uses changes (Schedule 1 of MLEP 2011) discussed above.

#### ***Recommendation L-2-(01):***

That the following changes be made to the respective Land Use Tables in Part 2 of MLEP 2011:

#### **R1 General Residential Zone**

- i. Delete the last two objectives of the zone reading:  
*"To provide for retail premises in existing buildings designed and constructed for commercial purposes."* and  
*"To provide for office premises in existing buildings designed and constructed for commercial purposes or as part of the conversion of existing industrial or warehouse buildings."*
- ii. Include *"offices premises"* and *"retail premises"* in the land use table for the zone in Part 4 Prohibited.

#### **R2 Low Density Residential Zone**

- i. Delete the last three objectives of the zone reading:  
*"To provide for multi dwelling housing and residential flat buildings but only as part of the conversion of existing industrial or warehouse buildings.";*  
*"To provide for office premises but only as part of the conversion of existing industrial or warehouse buildings or in existing buildings designed and constructed for commercial purposes."*  
*"To provide for retail premises in existing buildings designed and constructed for commercial purposes."*
- ii. Include *"multi dwelling housing"*, *"offices premises"*, *"residential flat buildings"* and *"retail premises"* in the land use table for the zone in Part 4 Prohibited.

#### **R3 Medium Density Residential Zone**

- i. Delete the last three objectives of the zone reading:

*“To provide for residential flat buildings but only as part of the conversion of existing industrial or warehouse buildings.”;*

*“To provide for office premises but only as part of the conversion of existing industrial or warehouse buildings or in existing buildings designed and constructed for commercial purposes.”; and*

*“To provide for office premises and retail premises in existing buildings designed and constructed for commercial purposes.”*

- ii. Include “offices premises”, “residential flat buildings” and “retail premises” in the land use table for the zone in Part 4 Prohibited.

#### R4 High Density Residential Zone

- i. Delete the fourth and fifth objectives of the zone reading:  
*“To provide for office premises but only as part of the conversion of existing industrial or warehouse buildings or in existing buildings designed and constructed for commercial purposes.”* and  
*“To provide for retail premises in existing buildings designed and constructed for commercial purposes.”*
- ii. Include “offices premises” and “retail premises” in the land use table for the zone in Part 4 Prohibited.

#### B1 Neighbourhood Centre Zone

- i. Delete the last objective of the zone reading:  
*“To enable a purpose built dwelling house to be used in certain circumstances.”*
- ii. Delete “dwelling houses” in the land use table for the zone from Part 3 Permitted with consent.

#### B4 Mixed Use Zone

- i. Delete the second last objective of the zone reading:  
*“To enable a purpose built dwelling house to be used in certain circumstances.”*
- ii. Delete “dwelling houses” in the land use table for the zone from Part 3 Permitted with consent.

#### B5 Business Development Zone

- i. Delete the second objective of the zone reading:  
*“To enable a purpose built dwelling house to be used in certain circumstances.”*
- ii. Delete “dwelling houses” in the land use table for the zone from Part 3 Permitted with consent.

#### B6 Enterprise Corridor Zone

- i. Delete the last objective of the zone reading:  
*“To enable a purpose built dwelling house to be used in certain circumstances.”*
- ii. Delete “dwelling houses” in the land use table for the zone from Part 3 Permitted with consent.

#### B7 Business Park Zone

- i. Delete the last objective of the zone reading:  
*“To enable a purpose built dwelling house to be used in certain circumstances.”*
- ii. Delete “dwelling houses” in the land use table for the zone from Part 3 Permitted with consent.

#### IN1 General Industrial Zone

- i. Delete the last objective of the zone reading:  
*“To enable a purpose built dwelling house to be used in certain circumstances.”*
- ii. Delete “dwelling houses” in the land use table for the zone from Part 3 Permitted with consent.

#### IN2 Light Industrial Zone



- i. Delete the last objective of the zone reading:  
*"To enable a purpose built dwelling house to be used in certain circumstances."*
- ii. Delete "dwelling houses" in the land use table for the zone from Part 3 Permitted with consent.

**Recommendation L-6.9:**

That Clause 6.9 of MLEP 2011 be amended to read as follows:

**6.9 Converting industrial or warehouse buildings to multi dwelling housing, office premises or residential flat buildings in residential zones**

- (1) The objective of this clause is to provide matters for consideration in the assessment of applications relating to developments permitted under Parts 23, 24 and 25 of Schedule 1 of this Plan for multi dwelling housing, office premises and residential flat buildings in residential zones where they are part of an adaptive reuse of existing industrial buildings or warehouse buildings.
- (2) In determining whether to grant development consent for developments permitted under Parts 23, 24 and 25 of Schedule 1 of this Plan, the consent authority must consider the following:
  - (a) the impact of the development on the scale and streetscape of the surrounding locality,
  - (b) the suitability of the building for adaptive reuse,
  - (c) the degree of modification of the footprint and facade of the building.

**Recommendation L-6.10:**

That Clause 6.10 of MLEP 2011 be amended to read as follows:

**6.10 Use of existing non-residential buildings in residential zones**

- (1) The objective of this clause is to provide matters for consideration in the assessment of applications relating to developments permitted under Part 26 of Schedule 1 of this Plan for office premises, shops, restaurants or cafes or take away food and drink premises.
- (2) Development consent must not be granted to development for the purposes of office premises, shops, restaurants or cafes or take away food and drink premises permitted under Part 26 of Schedule 1 of this Plan unless the consent authority has considered the following:
  - (a) the impact of the development on the amenity of the surrounding locality,
  - (b) the suitability of the building for adaptive reuse,
  - (c) the degree of modification of the footprint and facade of the building.

**Recommendation L-6.11 (01):**

That Clause 6.11 of MLEP 2011 be amended to read as follows:

**6.11 Use of dwelling houses in business and industrial zones**

- (1) The objective of this clause is to provide matters for consideration in the assessment of applications relating to developments permitted under Part 27 of Schedule 1 of this Plan for dwelling houses.
- (2) Development consent must not be granted to development for the purpose of a dwelling house permitted under Part 27 of Schedule 1 of this Plan unless the consent authority is satisfied that the building will offer satisfactory residential amenity.

**Recommendation L-Sch1- 23-27:**

That the following additional matters be inserted in Schedule 1 Additional permitted uses of MLEP 2011 reading as follows:

**23 Use of certain residentially zoned land in the former Marrickville Local Government Area**

- (1) This clause applies to all land zoned R2 Low Density Residential and R3 Medium Density Residential that contains a building that was designed and constructed for an industrial or warehouse purpose, and was erected before the commencement of this Plan.
- (2) Development for the adaptive reuse of the building for the purposes of a residential flat building is permitted with consent.

**24 Use of certain residentially zoned land in the former Marrickville Local Government Area**

- (1) This clause applies to all land zoned R1 General Residential, R2 Low Density Residential, R3 Medium Density Residential and R4 High Density Residential that contains a building that was designed and constructed for an industrial or warehouse purpose, and was erected before the commencement of this Plan.
- (2) Development for the adaptive reuse of the building for the purposes of office premises is permitted with consent.

**25 Use of certain residentially zoned land in the former Marrickville Local Government Area**

- (1) This clause applies to all land zoned R2 Low Density Residential, that contains a building that was designed and constructed for an industrial or warehouse purpose, and was erected before the commencement of this Plan.
- (2) Development for the adaptive reuse of the building for the purposes of multi dwelling housing is permitted with consent.

**26 Use of certain residentially zoned land in the former Marrickville Local Government Area**

- (1) This clause applies to all land zoned R1 General Residential, R2 Low Density Residential, R3 Medium Density Residential and R4 High Density Residential that contains a building that was designed and constructed for the purpose of a shop, and was erected before the commencement of this Plan.
- (2) Development for the purposes of office premises, shops, restaurants or cafes or take away food and drink premises is permitted with consent.

**27 Dwelling houses in certain business and industrial zones in the former Marrickville Local Government Area**

- (1) This clause applies to all land zoned B1 Neighbourhood Centre, B4 Mixed Use, B5 Business Development, B6 Enterprise Corridor, B7 Business Park, IN1 General Industrial and IN2 Light Industrial that contains a building that was designed and constructed for the purpose of a dwelling house, and was erected before the commencement of this Plan.
- (2) Development for the purposes of a dwelling house is permitted with consent.

All Residential Zones

Home Industries

Home industries are a type of “*light industry*”, and a “*light industry*” is a type of “*industry*” under the definitions contained in the Dictionary to MLEP 2011.

“*Industries*” are listed as “*Prohibited*” in the Land Use Table for the R1 – General Residential, R2 – Low Density Residential, R3 – Medium Density Residential and R4 – High Density Residential zones.

Consequently “*home industries*” are not permissible in any of the residential zones. As the intent of home industries is that they be permissible in residential zones it is recommended that “home industries” be listed as a use permitted with consent in the respective land use tables for each of the residential zones.

***Recommendation L-2-(02):***

That “*Home industries*” be added to the list of developments in Part 2 Permitted with consent of the Land Use Tables for the R1 – General Residential, R2 – Low Density Residential, R3 – Medium Density Residential and R4 – High Density Residential zones.

R2 Low Density Residential Zone

Neighbourhood Shops

Clause 6.10 of MLEP 2011 permits shops in the R2 Low Density Residential zone “*where the development relates to a building that was designed and constructed for the purpose of a shop and was erected before the commencement of this Plan*”. However “*neighbourhood shops*” are prohibited in the R2 Low Density Residential zone. This would mean that “*neighbourhood shops*” would be prohibited in these circumstances whilst “*shops*” would not.

This outcome is unintended as a “*neighbourhood shop*” that provides “*for the day-to-day needs of people who live and work in the local area...*” is a less intensive land use than a shop. Therefore, that use that should be permissible with consent in the R2 Low Density Residential zone in those circumstances where shops are permissible.

Consequently, it is recommended that the words “*neighbourhood shops*” be deleted from the list of prohibited uses in the Land Use Table for the R2 Low Density Residential zone.

**NB** This problem does not arise with the other residential zones as neighbourhood shops are permissible in these zones. The proposed deletion of “*neighbourhood shops*” from the R2 Zone works in conjunction with the other recommended changes to this clause and Schedule 1 which act to permit office premises, shops, restaurants or cafes or take away food and drink premises in all of the residential zones but only in buildings that were designed and constructed for the purpose of a shop.

***Recommendation L-2-(03):***

That the words “*Neighbourhood shops*” be deleted from the list of prohibited uses in the Land Use Table for the R2 Low Density Residential zone.

B6 Enterprise Corridor Zone

i. Zone Objectives

The fourth zone objective reads “*To provide for residential uses, but only as part of a mixed development.*” The word “*use*” (after the word “*mixed*”) was inadvertently omitted from the subject objective.

The objective should read *“To provide for residential uses, but only as part of a mixed use development.”* to be consistent with the wording in Standard Instrument (Local Environmental Plans) Amendment Order 2011.

Notwithstanding the above, it should be noted that the above objective was required to be included in the objectives of the zone under a direction from the Department which required the objective to be included *“if any form of residential accommodation is permitted in this zone”*.

The parent term *“residential accommodation”* is listed as prohibited in the land use table for the zone. The only type of residential accommodation listed as permitted with consent in the land use table for the zone is *“Dwelling houses”*.

A separate zone objective (the fifth zone objective) relates to dwelling houses which reads as follows:

- *“To enable a purpose built dwelling house to be used in certain circumstances as a dwelling house.”*

The fourth and fifth zone objectives referred to above are in conflict in that the fourth objective only permits residential uses as part of a mixed (use) development, and a dwelling house by its very nature is a standalone use and consequently can't be *“part of a mixed use development”*. Accordingly the fourth zone objective should be deleted.

***Recommendation L-2-(04):***

That the fourth zone objective for the B6 Enterprise Corridor zone reading *“To provide for residential uses, but only as part of a mixed development.”* be deleted.

ii. Land Use Table

The land use table for the B6 Enterprise Corridor zone lists *“Commercial premises”* as *“Prohibited”*. Under the Dictionary to MLEP 2011 *“commercial premises”* means any of the following: *“business premises”, “office premises”* and *“retail premises”*.

*“Business premises”* and *“Office premises”* are both listed as *“Permitted with consent”* in the land use table for the B6 Enterprise Corridor zone. The group term *“Retail premises”* is not listed as *“Permitted with consent”* in the land use table for the zone but a number of types of retail premises (*“Food and drink premises”, “Garden centres”, “Hardware and building supplies”, “Landscaping material supplies”, “Markets”, “Neighbourhood shops”, “Plant nurseries”* and *“Vehicle sales or hire”*) are listed in the land use table as *“Permitted with consent”*.

One of the objectives of the B6 Enterprise Corridor zone is *“To maintain the economic strength of centres by limiting retailing activity.”* Only select types of *“retail premises”* are permitted in the B6 Enterprise Corridor zone, being those retail premises listed in the Land Use Table for the zone referred to above.

In view of the above it is recommended that the listing of *“Commercial premises”* as *“Prohibited”* in the land use table for the zone be deleted and the term *“Retail premises”* be listed as *“Prohibited”* in the zone.

***Recommendation L-2-(05):***

That the listing of *“Commercial premises”* as *“Prohibited”* in the land use table for the B6 Enterprise Corridor zone be deleted and the term *“Retail premises”* be listed as *“Prohibited”* in the zone.

**B7 Business Park Zone**

i. Turf farming

*“Turf farming”* is a use listed as *“Prohibited”* in the Land Use Table for the B7 Business Park Zone. *“Agriculture”* is also a use listed as *“Prohibited”* in the Land Use Table for the zone.

“*Turf farming*” is a type of “*intensive plant agriculture*”. “*Intensive plant agriculture*” falls under the group term “*agriculture*” under MLEP 2011. The listing of the group term “*agriculture*” as a use prohibited in the zone means that the child term “*turf farming*” is automatically a prohibited use in the zone. The listing of “*turf farming*” as a prohibited use in the land use table for the zone is therefore superfluous. The listing is also inconsistent with the listing practice used in other land use table zones.

***Recommendation L-2-(06):***

That “*Turf farming*” be deleted from Part 2 Prohibited of the Land Use Table for the B7 Business Park zone.

ii. Respite day care centres

“*Respite day care centres*” is a use listed as “Permitted with consent” and also listed as “*Prohibited*” in the Land Use Table for the B7 Business Park Zone.

“*Respite day care centres*” are a use mandated as “*Permitted with consent*” in the B7 Business Park zone under the Standard Instrument.

The listing of “*Respite day care centres*” as a prohibited use in the land use table for the zone is an error.

***Recommendation L-2-(10):***

That “*Respite day care centres*,” be deleted from “*Part 4 Prohibited*” of the Land Use Table for the B7 Business Park zone.

IN1 General Industrial Zone

Transport Depots

“*Transport depots*” are a use listed as “*Prohibited*” in the Land Use Table for the IN1 General Industrial Zone.

Under MLEP 2011 a transport depot is defined as follows:

*“transport depot means a building or place used for the parking or servicing of motor powered or motor drawn vehicles used in connection with a business, industry, shop or passenger or freight transport undertaking”.*

A taxi change-over base would constitute a “*transport depot*” under the above definition.

Transport depots are prohibited in the IN1 General Industrial zone. “*Transport depots*” are “*Permitted with consent*” in the IN2 Light Industrial zone and the B6 Enterprise Corridor and B7 Business Park zones under the provisions of MLEP 2011.

It is considered that “*transport depots*” should be permitted with consent in the IN1 General Industrial zone. The IN1 General Industrial zones in the LGA are generally located away from residential zones. By comparison, the IN2 Light Industrial, B6 Enterprise Corridor and B7 Business Park zones are generally located adjacent to residential zones.

It should also be noted that other transport related uses including “*Freight transport facilities*” and “*Truck depots*” are “*Permitted with consent*” in the IN1 General Industrial zone under the provisions of MLEP 2011. A review of a number of other Council’s gazetted local environmental plans revealed that “*transport depots*” were permitted with consent in those LEPs that included the IN1 General Industrial zone.

***Recommendation L-2-(07):***

That “*Transport depots*” be deleted from Part 2 Prohibited of the Land Use Table for the IN1 General Industrial zone.

## SP1 Special Activities Zone

### Home Occupations

"Home occupations" are listed as "Permitted without consent" in the Land Use Table for the SP1 Special Activities zone. As dwellings are not permissible within the zone it is recommended that "Home occupations" be deleted from the Land Use Table for the zone. It is noted that many other council's gazetted LEPs do not list home occupations in the land use table for that zone.

#### ***Recommendation L-2-(08):***

That "Home occupations" be deleted from Part 2 Permitted without consent of the Land Use Table for the SP1 Special Activities zone and be replaced with the word "Nil".

## SP2 Infrastructure Zone

### Home Occupations

"Home occupations" are listed as "Permitted without consent" in the Land Use Table for the SP2 Infrastructure zone. As dwellings are not permissible within the zone it is recommended that "Home occupations" be deleted from the Land Use Table for the zone. It is noted that many other council's gazetted LEPs do not list home occupations in the land use table for that zone.

#### ***Recommendation L-2-(09):***

That "Home occupations" be deleted from Part 2 Permitted without consent of the Land Use Table for the SP2 Infrastructure zone and be replaced with the word "Nil".

## **MLEP 2011: Part 4 Principal development standards**

### Clause 4.4 Floor space ratio

#### ***i. FSR for dwelling houses on sites greater than 400sqm***

Under Clause 4.4 (2A) the maximum floor space ratio for various forms of residential accommodation (namely attached dwellings, bed and breakfast accommodation, dwelling houses and semi-detached dwellings) on land labelled "F" on the Floor Space Ratio Map with a site area greater than 400sqm is restricted to 0.5:1.

A maximum FSR for other forms of development permitted (including child care centres, community facilities, places of public worship and seniors housing) on such land is 0.6:1.

To ensure consistency in the FSR controls with the other forms of development permitted, it is recommended that the upper site area listing for sites greater than 400sqm for development for the purposes of attached dwellings, bed and breakfast accommodation, dwelling houses and semi-detached dwellings) on land labelled "F" on the Floor Space Ratio Map be deleted.

The deletion of the upper site area listing of "> 400 square metres" from the table to Clause 4.4 (2A) would mean that a maximum floor space ratio of 0.6:1 would apply to attached dwellings, bed and breakfast accommodation, dwelling houses and semi-detached dwellings on land labelled "F" on the Floor Space Ratio Map, on land with a site area greater than 350 square metres, the same maximum FSR that applies to other forms of development permitted on such land.

#### ***Recommendation L-4.4 (01):***

That the Site area and Maximum floor space ratio table in Clause 4.4 (2A) of MLEP 2011 be amended by the deletion:

"> 350 ≤ 400 square metres	0.6:1
> 400 square metres	0.5:1"

and the insertion of:



ii. FSR on land reserved Local Road (SP2) on the Land Reservation Acquisition Maps

The creation of the laneways to provide vehicular access to the rear of shops and shop top housing developments is important to avoid conflicts associated with loading/unloading and waste collection from busy main streets. It also avoids the need for creation of vehicular driveways onto main streets, which bring vehicles from the site into conflict with pedestrians and other traffic.

There are a number of commercial strips within the LGA that, for many years, have been planned to be serviced by rear public laneways. Land for those laneways is reserved for local road purposes on the Land Reservation Acquisition Maps.

The current planning controls do not contain incentives to encourage land to be dedicated for those planned laneways. No Floor Space Ratio control or Height of Building control applies to the land reserved Local Road on the Floor Space Ratio Map and Height of Buildings Maps for the respective properties.

The definition of "site area" under MLEP 2011 "does not include the area of any land on which development is not permitted to be carried out under this Plan." Consequently that part of the property reserved for local road purposes does not constitute "site area" for the purposes of determining the floor space ratio of development on the property. Notwithstanding, usual practice, to act as a mechanism that provides an incentive for the dedication without a negative impact on landowners, is to ensure no loss of development potential, provided the dedication is made.

The preferred approach to formalise Council's practice is to include an additional provision in MLEP 2011. In this regard an additional subclause could be inserted into Clause 4.4 of MLEP 2011 reading as follows:

*"(2C) Despite subclause (2) for the purposes of determining the floor space ratio on land reserved Local Road (SP2) on the Land Reservation Acquisition Map, the land reserved Local Road (SP2) shall be included as site area where the reserved land is to be dedicated to Council as "Proposed Road".*

**Recommendation L-4.4 (02):**

That an additional subclause be added after Clause 4.4 (2B) of MLEP 2011 reading as follows:

*"(2C) Despite subclause (2) for the purposes of determining the floor space ratio on land reserved Local Road (SP2) on the Land Reservation Acquisition Map, the land reserved Local Road (SP2) shall be included as site area where the reserved land is to be dedicated to Council as "Proposed Road".*

**MLEP 2011: Part 5 Miscellaneous provisions**

Laneway Reservations

The former Marrickville Council considered a report on laneway reservations under Marrickville Local Environmental 2011 as Item 2 at its June 2014 Infrastructure, Planning and Environmental Services Meeting where it resolved:

**"THAT Council:**

1. receives and notes this report;
2. endorses the following actions to ensure the dedication of laneway reservations identified in Council's planning controls as part of the future redevelopment of identified lands, at no cost to Council:
  - a. remove all existing laneway reservations from the MLEP 2011 Land Reservation Acquisition Map;

- b. *discontinue one of the reservations (Reservation 4: 309-317 King Street and 3 Eliza Street, Newtown);*
  - c. *for nine of the reservations, reduce the MLEP 2011 floor space ratio and height controls for the affected properties;*
  - d. *identify the abovementioned nine reservations on the MLEP 2011 Key Sites Map with a link to a new MLEP 2011 Schedule 6, stating that higher floor space ratio and height controls (aligned to current LEP controls) can only be achieved subject to dedication of the laneway reservation;*
  - e. *identify the remaining reservation (Reservation 10: 238 Illawarra Road, Marrickville) on the MLEP 2011 Key Sites Map with a link to a statement in the new MLEP 2011 Schedule 6 that this reservation be created through appropriate mechanisms within Council's Section 94 Plan; and*
  - f. *include new information and controls within MDCP 2011 on the location, design and method of dedication of laneway reservations.*
- 3. *alternatively, should the Department of Planning and Environment (DP&E) not approve the mechanism proposed in Recommendation 2 above, that Council endorse the following actions:*
  - a. *remove all existing laneway reservations from the MLEP 2011 Land Reservation Acquisition Map;*
  - b. *discontinue one of the reservations (Reservation 4: 309-317 King Street and 3 Eliza Street, Newtown);*
  - c. *for nine of the reservations, reduce the MLEP 2011 floor space ratio and height controls of all reservation-affected properties;*
  - d. *for the abovementioned nine reservations, nominate higher floor space ratio and height controls (aligned to current LEP controls) within MDCP 2011 that can only be achieved subject to dedication of the laneway reservation;*
  - e. *identify the remaining reservation (Reservation 10: 238 Illawarra Road, Marrickville) within MDCP 2011 and Section 94 Plan, stating that this reservation be created through appropriate mechanisms within Council's Section 94 Plan; and*
  - f. *include new information and controls within MDCP 2011 on the location, design and method of dedication of laneway reservations.*
- 4. *considers amendments consistent with Recommendation 2 or 3 above as part of MLEP 2011 and MDCP 2011 Amendment No. 3, to be reported to Council later in 2014."*

The Department of Planning and Environment were advised, by letter dated 20 June 2014, of the Council's resolution and advice was requested from the Department as to whether they raised any objection in principle to Council's preferred approach.

The Department, by email dated 23 October 2014, advised (in part):

*"The first option (setting higher FSR and HOB which can only be achieved subject to dedication) would most likely run into difficulties because there is no legal mechanism under the EP&A Act to allow this in an LEP.*

*The second option (involving identifying the reservations in the DCP and specifying the higher controls subject to dedication under a planning agreement under s. 94 of the Act) may be more likely, but you would need to seek your own advice on the legality of the conditions proposed to be imposed.*

*Alternatively, you could possibly consider amending the MLEP to include our model clause 5.1A 'Development on land intended to be acquired for public purposes' (e.g. Lake Macquarie LEP 2014). This would limit development on land intended to be acquired for a public purpose, overcoming the land having development potential, but may this not necessarily enable getting it free of cost."*

Model Clause 5.1A referred to in the Department's correspondence reads as follows:

## **“5.1A Development on land intended to be acquired for public purposes**

- (1) The objective of this clause is to limit development on certain land intended to be acquired for a public purpose.
- (2) This clause applies to land shown on the [Land Reservation Acquisition Map](#) and specified in Column 1 of the Table to this clause and that has not been acquired by the relevant authority of the State specified for the land in clause 5.1.
- (3) Development consent must not be granted to any development on land to which this clause applies other than development for a purpose specified opposite that land in Column 2 of that Table.

Column 1	Column 2
Land	Development
Zone RE1 Public Recreation and marked “Local open space”	Recreation areas
Zone SP2 Infrastructure and marked “Classified road”	Roads
Zone SP2 Infrastructure and marked “Local road”	Roads
Zone SP2 Infrastructure and marked “Car park”	Car park
Zone SP2 Infrastructure and marked “Drainage”	Drainage

Based on the Department’s advice and noting that the recommended clause is a Standard Instrument model clause it is recommended that the Department’s “Model Clause 5.1A Development on land intended to be acquired for public purposes” be included in MLEP 2011. Notwithstanding, given the significant liability issues associated with the potential acquisition of private land, it is recommended that the options to address this matter be further considered during the public exhibition process and advice sought from Council’s General Counsel concerning the preferred option.

### ***Recommendation L-5.1A:***

That a new clause, being the Department’s “*Model Clause 5.1A - Development on land intended to be acquired for public purposes*” be added to MLEP 2011 to address development potential on land reserved for public purposes.

## **MLEP 2011: Part 6 Additional local provisions**

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

A planning proposal (Marrickville Local Environmental Plan 2011 (Amendment No. 9)) to amend Marrickville Local Environmental Plan 2011 (MLEP 2011) to delete “shop top housing” as *Permitted with consent* from the Land Use Table for the B7 Business Park zone was gazetted on 2 June 2017.

The amendment included amendments to Clause 6.13 Dwellings and residential flat buildings in Zone B7 Business Park.

Clause 6.13 (3) (d) contained within the gazetted amendment reads as follows:

“(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:*  
[...]

- (d) *in the case of development for the purpose of a dwelling—the dwelling will be on the same lot of land as a non-residential use (including in the case of a lot in a strata plan or community title scheme)."*

The wording of the above subclause has potential interpretation issues because the subject matter listed in Clause (3) relates to "*development for the purpose of a dwelling or residential flat building*" whilst the subject matter in subclause (d) relates only to "*development for the purpose of a dwelling*".

On the basis of the wording of the clause it could be contended that the provisions of subclause (d) do not apply to dwellings contained within a residential flat building. Such an interpretation is clearly contrary to the objective of the clause "*to provide for limited residential development...*"

Subclause (3) (d) needs to be amended to avoid potential interpretation issues. The need for the amendment is demonstrated in legal advice recently received by Council in relation to development application for a mixed use development which included a residential flat building on land zoned B7 Business Park. Part of that legal advice is reproduced below:

"31. *The chapeau to clause 6.13(3)(d) provides:*

*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: [emphasis added]*

32. *When one has regard to the definitions of 'dwelling' and 'residential flat building' in the Dictionary of the LEP, it is plain that residential flat buildings contain dwellings which are a form of the genus 'residential accommodation'. As distinct from the Dictionary, the chapeau to clause 6.13(3) uses the terms in the context of being separate 'purposes'. It is therefore necessary to give meaning to the singular expression of 'a dwelling' in the chapeau. To do so permits meaning to the distinction in the clause between 'a dwelling' and 'residential flat building'.*

33. *Accordingly, clause 6.13(3)(d) of the LEP does not apply to the DA as its application is confined to 'development for the purpose of a dwelling'.*"

**Recommendation L-6.13:**

That subclause (3) (d) of Clause 6.13 of MLEP 2011 be amended to read:

*"(d) in the case of development for the purpose of a dwelling, including a dwelling in a residential flat building—the dwelling will be on the same lot of land as a non-residential use (including in the case of a lot in a strata plan or community title scheme)."*

Clause 6.15      Location of boarding houses in business zones

The clause restricts the use of the street level for boarding houses to promote active street fronts in the following zones:

- a) Zone B1 Neighbourhood Centre,
- b) Zone B2 Local Centre, and
- c) Zone B4 Mixed Use.

The objective of the clause "*is to control the location of boarding houses in business zones*". However the provisions do not apply to boarding houses that are permissible with consent as part of a mixed use development on other business zoned Schedule 1 sites.

In order to achieve the objectives of Clause 6.15 it is recommended that a new subclause be inserted into the clause identifying those Schedule 1 sites.

**Recommendation L-6.15:**

That Clause 6.15 of MLEP 2011 be amended by the addition of the following subclause:

(2A) This clause also applies to the following land that is described or referred to in Schedule 1:

- a) 2 Use of certain land at Old Canterbury Road, Lewisham,
- b) 2A Use of certain land at 776-798 Parramatta Road, Lewisham,
- c) 3 Use of certain land at Addison Road, Marrickville,
- d) 12 Use of certain land at 76 Wilford Street, Newtown, and
- e) 15 Use of certain land at St Peters.

#### New Clause – Design Excellence

Marrickville Council was one of the first metropolitan councils to prepare a new LEP under the Standard Instrument LEP. MLEP 2011 was gazetted nearly 4 years ago. Many other councils have now had their respective LEPs under the Standard Instrument gazetted. A number of those councils have included design excellence provisions in their respective LEP. Those councils include Blacktown, Botany Bay, Manly, Penrith, Randwick, Rockdale, Strathfield, Sydney and The Hills.

Design excellence is critical to enhance the urban and public domain character of an area and contribute to its liveability, vibrancy and attractiveness. High quality design is also essential to the image and market attractiveness of areas, with design excellence acting as a catalyst for further investment. It is therefore important that design excellence is a key consideration in the assessment of development proposals.

Good building design should positively contribute to the overall architectural quality of the area and provide buildings appropriate to their context. In some circumstances, that contribution may be as an iconic or landmark building, but more typically it is as a well-mannered building that fits sensitively into the streetscape.

With a view to promoting the delivery of exceptionally high quality urban design, architecture and sustainable buildings in Marrickville, and to ensure future developments add to the vibrancy, liveliness and attractiveness of the area Council resolved in February 2014 Council resolved to establish an Architectural Excellence Panel.

Matters referred to the Architectural Excellence Panel include:

- (a) Developments 6 or more storeys in height;
- (b) Substantial development that relates to a master plan area, identified in Part 9 of Marrickville Development Control Plan 2011; and
- (c) Any other significant development proposal where Council officers consider that the Panel's advice would be beneficial, including (but not limited to):
  - (i) sites where transformational change is anticipated or occurring, or
  - (ii) sites that have benefitted from significant rezoning, or
  - (iii) where the context determines that development must demonstrate a high quality of architectural resolution.

To assist in facilitating Council's vision that "*Marrickville's built environment demonstrates good urban design and the conservation of heritage, as well as social and environmental sustainability*" (KRA 3.9 -Marrickville Community Strategic Plan 2023) and promoting the delivery of exceptionally high quality urban design, architecture and sustainable buildings in Marrickville, and to ensure future developments add to the vibrancy, liveliness and attractiveness of the area it is recommended that a Design Excellence clause be incorporated into MLEP 2011.

A review of the design excellence provisions in the more recently gazetted LEPs was undertaken and those provisions were used as a guide to draft a Design Excellence clause tailored for insertion in MLEP 2011. In terms of a threshold it was felt that the clause should apply to developments which involve the construction of a new building or external alterations to an existing building on land where the maximum height shown for the land on the Height of Buildings Map is 14 metres ("N 14.0") or greater, or that is, or will be, at least 14 metres in height.



**NB** This recommendation was referred to as “**Recommendation L-6.17**” in the original report. Following the gazettal of Marrickville Local Environmental Plan 2011 (Amendment No. 14) which inserted Clauses 6.17 and 6.18 into the instrument the recommendation reference has been changed to **Recommendation L-6.19**.

**Recommendation L-6.19:**

That the following clause titled “Clause 6.19 Design Excellence” be inserted in MLEP 2011 at the end of Clause 6.18:

**6.19 Design excellence**

- (1) The objective of this clause is to deliver the highest standard of architectural, urban and landscape design.
- (2) This clause applies to development involving the construction of a new building or external alterations to an existing building:
  - (a) on land where the maximum height shown for the land on the Height of Buildings Map is 14 metres (“N 14.0”) or greater, or
  - (b) that is, or will be, at least 14 metres in height.
- (3) Development consent must not be granted to development to which this clause applies unless the consent authority is satisfied that the proposed development exhibits design excellence.
- (4) In considering whether the development exhibits design excellence, the consent authority must have regard to the following matters:
  - (a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,
  - (b) whether the form and external appearance of the development will improve the quality and amenity of the public domain,
  - (c) whether the development detrimentally impacts on view corridors and landmarks,
  - (d) the requirements of Marrickville Development Control Plan,
  - (e) how the development addresses the following matters:
    - (i) the suitability of the land for development,
    - (ii) existing and proposed uses and use mix,
    - (iii) heritage issues and streetscape constraints,
    - (iv) the relationship of the development with other development (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,
    - (v) bulk, massing and modulation of buildings,
    - (vi) roof design,
    - (vii) street frontage heights,
    - (viii) environmental impacts such as sustainable design, overshadowing, visual and acoustic privacy, wind and reflectivity,
    - (ix) the achievement of the principles of ecologically sustainable development,
    - (x) pedestrian, cycle, vehicular and service access and circulation requirements, including the permeability of any pedestrian network,
    - (xi) impact on, and any proposed improvements to, the public domain,
    - (xii) appropriate ground level public domain interfaces,
    - (xiii) excellence and integration of landscape design.
- (5) In this clause:

**Marrickville Development Control Plan** means the Marrickville Development Control Plan 2011, as in force on the commencement of this Plan.



## **MLEP 2011: Schedule 1 Additional permitted uses**

The following amendments are proposed to certain Schedule 1 listings to delete listings that are no longer necessary:

### **Part 1 Use of certain land at 165 Edgeware Road, Enmore**

The additional permitted use under Schedule 1 for the above property is "*Development for the purpose of a pub is permitted with consent*". The property 165 Edgeware Road, Enmore is zoned B1 Neighbourhood Centre under MLEP 2011. "*Food and drink premises*" are listed as a use "*Permitted with consent*" in the Land Use Table for the B1 Neighbourhood Centre zone and as such a pub is a use permitted with consent under zoning applying to the land. Consequently the additional use listing in Schedule 1 for the property is superfluous.

#### ***Recommendation L-Sch1-1:***

That the listing in Schedule 1 of Part 1 Use of certain land at 165 Edgeware Road, Enmore be deleted.

### **Part 3A Use of certain land at 74 Edinburgh Road, Marrickville**

The listing in Schedule 1 of Part 3A Use of certain land at 74 Edinburgh Road, Marrickville of the additional permitted uses of "*garden centre*" and "*hardware and building supplies*" for the property which is zoned IN1 General Industrial is no longer required following changes to the Standard Instrument as those uses are now mandated uses permitted with consent in an IN1 General Industrial zone; and

#### ***Recommendation L-Sch1-3A:***

That the listing in Schedule 1 of Part 3A Use of certain land at 74 Edinburgh Road, Marrickville be deleted.

## **MLEP 2011: Schedule 5 Environmental heritage**

### **Part 1 Heritage Items**

#### **Former Schwebel Family Quarry (Heritage Item No. I97)**

The former Schwebel Family Quarry is listed in Part 1 of Schedule 5 of MLEP 2011 as follows:

Marrickville	Former Schwebel Family Quarry, including interiors	Wharf Road and Illawarra Road (rear of properties)	Lot 2, DP 338141; Local Lot 1, DP 615272; Lot 1, DP 311826; Lot 1, DP 913016; Lot 1, DP 956119; Lots 1 and 2, DP 300589; Lots 3–10, DP 10071	I97
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The Stone House associated with the former Schwebel Family Quarry is also listed in Part 1 of Schedule 5 of MLEP 2011. That listing reads as follows:

Marrickville	Stone House associated with former Schwebel Family Quarry, including interiors	560 Illawarra Road	Lot 2, DP 338141	Local	I97
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The above 2 listings form Heritage Item No. 197. However the two components of the said heritage item are physically separated from each other. The first component listed above relates primarily to

the rock face of the quarry wall whilst the second component relates to the Stone House associated with the quarry on the property 560 Illawarra Road.

The property description for the first component includes the property 560 Illawarra Road (Lot 2 DP 338141). It is recommended that that Lot be deleted from the property description as it does not form part of rock face of the quarry wall. It is also recommended that the words “, including interiors” be deleted from the Item name.

**Recommendation L-Sch. 5-Part 1 (05):** That the heritage listing for the heritage item referred to as “Former Schwebel Family Quarry, including interiors” (after the listing of Heritage Item No. 1128 – 47 and 51 Warren Road) in Part 1 of Schedule 5 of MLEP 2011 be amended to read as follows:

Marrickville	Former Schwebel Family Quarry	Wharf Road and Illawarra Road (rear of properties)	Lot 1, DP 615272; Local Lot 1, DP 311826; Lot 1, DP 913016; Lot 1, DP 956119; Lots 1 and 2, DP 300589; Lots 3–10, DP 10071	197
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187 Princes Highway, St Peters (Heritage Item No. 1275)

The item name is listed as “St Peter’s Church of England, including interiors”. The identification sheet in the Marrickville Heritage Study (Inventory Item 4.14) lists the item as “St Peters Church of England and adjoining cemetery”. The whole property is indicated as a heritage item on the heritage map (HER\_004) and the property description in Schedule 5 relates to the entire property. The church is located on the property known as 211 Princes Highway and the cemetery is located on the property known as 187 Princes Highway. The property contains 2 lots and Council’s property information system refers to both lots as being Part Lot 1 DP 233214.

It is recommended that the listing of the item be amended to read “St Peter’s Church of England, including interiors and Cemetery”.

**Recommendation L-Sch. 5-Part 1 (06):**

That the heritage listing of the St Peter’s Church of England (Heritage Item No. 1275) in Part 1 of Schedule 5 of MLEP 2011 be amended to read “St Peter’s Church of England, including interiors and Cemetery”.

7-13 Bedford Street, Newtown (The Hub Theatre)

Staff have recommended that The Hub Theatre on the property 7-13 Bedford Street, Newtown be listed as a heritage item on the basis that:

*“The Hub Theatre at 7-13 Bedford Street, Newtown, formerly known as Clay’s Bridge Theatre, was of considerable importance in the history of the local and broader Australian entertainment industries, particularly during the critical World War I and immediate post-war eras. It was largely there, in the Bridge Theatre, that an Australian theatre form, the ‘revusical’ (a one-act musical comedy starring people such as Stiffy and Mo, George Wallace, and Jim Gerald) was born. It was also there that many Australian vaudeville performers had their early training and started successful careers. The Bridge was an important venue for vaudeville in the 1910s and 1920s, seating 1500-1600 people. Harry Clay developed a theatre circuit in Sydney and suburbs, especially noted for the opportunities it gave new comers. The Hub is thought to be the last purpose-built vaudeville theatre still standing in New South Wales. According to Thome et al. (p224), The Hub was in 1996 the oldest building in New South Wales continuously licensed for theatre/cinema. The Hub has social significance having played an important role in the Newtown community for much of the past century.”*

A Heritage Assessment Report confirming the heritage significance of the building would need to be prepared.

**Recommendation L-Sch. 5-Part 1 (08):**

That, subject to a Heritage Assessment Report, the Hub Theatre at 7-13 Bedford Street, Newtown be listed as a heritage item in Part 1 of Schedule 5 of MLEP 2011, after the listing of Heritage Item No. I137 Newtown Town Hall, as follows:

Newtown	The Hub Theatre, including interiors	7-13 Bedford Street	Lot 19, DP 74761; Local Lot 2 DP 85819	I390
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**Turpentine - Ironbark Forrest Understory, Dulwich Hill Railway cutting**

Staff have recommended that the Turpentine- Ironbark Forrest Understory, Dulwich Hill Railway cutting be listed as a heritage item on the basis that:

*"A patch of native grassland north of Dudley Street and east of the railway bridge at Dulwich Hill is significant because is a rare remnant understory of the original Turpentine-Ironbark Forest which covered much of the area prior to the arrival of Europeans. The remnant is an amazing survivor of a forest that was mapped as the 'Kangaroo Ground' in Watkin and Tench's 1793 map of 'County Contiguous to Port Jackson'. The other known remnant in the Council Area exists in St Stephens cemetery, Newtown. The Wianamatta Shale slopes, on which this forest grew, are now predominantly covered by housing and roads. The grasses (Kangaroo Grass and Plume Grass) are confined to a thin layer of shale soil overlying the sandstone and visible at the edge of the cutting for the railway. (information sourced from: Missing Jigsaw Pieces, The Bush Plants of the Cooks River Valley by Benson, Ondinea and Bear, published 1999 by Royal Botanic Gardens Sydney)"*

A Heritage Assessment Report confirming the heritage significance of the item would need to be prepared.

**Recommendation L-Sch. 5-Part 1 (09):**

That, subject to a Heritage Assessment Report, the Turpentine - Ironbark Forrest Understory, Dulwich Hill Railway cutting be listed as a heritage item in Part 1 of Schedule 5 of MLEP 2011, after the listing of Dulwich Hill Railway Station Group Item No. I316, as follows:

Dulwich Hill	Turpentine – Ironbark Forest Understory	Dulwich Hill Railway cutting, northern side of Dudley Street east of Wardell Road	Local	I389
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**Former Petersham Girls' High School (I230)**

The address of the subject heritage item (I230) is listed as "West Street" in Part 1 of Schedule 5. The heritage inventory sheet and the former listing of the heritage item in MLEP 2001 lists the address of the item as 2 Gordon Street, Petersham. (That is also the default postal address on Council's property information system). It is recommended that the address of the item be changed to 2 Gordon Street, Petersham in Part 1 of Schedule 5 of MLEP 2011.

**Recommendation L-Sch. 5-Part 1 (11):**

That the address of heritage item I230 for the Petersham Girl's High School (former) including interiors be amended to read 2 Gordon Street, Petersham, with the item placed in chronological locality order, in Part 1 of Schedule 5 of MLEP 2011.

**Australia Street Infants School (I136)**

The address listed for the subject heritage item is 229 Australia Street, Newtown (including 73 Lennox Street). The area identified as the heritage item on the Heritage Map Sheet also includes the properties 69 Lennox Street, 71 Lennox Street and 75 Lennox Street. All those properties are owned by the NSW Department of Education and Training. All the lots comprising the school site have the property description of Part Lot 1 DP 830304. It is recommended that the address listed in Part 1 of Schedule 5 of MLEP 2011 include all the properties.

**Recommendation L-Sch. 5-Part 1 (12):**

That the address of heritage item I136 for the Australia Street Infants School, including interiors be amended to read 229 Australia Street (including 69 Lennox Street, 71 Lennox Street, 73 Lennox Street and 75 Lennox Street) in Part 1 of Schedule 5 of MLEP 2011.

**631 King Street, Newtown (Heritage Item No. I159)**

The listing of the heritage item in Schedule 5 of MLEP 2011 lists the Item name as “*St Peters Hotel, including interiors*”. The hotel is known as the Sydney Park hotel not “*St Peters Hotel*”.

It is recommended that the listing of the item be amended to read “St Peters Hotel, including interiors”.

**Recommendation L-Sch. 5-Part 1 (13):**

That the heritage listing of the “*St Peters Hotel, including interiors*” (Heritage Item No. I159) in Part 1 of Schedule 5 of MLEP 2011 be amended to read “Sydney Park Hotel, including interiors”.

**MLEP 2011: Part 2 Heritage conservation areas**

**Heritage Conservation Area “C18”**

The name of the above Heritage Conservation Area is listed in Part 2 of Schedule 5 as “Petersham South Heritage Conservation Area”. In the Heritage Conservation Areas Report contained in Public Exhibition Folder 3 (Draft Local Environmental Plan and Development Control Plan 2010) Paul Davies identifies the HCA as Petersham South Heritage Conservation Area (Norwood Estate)”.

Part 8.2.20 and Part 9.6 and Part 9.9 of MDCP 2011 refer to the HCA as “Petersham South (Norwood Estate) HCA 18.

It is recommended that the heritage conservation area name in Part 2 of Schedule 5 of MLEP 2011 be amended to read Petersham South (Norwood Estate) Heritage Conservation Area.

**Heritage Conservation Area “C19”**

The name of the above Heritage Conservation Area is listed in Part 2 of Schedule 5 as “Norwood Park Estate (Park Street, Marrickville) Heritage Conservation Area”.

The heritage conservation area is listed as “Norwood Park Estate (Marrickville) Heritage Conservation Area” in Part 8.2.21 of MDCP 2011. Park Street does not exist in the HCA although there is a Park Road in the HCA.

To be consistent with the naming of other HCAs, e.g. C15 it is recommended that the words “(Park Street, Marrickville)” be deleted from Part 2 of Schedule 5 for HCA 19.

The listing of the Heritage Conservation Areas in Part 2 of Schedule 5 is not particularly user friendly as in many cases, without specific knowledge or reference to the map, the locality in which the HCA is located is difficult to ascertain. A reference to the locality (or suburb) in the respective listings (similar to the way heritage items are listed in MLEP 2011) would be beneficial.

It is noted some other council's EPIs have listed their HCA's by suburb (e.g. Sydney City Council) and it is recommended that Council utilise the same approach.

It is recommended that the name of Heritage Conservation Areas C18 and C19 be amended to read “*Petersham South (Norwood Estate) Heritage Conservation Area*” and “*Norwood Park Estate Heritage Conservation Area*” respectively and the listing of the Heritage Conservation Areas in Part 2 of Schedule 2 be amended so the areas are listed alphabetically by the suburb(s) in which the HCA is located.

**Recommendation L-Sch5-Part 2 (01):**

That Part 2 of Schedule 5 of MLEP 2011 be amended to read as follows:

## Part 2 Heritage conservation areas

**Note.** Heritage conservation areas are shown on the [Heritage Map](#) by a red outline with red hatching and labelled with the relevant map reference number.

Locality	Name of Heritage Conservation Area	Significance	Map reference
Camperdown	Hopetoun-Roberts-Federation Streets Heritage Conservation Area	Local	C9
Camperdown	Camperdown Park Heritage Conservation Area	Local	C10
Camperdown/Newtown	North Kingston Estate Heritage Conservation Area	Local	C11
Camperdown/Stammore/Petersham	Parramatta Road Commercial Precinct Heritage Conservation Area	Local	C5
Dulwich Hill	The Abergeldie Estate Heritage Conservation Area	Local	C1
Dulwich Hill	Dulwich Hill Commercial Precinct Heritage Conservation Area	Local	C28
Dulwich Hill	Hoskins Park & Environs Heritage Conservation Area	Local	C36
Enmore	Camden Street and James Street Heritage Conservation Area	Local	C38
Enmore	Enmore-House Heritage Conservation Area	Local	C13
Lewisham	Lewisham Estate Heritage Conservation Area	Local	C26
Marrickville	Llewellyn Estate Heritage Conservation Area	Local	C14
Marrickville	Norwood Park Estate Heritage Conservation Area	Local	C19
Marrickville	Porter's Brickworks Estate Heritage Conservation Area	Local	C24
Marrickville	Civic Precinct Heritage Conservation Area	Local	C30
Marrickville	David Street Heritage Conservation Area	Local	C31
Marrickville	Inter-War Heritage Conservation Area Group—Hollands Avenue; Jocelyn Avenue and Woodbury Street	Local	C35
Newtown	King Street and Enmore Road Heritage Conservation Area	Local	C2
Newtown	Enmore-Newtown Heritage Conservation Area	Local	C12
Newtown	Holmwood Estate Heritage Conservation Area	Local	C15
Petersham	Petersham North Heritage Conservation Area	Local	C3
Petersham	Railway Street (Petersham) Heritage Conservation Area	Local	C4
Petersham	Petersham South (Norwood Estate) Heritage Conservation Area	Local	C18
Petersham	Audley Street South (Bayswater Estate) Heritage Conservation Area	Local	C20
Petersham	Rathlin Estate Heritage Conservation Area	Local	C21
Petersham	Morgan Street Heritage	Local	C22

	Conservation Area		
Petersham	Jarvie Avenue Heritage Conservation Area	Local	C23
Petersham	Petersham Commercial Precinct Heritage Conservation Area	Local	C25
Petersham	Hordern Avenue Heritage Conservation Area	Local	C27
St Peters	Goodsell Estate Heritage Conservation Area	Local	C16
St Peters	Lackey Street and Simpson Park Heritage Conservation Area	Local	C37
Stanmore	Annandale Farm Heritage Conservation Area	Local	C6
Stanmore	Kingston West Heritage Conservation Area	Local	C7
Stanmore	Cardigan Street Heritage Conservation Area	Local	C8
Stanmore	Kingston South Heritage Conservation Area	Local	C17
Tempe	Collins Street Heritage Conservation Area	Local	C32
Tempe	Wells Avenue Heritage Conservation Area	Local	C33
Tempe	Stanley Street Heritage Conservation Area	Local	C34

### Part 3 Archaeological Sites

Archaeological sites provide evidence of the lives of Australia's previous generations. All known and potential archaeological relics in NSW are protected under the NSW Heritage Act 1977. When intending to disturb or excavate land where archaeological relics have been identified or are considered likely to occur, it is the responsibility of the property owner to seek relevant approvals. Either an excavation permit under Section 140 of the Heritage Act 1977 or an exception under Section 139(4) of the Heritage Act 1977 will be required.

Clause 5.10 (7) of MLEP 2011 reads as follows:

**“(7) Archaeological sites**

*The consent authority must, before granting consent under this clause to the carrying out of development on an archaeological site (other than land listed on the State Heritage Register or to which an interim heritage order under the [Heritage Act 1977](#) applies):*

- (a) notify the Heritage Council of its intention to grant consent, and*
- (b) take into consideration any response received from the Heritage Council within 28 days after the notice is sent.”*

Under Clause 5.10 (2) (c) of MLEP 2011 development consent is required for:

- “(c) *disturbing or excavating an archaeological site while knowing, or having reasonable cause to suspect, that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed,*”**

It is the responsibility of the property owner to seek either an excavation permit under Section 140 of the Act or an Exception under Section 139(4) of the Act when intending to disturb or excavate land where archaeological relics have been identified or are considered likely to occur.



Council's property information system (Exponare) identifies a number of sites as archaeological sites. However none of those sites are currently identified on Marrickville Local Environmental Plan 2011 Heritage Map or listed in Schedule 5 of MLEP 2011.

A staff submission has been received requesting that those archaeological sites be listed in MLEP 2011. The submission stated that there have been *"a lot of issues with applicants being unaware that their site is classified as an archaeological site and there have been occasions where officers have also missed it in the assessment as they only show up on exponare. This has caused significant delays as it is often picked up late and we have to send it to the Heritage Council and wait 4 weeks for a response"*.

The archaeological sites shown on Council's property information system relate to those archaeological sites that were identified as part of the Marrickville Heritage Study Review 2001. The majority of the sites identified are former villa sites, which were demolished, in the late 1800s and early 1900s. The study states that this list is a base line archaeological assessment and should only be seen as a starting point for further identification of the potential archaeological resource of Marrickville.

It is considered that those identified archaeological sites should be included on Council's Heritage Map and listed in Schedule 5 of MLEP 2011 so that the information is publically accessible so that property owners can check whether a site has been identified as having archaeological significance.

It is noted that a number of other Council's LEPs include archaeological sites in Part 3 Schedule 5 of their LEP and on their respective Heritage Map.

A table listing the archaeological sites identified on Council's property information system is provided in the Table in Recommendation L-Sch5-Part 3 (01).

**Recommendation L-Sch5-Part 3 (01):**

That a new section titled *"Part 3 Archaeological sites"* be inserted in Schedule 5 of MLEP 2011 listing the archaeological sites in accordance with the details in the following Table:

Table: Proposed Archaeological Sites

Locality	Item	Address	Property description	Significance	Item no
Camperdown	Kingston Fowler's Pottery Archaeological site	139-143 Parramatta Road, 1-43 Australia Street, Derby Place, 2-36 Denison Street, Part of Denison Street, Part of Australia Street, Camperdown	Lots 1-9, DP 1183831; Pt Lots 1, 2 and 5, and Lots 2, 3, 4 and 6-8, DP 1078125; Lot 1, DP 818033; Derby Place; Part of Denison Street; Part of Australia Street	Local	A01
Enmore	Enmore House Archaeological site	23-47 Metropolitan Road and part of Metropolitan Road, Enmore	Lot 1, DP 909931; Lot 1, DP 909251; Lot 1, DP 910380; Lots 88, 89, 92-96, Section 2, DP 1166; Lot A, DP 188568; Lots X and Y, DP 438282	Local	A02
Lewisham	Former Petersham Cemetery Archaeological site	Part of 2B West Street, part of 3 Thomas Street, part of pedestrian walkway	Lot 1, DP 1116995; Lot 22, DP 827632; part of pedestrian walkway between Thomas Street and West Street and part	Local	A03

		between Thomas Street and West Street on the northern side of the railway line and part of West Street,	of West Street		
Marrickville	Harnleigh Archaeological site	6A and 7A Harnett Avenue, 3 Roach Street, 2-6 Roach Street and part of Roach Street, Marrickville	Lots 13-15, DP 1733; Part of Roach Street; Lot A, DP 373318; Lots 1-3, DP 309439; Lot 1, DP 920687; Lot 1, DP 923334	Local	A04
Marrickville	The Warren Archaeological site	54-68 Premier Street, 2-22 Mansion Street, 1-17 and 2-18 Richards Avenue, Richards Avenue, 1-3 Holts Crescent, Holts Crescent, 1-21 McGowan Avenue, McGowan Avenue, and 47A Thornley Street (Richardsons Lookout), Marrickville	Lots 1-22, Sec A, DP 10854; Lots 1-7 and 10-24, Section B, DP 10854; Lots 1 and 2, DP 1116566; Lots 1, 3, 4 and 5, DP 582062; Richards Avenue; Holts Crescent and McGowan Avenue	Local	A05
Newtown	Brady's House and Enmore Town Houses Archaeological site	59-81 Enmore Road and part of Wilford Lane, Newtown	Lot 11, DP 1152825; SP 83565; Lot F, DP 443979; Lots 1, 2 and 4, DP 571460; Lot 31, DP 808310	Local	A06
Newtown	Stanmore House Archaeological site	86-88 Enmore Road, Newtown	Lot 534, DP 774027; Lot 52, DP 3605	Local	A07
Newtown	Thurnbey Archaeological site	1A, 1-13 Phillip Street, Newtown	Lots 1 and 2, DP 1207441; Lots A and B, DP 437310; Lots 4-7, DP 6051	Local	A08
Newtown	St Stephen's Cemetery Archaeological site	187 Church Street, Newtown	Lot 1, DP 137465; Lot, 596 DP 752049	Local	A09
Newtown	Bello Retiro Archaeological site	1-15 Darley Street, part of Darley Lane, Maria Lane and 2A- 8 Wells Street, Newtown	Lot 91, DP 703535; SP 16402; Lot D, DP 333571; Lots 1 and 2, DP 608046; Lots 1 and 2, DP 222322; Lot 1, DP 912464; Lot 1, DP 921768	Local	A10
Newtown	Holmwood Archaeological site	13, 13A, 15A and 15 Dickson Street, Newtown	Lots 30-35, Section B, DP 2569	Local	A11

Newtown	Reibey House Archaeological site	31 Station Street, Newtown	SP 13845	Local	A12
Newtown	Camden Villa Archaeological site	95-141 Station Street, 118-158 Station Street and part of Station Street, Newtown	Lots 1-9, DP 710339; Lot 1, DP 1204809; Lots 1, and 2 DP 524203; Lots 21, 26- 36, 40-49, DP 2257; Lots 1-3, DP 107405; Lot 2, DP 318357; Lot 1, DP 1130043; Lot 2, DP 340460; Lots 1 and 2, DP 597665; Lots 1-5, DP 108211; Lot 1, DP 660892; SP 85515; and part of Station Street	Local	A13
Petersham	Sydenham House Archaeological site	67-77 New Canterbury Road and 31 Gordon Street, Petersham	Lots A, B, C, D, E and F, DP 27818; Lot 10 ,DP 717391	Local	A14
Petersham	Sara Dell Archaeological site	620 Parramatta Road, Petersham	Lot 1, DP 826604	Local	A15
Petersham	Petersham House Archaeological site	5A Railway Terrace, Petersham	Lot 2, DP 103171; Lot 3, DP 240; Lot 3, DP 1031741; Lot 1, DP 929435	Local	A16
Petersham	Terminus Cottage Archaeological site	21-27 Searl Street and part of Searl Street, Petersham	Lot 1, DP 186558; Lot 1, DP 190030; Lots A and B, DP 370545	Local	A17
Stanmore	Annandale House Archaeological site	68-116 Albany Road, part of Percival Avenue, part of Albany Lane, 79-117 Macaulay Street, part of Macaulay Street and part of Northumberland Lane West, Stanmore	Lots 1-6, DP 22552; Lot A, DP 431817; Lot 16, DP 651988; Lot 1, DP 935895; Lots 1-4, DP 218251; Lots A and B, DP 32832; Lot Y, DP 412487; Lots 14, 15, 18, 23, 27-30, Section B1, DP 3129; Lot 1, DP 811905; Part of Percival Avenue; Part of Macaulay Lane; Lots A and B, DP 32918; DP 1097983; Lot 1, DP 916530; Lot 1, DP 954491; Lots 9 and 10, DP 3567; Part of Macaulay Road; Part of Northumberland Lane West	Local	A18
Stanmore	Woerden Archaeological site	80 Cambridge Street, Stanmore	Lot 41, DP 739919; Lot 3, DP 554452	Local	A19
Stanmore	Newington	244 Stanmore	Lot 8, DP 710369	Local	A20

	Archaeological site	Road, Stanmore			
St Peters	Finningham Archaeological site	176 Princes Highway, St Peters	Lot 6, DP 818380	Local	A21
St Peters	St Peters Church of England Cemetery	187 Princes Highway, St Peters	Part Lot 1, DP 233214	Local	A22
St Peters	Petersleigh Archaeological site	310 Princes Highway, St Peters	Lot 1, DP 788037	Local	A23
St Peters	Heathcote Archaeological site	340 Princes Highway, St Peters	Lot 1, DP 573943; Lots 3-6, DP 16867	Local	A24
St Peters	Nun-Cotnook Archaeological site	364-370 Princes Highway, St Peters	Lot 1, DP 181401; Lots 68 and 69, DP 658465	Local	A25
St Peters	Silverleigh Archaeological site	9 Unwins Bridge Road, St Peters	Lot 1, DP 1002775	Local	A26
Sydenham	The Grove Archaeological site	1-45 George Street and 2-52 Yelverton Street, Sydenham	Lots 11, 15, 22, 23 and 28, DP 7125; Lot 1, DP 132518; Lot 1, DP 946454; Lot 946096; Lots 1 and 2, DP 200244; Lots A and B, DP 305389; Lot 1, DP 971154; Lot 1, DP 430105; Lots 1-4, DP 33496; Lots E, F, G and H, DP 441008; Lots A, B, C and D, DP 34202; Lots 1-12, DP 438583; Lot 1, DP 971187; Lot 1, DP 971075; Lot 1, DP 970798; Lots X and Y, DP 414037; Lots 1 and 2, DP 500074; Lots A and B, DP 406721	Local	A27
Sydenham	Tivoli Archaeological site	Land in and around Hilton Avenue and Railway Lane, Sydenham	Lots 1-12, DP 16124; Closed Road (Lot 1 DP 129216; Hilton Avenue; Lot 3, DP 841307; Part of Railway Lane	Local	A28
Tempe	Bellevue Archaeological site	5-7 Bellevue Street, Tempe	Lots 101 and 102, DP 1149125	Local	A29
Tempe	Marionette Archaeological site	1-15 Lymerton Street and 2A-26 Samuel Street, Tempe	Lots 13, 14, 17-25 and 27-31, DP 3906; Lot 1, DP 972373; Lot 16, DP 658553; Lot 1, DP 1031603; Lot 26, DP 667388	Local	A30

Tempe	The Poffle Archaeological site	750 Princes Highway, Tempe	Lot 2, DP 803493	Local	A31
Tempe	Gannon's Inn Archaeological site	765-779 Princes Highway, 8 Gannon Lane and Gannon Lane, Tempe	Lots A, B and C, DP 173539; Lots A and B, DP 322409; Lot 1, DP 1116622 and Gannon Lane	Local	A32

## ATTACHMENT 1:

### Request for Advice from the Department of Planning and Environment on Amending the Land Use Tables in MLEP 2011

Our ref: 15/4738

13 May 2015

Michael Kokot  
Senior Planner  
Metro Delivery (CBD)  
Department of Planning and Environment  
GPO Box 39  
SYDNEY NSW 2001

Dear Michael,

#### MARRICKVILLE LOCAL ENVIRONMENTAL PLAN 2011 REQUEST FOR ADVICE ON AMENDING LEP LAND USE TABLES

Council is writing to seek the Department's feedback to the approach outlined in this letter to amend the Land Use Tables in MLEP 2011 prior to seeking a Council resolution to prepare a planning proposal to amend the land use tables and make consequential amendments to the additional local provisions.

#### Background

Marrickville Council was one of the earliest councils to prepare a new LEP under the Standard Instrument LEP.

As part of the Department's conditional Section 65(2) Certificate dated 27 October 2010 (Dept. Ref: 10/08546-1) for that LEP (then known as Marrickville Draft Comprehensive LEP 2010) the Department required a number of amendments to the draft plan, including:

*"Council is required to amend the draft LEP as follows:*

- i. In relation to "**Conversion of industrial buildings and warehouse buildings to residential flat buildings, multi dwelling housing and office premises**":  
Include the proposed uses (namely residential flat buildings, multi dwelling housing and offices premises) in the relevant LUT zone (i.e. R1, R2, R3 and R4).....*
- ii. In relation to "**Use of existing non-residential buildings in residential zones**":  
Include the proposed office premises and retail uses in the relevant LUT zone (i.e. R1, R2, R3 and R4.).....*
- iii. In relation to "**Use of existing dwelling houses in business and industrial zones**":  
Include the proposed residential uses in the relevant LUT zone (i.e. B1, B2, B4, B5, B6, B7, IN1 and IN2)....."*

It is understood the Department's rationale for the above changes was to avoid the creation of subzones with provisions overriding the Land Use Tables.

The Comprehensive LEP, Marrickville Local Environmental Plan 2011, was gazetted on 12 December 2011.

Since that time many other councils have now had their respective LEPs under the Standard Instrument gazetted. There has also been a change of government and based on more recently gazetted LEPs, it is evident that the Department has adopted a more flexible approach in the preparation of LEPs than was the case when Council prepared its original planning controls.

#### Discussion



Council made the above amendments to the Land Use Tables as requested by the Department.

To help alleviate confusion about the listing of those uses in land use tables in the LEP as *“Permitted with consent”* when those uses are only permitted in specific circumstances notes were included at the end of the respective land use tables in the draft LEP.

The notes included in the draft LEP for the R2 – Low Density Residential zone are reproduced below:

- “Note 1.** *Office premises, multi dwelling housing and residential flat buildings are only permitted in this zone where they are part of the adaptive reuse of existing industrial and warehouse buildings in which the existing use provisions of the Act have ceased to apply.*
- Note 2.** *Office and certain retail premises are only permitted in this zone in buildings existing on the appointed day, being a building that was designed and constructed for a non-residential purpose. This is to ensure that existing purpose built shops may with development consent be used for certain office or retail premises.”*

The notes included in the land use tables were required to be deleted and not included in the gazetted LEP.

The listing of certain uses in the LEP land use tables as *“Permitted with consent”* when those uses are only permitted in specific circumstances is not user friendly and has caused much confusion in the plan’s implementation. The deletion of the notes to the land use tables has compounded the situation.

The way the land use zoning tables were required to be structured by the Department to list certain uses in the land use tables in MLEP 2011 as *“Permitted with consent”* when those uses are only permitted in specific circumstances has also caused many interpretation issues (and in some cases litigation issues) for Marrickville Council in the assessment of development applications for certain types of developments that are subject to provisions of some State Environmental Planning Policies.

In explanation, some interpretation issues for Marrickville Council in relation to the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARHSEPP) include:

#### Boarding Houses - Clause 29(1)(c) of the ARHSEPP

Clause 29(1) (c) of the ARHSEPP permits a floor space ratio bonus for boarding house developments if *“the development is on land within a zone in which residential flat buildings are permitted.....”*.

The term *“residential flat building”* is listed as a use *“Permitted with consent”* in the Land Use Table for the R2 Low Density Residential and R3 Medium Density Residential zones. However by virtue of Clause 6.9 (3A) of MLEP 2011, residential flat buildings are only permissible on land within those zones where the *“development relates to a building that was designed and constructed for an industrial or warehouse purpose”,* that *“was erected before the commencement of this Plan”* (MLEP 2011).

Clause 29 (1) (c) includes floor space ratio bonus provisions for boarding house developments *“if the development is on land within a zone in which residential flat buildings are permitted.....”*.

Unlike other provisions in the ARHSEPP the incentive clause relates to whether or not residential flat buildings are permitted in the zone, not whether or not residential flat buildings are permitted on the land under the environmental planning instrument.

Under most environmental planning instruments residential flat buildings would only be permitted on land within a zone that permitted residential flat buildings. That is not always the case under MLEP 2011 because of the way the land use zoning tables were required to be structured to list

certain uses in the land use tables in MLEP 2011 as “*Permitted with consent*” when those uses are only permitted in specific circumstances.

Consequently, it has been argued that irrespective of whether residential flat buildings may be built on the land, as residential flat buildings may be built within the Zone, a boarding house development on that land is entitled to a floor space ratio bonus under the ARHSEPP.

#### Group Homes - Clause 42 (b) of the ARHSEPP

The wording of the clause creates similar issues to those referred to above because of the way land use zoning tables have been required to be structured.

Under MLEP 2011 dwelling houses are listed in the land use table as “*Permitted with consent*” in a number of zones other than those referred to in Clause 42 (a) of the ARHSEPP.

For example, “*dwelling houses*” are listed as a use “*Permitted with consent*” in the Land Use Table for the B1 Neighbourhood Centre, B4 Mixed Use, B5 Business Development, B6 Enterprise Corridor, B7 Business Park, IN1 General Industrial and IN2 Light Industrial zones. However by virtue of Clause 6.11 (3a) of MLEP 2011, dwelling houses are only permissible within those zones where the “*development relates to a building that was designed and constructed for the purpose of a dwelling house and was erected before the commencement of this Plan.*”

“*Groups homes*” are prohibited in all the above mentioned zones (with the exception of the B4 Mixed Use zone) under MLEP 2011.

Under Clause 42 (1) (b) of the ARHSEPP “*any other zone in which development for the purpose of....dwelling houses..... may be carried out with or without consent under an environmental planning instrument*” is a prescribed zone and as such development for the purposes of a group home is permissible with consent in such zones under the provisions of the ARHSEPP.

#### **Council’s former environmental planning instrument**

Issues such as those referred to above, did not exist under Council’s former environmental planning instrument, Marrickville Local Environmental Plan 2001.

Under that instrument “*residential flat buildings*” were not listed as a development permitted with consent in the Land Use Table for the Residential 2 (A) zone (Clause 10). Clause 32 of MLEP 2001 did however permit residential flat buildings on land zoned Residential 2 (A) “*where the building was in existence.....on the appointed day*”, and where the building “*was designed and constructed for an industrial or warehouse purpose and in respect of which the existing use provisions of the Act have ceased to apply*”.

Clause 32 of MLEP 2001 read (in part) as follows:

- “(1) *This clause applies to a building in existence on land zoned Residential 2 (A), 2 (B) or 2 (C) on the appointed day, being a building that was designed and constructed for an industrial or warehouse purpose and in respect of which the existing use provisions of the Act have ceased to apply.*
- (2) *Despite any other provision of this plan, consent may be granted for the conversion of a building to which this clause applies to a residential flat building. ....*”

#### **Additional Justification for Council’s case**

Additional justification for Council’s case is provided in the Attachment to this letter.

#### **Council’s preferred approach to address the issues raised**

Council is seeking to amend Marrickville Local Environmental Plan 2011 to provide a more user friendly and easier to understand document and to overcome issues such as those referred to above and to overcome issues detailed in the Attachment.

The specific amendments sought are to delete those uses that are only permitted in specific circumstances from being listed in the land use tables in the LEP as “*Permitted with consent*” and amend the additional local provisions in Part 6 of the LEP relating to those developments.

An example of a proposed amended local provision relating to the use of existing non-residential buildings in residential zones is provided below:

#### **6.10 Use of existing non-residential buildings in residential zones**

- (1) The objective of this clause is to provide for the reuse of buildings for certain non-residential purposes in residential zones.
- (2) This clause applies to a building that was lawfully designed and constructed for the purpose of a shop that was erected before the commencement of this Plan, on land in the following zones:
  - (a) Zone R1 General Residential,
  - (b) Zone R2 Low Density Residential,
  - (c) Zone R3 Medium Density Residential,
  - (d) Zone R4 High Density Residential.
- (3) Despite any other provisions of this Plan development consent may be granted to the use of a building to which this clause applies for the purpose of office premises, shops, restaurants or cafes or take away food and drink premises.
- (4) Before determining a development application for development to which this clause applies, the consent authority must consider:
  - (i) the impact of the development on the amenity of the surrounding locality,
  - (ii) the suitability of the building for adaptive reuse,
  - (iii) the degree of modification of the footprint and facade of the building.

#### **Council seeks the Department’s advice**

Prior to preparing draft amendments to the LEP Council seeks the Department’s advice as to whether it raises any objection to such an approach.

If you wish to discuss the matter please contact **Peter Wotton**, Strategic Planning Projects Coordinator on **9335-2260** from Council’s Planning and Environmental Services Division.

Yours faithfully



Marcus Rowan  
**Manager Planning Services**

TRIM doc: 135095.15

Encl. Additional Justification for Council’s case

**ATTACHMENT TO: COUNCIL'S REQUEST FOR ADVICE ON AMENDING MARRICKVILLE  
LOCAL ENVIRONMENTAL PLAN 2011  
LAND USE TABLES**

**Additional Justification for Council's case**

In addition to the reasons already provided, the following additional points are made in support of Council's case:

- a. As stated previously Marrickville Council was one of the earliest councils to prepare a new LEP under the Standard Instrument LEP.

A review was undertaken of some of the more recently gazetted LEPs of other council's instruments prepared under the Standard Instrument. It is evident that the Department has agreed to the inclusion of additional local provisions in some of those instruments which include provisions that permit some development types which are not permitted in the Land Use Table for the zone to be carried out with consent on certain land.

Those clauses include wording "*Despite any other provisions of this Plan.....*"

Examples include:

- i. Auburn Local Environmental Plan (Clauses 6.8, 6.9 and 6.10);
  - ii. Canterbury Local Environmental Plan (Clause 6.7);
  - iii. Holroyd Local Environmental Plan (Clause 6.9);
  - iv. North Sydney Local Environmental Plan (Clauses 6.16, 6.17 and 6.18); and
  - v. Penrith Local Environmental Plan (Clause 7.14).
- b. Other clauses in the LEP (and the Standard Instrument) permit development to be carried out with development consent for development types not permitted with consent under the land use tables. For example Clause 2.8 (2) relating to the "*Temporary use of land*", Clause 5.3 relating to "*Development near zone boundaries*" and Clause 5.10 (10) relating to "*Conservation incentives*" for heritage items.

The above clauses have a similar effect to the creation of subzones.

- c. The listing of certain uses in the LEP land use tables LEP as "*Permitted with consent*" when those uses are only permitted in specific circumstances also has some unintended consequences.

For example, numerous lawful dwelling houses in the Council area, are located in business and industrial zones, which were lawfully erected before the coming into effect of an environmental planning instrument which prohibited such uses.

The coming into effect of Marrickville Local Environmental Plan 2011 made those dwelling houses permissible with consent and as such those dwelling houses no longer benefit from the existing use rights provisions of the Act. Consequently any development on land containing one of those dwellings would be subject to the relevant provisions contained within MLEP 2011.

In a sense the coming into effect of Clause 6.11 of MLEP 2011 had an unintentional consequence similar to derogating from the existing use rights provisions of the Act. It is noted that prior to the coming into effect of MLEP 2011 consent could be granted under the Act to an application to carry out alterations or extensions to, or the rebuilding of, a purpose built dwelling house (that has existing use rights), on land in the zones referred to in sub clause (2) of Clause 6.11. However the coming into effect of MLEP 2011 resulted in it no longer being possible for a purpose built dwelling house in those zones to be rebuilt (in the case of fire for example). It should also be pointed out that in many cases, on industrial zoned land because of subdivision patterns, etc there is probably little prospect of many of those properties being developed for industrial purposes in accordance with the zoning provisions applying to the land.

- d. The listing of certain uses in the LEP land use tables LEP as “Permitted with consent” when those uses are only permitted in specific circumstances is also problematic for Clause 5.3 Development near zone boundaries.

Whilst it has not caused any problems to date for Council, the wording of the sub clause (4) has similar issues to those referred to in the comments to Clause 29 (1) (c) of the ARHSEPP because it permits development consent to be granted “for any purpose that may be carried out in the adjoining zone.” It is not a question as to whether the development may or may not be permitted on the adjoining land, but rather a question as to whether that development is permitted with consent under the land use table for the zoning of the land to which Clause 5.3 (2) applies.

- e. The listing of certain uses in the LEP land use tables LEP as “*Permitted with consent*” when those uses are only permitted in specific circumstances also has implications for the application of other SEPPs. For instance Clause 4 (1) (a) (i) State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 states (in part):

*“This Policy applies to land within New South Wales that is land zoned primarily for urban purposes or land that adjoins land zoned primarily for urban purposes, but only if:*

- (a) development for the purpose of any of the following is permitted on the land:*  
*(i) dwelling-houses,....”*

As discussed previously under MLEP 2011 dwelling houses are permitted with consent in certain circumstances in a number of zones including the IN1 General Industrial and IN2 Light Industrial zones. Housing for seniors or people with a disability would be permitted with consent on such land under Clause 4 (1) of the SEPP.

- f. Drafting additional local provisions to make certain uses permissible with consent in specific circumstances is challenging, particularly when that use is permissible in the zone in its own right.

This is probably best demonstrated by providing the example of Clause 6.10 of MLEP 2011 which relates to “Use of existing non-residential buildings in residential zones”.

That clause currently reads (in part) as follows:

*“6.10 Use of existing non-residential buildings in residential zones*

- (1) The objective of this clause is to provide for the reuse of buildings for non residential purposes.*
- (2) This clause applies to land in the following zones:*
- (a) Zone R1 General Residential,*  
*(b) Zone R2 Low Density Residential,*  
*(c) Zone R3 Medium Density Residential,*  
*(d) Zone R4 High Density Residential.*
- (3) Development consent must not be granted to development for the purpose of office premises, shops, restaurants or cafes or take away food and drink premises on land to which this clause applies unless:*
- (a) the development relates to a building that was designed and constructed for the purpose of a shop and was erected before the commencement of this Plan, and.....”*

The current wording of the clause is problematic in that addressing one scenario it has created an unintended consequence because of the construction and content of sub clauses (2) and (3).

That consequence is a result of:

- i. “*neighbourhood shops*” are a form of development permitted with consent in R1 General Residential and R4 High Density Residential zones under MLEP 2011; and
- ii. the construction of a ‘*neighbourhood shop*’ carried out in accordance with a development consent issued after the commencement of MLEP 2011, once completed, would be an “*existing building that was designed and constructed as a shop*”.

By virtue of sub clause (3)(a) development consent could not be granted for the use of that shop for the “*purposes of office premises, shops, restaurants or cafes or take away food and drink premises*” because “*the building that was designed and constructed for the purpose of a shop and was*” **NOT** “*erected before the commencement of this Plan*”.

Draft Amendment No. 2 to MLEP 2011 includes a proposed amendment to the clause to overcome the above issue.

It is noted the additional local provisions in a number of other council's gazetted LEP have similar issues to those associated with the current drafting of Clause 6.10 of MLEP 2011, including:

- i. Canterbury Local Environmental Plan 2012 (Clauses 6.5);
- ii. Leichhardt Local Environmental Plan 2013 (Clauses 6.10);
- iii. Randwick Local Environmental Plan 2012 (Clause 6.13);
- iv. Sydney Local Environmental Plan 2012 (Clause 7.22); and
- v. Woollahra Local Environmental Plan 2014 (Clause 6.6).