



New South Wales

State Environmental Planning Policy Amendment (Bella Vista and Kellyville Station Precincts) 2017

under the

Environmental Planning and Assessment Act 1979

His Excellency the Governor, with the advice of the Executive Council, has made the following State environmental planning policy under the *Environmental Planning and Assessment Act 1979*.

Minister for Planning

Council Explanatory Note: No change to Department's draft Instrument provided July 2017

State Environmental Planning Policy Amendment (Bella Vista and Kellyville Station Precincts) 2017

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1 Name of Policy

This Policy is *State Environmental Planning Policy Amendment (Bella Vista and Kellyville Station Precincts) 2017*.

Council Explanatory Note: No change to Department's draft Instrument provided July 2017

2 Commencement

This Policy commences on the day on which it is published on the NSW legislation website.

Council Explanatory Note: No change to Department's draft Instrument provided July 2017

3 Maps

The maps adopted by the following environmental planning instruments are amended or replaced, as the case requires, by the maps approved by the Minister on the making of this Policy:

- (a) *State Environmental Planning Policy (State and Regional Development) 2011*,
- (b) *The Hills Local Environmental Plan 2012*.

Council Explanatory Note: No change to Department's draft Instrument provided July 2017

4 Repeal of Policy

1. This Policy is repealed on the day following the day on which this Policy commences.
2. The repeal of this Policy does not, because of the operation of sections 5 (6) and 30 of the *Interpretation Act 1987*, affect any amendment made by this Policy.

Council Explanatory Note: No change to Department's draft Instrument provided July 2017

Schedule 1 **Amendment of State Environmental Planning Policy (State and Regional Development) 2011**

Schedule 2 State significant development—identified sites

Insert after clause 12:

13 Development at Bella Vista Station Precinct and Kellyville Station Precinct Sites

Development on land identified as being within the Bella Vista Station Precinct Site or Kellyville Station Precinct Site on the State Significant Development Sites Map if the development is for the purposes of:

- (a) a principal subdivision establishing major lots or public domain areas, **which includes the identification and dedication of no less than 56,000 square metres of land to Council for public open space, at no cost,** or
- (b) the creation of new roadways and associated works.

*Council Explanatory Note: **Text in black** is as per Department's draft Instrument provided July 2017. **Text in red** has been added to address the need for certainty that at least 5.6ha of land for public open space will be provided on Government-owned land within the Precincts.*

Schedule 2 Amendment of The Hills Local Environmental Plan 2012

[1] Land Use Table, Zone B7 Business Park

Insert “kiosks;” in alphabetical order in Item 3 of Zone B7 Business Park.

Council Explanatory Note: No change to Department’s draft Instrument provided July 2017

[2] Part 8

Insert after Part 7:

Part 8 Bella Vista and Kellyville Station Precincts

8.1 Temporary use of land in Zone B7

Despite clause 2.8 (2), the temporary use of land shown as “Bella Vista Station Precinct” on the Sydney Metro Northwest Map that is in Zone B7 Business Park may be for a maximum period of 3 years, but only if the temporary use of land is for the purpose of an entertainment facility.

Council Explanatory Note: No change to Department’s draft Instrument provided July 2017

8.2 Minimum lot sizes for residential flat buildings and shop top housing

Development consent may be granted to development on a lot, shown as being part of “Bella Vista Station Precinct” or “Kellyville Station Precinct” on the Sydney Metro Northwest Map, in a zone shown in Column 2 of the Table to this clause for a purpose shown in Column 1 of the table opposite that zone, if the area of the lot is equal to or greater than the area specified for that purpose and shown in Column 3 of the table.

Column 1	Column 2	Column 3
Residential flat building with a building height of 21 metres or more	Zone R1 General Residential	3,600 square metres
	Zone R4 High Density Residential	3,600 square metres
	Zone B2 Local Centre	3,600 square metres
Residential flat building with a building height of less than 21 metres	Zone R1 General Residential	1,500 square metres
	Zone R4 High Density Residential	1,500 square metres
Shop top housing with a building height of 21 metres or more	Zone R1 General Residential	3,600 square metres
	Zone R4 High Density Residential	3,600 square metres
	Zone B2 Local Centre	3,600 square metres
Shop top housing with a building height of less than 21 metres	Zone R1 General Residential	1,500 square metres
	Zone R4 High Density Residential	1,500 square metres
	Zone B2 Local Centre	1,500 square metres

Council Explanatory Note: Text in black is as per Department’s draft Instrument provided July 2017. Clause has been amended to require a minimum lot size of 3,600square metres for all residential flat buildings and shop top housing development. This is consistent with agreements reached between Council staff, Department staff and the Chief Town Planner. A minimum lot size of 1,500 square metres is inconsistent with Council policy across the remainder of the Shire and does not provide certainty, likelihood or confidence that the master planned outcomes publicly exhibited for the Precincts could be achieved.

8.3 Site area of proposed development includes dedicated land

The site area of proposed development on land shown as “Bella Vista Station Precinct” or “Kellyville Station Precinct” on the Sydney Metro Northwest Map is, for the purpose of applying a floor space ratio under clause 4.5, taken to include land that:

- (a) is dedicated to the Council or a public authority for a public purpose (including roads, drainage or open space), **at no cost**, and
- (b) would have been part of the site area if it had not been so dedicated.

Council Explanatory Note: Text in black is as per Department’s draft Instrument provided July 2017. Text in red has been added to ensure that development rights can only be transferred from land that was dedicated at no cost.

The transfer of development rights is effectively compensation to the developer to recoup any lost yield that would have been achievable on land that has been dedicated. This is adequate compensation for the dedication of land. However, the drafting of the clause by the Department, without specifying that dedication must be at no cost, would enable Developers to claim compensation for the land by way of transferred development yield and then also seek financial compensation from Council for the value of the land. This arrangement is not acceptable.

8.4 Minimum building setbacks

Development consent must not be granted to development on land identified as “Bella Vista Station Precinct” or “Kellyville Station Precinct” on the Sydney Metro Northwest Map unless the front building setback of any building resulting from the development is equal to, or greater than, the following:

- (a) for a building in Zone R1 General Residential or Zone R4 High Density Residential—5 metres,
- (b) for a residential flat building in Zone B2 Local Centre—5 metres,
- (c) for a building in Zone B7 Business Park with a street frontage to Old Windsor Road, Kellyville, north of Celebration Drive, Kellyville—10 metres from the eastern edge of the Old Windsor Road road reserve.

Note. Land identified for road widening, acquisition, dedication or any public purpose will not be included within the calculation of setback distances.

Council Explanatory Note: No change to Department’s draft Instrument provided July 2017, however, an explanatory note has been added to clarify that setbacks would be calculated from site boundaries following the acquisition or dedication of land.

8.5 Development requiring the preparation of a development control plan

- (1) The objective of this clause is to ensure that development within the Bella Vista Station Precinct or Kellyville Station Precinct occurs in accordance with a site-specific development control plan.
- (2) This clause applies to land identified as “Bella Vista Station Precinct” or “Kellyville Station Precinct” on the Sydney Metro Northwest Map.
- (3) Development consent must not be granted for development on land to which this clause applies unless:
 - (a) a development control plan that provides for the matters specified in subclause (4) has been prepared for or applies to the land, or
 - (b) the development is of a minor nature and is consistent with the objectives of the zone in which the land is situated.
- (4) The development control plan must provide for all of the following:
 - (a) design principles drawn from an analysis of the site and its context,
 - (b) distribution of land uses, including open space (its function and

- landscaping) and environment protection areas,
- (c) heritage conservation, including both Aboriginal and European heritage,
 - (d) encouraging sustainable transport, including increased use of public transport, walking and cycling, road access and the circulation network and car parking provision, including integrated options to reduce car use,
 - (e) impact on, and improvements to, the public domain,
 - (f) identification and conservation of native flora and fauna habitat and habitat corridors on the site, including any threatened species, populations or ecological communities,
 - (g) the application of the principles of ecologically sustainable development,
 - (h) identification, extent and management of watercourses, wetlands and riparian lands and any buffer areas,
 - (i) environmental constraints, including climate change, acid sulfate soils, flooding, contamination and remediation,
 - (j) opportunities to apply integrated natural water-cycle design and integrated renewable energy design.

Council Explanatory Note: No change to Department's draft Instrument provided July 2017

8.6 Active street frontages in Zones B2 and B7

- (1) This clause applies to land identified as "Active street frontage" on the Active Street Frontages Map.
- (2) Development consent must not be granted to the erection of a building, or the change of use of a building, on land to which this clause applies unless the consent authority is satisfied that the building will have an active street frontage.
- (3) Despite subclause (2), an active street frontage is not required for any part of a building that is used for any of the following:
 - (a) entrances and lobbies (including as part of mixed use development),
 - (b) access for fire services,
 - (c) vehicular access.

Council Explanatory Note: No change to Department's draft Instrument provided July 2017 however the Clause has been renumbered from 8.7 to 8.6, as a result of changes to the placement of the Design Excellence Provision (drafted as Clause 8.6 in the Departments draft Instrument provided July 2017 – see below).

8.7 Ground floor business premises and retail premises in Zones B2 and B7

- (1) This clause applies to land identified as "Active street frontage" on the Active Street Frontages Map.
- (2) Development consent must not be granted to the erection of a building, or the change of use of a building, on land to which this clause applies unless the consent authority is satisfied that the ground floor of the building will be used only for the purpose of business premises or retail premises.

Council Explanatory Note: No change to Department's draft Instrument provided July 2017 however the Clause has been renumbered from 8.8 to 8.7, as a result of changes to the placement of the Design Excellence Provision (drafted as Clause 8.6 in the Departments draft Instrument provided July 2017 – see below).

8.8 Residential development yield on certain land within the Bella Vista and Kellyville Station Precinct

- (1) This clause applies to development that involves the erection of one or more buildings that contain dwellings on land identified as “Area C” on the Floor Space Ratio Map.
- (2) Despite clause 4.4, the consent authority may consent to development to which this clause applies with a floor space ratio that does not exceed the increased floor space ratio identified on the Floor Space Ratio Incentive Map, if the consent authority is satisfied that:
 - (a) the site area of the development is no less than 1 hectare, and
 - (b) a concept development application has been approved for the development, which details the:
 - (i) arrangement of roads on the land,
 - (ii) general subdivision layout of major lots,
 - (iii) distribution of land uses, including open space,
 - (iv) distribution of built form and indicative building heights, setbacks, building separation and common open space, and
 - (v) location, size and design of public domain areas and through site links, and
 - (c) no more than 25% of the total number of dwellings (to the nearest whole number of dwellings) contained in the development are to be studio or 1 bedroom dwellings, or both, and
 - (d) at least 20% of the total number of dwellings (to the nearest whole number of dwellings) contained in the development are to be 3 or more bedroom dwellings, and
 - (e) at least 40% of all 2 bedroom dwellings contained in the development will have a minimum internal floor area of 110 square metres, and
 - (f) at least 40% of all 3 bedroom dwellings contained in the development will have a minimum internal floor area of 135 square metres, and
 - (g) the following minimum number of car parking spaces are to be provided for the development:
 - (i) for each dwelling—1 car parking space, and
 - (ii) for every 5 dwellings—1 car parking space, in addition to the car parking space required for the individual dwelling.
- (3) In this clause:
internal floor area does not include the floor area of any balcony.

Council Explanatory Note: The draft clause above aligns with the agreement reached between Council and the NSW Chief Town Planner with respect to housing mix and diversity (in terms of the TOD Walking Catchment Density and “top-up” methodology as well as the % criteria based on the demographics of the Hills Shire). It also ensures that the incentivised Floor Space Ratio is only possible where a development site has a minimum area of 1 hectare and a concept development application (master plan) approval.

The operation of this amended clause would rely on concurrent amendments to Division 2A (Clause 83C (1) of the EP&A Act, which currently specifies that “an environmental planning instrument cannot require the making of a concept development application before development is carried out”.

[3] Design excellence

Omit clause 7.7. Insert instead:

7.7 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 erection of a new building or external alterations to an existing building ~~on land identified as “Bella Vista Station Precinct” or “Kellyville Station Precinct” on the Sydney Metro Northwest Map~~ if the building is, or will be, higher than 25 metres or 8 storeys (or both).
- (3) Development consent must not be granted to development to which this clause applies unless the consent authority considers that the 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, arrangement 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,
 - (d) whether the development detrimentally impacts on any land protected by solar access controls established in ~~the development control plan referred to in clause 8.5~~ The Hills DCP,
 - (e) the requirements of ~~the development control plan referred to in clause 8.5~~ The Hills DCP,
 - (f) 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) street frontage heights,
 - (vii) environmental impacts such as sustainable design, overshadowing, wind and reflectivity,
 - (viii) the achievement of the principles of ecologically sustainable development,
 - (ix) pedestrian, cycle, vehicular and service access, circulation and requirements,
 - (x) the impact on, and any proposed improvements to, the public domain,
 - (xi) the impact on any special character area,
 - (xii) achieving appropriate interfaces at ground level between the building and the public domain,
 - (xiii) excellence and integration of landscape design.

draft

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- (5) In addition, development consent must not be granted to development to which this clause applies unless:
- (a) if the development is in respect of a building that is, or will be, higher than ~~11 metres or 3 storeys~~ 25 metres or 8 storeys (or both) but not higher than 66 metres or 20 storeys (or both):
 - (i) a design review panel reviews the development, and
 - (ii) the consent authority takes into account the findings of the design review panel, or
 - (b) if the development is in respect to a building that is, or will be, higher than 66 metres or 20 storeys (or both):
 - (i) an architectural design competition is held in relation to the development, and
 - (ii) the consent authority takes into account the results of the architectural design competition.
- (6) Subclause (5) (b) does not apply if:
- (a) the NSW Government Architect certifies in writing that an architectural design competition need not be held but that a design review panel should instead review the development, and
 - (b) a design review panel reviews the development, and
 - (c) the consent authority takes into account the findings of the design review panel.
- (7) In this clause:

architectural design competition means a competitive process conducted in accordance with the Design Excellence Guidelines.

Design Excellence Guidelines means the Design Excellence Guidelines issued by the Secretary and in force at the commencement of this clause.

Design review panel means a panel of 3 or more persons established by the consent authority for the purposes of this clause and approved by the NSW Government Architect.

Council Explanatory Note: Text in black is as per Department's draft Design Excellence provision provided July 2017.

In terms of placement within Council's LEP, the Department's draft instrument included this provision as Clause 8.6 (applicable only to development within the Bella Vista and Kellyville Priority Precincts). To avoid duplication and conflict with Council's existing design excellence provision (Clause 7.7 of LEP 2012), it is instead recommended that this clause simply replace the existing Clause 7.7 of Council's LEP – the Department's clause would then apply to all land within the Shire (including the Bella Vista and Kellyville Precincts as intended by the Department).

Text in red shows amendments to the Department's draft clause which:

- Changes the placement of the provision to Clause 7.7 of LEP 2012 rather than proposed clause 8.6;
- Amends sub-clause (2) to remove reference to "Bella Vista Station Precinct" and "Kellyville Station Precinct" as the clause would apply to all land within the Shire;
- Replace reference to "the development control plan referred to in clause 8.5" with "The Hills DCP" to reflect the broader application of the clause to all development within the Shire; and
- Amend the threshold for application of the clause from 11 metres (3 storeys) to 25 metres (8 storeys)

[4] Clause 4.6 Exceptions to development standards

Insert after clause 4.6 (8) (cb):

(cc) clause 8.8.

Council Explanatory Note: New provision to ensure that the outcomes specified in Clause 8.8 cannot be varied through the use of Clause 4.6.

[5] Schedule 1 Additional permitted uses

Insert at the end of the Schedule with appropriate clause numbering:

Use of certain land at Bella Vista Station Precinct in Zone B7

- (1) This clause applies to certain land at Bella Vista Station Precinct that is in Zone B7 Business Park, shown as “Item 7” on the Additional Permitted Uses Map.
- (2) Development for the purposes of a market is permitted with development consent.
- (3) Development for the purpose of a shop with a gross floor area not exceeding 2,500m² is permitted with development consent.

Council Explanatory Note: No change to Department’s draft Instrument provided July 2017

Use of certain land at Bella Vista Station Precinct and Kellyville Station Precinct in Zone SP2

- (1) This clause applies to certain land at Bella Vista Station Precinct and Kellyville Station Precinct that is in Zone SP2 Infrastructure, shown as “Item ~~13~~ 20” on the Additional Permitted Uses Map.
- (2) Development for the purposes of an environmental facility or a recreation area is permitted with development consent.

Council Explanatory Note: Text in black is as per Department’s draft Instrument provided July 2017. Text in red has been amended to update for correct Item number on Additional Permitted Use Map. No material change to the Department’s draft clause.

Use of certain land at Bella Vista Station Precinct and Kellyville Station Precinct in Zones R1 and R4

- (1) This clause applies to certain land at Bella Vista Station Precinct and Kellyville Station Precinct that is in Zone R1 General Residential and Zone R4 High Density Residential, shown as “Item ~~9~~ 21” on the Additional Permitted Uses Map.
- (2) Development for the purposes of an exhibition village or recreation facility (outdoor) is permitted with development consent.

Council Explanatory Note: Text in black is as per Department’s draft Instrument provided July 2017. Text in red has been amended to update for correct Item number on Additional Permitted Use Map. No material change to the Department’s draft clause.

[6] Dictionary

Insert in alphabetical order:

Active Street Frontages Map means The Hills Local Environmental Plan 2012 Active Street Frontages Map.

Sydney Metro Northwest Map means The Hills Local Environmental Plan 2012 Sydney Metro Northwest Map.