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Alteration of Gateway determination report – PP_2019_RANDW_002_00 (PP-2020-75)

Expansion of the Eastern Suburbs Memorial Park
(cemetery and crematorium)

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1 Introduction

1.1 Overview

1.1.1 The proposal

The planning proposal seeks to amend the Randwick Local Environmental Plan (LEP) 2012 to introduce ‘cemetery’ as an additional permitted use for part of the site and retain the existing RE1 Public Recreation zone.

1.1.2 Site description

Table 1 Site description

Site Description	The planning proposal (Attachment B) applies to land at Bumborah Point, Port Botany and comprises land legally known as: <ul style="list-style-type: none"> • Lot 4858 DP 752015 – Crown land • Lot 7302 DP 1139143 – Crown land • Military Road Reserve – Council owned land
Type	Site
Council / LGA	Randwick City

Site description

The subject land at Bumborah Point, Port Botany (the site) is approximately 4.35 hectares (**Figure 1**) and is primarily used for pedestrian and cycling connections and access to Yarra Bay Beach. It has a car park (20 car spaces) with access via Military Road, a discontinued walkway from Prince of Wales Drive along part of the Yarra Bay foreshore, and footpaths connecting to the Eastern Suburbs Memorial Park (ESMP) and Yarra Bay Bicentennial Park. Several easements traverse the site.

The site is largely inaccessible and covered in thick vegetation, with the dominant vegetation communities being *Coastal Sand Tea-tree Banksia Scrub* and *Beach Spinifex Grassland*. A Flora and Fauna Assessment report (by Ecological, dated June 2019) found no threatened species of flora or fauna.

Ownership, land reservation classification and land claims

Most of the site is Crown land. Council is of the view that even though the land is zoned for RE1 Public Recreation under Randwick Local Environmental Plan (LEP) 2012, it is no longer reserved for recreation and instead is reserved for future public requirements under the *NSW Crown Land Management Act 2016*.

Lot 4858, which constitutes the primary land parcel of the site, was subject to three land claims by the La Perouse Local Aboriginal Land Council (LALC) between 2006 and 2016. The land claims were withdrawn in 2017. A copy of an executed Deed of Agreement is submitted with the planning proposal which shows:

- that the proponent is to grant 125 burial licences as security burial rights to the La Perouse LALC within the ESMP; and
- that the proponent must establish an exclusive Aboriginal Cemetery and Memorial Garden (with at least 125 double depth graves) on the Claimed Land.

At the time of this report, the Department has sought clarification from Crown Lands as to whether there are any outstanding Aboriginal Lands Claims for lot 7302, a small triangular land parcel at the south-eastern corner of the site (discussed in Section 4.2.6).

Surrounding area and context

The site is directly adjoined by the Eastern Suburbs Memorial Park (ESMP) which is a cemetery and crematorium in the east and north-east. To the north of the site is a local collector road (Military Road) and freight and logistic uses and to the west is a private road (Prince of Wales Drive) and the Port Botany freight and logistics precinct. To the south is Yarra Bay.



Figure 1 Subject site lot boundary and description (source: Six Maps)

The site is located in the Botany Bay National Park Heritage Conservation Area (State and Local (in part) significance) and the south-east portion of site is identified as the Yarra Bay Beach and Reserve (local significance). The site is in the vicinity of the Bunnerong Power Station Heritage Conservation Area (local significance).

1.1.3 Purpose of plan

The proposed controls in **Table 2** and **Figure 2** are intended to facilitate expansion of the ESMP which is designed as a predominantly lawn-based cemetery serving a dual purpose: as publicly accessible open space and a cemetery.

Table 2 Current and proposed controls

Control	Current	Proposed
Zone	RE1	RE1
Additional Permitted Uses (Schedule 1 and Map)	Nil	'Cemetery' for part of the site

Original concept plan

The planning proposal is supported by a Concept Master Plan (by MHLA, dated June 2019; **Figure 3**) which describes the indicative layout, including burial areas, columbaria, foreshore landscape buffer, internal roads, walking and bicycle paths and car parking. It allows for approximately 3,000 full body burial plots plus space for ash interments. The proposal also includes a dedicated Aboriginal Cemetery and Memorial Garden which will accommodate 125 burial plots for the interment of the remains of Aboriginal persons who were the members of the La Perouse LALC area, or members of their families.



Figure 2 Proposed Additional Permitted Use map



Figure 3 Proposed Concept Master Plan, issue C dated June 2019 (Source: Mathew Higginson Landscape Architecture [MHLLA]). Note: the 20m foreshore vegetation zone is denoted in blue line in the plan.

Revised concept plan and additional information

A revised submission, including a Concept Masterplan (by MHLLA, issue D, dated September 2020; **Figure 4**), was submitted to the Department in February 2021 to respond to the Gateway conditions, which are required to be satisfied prior to public exhibition (**Attachment C1**). Whilst the concept plan remains unamended, the revised submission includes additional information and more clarity on the following:

- Revised Concept Plan:
 - New sections to indicate the mean high-water mark (MHW) and 'vegetation / beach transition zone',
 - Clarification of existing constraints (utilities and easements) and quantum of existing, proposed and new vegetation, and
 - an updated yield of burial plots, being 3,482 lawn plots and 565 monument plots.

Note: No further information has been provided to clarify whether the 125 burial plots for Aboriginal persons are included in these figures or to provide the estimated amount of ash interment space.

- Flora and fauna addendum statement, by Ecological;
- Addendum planning statement, addressing the Eastern City District Plan and Randwick Local Strategic Planning Statement, by Urbis;
- Response to Gateway conditions, by Urbis;
- Coastal engineering advice (email), by Horton Coastal Engineering; and
- Final draft site-specific development control plan (DCP) (version 7), by Urbis and Council.



Figure 4 Revised Concept Master Plan, Issue D, dated September 2020 (Source: MHLA) Attachment C1. Note: the 20m foreshore vegetation zone is denoted in blue line in the plan.

1.1.4 State electorate and local member

The site falls within the Maroubra state electorate where Michael John Daley MP is the State Member. The site falls within the Kingsford Smith federal electorate where Matt Thistlethwaite MP is the Federal Member.

To the team's knowledge, neither MP has made any written representations regarding the proposal. There are no donations or gifts to disclose, and a political donation disclosure is not required. There have been no meetings or communications with registered lobbyists with respect to this proposal.

2 Gateway determination and alterations

The Gateway determination issued on 22 May 2020 (**Attachment D**) determined the proposal should proceed subject to conditions. Of note, the Gateway determination required the proposal to be finalised by 22 May 2021, being 12 months from the date of Gateway Determination.

Given the nature of the proposal Council was not authorised to be the local plan making authority.

On 8 February 2021, Council indicated by email that it was seeking progression of the planning proposal, subject to an amended planning proposal, draft DCP, technical studies and other supporting information being submitted to the Department prior to public exhibition (**Attachment I**). Council provided an update on the expected timeframes, citing delays caused due to the complexities of the site, time taken to negotiate a voluntary planning agreement under existing and future Crown land restrictions and working with the proponent to address the Gateway conditions.

On 25 February 2021, Council provided an amended proposal timeline which indicated minimal time available for the Department to finalise the LEP by the May 2021 completion due date (**Attachment I**).

In late February 2021, Council submitted a revised submission with additional information (**Attachments C1-C6**) to address the Gateway conditions prior to public exhibition.

At its meetings with Council, the Department advised of the NSW Government reforms since July 2020 to the planning system to deliver improved processes for assessing and finalising planning proposals more efficiently.

On 6 April 2021, the Department wrote to Council inviting Council to request that the planning proposal should not proceed (**Attachment H**). The correspondence called for Council's request by 21 April 2021 to enable a Department decision on the planning proposal by 22 May 2021. In the letter, the Department advised it had reviewed the submitted documentation and was unable to support the progression of the proposal due to unresolved planning issues and Gateway conditions and delays to the 12-month finalisation timeframe. At the time of this report, Council has not provided any written agreement to the above request.

In mid-May 2021, the Department met with the proponent, the Southern Metropolitan Cemeteries NSW, to discuss the outstanding planning issues. During the meetings, the Department advised that it is committed to working with Council and the proponent to resolve the outstanding issues to facilitate the preparation of a new planning proposal, and with the current proposal discontinued.

3 Gateway Determination conditions

The Gateway determination conditions require the planning proposal to be amended to address the following matters and submitted to the Department for review and endorsement prior to public exhibition:

- prepare a site specific DCP which incorporates requirements relating to public access, passive and active recreation, native vegetation retention, foreshore vegetation protection, public safety, contaminated ground water seepage and heritage conservation and interpretation;
- revise the concept masterplan and additional permitted uses map in accordance with the DCP;
- clarify certain matters, such as estimated numbers of burial plots and ash internment space, and various technical terms and concepts;
- address the planning priorities in the Eastern City District Plan and Randwick Local Strategic Planning Statement (LSPS);

- address the requirements of Ministerial Directions 2.2 Coastal Protection and 2.6 Remediation of Contaminated Land;
- address the provisions of relevant State Environmental Planning Policies (SEPPs), being SEPP (Vegetation in Non-Rural Areas) 2017 and SEPP No. 55 Remediation of Land, including confirmation the land can be made suitable for the intended land uses;
- updates to the planning proposal document and other technical reports to reflect the changes to the concept masterplan and proposal as a result of the conditions of the Gateway, and remove culturally sensitive information; and
- provide an updated planning proposal timeline.

A number of Gateway conditions have not been satisfied as detailed in Section 4 of this Report.

Appendix 1 within this report provides an overview of the Gateway conditions and a statement as to whether the revised planning proposal and supporting documentation have satisfied the conditions.

4 Department's Assessment

4.1 Strategic alignment

The additional information provided with the revised submission, dated February 2021, did not adequately demonstrate strategic alignment with the strategic planning framework as required in the relevant Gateway conditions.

4.1.1 District Plan and Local Strategic Planning Statement

The planning proposal has been the subject of a detailed review and assessment prior to the Gateway determination on 22 May 2020. The Gateway assessment report provided an assessment of the Eastern City District Plan, the Randwick City Plan (2017) and the Randwick Local Strategic Planning Statement (LSPS, 2020) (**Attachment E**).

The planning proposal did not contain a statement of consistency with the Randwick LSPS as the planning proposal was lodged with Council prior to the exhibition of the then draft LSPS (endorsed on 25 February 2020).

Conditions 1 (k) and (l) of the Gateway determination require the preparation of an amended planning proposal prior to public exhibition to address all relevant planning priorities of the Eastern City District Plan and the Randwick LSPS.

An Addendum Planning Statement was submitted by Council in February 2021 with a statement of consistency against the District Plan and LSPS Planning Priorities (**Attachment C2**).

Despite this, it is noted that this condition is only partly satisfied as the revised submission has not adequately and fully addressed the strategic alignment of the proposal with the relevant priorities in the District and Local plans. As such, any future planning proposal must address the following in a revised planning proposal document:

- All relevant planning priorities in the District Plan, including but not limited to:
 - E4 *Fostering healthy, creative, culturally rich and socially connected communities,*
 - E6 *Creating and renewing great places and local centres, and respecting the District's heritage, and*
 - E9 *Growing international trade gateways* – particularly regarding cycling and walking connections around Port Botany;
- All relevant planning priorities in the Randwick LSPS which identify the importance of conserving and respecting Aboriginal cultural heritage and providing social infrastructure

(such as cemeteries), for which no statement of consistency has been provided. These include:

- 4 *Conserve and protect our unique built cultural heritage,*
- 5 *Safeguard and celebrate our Indigenous cultural heritage, and*
- 6 *Support the delivery of social infrastructure and services to meet the needs of our diverse community;*
- provide a statement of consistency with any other local plans, strategies (e.g. Local Housing Strategy) and documents which may be endorsed by Council or approved by the Department prior to the lodgement of any future proposal, where relevant.

4.1.2 Section 9.1 Ministerial Directions

The Gateway determination identified that the proposal is consistent with relevant section 9.1 Ministerial Directions, except Directions 2.2 Coastal Management and 2.6 Remediation of Contaminated Land (**Attachment D**). The Gateway assessment against the s9.1 Directions at the time of the Gateway determination remains relevant to the proposal, including any identified inconsistencies:

- Direction 2.2 Coastal Management - The Gateway Report identified that insufficient information had been provided to address the provisions of this direction (**Attachment E**), in particular, the requirements for the proposal to give effect to, and be consistent with, the objects of the *Coastal Management Act 2016* and relevant coastal management areas, the *NSW Coastal Management Manual* and toolkit, the *NSW Coastal Design Guidelines* and any relevant *Coastal Management Plan* or *Coastal Zone Management Plan*. Gateway Condition 1(o) requires more information to clearly demonstrate consistency, prior to exhibition. The February 2021 submission does not provide information to address the above condition.
- Direction 2.6 Remediation of Contaminated Land - The Gateway Report noted that a preliminary site investigation was provided in support of the proposal and its proposed uses, subject to the submission of a detailed site investigation with any future development application. As a formality, the Report identified that the new Ministerial Direction 2.6 must be addressed, given the removal of Clause 6 from the SEPP No. 55 and transfer of the requirements to the new Ministerial Direction on 17 April 2020. Gateway Condition 1(o) requires more information to clearly demonstrate consistency, prior to exhibition. The February 2021 submission does not provide information to address the above condition.
- Direction 2.3 Heritage Conservation – The Gateway Report identified that the proposal was generally consistent with Direction 2.3, however, Condition 1 (o) required updated information to address the direction based on the findings of all heritage and archaeological studies undertaken. The February 2021 submission does not address the above.
- Gateway Condition 1 (p) requires updated information in the planning proposal document to refer to “section 9.1 Directions” in lieu of “section 117 Directions”. The February 2021 submission has not included an updated planning proposal document.

4.1.3 State Environmental Planning Policies (SEPPs)

The Gateway Report identified unresolved matters with SEPP (Vegetation in Non-Rural Areas) 2017 and SEPP No. 55 – Remediation of Land (**Attachment E**).

With regard to SEPP (Vegetation in Non-Rural Areas) 2017, the Report identified that the SEPP provisions had not been addressed.

The Report identified that a Preliminary Site Investigation had been submitted in support of the planning proposal, and an additional statement had been submitted to Council addressing the specific terms required under the former Clause 6 of SEPP No. 55, which was deemed to be satisfactory by Council. However, the additional statement had not been submitted to the Department nor discussed in the planning proposal.

Gateway Condition 1 (m) requires more information prior to exhibition to address the provisions of SEPP (Vegetation in Non-Rural Areas) 2017 and updated information to address SEPP No. 55, including confirmation that the land can be made suitable for the intended land use.

Condition 1 (n) further requires that the reference to several repealed SEPPs to be deleted from the planning proposal documentation.

The February 2021 submission has not addressed the above conditions.

4.2 Site specific matters

The additional information provided with the revised submission, dated February 2021, has not addressed a number of site-specific planning matters as required in the Gateway Conditions.

4.2.1 Site Specific DCP, Concept Masterplan and Maps

The Gateway Report noted that the success of the dual use proposal, which allows the co-location of burial spaces, landscaped and recreation areas, is dependent on the detailed landscape design. The report noted that Clause 6.12 of the Randwick LEP 2012 requires a site-specific DCP to be prepared and Gateway Condition 1 (a) recommended a range of matters to be addressed in any future DCP.

It is noted that a draft site specific DCP has been prepared to address Condition 1 (a), thereby technically satisfying Condition 1 (a) (**Attachment C5**). Whilst the DCP is not a matter for the Department to review and determine, it is considered that any future DCP should consider further the following aspects of Condition 1 (a):

- (ii) – clearer requirements discouraging fencing and barriers around the cemetery area.
- (vii) – it is noted that the retention of native vegetation in ‘non-burial areas’ is encouraged, and that native vegetation is encouraged in the foreshore. However, further clarity could be given to requiring retention of native vegetation within the foreshore buffer area, and clarity as to whether the latter relates to existing vegetation or only new plantings.
- (viii) – it is noted that the draft DCP stipulates requirements for material durability for walkways affected by severe storms and sea-level rise. It is unclear if it specifically requires that the foreshore walkway should be located outside the area subject to coastal hazards, noting that the Gateway condition requires consideration over a 100-year (to 2119) planning horizon.
- (ix) – requirements relating to the location of cemetery uses and burial plots outside the area subject to coastal hazards and buffer areas.
- (x) – consider requirements for archaeological reports for Aboriginal artefacts to be provided with any future development application (DA), in addition to a heritage impact statement. Clarify at what stage of the DA process that consultation with the Local Aboriginal Land Council is to occur (as specified in Section 5.2(g) of the draft DCP).

Gateway Condition 1 (b) and (c) require the Concept Masterplan to address all matters in Condition 1 (a) and for the Additional Permitted Uses map (for the cemetery use) to be revised and aligned with the amended masterplan, respectively.

It is noted that Conditions 1 (b) and (c) are not addressed.

Further commentary on the site-specific matters that are relevant to Condition 1 (a) are detailed in Sections 4.2.2- 4.2.6 below.

4.2.2 Burial plots and internment space

The Gateway Report identified discrepancies in the proposed number of burial plots in the planning proposal (3,000) and the Transport and Traffic Report (*‘some 2000’*), and uncertainty as to whether

the estimated number of burial plots includes the 125 plots for the Aboriginal Cemetery (**Attachment E**).

Gateway Condition 1 (d) and (e) require updated information of the estimated numbers of burial plots and ash interment space to reflect the changes to the Concept Plan and confirmation as to whether the 3,000 burial plots include the 125 burial plots for Aboriginal cemetery.

Condition 1 (f) also requires a plain English explanation of technical terms, such as ‘active burial years’, to be included in the revised planning proposal.

These conditions were to be satisfied prior to public exhibition.

It is noted that Condition 1 (d) is partly satisfied as the revised Concept Plan provides a revised estimated number of burial plots (lawn – 3,482 and monument – 565) however the estimated ash interment space remains unclear (**Attachment C1**). Any future planning proposal will require consistency in the estimated number of burial plots and clarity in ash interment space in all technical and supporting documentation.

It is noted that Conditions 1 (e) and (f) have not been addressed in the February 2021 submission.

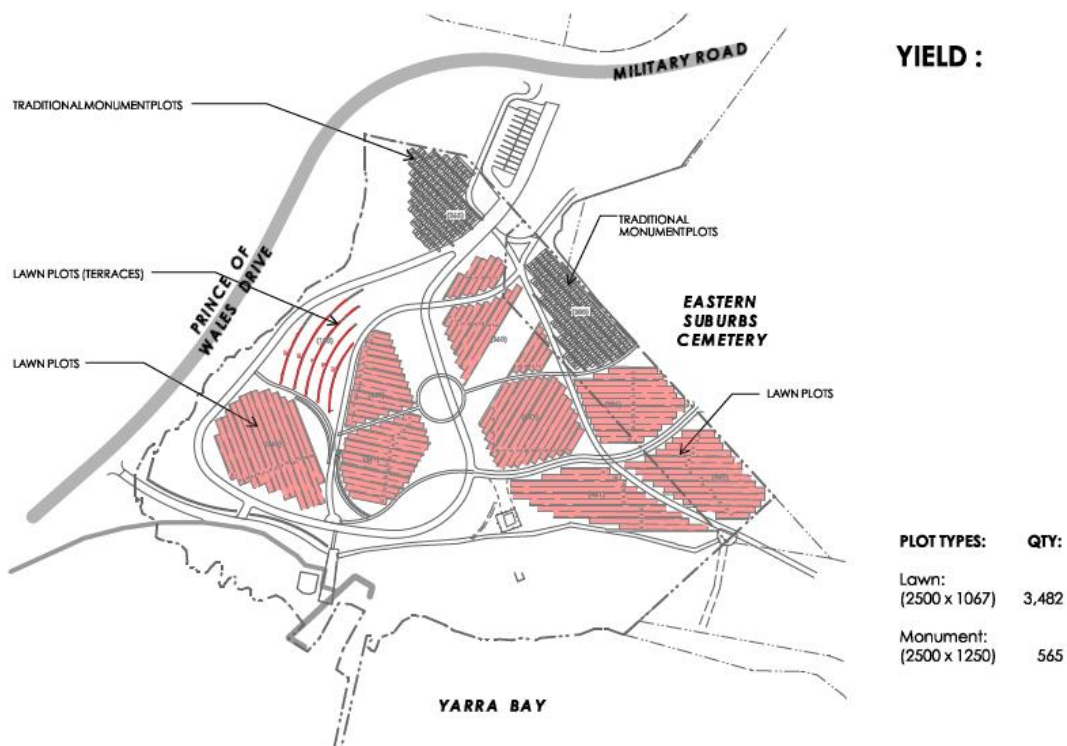


Figure 5. Estimated yield of lawn and monumental burial plots. Source: Revised Concept Plan, by MHLA, issue D, dated 8/9/2020.

4.2.3 Flora and fauna

The Flora and Fauna Assessment Report (FFA; by Ecological, dated June 2019) identified the dominant native vegetation communities (*Coastal Sand Tea-tree Banksia Scrub [CSTTBS]* and *Beach Spinifex Grassland [BSG]*), recorded no threatened species and recorded several weed species. The Gateway Report notes that the subject site is not identified as “Biodiversity” on the Terrestrial Biodiversity Map in the Randwick LEP 2012 (**Attachment E**).

The proposed amount of vegetation to be removed in the original and revised concept plan (0.65ha of CSTTBS) is above clearing threshold and a Biodiversity Offset Scheme will be required under the *Biodiversity Conservation Act 2016*.

Condition 1 (b) requires the Concept Plan to be amended in accordance with the site specific DCP requirements in Condition 1 (a)(v), (vi) and (vii) as follows:

- 1(a)(v) - require the design to maximise areas for landscaping and minimise clearing of native vegetation;
- 1(a)(vi) - expand and widen the 'foreshore buffer zone' to retain additional native vegetation, enable continuous canopy cover and windbreaks, offer a visual buffer and increase the area of land for public recreation; and
- 1(a)(vii) - encourage the retention of native vegetation in the foreshore buffer zone to enable protection and visual amenity.

The *Response to Gateway Conditions* submitted in February 2021 argues that further amendment of the concept masterplan is considered unnecessary and unreasonable (**Attachment C3**).

It is noted that the revised concept masterplan (**Attachment C1**) and FFA Addendum (**Attachment C4**) have provided additional diagrams and information to explain the various considerations behind the concept plan, and to further clarify the extent of vegetation impacted.

Despite this, the supplementary information remains ambiguous in a number of areas. More clarity and accurate data relating to the extent and quantum of vegetation to be retained, removed and replanted are required:

In relation to the Concept Master Plan (issue D):

- The revised concept plan and supporting diagrams denote areas of *Beach Spinifex Grassland* (BSG) with a bold green line. However, the quantum of BSG that is to be retained and removed (if any) is unclear and the data should be updated to be consistent with the quantum specified in the FFA Report and Addendum Statement by Ecological.
- It is unclear in the revised concept plan sections from what reference point the 'Foreshore Vegetation Zone' is measured (as discussed further in Section 4.2.2) and therefore the quantum of vegetation in this zone. It appears that the zone commences at the 'vegetation / beach transition', but it is unclear as to how this transition area is determined.
- A few sections have been prepared; however, the width of the Foreshore Vegetation Zone is not annotated or dimensioned.
- The Detailed Section shows that the Foreshore Vegetation Zone is up to approximately 39m in width. However, where this section 'cuts' across the plan is not given.
- The sections must be consistent with information in the planning statement (the Response to Conditions states that the buffer is between 20m and 39m) to allow verification and cross-referencing.

In relation to the data given in the Concept Master Plan, Flora and Fauna Report and Addendum, Planning Proposal, Response to Conditions and Addendum:

- There are inconsistencies in the quantum of native vegetation currently existing, to be retained and removed in the supporting documentation (**Table 5**).
- There are inconsistencies in the area (in hectares) of the site identified in the planning proposal and the 'study area' identified in the FFA Report and Addendum Statement.

The data and information provided to date are inconsistent and inconclusive in terms of its accuracy and the full extent of impact on, and removal of, native vegetation. Any future planning proposal will need to address or explain the reason for this inconsistency. A coherent and accurate set of data, as well as clearly presented concept plan and sections are required to support the proposal.

The above information is to demonstrate the proposal will adequately protect and enhance native vegetation, improve linkages between remnant native vegetation, create canopy cover and windbreaks, as well as providing visual buffer from the foreshore areas.

Table 3 Comparison of quantum of vegetation (in hectares) in planning and technical documents

Metric (in hectares)	Original planning proposal (June 2019)			Revised submission (February 2021)		
	Concept Plan	FFA Report	Planning Proposal	Revised Concept Plan	FFA Addendum	Planning statement & Response to Conditions
Site Area / Study Area	N/S	5.32ha	4.35ha	N/S	5.32ha	4.35ha
Existing Vegetation	-	5.32	-	[1.31]	5.32	-
- CSTTBS		- 1.67		- 1.31	- 1.67	
- BSG		- 0.02		- N/S	- 0.02	
- Weeds		- 2.04		- N/S	- 2.04	
- Cleared land		- 1.01		- N/S	- 1.01	
- Natural or modified foreshore		- 0.57		- N/S	- 0.57	
Vegetation Affected	-	2.48	[1.32]	N/S [0.396]	2.48	{0.78}
- CSTTBS		- 0.65	- 1.32		- 0.65	- 0.78 of natives
- BSG		- 0.00			- 0.00	
- Weeds, cleared land, natural or modified foreshore		- 1.83, being 1.36 + 0.46 + 0.01			- 1.83*, being 1.36 + 0.46 + 0.01	- N/S*
Vegetation Retained	-	[0.7]	-	[0.734]	-	[0.734]
- Natives		- 0.02		- 0.734		- 0.734
- Weeds, cleared land, natural or modified foreshore		- 0.68		- N/S		- N/S
Vegetation Planted (Natives)	-	-	-	0.712	-	0.712
Total Area of Proposed vegetation	-	-	-	N/S [1.446 + 0.02 (BSG)]	-	1.446 + 0.02 (BSG)

Source: Information collated from the original Concept Plan (Issue C and D) by MHLA; FFA Report (dated June 2019) and Addendum Statement (dated 23/10/2020) by Ecological; Planning Proposal (dated June 2019), Addendum Planning Statement (Dated 10/2/2021) and Response to Conditions prepared by Urbis.

Note 1: information italicised with “[x]” indicates the Department’s calculation, not the technical documents.

Note 2: “N/S” denotes not specified; CSTTBS denotes Coastal Sand Tea-tree Banksia Scrub; BSG denotes Beach Spinifex Grassland; FFA denotes Flora and Fauna Assessment.

Note 3: **The FFA Addendum Statement and Addendum Planning Statement (respectively) identify that 73% (or 1.9ha) and 68% (or 1.68ha) of the area to be ‘affected’ is weeds or cleared land. These figures are inconsistent with the 1.36ha of weeds that are proposed to be removed, as stated in the FFA Addendum Statement by Ecological.*

4.2.4 Coastal, foreshore and groundwater management

Coastal Engineering Advice (by Horton Coastal Engineering [HCE] Pty Ltd, dated 30 May 2019) and Geotechnical Report (by Douglas Partners, dated 14 May 2018) were provided in support of the proposal.

Condition 1 (a) requires in a site specific DCP to address coastal hazards, foreshore protection, and ground water quality, including:

- (a)(v) – (a)(vii): retaining native vegetation in foreshore areas and widening the foreshore buffer area, as discussed in Section 4.2.3;
- (a)(viii): locating the foreshore walkway outside the area subject to coastal hazards over a 100-year planning horizon and the cemetery area; and
- (a)(ix): locating all burial plots and columbaria outside the areas subject to coastal hazards and buffer areas for mitigating against contaminated water seepage to the cliff face.

As per Conditions 1(b) and (c), the concept masterplan and additional permitted uses map are to be amended in accordance with the DCP.

Condition 1 (g) requires a Plain English explanation of how foreshore buffer zone is determined and its relationship with coastal hazard and burial buffer areas.

The revised submission contains the following additional information and clarifications:

- Revised concept master plan – updated the sections (**Figure 6**) to indicate the location of the mean high water mark (MHWM) and ‘vegetation/beach transition’ (**Attachment C1**).
- Response to Gateway Conditions letter – argues that the existing buffer (20m-39m) provides a balanced approach to public recreation and burial space provision, visual amenity and maximising the retention of native vegetation (**Attachment C3**).
- Email correspondence with Horton Coastal Engineering – clarification of coastal hazard lines and buffers to cemetery uses in Coastal Engineering Advice (**Attachment C6**).

It is noted that these documents have not adequately addressed Conditions 1(a), (b), (c) and (g) because:

- An explanation in plain English has not been provided as to how the ‘Foreshore Vegetation Zone’ (FVZ) is determined, as well as its relationship and inter-dependencies with the Coastal Hazard Zones and buffer zones for burial areas. This is required to clearly explain how the setbacks to burial areas and walkways have been determined to mitigate impacts from future coastal hazards and potential contaminated groundwater seepage, as well as to provide a landscape corridor for planting and native vegetation retention.
- The above should be supported by clear maps and illustrations. As discussed above, the revised masterplan and sections do not clearly show the width of the FVZ and how this zone is determined. Written clarification should be provided in addition to a revised masterplan.
- Formal engineering advice with supporting evidence is required to explain why the coastal hazard lines do not extend over the south-western part of the site. This is to demonstrate the capability of the proposal in ensuring public safety, especially for users of the walkways and cycleways. The February 2021 submission only includes a short email correspondence from the engineering consultant.

The above requirements may result in changes to the extent or alignment of the Additional Permitted Uses Map (for ‘cemetery’ purposes) and the concept master plan.

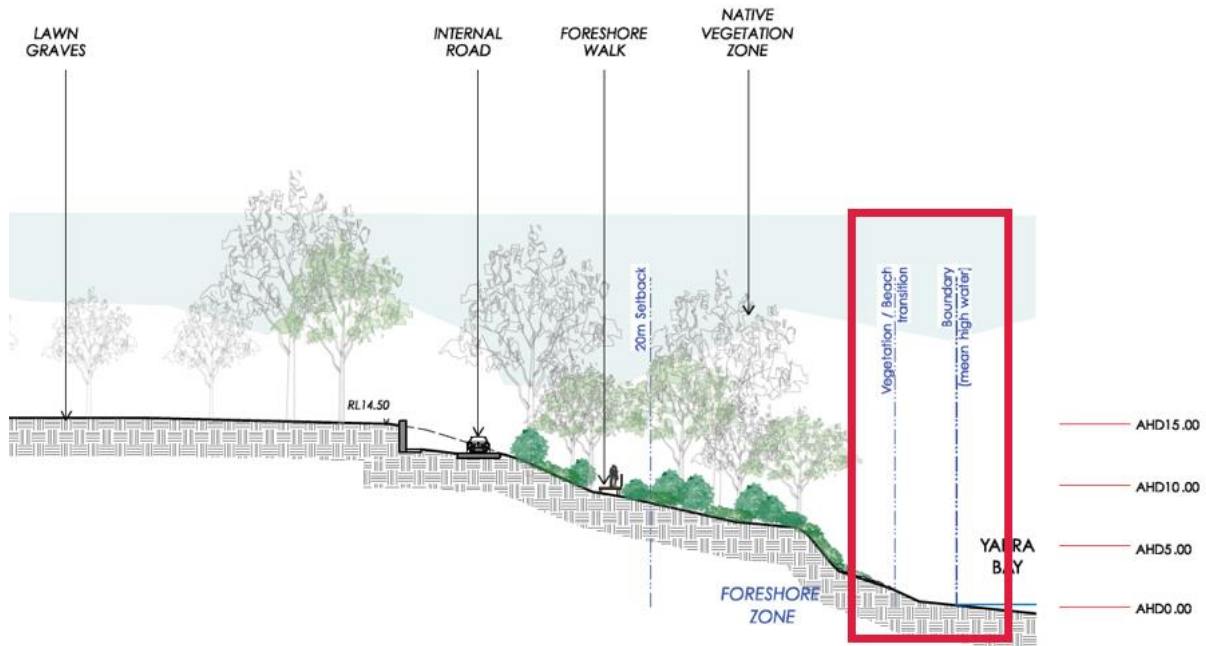


Figure 6. Extract from revised Section A, issue D, which denotes the MHW and the vegetation/beach transition zone (red box). Source: Revised Concept Plan, by MHLA, dated 8/9/2020, Attachment C1.

4.2.5 Land reservation under the *Crown Land Management Act 2016*

The Gateway Report identifies that the land at Lot 4858, DP 752015 is currently reserved for 'public purpose of future public requirements' by notice in the NSW Government Gazette. The reservation of the land for the purposes of a 'cemetery' is required under the provisions of the *Crown Land Management Act 2016* to facilitate the proposed development. In addition, Lot 7302 has a reserved purpose of 'public recreation' and Council has been appointed as Council Crown Land Manager.

Condition 4 of the Gateway determination requires consultation with Crown Lands to ensure all necessary processes are carried out to authorise the proposed cemetery use pursuant to the *Crown Land Management Act 2016* (CLMA).

It is understood that failure to change the reservation status of the land before the LEP is made may frustrate the ability of the land to be used for the purpose of a 'cemetery'. This is because development for the purposes of a 'cemetery' is not consistent with the purposes for which the land is currently reserved, being 'future public requirements' and 'public recreation' for the respective lots.

Any future planning proposal will need to provide details of discussions with Crown Lands to ensure all necessary arrangements have been, or will be, made to reserve the land for the purposes of a cemetery and open space. The Department will continue to work with Council to facilitate this process.

It is noted that Condition 4 is not yet addressed. Whilst the Gateway Determination does not specify the timeframe within which this is to occur, the Department will advise Council that the requirements of this Condition must be addressed as part of any new planning proposal. This includes determining the practical steps involved in arranging a notice in the NSW Government Gazette for the Minister to reserve the land for the purpose of a 'cemetery' and the other requirements set out under the CLM Act for such processes, including the requirement for the Minister to approve a community engagement strategy. Any future proposal needs to ensure the appropriate authorisations are, or will be, in place for the proposed use.

4.2.6 Aboriginal Lands Claims

The Aboriginal Lands Claims (ALCs) for Lot 4858 were withdrawn by letter of 30 March 2017 by the Officer of the Registrar – Aboriginal Land Rights Act 1983, being:

- ALC 12802 lodged on 4 August 2006;
- ALC 32005 lodged on 7 September 2010; and
- ALC 40491 lodged on 18 April 2016.

As detailed in Section 1.1.2 of this report, the Deed of Agreement associated with the ALCs over Lot 4858 requires 125 burial plots for the Aboriginal Cemetery and Condition 1 (e) requires confirmation of whether the estimated number of burial plots includes the 125 burial plots for Aboriginal cemetery. It is noted in Section 4.2.2 that this Condition is not yet addressed.

According to Crown Lands' records and advice, five ALCs made by the La Perouse and NSW Local Aboriginal Land Councils remain outstanding for Lot 7302, a triangular lot at the south-east corner of the site. The Additional Permitted Use map does not appear to apply to Lot 7302 (**Figure 7**), however, any future planning proposal needs to clarify whether it affects Lot 7302. Council should consult with Crown Lands to ensure the appropriate authorisations are in place and processes are followed with regards to the remaining ALCs on Lot 7302 before a planning proposal is lodged.

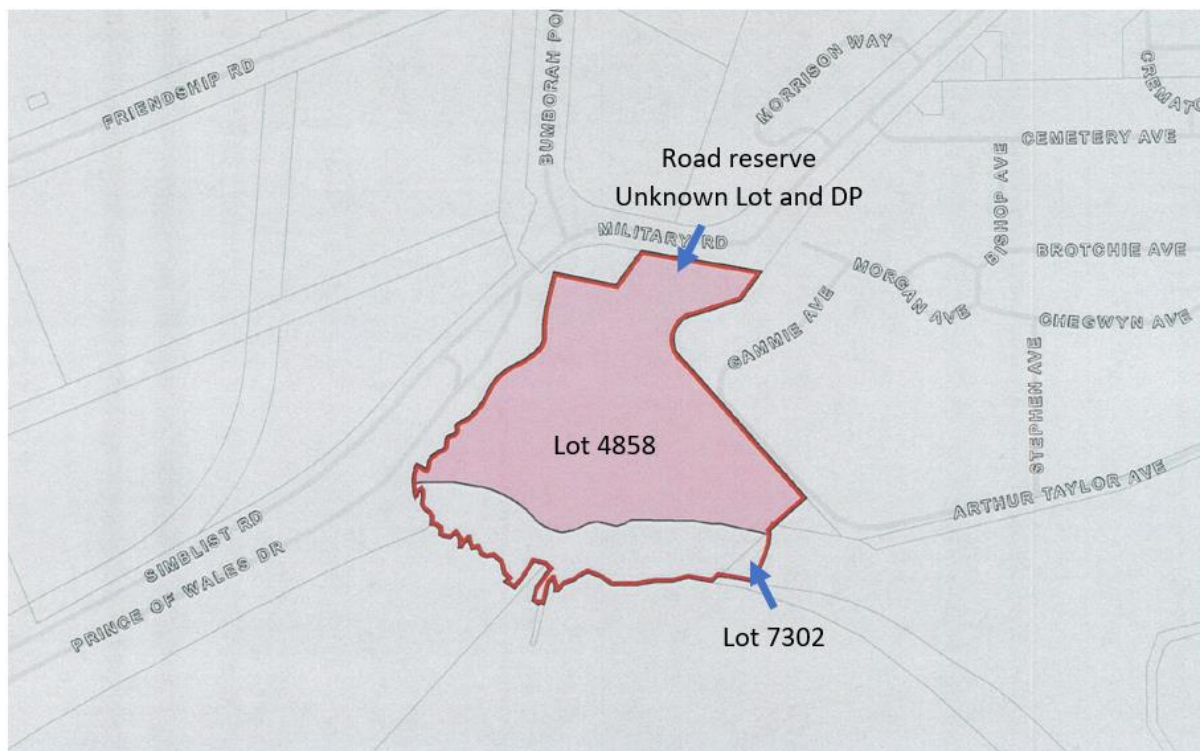


Figure 7. overlay of additional permitted use (pink) with the lot and DPs of the site

4.2.7 Aboriginal and European Heritage

The heritage context of the subject site is detailed in Section 1.3 of this report. Accordingly, a number of reports were provided in support of the proposal, including an Aboriginal Heritage Due Diligence Assessment report (by Artefact, September 2017), a Heritage Assessment Report (by Urbis, August 2019), an Identifying Heritage Archaeological Potential Study (by Urbis, August 2019), a Heritage Impact Statement and addendum letter (by Urbis, May 2019).

Condition 1 (h) requires the Aboriginal Heritage Due Diligence Assessment report to be updated prior to exhibition to remove sensitive data from Aboriginal Heritage Information Management System

(AHIMS) and to make reference to the correct property description in accordance with the survey plan.

This Condition has not been addressed in the February 2021 submission.

Condition 1 (i) requires the Heritage Impact Statement and Addendum letter to be publicly exhibited.

It is noted that this condition relates to the public exhibition processes which has not yet commenced, and any future planning proposal will be required to comply with this condition at that time.

4.2.8 Other technical reports

Condition 1 (j) requires updated supporting technical reports to reflect changes to the proposal as a result of the conditions of the Gateway determination (such as burial plot numbers), where required.

It is noted that this Condition has not been addressed with regards to the majority of technical reports, such as the Traffic and Parking Assessment.

It is noted that the Flora and Fauna Assessment Addendum and email correspondence relating to Coastal Engineering Advice have been provided in response to Gateway Conditions 1 (a) and 1 (g) (refer to Section 4.2.3 and 4.2.4, **Attachments C4 and C6**). However, with regards to Condition 1 (j) any future planning proposal, Flora and Fauna Assessment Report and Coastal Engineering Report will need to be amended to include the additional information and advice on these technical matters.

4.2.9 Other administrative matters

It is recommended any future planning proposal should be accompanied by a comprehensively revised planning proposal report and supporting technical documents, in lieu of multiple addendums and correspondences.

5 Other considerations

5.1 Planning reforms to reduce finalisation timeframes

The NSW Government is committed to reforming the planning system to be more streamlined and simplified in order to help unlock productivity by creating jobs and supporting on-going economic recovery. The reforms include delivering improved processes for assessing and finalising planning proposals more efficiently. This is intended to provide greater clarity to local government, the community and more certainty to proponents, and investors.

Part of the reforms seek to reduce timeframes to rezone land down to generally one year and no more than two years from start to completion. This has been shown to be achievable in many cases where proposals are aligned to a strong strategic planning framework.

Gateway Condition 1 (q) requires an updated project timeline to be provided prior to exhibition.

As stated in Section 2 of this report, Council is unable to meet the Department's timeframes under the NSW Government's planning reform, which would require finalisation by 22 May 2021. Council's correspondence on 8 and 25 February 2021 anticipated that the planning proposal would be exhibited in April and reported to Council on 25 May 2021 (**Attachment I**). Council's correspondence was on the basis that the matters required to be resolved before exhibition had been met. As outlined in the report above a number of matters remain outstanding and subject to further technical studies which would not be able to be finalised in order to meet Council's proposed timeframes. As such, the LEP would not be finalised until after the required timeframe under the Gateway determination.

On this basis, it is recommended that Gateway determination be altered to not proceed, and a new planning proposal be submitted once outstanding issues are resolved. This will ensure a clear and timely pathway to finalisation for a new planning proposal. The Department will support Council to prepare a new proposal and ensure a timely finalisation of a new proposal.

6 Recommendation

The Department recommends that the Gateway determination be altered to not proceed under section 3.34(7) of the *Environmental Planning and Assessment Act 1979* because:

- The planning proposal has not been amended to adequately address the strategic alignment with the Eastern City District Plan and Randwick Local Strategic Planning Statement in accordance with the conditions of the Gateway determination.
- The planning proposal has not provided additional information to clearly demonstrate consistency with relevant Section 9.1 Ministerial Directions and to address the provisions of relevant State Environmental Planning Policies.
- There are site specific planning matters which are unresolved and the information provided has not:
 - adequately demonstrated how foreshore vegetation protection, coastal hazard, public safety and groundwater management have been addressed in the concept master plan;
 - clearly demonstrated the impact on, and replacement of, native vegetation; the information currently provided is inconsistent and inconclusive;
 - adequately amended the concept master plan and Additional Permitted Use map in accordance with the Gateway conditions to illustrate protection of native vegetation, and creation of canopy cover and visual buffer from the foreshore;
 - clearly demonstrated whether the estimated number of burial plots includes those dedicated for the Aboriginal Cemetery and Memorial Garden;
 - provided details to demonstrate that appropriate authorisations are, or will be, in place to change the land reservation under the *Crown Land Management Act 2016* to allow the dual use of the site as a cemetery and open space; and
 - provided details to confirm whether the proposed Additional Permitted Use map applies to the land parcel known as Lot 7302, which has out-standing Aboriginal Lands Claims, and whether appropriate arrangements have been made to resolve this matter.
- A number of technical reports have not been amended to reflect updates to the proposal or to provide information pursuant to the Gateway Conditions, including explanation of technical terms and concepts in plain English, and removal of sensitive Aboriginal heritage data.
- The supporting documents to the planning proposal, including the revised submission received in February 2021, are not appropriately coordinated and are not suitable for public exhibition.
- The Gateway determination required the Local Environmental Plan to be made by 22 May 2021, and the submitted project timeline indicates that this due date will not be met.



19 May 2021

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21 May 2021

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Attachments

Attachment	Document
Attachment Council	Letter to Council
Attachment Proponent	Letter to Proponent
A	Alteration of Gateway Determination
B	Planning Proposal, dated June 2019
C1	Revised submission – Concept Master Plan, issue D
C2	Revised submission – Addendum Planning Statement
C3	Revised submission – Response to Gateway Conditions
C4	Revised submission – Flora and Fauna Addendum Statement
C5	Revised submission – Draft Site Specific DCP (version 7)
C6	Revised submission – Email with coastal engineering advice
	<i>SF21/19200 contains all documents lodged in the revised submission</i>
D	Gateway Determination – 22 May 2020

Attachment	Document
E	Gateway Determination Assessment Report
F	Gateway letter to Council – 22 May 2020
G	Letter to Council requesting the proposal not to proceed – 6 April 2021

Appendix 1

Table 1 Gateway conditions and outcome of revised submission

No.	Condition requirements	Addressed / Not addressed
1	<i>The planning proposal is to be amended to address the following matters and submitted to the Department for review and endorsement prior to public exhibition:</i>	As below
1(a)	<p><i>Preparation of a draft site-specific development control plan incorporating the following requirements:</i></p> <ul style="list-style-type: none"> <i>(i) The site is to be designed to encourage access by the general public, including pedestrians and cyclists;</i> <i>(ii) The site, including the cemetery area, is not to be impeded by fencing or barriers that would affect accessibility;</i> <i>(iii) Access to Yarra Bay Beach and the adjoining coastal walkway is to be improved and enhanced for the general public;</i> <i>(iv) The site is to be designed to support passive recreation activities as well as walking and cycling;</i> <i>(v) The cemetery design is to maximise areas for landscaping, planting and tree canopy and minimise clearing of native vegetation. In addition, consideration is to be given to minimising or removing monumental graves to achieve the above;</i> <i>(vi) The “foreshore buffer zone” as identified in the Concept Master Plan is to be expanded and widened to retain additional amount of native vegetation in the eastern part of the site, enable continuous canopy cover and wind-break for the proposed coastal walkway, create a stronger visual buffer between the cemetery and the foreshore via landscape planting, and increase the amount of land dedicated for public recreation on the site;</i> <i>(vii) Retention of the native vegetation within the “foreshore buffer zone” is maximised to allow a high degree of protection of the existing flora and fauna and to achieve high visual amenity;</i> <i>(viii) The foreshore walkway must be located outside areas identified as being subject to coastal hazards over a 100-year planning horizon (to the year 2119) and the cemetery area;</i> 	Partly addressed. Refer to unresolved site-specific matters in Section 4.
1(a)	<ul style="list-style-type: none"> <i>(ix) All burial plots and columbaria must be located outside the areas subject to coastal hazards (over a 100-year planning horizon to the year 2119) and buffer areas for mitigating against contaminated water seepage to the cliff face as recommended in the Additional Coastal Engineering Advice on Bumbora Point Cemetery Planning Proposal, dated 30 May 2019, and prepared by Horton Coastal Engineering; and</i> <i>(x) Guidance on the conservation and interpretation of any potential significant archaeological relics associated with past uses on the site.</i> 	
1(b)	<i>An amended Concept Master Plan addressing all items listed in part (a) above</i>	Not addressed
1(c)	<i>A revised Additional Permitted Uses Map to align with the amended Concept Master Plan</i>	Not addressed

No.	Condition requirements	Addressed / Not addressed
1(d)	<i>Updated information in the planning proposal document to reflect the changes to the Concept Master Plan as required by this Gateway determination, including the estimated numbers of burial plots and ash interment space</i>	Partly addressed. Clarity on ash interment space required.
1(e)	<i>Confirmation of whether the estimated 3,000 burial plots includes the 125 burial plots dedicated for the Aboriginal Cemetery and Memorial Garden</i>	Not addressed
1(f)	<i>An updated statement of intended outcomes in plain English with all technical terms, such as “active burial years”, explained</i>	Not addressed
1(g)	<i>An explanation in plain English (supported by maps / illustration as appropriate) of how the boundary of the “foreshore buffer zone” and the additional permitted use area are determined and their relationship with the coastal hazard and buffer areas described in the Coastal Engineering Advice and Geotechnical Report</i>	Not addressed
1(h)	<i>An updated Aboriginal Heritage Due Diligence Assessment to remove culturally sensitive information, being all Aboriginal Heritage Information System (AHIMS) data and related mapping that indicate the potential location of Aboriginal heritage sites and relics. In addition, update the report to make reference to the correct property description in accordance with the survey plan</i>	Not addressed
1(i)	<i>Include the Heritage Impact Statement, dated 5 July 2018 and addendum letter regarding potential former fortifications, dated 30 May 2019, both prepared by Urbis, as part of the planning proposal to be publicly exhibited</i>	N/A - addressed at any future exhibition
1(j)	<i>Updated supporting technical reports to reflect changes to the proposal as a result of the conditions of this Gateway determination (such as burial plot numbers), where required</i>	Not addressed
1(k)	<i>Information to address all relevant planning priorities in the Eastern City District Plan, including:</i> <i>(i) E9. Growing international trade gateways,</i> <i>(ii) E14. Protecting and improving the health and enjoyment of Sydney Harbour and the District’s waterways,</i> <i>(iii) E15. Protecting and enhancing bushland and biodiversity,</i> <i>(iv) E16. Protecting and enhancing scenic and cultural landscapes,</i> <i>(v) E18. Delivering high quality open space,</i> <i>(vi) E20. Adapting to the impacts of urban and natural hazards and climate change.</i>	Partly addressed. Further justification against E9 required.
1(l)	<i>Information to address all relevant planning priorities and actions in the Randwick Local Strategic Planning Statement;</i>	Partly addressed. Further justify Priorities 5 and 6.

No.	Condition requirements	Addressed / Not addressed
1(m)	<p>Information to address the provisions of the following State Environmental Planning Policies (SEPPs):</p> <ul style="list-style-type: none"> (i) SEPP (Vegetation in Non-Rural Areas) 2017, and (ii) Updated information to address SEPP No. 55 Remediation of Land, including confirmation that the land can be made suitable for the intended land use. 	Not addressed
1(n)	<p>Delete reference to the following repealed SEPPs:</p> <ul style="list-style-type: none"> (i) SEPP Amendment (Child Care) 2017; (ii) SEPP (Rural Lands) 2008; (iii) SEPP (Miscellaneous Consent Provisions) 2007; (iv) SEPP No. 1 Development Standards; (v) SEPP No. 30 Intensive Agriculture; (vi) SEPP No. 44 Koala Habitat Protection; (vii) SEPP No. 52 Farm Dams and Other Works in Land and Water Management Plan Areas; (viii) SEPP No. 62 Sustainable Aquaculture; and (ix) SEPP No. 71 Coastal Protection 	Not addressed
1(o)	<p>Information to clearly demonstrate consistency with the following section 9.1 Directions:</p> <ul style="list-style-type: none"> (i) Direction 2.2 Coastal Protection; (ii) Direction 2.3 Heritage Conservation – provide updated information to address this direction based on the findings of all heritage (including heritage significance assessment, heritage impact assessment and Aboriginal heritage assessment) and archaeological studies undertaken; and (iii) Direction 2.6 Remediation of Contaminated Land. 	Not addressed
1(p)	<p>Updated information in the planning proposal document to refer to “section 9.1 Directions” in lieu of “section 117 Directions”</p>	Not addressed
1(q)	<p>An updated project timeline.</p>	Timeline provided, not supported
2	<p>Relates to public exhibition and community consultation requirements</p>	N/A - addressed later
3	<p>Relates to Agency consultation requirements</p>	N/A – addressed later
4	<p>The land at Lot 4858 in DP 752015 has been reserved for public purpose of ‘future public requirements’ by notice in the NSW Government Gazette. It is advised that reservation of the land for the purposes of a cemetery is required under the provisions of the Crown Land Management Act 2016 to facilitate the proposed development. As such, consultation with Crown Land is to be undertaken to ensure all necessary processes are carried out to authorise the proposed cemetery use pursuant to the Act.</p>	Not addressed
5	<p>The time frame for completing the LEP is to be 12 months following the date of the Gateway determination</p>	Not achieved
6	<p>A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, if reclassifying land).</p>	N/A – may or may not be required for any future planning proposal

No.	Condition requirements	Addressed / Not addressed
7	Requires that Council is not authorised as the local plan-making authority	N/A – relates to finalisation