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Gateway Alteration Report – PP-2022-1748

Cooks Cove (13, 15, 19 & 19A Marsh Street, Arncliffe)

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Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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Table 1 Reports and plans supporting the proposal

Relevant reports and plans
Gateway Determination (PP-2022-1748) – Cooks Cove Planning Proposal – 5 August 2022
Planning Proposal (prepared for Exhibition) – Cooks Cove, Arncliffe – Prepared by Ethos Urban on behalf of Cook Cove Inlet Pty Ltd – 10 March 2023
Draft Bayside LEP Maps
Cooks Cove – Urban Design + Landscape Report (Planning Proposal) – 22 February 2022
Flood, Stormwater and WSUD Report
Transport Impact Assessment
Survey and Reclassification
Aeronautical Impact Assessment
Wind Shear and Turbulence Assessment
Acoustic Assessment Report
Servicing and Utilities Infrastructure Strategy Report
Ethane Pipeline Preliminary Hazard Analysis
Flora and Fauna Assessment
Archaeological Report
Environmental Site Assessments
Geotechnical Summary Memorandum
Indicative Draft Bayside DCP 2022
TfNSW Infrastructure Letter of Offer and Exhibition
Aviation Matters Letters of Endorsement
Pre-exhibition report to the Panel
Panel Record of Decision to Exhibition proposal and request an altered Gateway dated 31 March 2023
Gateway Alteration Request – 3 April 2023

1 Introduction

This report discusses the proposed amendments to the Gateway determination (the Gateway) issued by the Department of Planning and Environment (the Department) for the original planning proposal at 13, 15, 19 and 19A Marsh Street, Arncliffe (the site).

The site forms part of the Cooks Cove Precinct (the Precinct) as identified in the Bayside West Precincts Plan 2036.

The planning proposal dated 22 October 2021 (the original proposal) for the site was granted Gateway approval on 5 August 2022 subject to conditions.

On 28 March 2023, a revised planning proposal dated 10 March 2023 (the revised proposal) was considered by the Sydney Eastern City Planning Panel (the Panel) as the planning proposal authority (PPA).

This revised proposal seeks to address the Gateway conditions and the new employment zones. In response, the Panel has submitted a request to alter the Gateway to ensure the planning proposal which is publicly exhibited is described in the Gateway. This is intended to assist with public exhibition.

The intended outcomes in the revised proposal remain consistent with those of the original proposal. The revised proposal also continues to seek to develop part of the Cooks Cove Precinct as a logistics and warehousing precinct, together with supporting uses, including hotel and motel accommodation and office premises.

On 31 March 2023, the Panel supported the revised proposal to proceed to exhibition, subject to issuing of a Gateway alteration which is the subject of this report.

1.1 Overview

1.1.1 The original proposal

The original proposal sought to facilitate the development of part of the Cooks Cove Precinct as a logistics and warehousing precinct, together with supporting uses such as tourist and visitor accommodation, office, and retail. It also sought to remove the site from the operation of Chapter 6 of *State Environmental Planning Policy (precincts – Eastern Harbour City) 2021* (EHC SEPP) and insert new planning provisions into *Bayside Local Environmental Plan 2021* (Bayside LEP).

The proposal sought to:

- introduce the following three land use zones across the site including:
 - B7 Business Park across the majority of the Kogarah Golf Course freehold land;
 - RE1 Public Recreation for the foreshore area of the site adjacent to the Cooks River and land adjacent to Marsh Street; and
 - SP2 Infrastructure to the existing Marsh Street roadway and Arncliffe Permanent Motorway Facilities.
- introduce an overall maximum building height of RL51m;
- limit gross floor area (GFA) within different areas of the site to an aggregate of 342,000m² and insert floor area requirements to achieve the intended logistics and warehousing outcomes for the site;
- introduce additional permitted uses (APUs) within the B7 Business Park zone and site-specific planning provisions; and

- reclassify Lot 14 DP213314 and Lot 1 DP108492 from ‘community’ to ‘operational’ land to facilitate local road access and the provision of infrastructure to support development within the B7 Business Park zone. This also seeks to concurrently extinguish the application of a Charitable Trust which applies to part of the land that is the subject of the planning proposal.

Development Concept Scheme

The original proposal was supported by a Master Plan that has been prepared to provide an indicative reference scheme for the subject land. The key features of the Master Plan are:

- a development zone of approximately 15.8ha with up to 342,000m² GFA comprising 290,000m² of multi-level logistics and warehousing, 20,000m² for hotel and visitor accommodation uses, 21,250m² for commercial office uses and 10,750m² of retail uses;
- multi-level logistics building heights generally up to 5 storeys (approximately 46 metres) and 12 storeys (48 metres) for the hotel building above retail podium;
- road access to the development zone from Marsh Street with new intersections intended to be delivered at Gertrude and Flora Streets and road access retained from Levey Street;
- an embellished public foreshore riparian area along the Cooks River that includes a regional pedestrian and cycle path, landscaping and environmental restorative works; and
- flood management works.

1.1.2 Site description

The original and revised proposals apply to 13, 15, 19 and 19A Marsh Street, Arncliffe, which is located in the Bayside Local Government Area.

The site comprises a total area of 36.2ha, and is located:

- directly north of the M5 Motorway;
- immediately west of the Cooks River;
- west of Sydney Kingsford Smith Airport;
- approximately 10km south of the Sydney Central Business District (CBD);
- approximately 6km west of Port Botany; and
- approximately 1.5km north-east of the Rockdale local town centre (**Figure 1**).

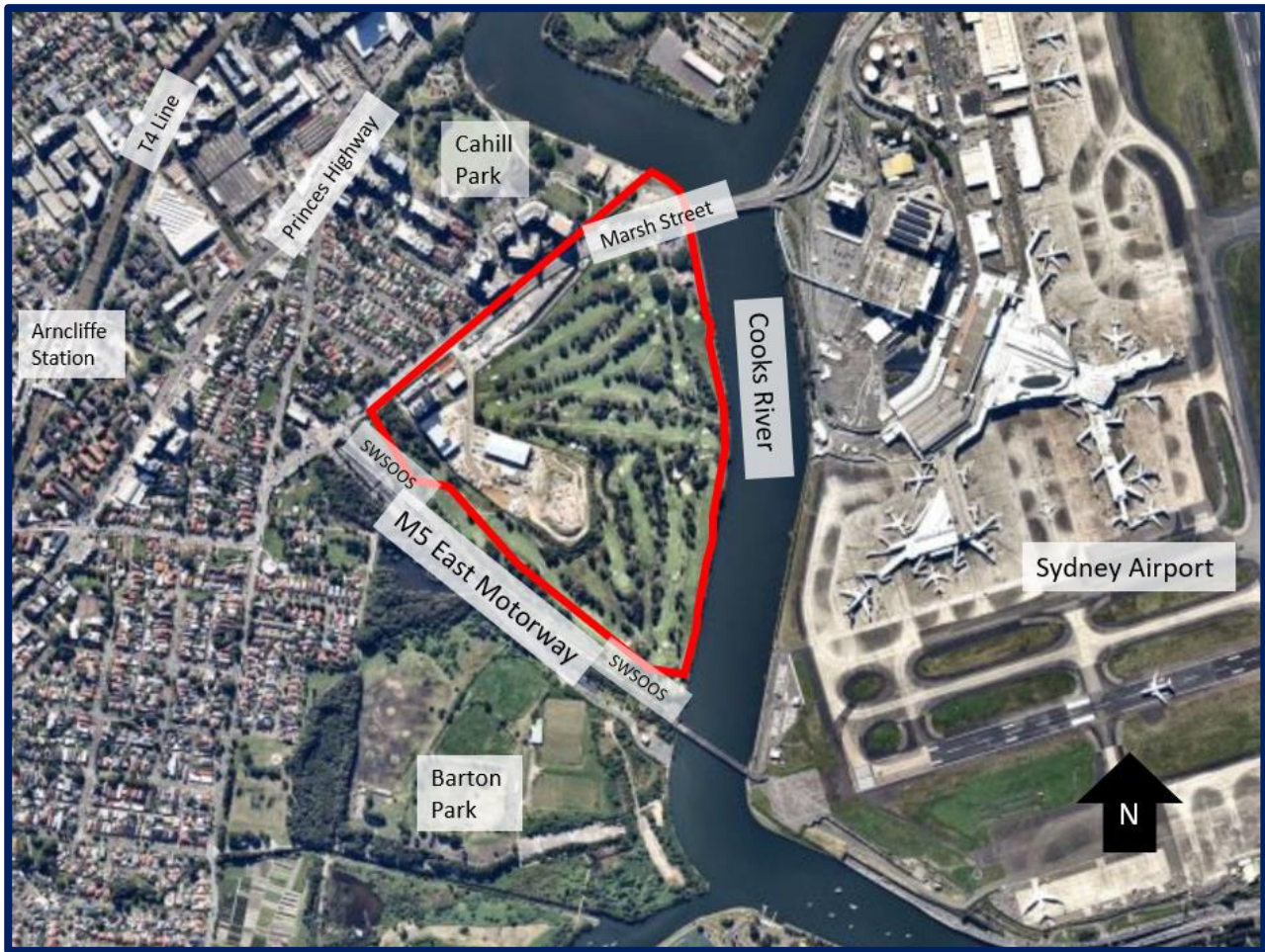


Figure 1: Context Map – the site highlighted in red

2 Alterations to the Planning Proposal

2.1 Background to Revised Proposal

The Gateway

On 5 August 2022, the Department issued the Gateway for the original proposal, which included the following conditions:

- **Condition 1** - requiring updates prior to community consultation, including:
 - addressing the consistency with various Ministerial Directions;
 - providing an updated Urban Design report to demonstrate the suitability of the proposal, including:
 - testing of the design built form outcome against the proposed maximum GFA;
 - clear diagrams showing the intended distribution of floorspace across the site having regard to intended future uses;
 - further justification for the proposed RL height addressing urban design matters;
 - further clarification of the need for a GFA cap and RL height;
 - visual impacts and relationship to the context of the area including intended public open space;

- amenity impacts including overshadowing and solar access provision to the intended public open space;
- public domain connections through the site and to intended future public open space; and
- intended new roads across Council land and how this will ensure an acceptable public open space outcome in terms of amenity and design.
- providing a plain English explanation of the proposed new land use definition of 'Trade Related Enterprises';
- including a local provision to prepare a site-specific Development Control Plan (DCP);
- providing a plain English explanation of a future LEP provision that seeks to allow consideration of the NSW Land Use Safety Planning Framework and land use safety study risk assessment prepared by Arriscar at the DA stage;
- providing further justification and reasoning to support the proposed APUs of 'advertising structures', 'retail premises' and 'tourist and visitor accommodation';
- clarifying whether 'industrial training facilities' is a proposed APU and if so, providing details and justification; and
- clearly describing and showing all draft LEP maps proposed.
- **Condition 2** – the Department review and approval the updates made to the proposal in accordance with condition 1; and
- **Condition 6** – requiring a public hearing to be held in accordance with the Local Government Act by Bayside Council following community consultation.

On 12 August 2022, Bayside Council raised queries about condition 6 of the Gateway concerning the reclassification of land – see further discussion in **Section 3.2** of this report.

On 23 February 2023, an initial version of the revised proposal was submitted to the PPA for review in accordance with the Gateway conditions.

On 9 March 2023, the Department wrote to the proponent requesting updates, including:

- the planning proposal being updated to address referencing and editorial issues;
- additional justification for serviced apartment noting condition 1(j)(iii). This should include clear justification for how this land use gives effect to the intended outcomes of the planning proposal, including supporting the ongoing operation of Sydney Airport; and
- inclusion of correspondence from Heritage NSW addressing condition 1(b).

On 10 March 2023, further revisions to the original proposal were submitted addressing minor comments. This is the revised proposal for the purposes of this report and Gateway alteration request.

On 16 March 2023, the Department confirmed that the revised proposal had addressed condition 2 of the Gateway.

The Panel's consideration of the revised proposal for public exhibition and a Gateway alteration

On 28 March 2023, the Panel as the PPA was briefed on the revised proposal and Gateway request.

On 31 March 2023, the Panel determined:

- The planning proposal as revised and submitted is suitable for public exhibition.
- A request for an alteration of the Gateway determination be submitted to the Department of Planning and Environment in accordance with the wording in Attachment G of the Panel Gateway Alteration and Exhibition Report.
- Should any altered Gateway determination require no additional updates to the planning proposal, the Panel requests the planning proposal be placed on public exhibition. The Panel delegates authority to the Department's Agile Planning team to make minor administrative changes as required prior to consultation commencing; and
- Should any altered Gateway determination require additional updates to the planning proposal, the Panel requests the planning proposal be updated and submitted to the Panel for review prior to it being placed on public exhibition.
- Public exhibition should commence no earlier than 11 April 2023.

On 3 April 2023, the Panel lodged the Gateway alteration request with the Department.

The Gateway alteration request considers the changes in the revised proposal (**Table 2** below) are beneficial and it continues to satisfy the strategic merit test and site-specific merit test. However, the Panel requests that the Gateway conditions be altered to ensure the planning proposal that is exhibited is consistent with the description of the proposal in the Gateway determination.

It is noted that, the following government bodies and agencies were consulted prior to exhibition and submission of the Gateway alteration request:

- Bayside Council;
- TfNSW;
- Heritage NSW;
- Team Leader – Hazards, Industry Assessment, Department of Planning and Environment;
- Sydney Airport Corporation Limited; and
- Commonwealth Department of Infrastructure, Regional Development and Cities.

No agencies raised objections with progression of the revised proposal to public exhibition.

2.2 The Revised Proposal

The revised proposal submitted by the PPA includes several amendments which seek to satisfy Gateway determination Condition 1, which have been reviewed and supported in accordance with Condition 2.

A comparison of the provisions of the original proposal and the revised proposal is provided at **Table 2** below.

Table 2: Summary comparison of the original proposal and revised proposals

Key Features & Controls	Original proposal	Revised Proposal	Department Comment
Land Area	36.2ha	36.2ha	No change.
Net developable area	Net development zone of approximately 15.8ha (Figure 6).	Net development zone of approximately 15.05 ha (Figure 6).	The Department has reviewed and has previously confirmed its satisfaction in accordance with condition 2 of the Gateway (see condition 1(a) and (e) of the Gateway).

Intended Outcomes/ Objectives	<ul style="list-style-type: none"> • Strengthen the economy within Bayside with the provision of new and expanded employment opportunities through new commercial offices and logistics land uses; • Provide for an enriched community, through the delivery of supporting retail and open space that will benefit not only the future workers and visitors of Cooks Cove but also the wider community and Bayside municipality as a whole; • Create an attractive and highly liveable community which delivers best practice design in order to meet the needs of workers and visitors of Cooks Cove and the wider community; • Protects the economic growth and safeguards the ongoing operations of Sydney Airport; • Provide a safe and efficient road network that balances movement and place, provides connections to the immediate and surrounding areas and results in appropriate traffic impacts on the wider network; • Improve mobility and accessibility to and from the precinct, providing substantial active pedestrian/cycling and public transport linkages, support a healthy and diverse community and helping to deliver a 30-minute city; • Protects and supports the provision of future transport linkages, both planned and under construction; 	<ul style="list-style-type: none"> • Strengthens the economy within the Bayside municipality through the provision of significant new employment opportunities through the realisation of new logistics and commercial office land uses; • Provides for an enriched community, through the delivery of supporting retail and open space that will benefit not only the future workers and visitors of Cooks Cove but also the wider community and Bayside municipality; • Enables the development of high quality tourist and visitor accommodation within a location immediately adjacent to Sydney International Airport and within a fast growing and high density urban renewal precinct; • Protects the economic growth and safeguards the ongoing operations of Sydney International Airport; • Creates an attractive precinct which delivers best practice design in order to meet the needs of workers and visitors of Cooks Cove and the wider community; • Provides a safe and efficient road network that balances movement and place, enhances connections to the immediate and surrounding areas and results in appropriate traffic impacts on the wider network; • Improves mobility and accessibility to and from 	<p>The revised proposal still seeks to provide for a mixed use logistic and warehousing precinct that appropriately to supports the ongoing operation of the Sydney Airport Trade Gateway.</p>
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Key Features & Controls	Original proposal	Revised Proposal	Department Comment
	<ul style="list-style-type: none"> • Delivery of an enhanced, attractive, connected and publicly accessible foreshore; • Contribute to the delivery of the Green Grid project through the provision of open space areas and the revitalisation of the Cooks River foreshore; and <p>Enable the protection and enhancement of the on-site biodiversity and environmental attributes</p>	<p>the precinct, providing substantial active pedestrian/cycling and public transport linkages, supporting a healthy and diverse community and helping to deliver a 30-minute city;</p> <ul style="list-style-type: none"> • Protects and supports the provision of future strategic transport linkages, both planned and under construction; • Delivers an integrated, attractive, connected and publicly accessible foreshore; • Contribute to the delivery of the Green Grid project through the provision of open space areas and the revitalisation of the Cooks River foreshore; and <p>Enables the protection and enhancement of the on-site biodiversity and environmental attributes.</p>	
Estimated dwelling yield	0	0	No change.
Estimated number of jobs	Approx. 3,300 jobs.	Approx. 3,300 jobs.	No change.
Land Use Zoning	<p>The following zones proposed (Figure 6):</p> <ul style="list-style-type: none"> • Part SP2 Infrastructure; • Part B7 Business Park; and • Part RE1 Public Recreation. 	<p>The following zones proposed (Figure 6):</p> <ul style="list-style-type: none"> • Part SP2 Infrastructure (Classified Roads) • Part SP4 Enterprise (SP4) • Part RE1 Public Recreation 	<p>The Department has reviewed and has previously confirmed it's satisfaction in accordance with condition 2 of the Gateway (see condition 1(j) of the Gateway)..</p> <p>See Section 3.1.1 of this report for further discussion on the proposed SP4 zone and proposed altered Gateway conditions.</p>

Key Features & Controls	Original proposal	Revised Proposal	Department Comment
Additional Permitted Uses	<p>Introduce APUs within the B7 Business Park zone (Figure 9), being:</p> <ul style="list-style-type: none"> Block 1 - 'advertising structures' and 'retail premises'; Block 2 - 'advertising structures', 'retail premises', 'tourist and visitor accommodation' and 'trade-related enterprises'; Block 2 - 'advertising structures', 'retail premises' and 'trade-related enterprises'; and Block 3 - 'environmental facilities', 'environmental protection works', 'freight transport facilities', 'industrial training facilities', 'light industries' and 'trade related enterprises'. 	<p>Introduce APUs within the SP4 zone (Figure 9), being:</p> <p>The proposed APU's are as follows:</p> <ul style="list-style-type: none"> 19 Marsh Street, Arncliffe - 'advertising structures'; and 19A Marsh Street, Arncliffe - 'trade-related enterprise'. 	<p>The Department has reviewed and has previously confirmed it's satisfaction in accordance with condition 2 of the Gateway (see condition 1(j) of the Gateway).</p> <p>See Section 3.1.2 of this report for further discussion on updates to the APUs in the revised proposal and the proposed altered Gateway conditions.</p>
Floor Space Ratio / Gross Floor Area	<p>Maximum GFA of 342,000m² for the site (equivalent FSR of 2.5:1).</p> <p>The application of defined areas will provide the following additional GFA limitations (Figure 8):</p> <ul style="list-style-type: none"> Block 1 – maximum 2,000sqm GFA for 'retail premises', 'food and drink premises' and 'office premises'; and Blocks 2 and 3 - a maximum 340,000sqm GFA, inclusive of: <ul style="list-style-type: none"> a maximum 20,000sqm GFA for 'tourist and visitor accommodation' and 'function centres'; a maximum 20,000sqm GFA for 'office premises'; 	<p>Maximum GFA of 343,250m² within the overall site, applied through (Figure 8):</p> <ul style="list-style-type: none"> Block 1 - maximum FSR of 1.25:1 (equivalent to 3,250 m²) Blocks 2 & 3 – maximum 340,000m² GFA (identified as Area 16), including: <ul style="list-style-type: none"> a maximum 20,000m² GFA for 'office premises'; a maximum 20,000m² GFA for 'hotel or motel accommodation' and 'serviced apartments'; and a maximum 10,000m² GFA for 'shops' and 'food and drink premises'. 	<p>The Department has reviewed and has previously confirmed it's satisfaction in accordance with condition 2 of the Gateway (see condition 1(e) of the Gateway).</p> <p>See Section 3.1.3 of this report for further discussion of amendments to this provision in response to introduction of SP4 zone and updates to APUs and the proposed altered Gateway conditions.</p>

Key Features & Controls	Original proposal	Revised Proposal	Department Comment
	<ul style="list-style-type: none"> – a maximum 10,000sqm GFA for 'retail premises'; and – a maximum 4,000sqm GFA for 'hardware and building supplies'. 		
Maximum height of building	<p>Maximum building heights (Figure 7):</p> <ul style="list-style-type: none"> • RL 30m • RL 51m 	<p>Maximum building heights (Figure 7):</p> <ul style="list-style-type: none"> • RL 24m • RL 51m 	The Department has reviewed and has previously confirmed it's satisfaction in accordance with Condition 2 of the Gateway (see condition 1(e) of the Gateway).
Reclassification of land	<p>Reclassify Lot 14 DP213314 and Lot 1 DP108492:</p> <ul style="list-style-type: none"> • from 'community' to 'operational' land; and • extinguish the application of a Charitable Trust which applies to part of the land that is subject of the original proposal. 	<p>Reclassify of Lot 14 DP213314 and Lot 1 DP108492:</p> <ul style="list-style-type: none"> • from 'community' to 'operational' land; and • extinguish the application of a Charitable Trust which applies to part of the land that is subject of the original proposal. <p>Following rezoning and subdivision it is subsequently intended that Council reclassify residue RE1 parcels as 'community' by resolution.</p>	<p>No change.</p> <p>See Section 3.2 for further discussion of amending condition 6 of the Gateway.</p>
Land Use Safety Provision	None proposed	<p>A provision which requires a development application on the site to address the NSW Land Use Safety Planning Framework.</p> <p>The provision proposes providing a copy to the planning secretary for comment.</p>	The Department has reviewed and has previously confirmed its satisfaction in accordance with Condition 2 of the Gateway (see Condition 1(i) of the Gateway).
Heritage / Flood Planning / Acid Sulfate Soils /	It is proposed to amend numerous Bayside LEP 2021 maps to bring the site under the control of numerous LEP clauses, specifically:	It is proposed to amend numerous Bayside LEP 2021 maps to bring the site under the control of numerous LEP clauses, specifically:	The Department has reviewed and has previously confirmed its satisfaction in accordance with condition 2 of the Gateway (see

Key Features & Controls	Original proposal	Revised Proposal	Department Comment
Terrestrial Biodiversity	<ul style="list-style-type: none"> • acid Sulfate soils and mapping; and • flood planning and the mapping. 	<ul style="list-style-type: none"> • Heritage considerations and mapping; • Flood planning; • Acid Sulfate soils and mapping; and • Biodiversity and the Terrestrial Biodiversity mapping. 	condition 1(a) and 1(b) of the Gateway).
Dictionary	The proposal seeks to add a land use definition for 'trade-related enterprises' to the Bayside LEP.	To facilitate the introduction of 'trade-related enterprises' as an APU, the proposal states that it seeks to add this land use as a 'note' rather than adding this definition to the Bayside LEP 2021.	No change - the Department has reviewed and has previously confirmed its satisfaction in accordance with Condition 2 of the Gateway (see condition 1(f) of the Gateway).
Other	The proposal notes that a draft site-specific Development Control Plan will be developed and finalised post Gateway Determination.	The proposal also notes that a site-specific Development Control Plan has been prepared to supplement the existing provisions of Bayside DCP 2022.	the Department has reviewed and has previously confirmed its satisfaction in accordance with Condition 2 of the Gateway (see Condition 1(h) of the Gateway).

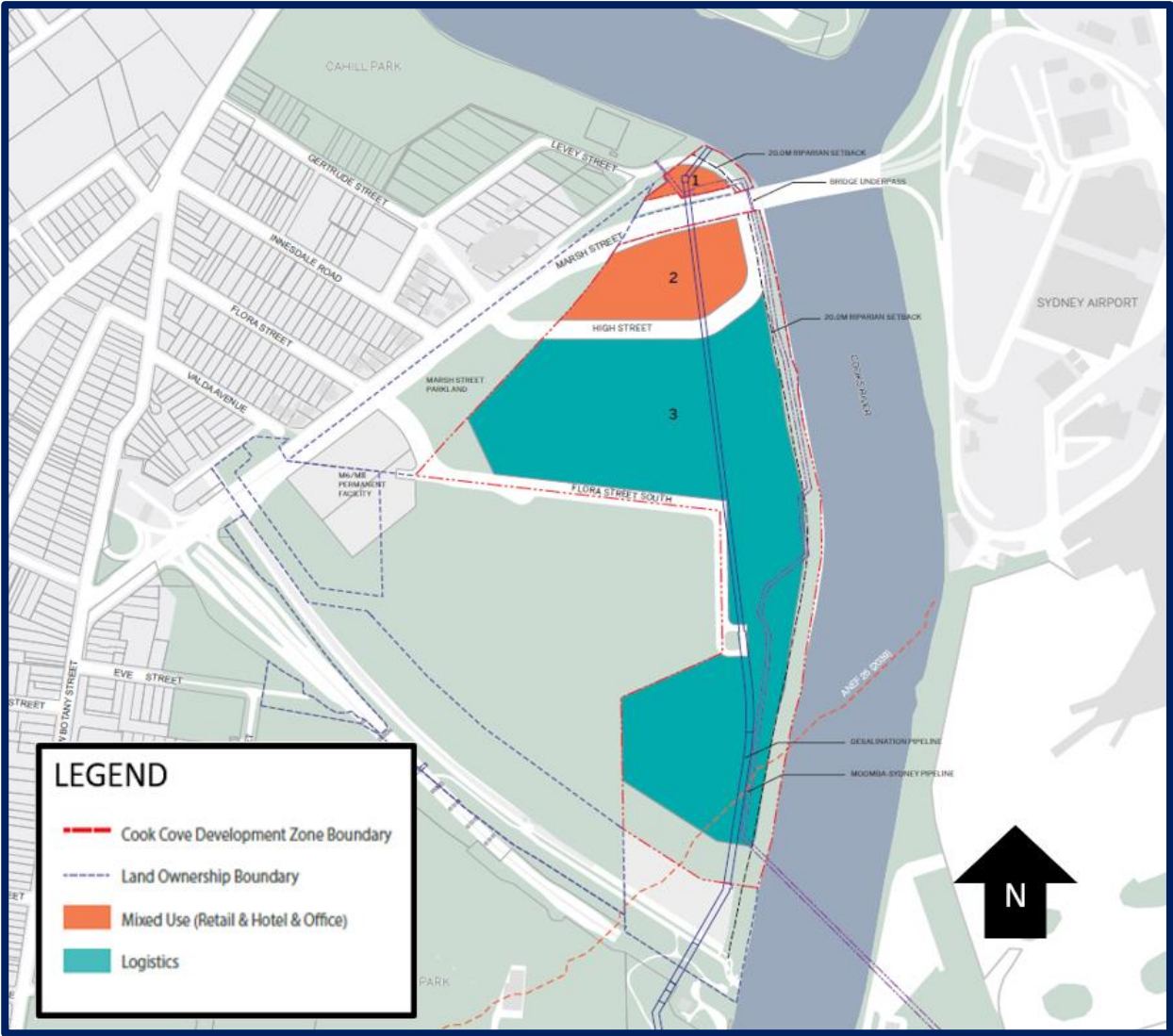


Figure 2: Masterplan blocks and land uses proposed in original proposal

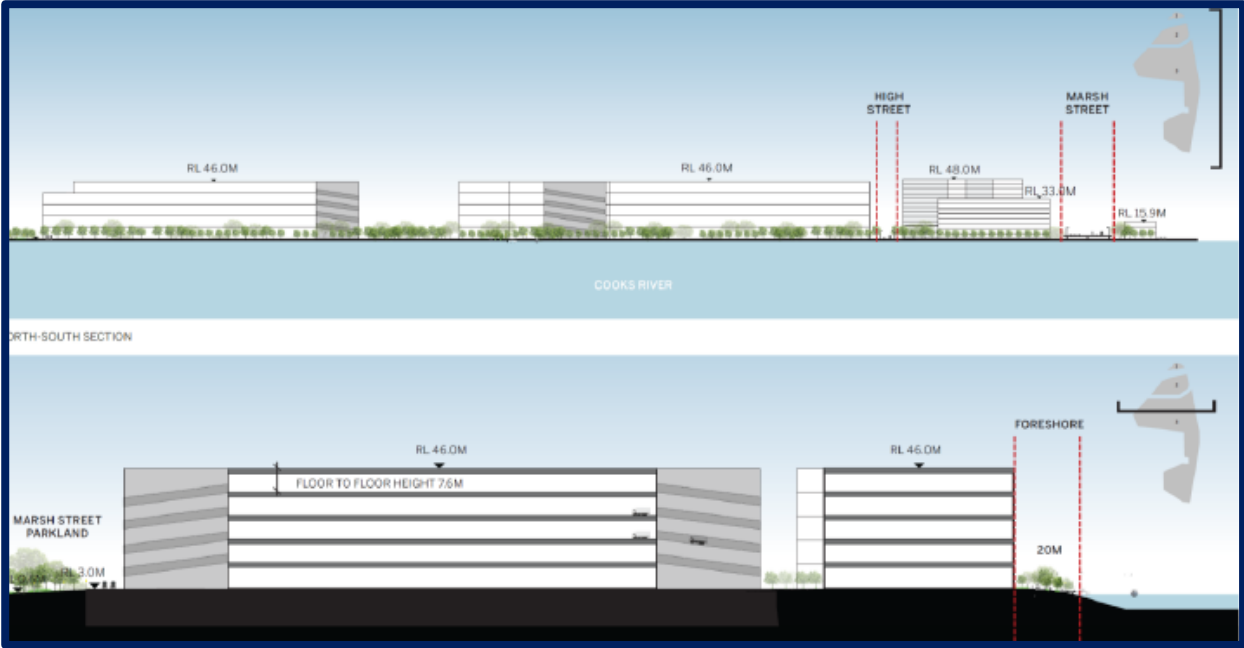


Figure 3: Cross-section of proposed built form in the original proposal

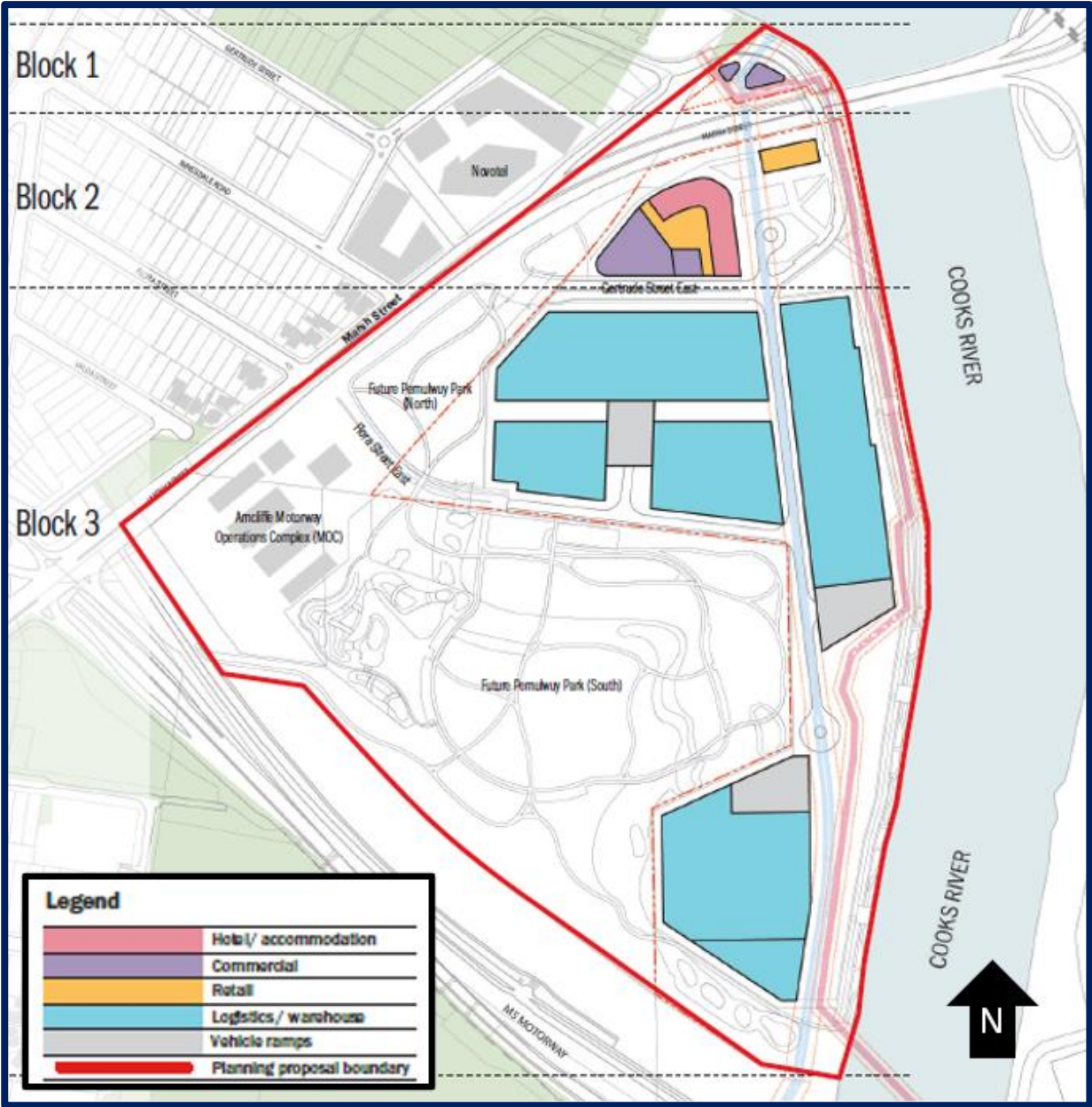


Figure 4: Masterplan blocks and land uses proposed in revised proposal

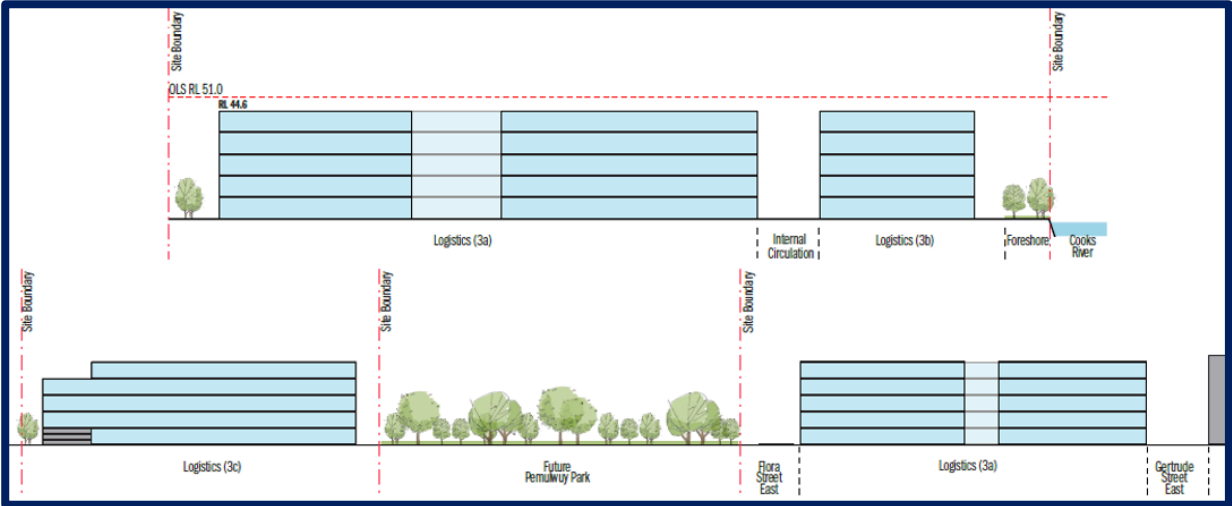
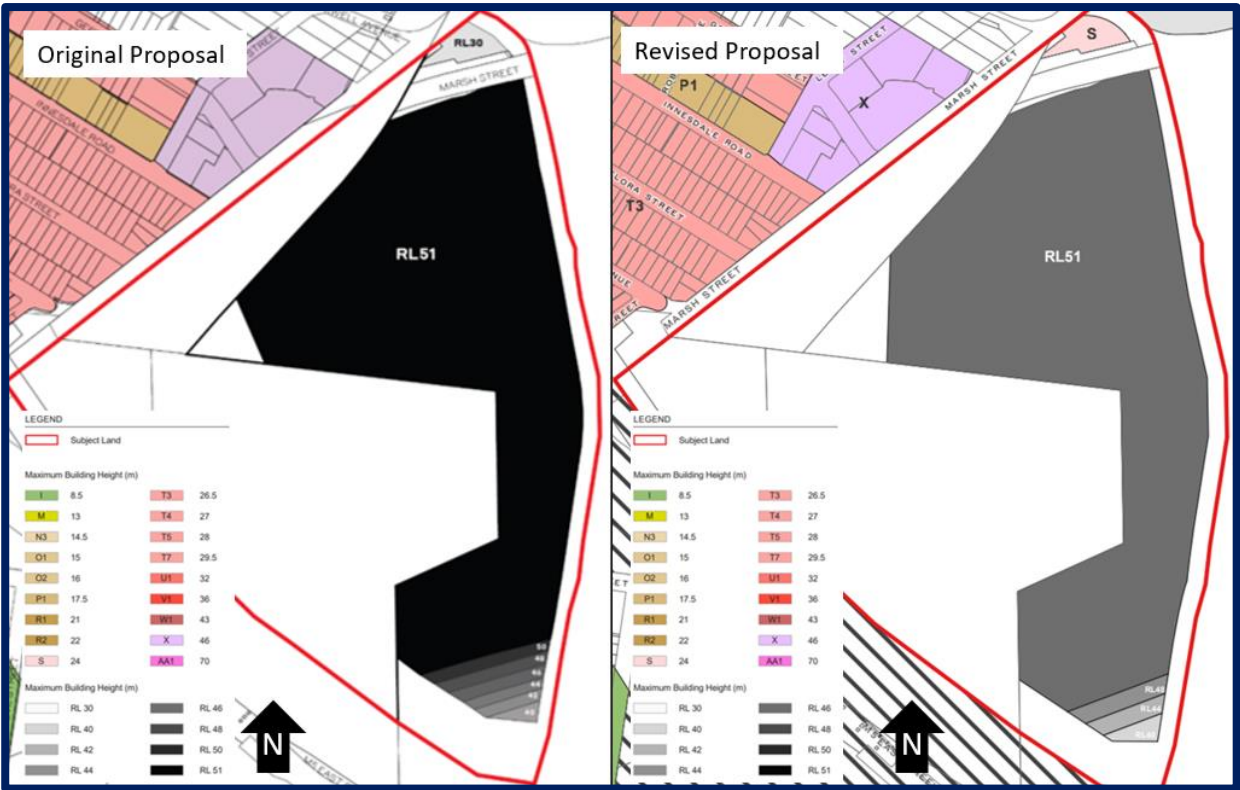
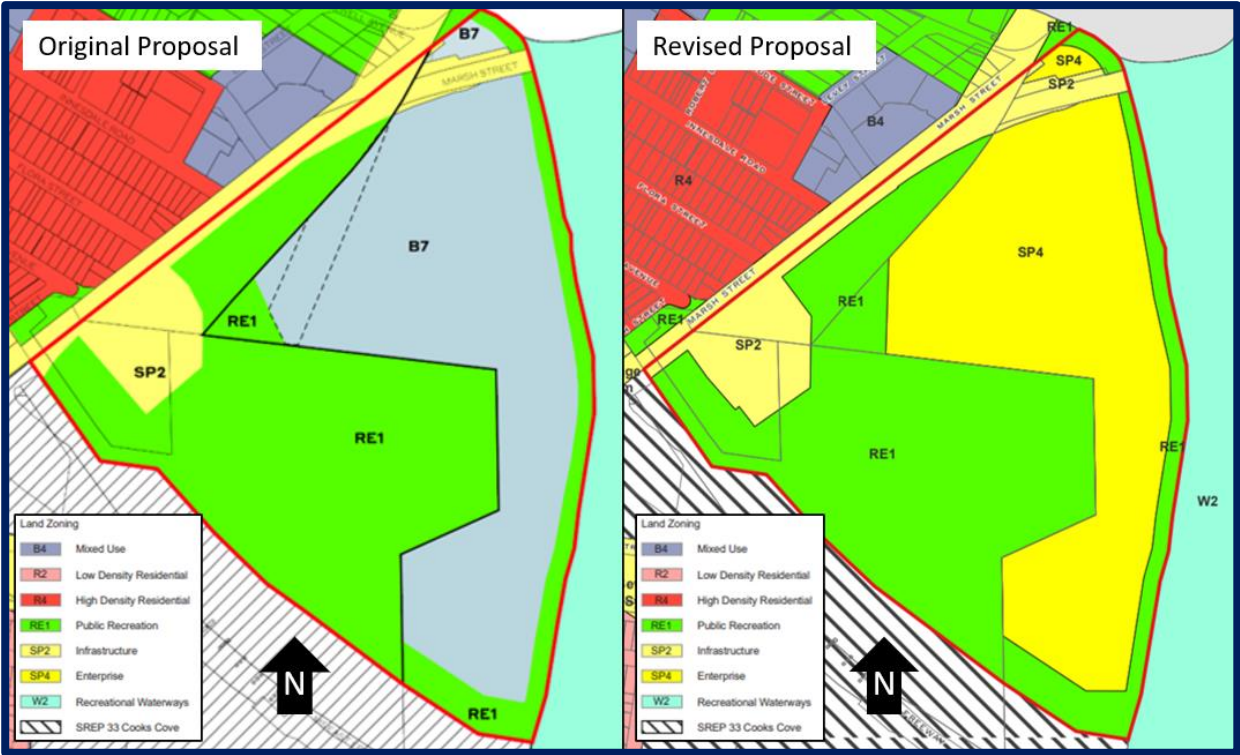
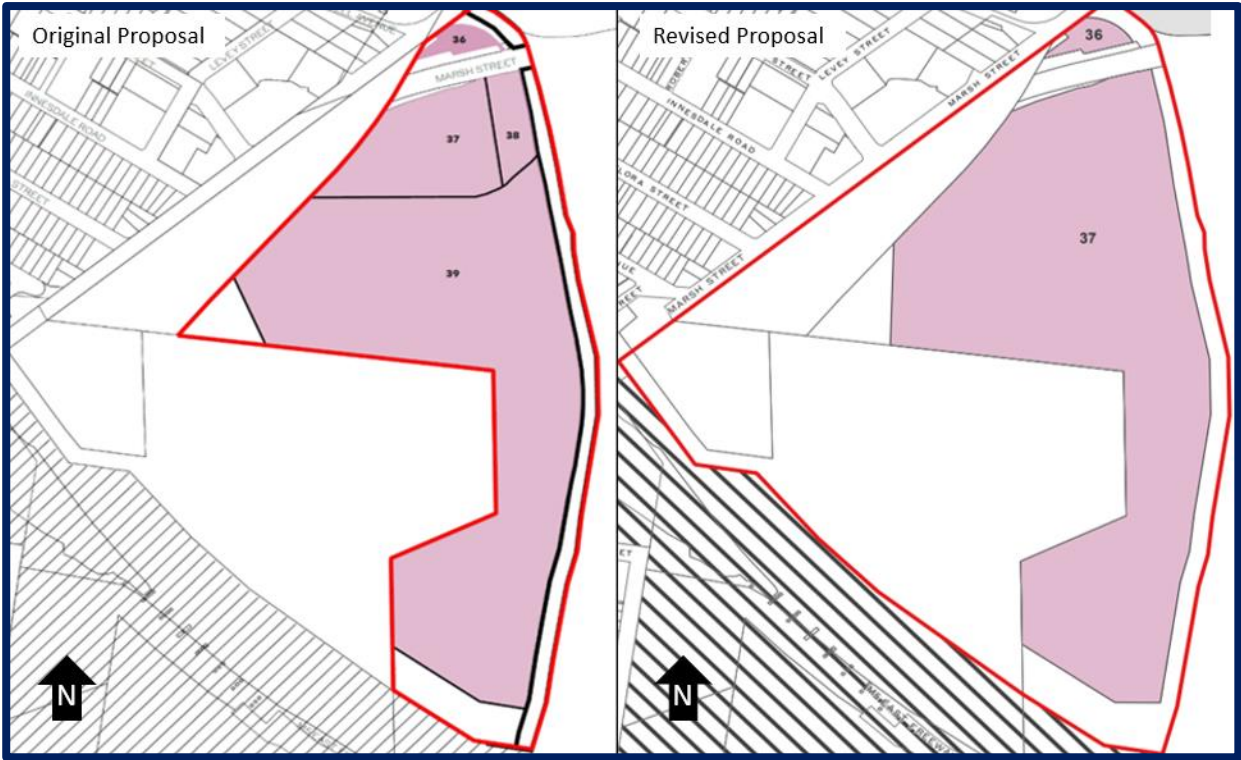
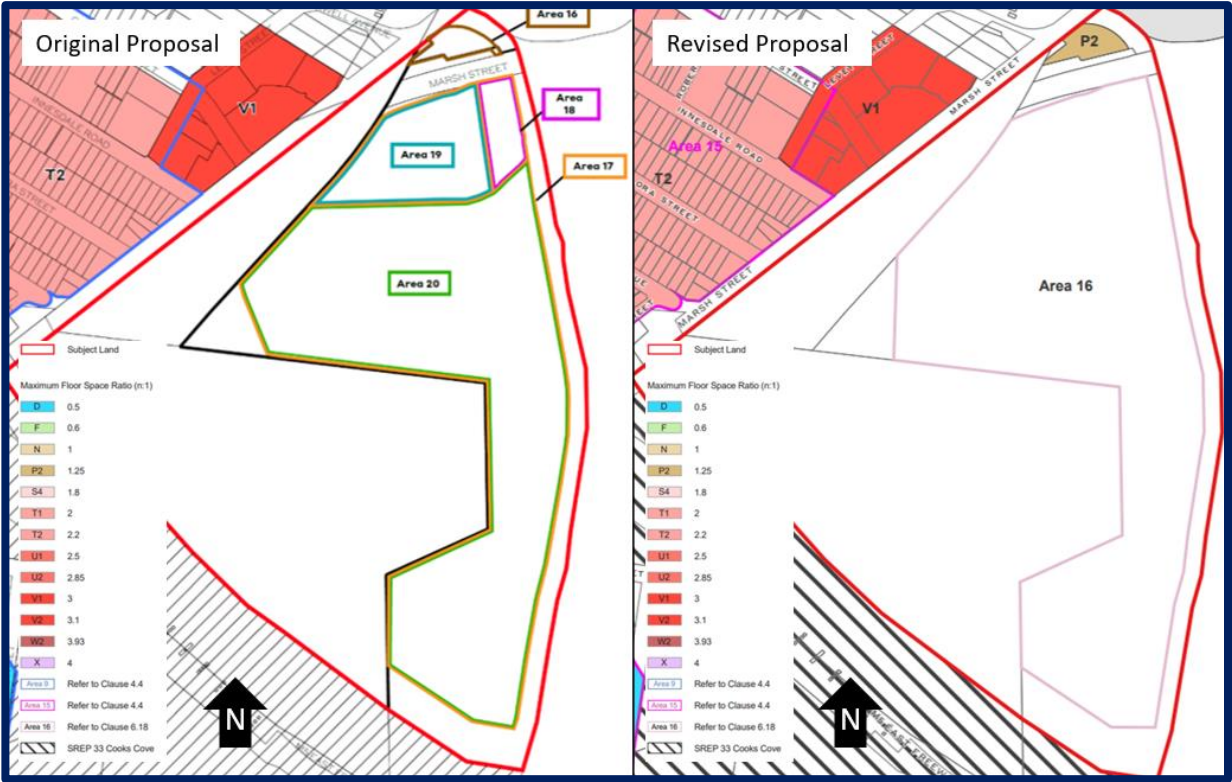


Figure 5: Cross-section of proposed built form in the revised proposal





2.3 Gateway alteration request

The PPA's requested amendments to the Gateway conditions are found in **Table 3** below, including the Department's comments and recommendations on the proposed altered condition wording.

Table 3: Comparison table with requested altered conditions and Department's comments

Existing Gateway Conditions	Proposed Altered Conditions (changes highlighted blue)	Department comment and recommendation (Department amendment to requested Condition highlighted red)
<p><u>The Gateway description:</u></p> <p><i>'Planning proposal (Department Ref: PP-2022-1748): to facilitate the development of part of the Cooks Cove precinct by removing the subject land from the operation of Chapter 6 of State Environmental Planning Policy (precincts – Eastern Harbour City) 2021 and insert new planning provisions into Bayside Local Environmental Plan 2021.'</i></p>	<p><u>Altered Gateway description:</u></p> <p><i>'To facilitate the development of part of the Cooks Cove precinct by removing the subject land from the operation of Chapter 6 of State Environmental Planning Policy (precincts – Eastern Harbour City) 2021 and insert new planning provisions into Bayside Local Environmental Plan for:</i></p> <ul style="list-style-type: none"> <i>Land to be zoned a combination of SP4 (Enterprise), RE1 (Public Recreation) and SP2 (Infrastructure);</i> <i>Maximum building height of RL51 for the majority of the land zoned SP4 (Enterprise) (Blocks 2 and 3), stepping down to RL48, RL44 and RL40 at the southern portion of this zone, and maximum building height of 24m for Block 1 at the north of the site;</i> <i>Maximum Gross Floor Area across the site of:</i> <ul style="list-style-type: none"> <i>Block 1: maximum FSR of 1.25:1 (P2);</i> <i>Blocks 2 and 3 (Area 16) Development is not to exceed:</i> <ul style="list-style-type: none"> <i>a total of 340,000sqm GFA,</i> <i>20,000sqm GFA of office premises,</i> <i>20,000sqm GFA of hotel or motel accommodation and serviced apartments, and</i> <i>10,000sqm GFA of shops and food and drink premises.</i> 	<p>The altered description is satisfactory noting it is necessary to ensure it accurately describes 'serviced apartments' in the GFA caps of the revised proposal, being:</p> <ul style="list-style-type: none"> <i>Maximum Gross Floor Area across the site of:</i> <ul style="list-style-type: none"> <i>Block 1: maximum FSR of 1.25:1 (P2);</i> <i>Blocks 2 and 3 (Area 16) Development is not to exceed:</i> <ul style="list-style-type: none"> <i>a total of 340,000sqm GFA,</i> <i>20,000sqm GFA of office premises,</i> <i>20,000sqm GFA of hotel or motel accommodation and serviced apartments, and</i> <i>10,000sqm GFA of shops and food and drink premises.</i> <p>See Section 3.1.3 of this report for further discussion.</p>

Existing Gateway Conditions	Proposed Altered Conditions (changes highlighted blue)	Department comment and recommendation (Department amendment to requested Condition highlighted red)
	<ul style="list-style-type: none"> ▪ 10,000sqm GFA of shops and food and drink premises. • Additional permitted uses: <ul style="list-style-type: none"> ○ 'Advertising Structures' permitted in Block 1; and ○ 'Trade Related Enterprises' permitted in SP4 land.' 	
<p><u>Condition 1(i)(i) – Prior to community consultation condition:</u></p> <p>'1(i) provide a plain English explanation of a future LEP provision that seeks to allow consideration of the NSW Land Use Safety Planning Framework and the land use safety study risk assessment (LUSS), prepared by Arriscar, at the development application stage. Specifically, this provision will need to:</p> <p>(i) apply to the land proposed to be rezoned to B7 Business Park and encompassing the proposed retail, office, hotel, serviced apartment, trade-related enterprises and warehouse logistics development; and'</p>	<p><u>Altered Condition 1(i)(i) – Prior to community consultation condition:</u></p> <p>'1(i) provide a plain English explanation of a future LEP provision that seeks to allow consideration of the NSW Land Use Safety Planning Framework and the land use safety study risk assessment (LUSS), prepared by Arriscar, at the development application stage. Specifically, this provision will need to:</p> <p>(i) apply to the land proposed to be rezoned to B7 Business Park SP4 Enterprise and encompassing the proposed retail food and drink premises, shops, office, hotel and motel accommodation, serviced apartment, trade-related enterprises and warehouse logistics development; and'</p>	<p>An amendment to the requested condition is necessary to ensure it accurately identifies 'serviced apartments' as a permitted use in the revised proposal, being:</p> <p><i>'(i) apply to the land proposed to be rezoned to SP4 Enterprise and encompassing the proposed food and drink premises, shops, office, hotel and motel accommodation, serviced apartment, trade-related enterprises and warehouse logistics development; and'</i></p> <p>See Section 3.1.2 of this report for further discussion.</p> <p>It is noted that the Department's Hazards Team has no objection with revised wording above.</p>

Existing Gateway Conditions	Proposed Altered Conditions (changes highlighted blue)	Department comment and recommendation (Department amendment to requested Condition highlighted red)
<p><u>Conditions 1(j)(ii) and(iii) – Prior to community consultation condition:</u></p> <p><i>‘1(j) provide further justification and reasoning to support the following proposed Additional Permitted Uses (APU’s):</i></p> <p><i>(i) ‘Advertising Structures’ having regard to the context of the site, intended locations for these structures and a clear need for this to occur;</i></p> <p><i>(ii) ‘Retail Premises’ including clarification of the maximum potential floor space proposed for this use and reasons for the need for the permissibility of all uses under its umbrella definition; and</i></p> <p><i>(iii) ‘Tourist and Visitor Accommodation’ including further justification and reasons for the need for the permissibility of all uses under its umbrella definition.’</i></p>	<p><u>Altered conditions 1(j)(ii) and(iii) – Prior to community consultation condition:</u></p> <p><i>‘1(j) provide further justification and reasoning to support the following proposed Additional Permitted Uses (APU’s):</i></p> <p><i>(i) ‘Advertising Structures’ having regard to the context of the site, intended locations for these structures and a clear need for this to occur;</i></p> <p><i>(ii) ‘Retail Premises’ including clarification of the maximum potential floor space proposed for this use and reasons for the need for the permissibility of all uses under its umbrella definition; and</i></p> <p><i>(iii) ‘Tourist and Visitor Accommodation’ including further justification and reasons for the need for the permissibility of all uses under its umbrella definition.’</i></p>	<p>No objection to proposed deletion of conditions 1(j)(ii) and(iii) because ‘retail premises’ and ‘tourist and visitor accommodation’ are proposed to be prohibited in revised proposal.</p> <p>See Section 3.1.2 of this report for further discussion.</p>
<p><u>Condition 1(k) – Prior to community consultation condition:</u></p> <p><i>‘1(k) clarify whether ‘industrial training facilities’ is proposed as an APU and if so, provide further details and justification.’</i></p>	<p><u>Deletion of condition 1(k) – Prior to community consultation condition:</u></p> <p><i>‘1(k) clarify whether ‘industrial training facilities’ is proposed as an APU and if so, provide further details and justification.’</i></p>	<p>No objection to proposed deletion of Condition 1(k) because ‘industrial training facilities’ are proposed to be prohibited in revised proposal.</p> <p>See Section 3.1.2 of this report for further discussion.</p>

Existing Gateway Conditions	Proposed Altered Conditions (changes highlighted blue)	Department comment and recommendation (Department amendment to requested Condition highlighted red)
<p><u>Condition 4 –Community consultation:</u></p> <p><i>‘4. Public exhibition is required under section 3.34(2)(c) and clause 4 of Schedule 1 to the Act as follows:</i></p> <p><i>(a) the planning proposal is categorised as complex as described in the Local Environmental Plan Making Guidelines (Department of Planning and Environment, 2021) and must be made publicly available for a minimum of 30 days; and</i></p> <p><i>(b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in Local Environmental Plan Making Guidelines (Department of Planning and Environment, 2021).</i></p> <p><i>Exhibition must commence within 8 months following the date of the gateway determination.’</i></p>	<p><u>Altered Condition 4 –Community consultation:</u></p> <p><i>‘4. Public exhibition is required under section 3.34(2)(c) and clause 4 of Schedule 1 to the Act as follows:</i></p> <p><i>(a) the planning proposal is categorised as complex as described in the Local Environmental Plan Making Guidelines (Department of Planning and Environment, 2021) and must be made publicly available for a minimum of 30 days; and</i></p> <p><i>(b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in Local Environmental Plan Making Guidelines (Department of Planning and Environment, 2021).</i></p> <p><i>Exhibition must commence within 8 months following the date of the gateway determination.’</i></p>	<p>No objection to proposed deletion of requirement to exhibit the proposal within 8 months of Gateway (5 April 2023).</p> <p>See Section 5 of this report for further discussion.</p>

3 Assessment

The Department notes that the original proposal and revised proposal have been subject to:

- a detailed strategic and site-specific Gateway assessment (original proposal); and
- a detailed review in accordance with the Gateway Condition 2 (revised proposal).

The following assessment addresses the proposed altered Gateway conditions and parts of the revised proposal relevant to those altered conditions.

It is noted that Section 3.34(7) of the *Environmental Planning and Assessment Act 1979* (the act) allows the Minister (or delegate) at any time, to alter a Gateway determination.

3.1 SP4 zone

3.1.1 Introduction of SP4 zone

The revised proposal seeks to apply the SP4 zone to part of the site (**Figure 6**), because:

- of the introduction of the new employment zones; and
- Gateway conditions 1(j)(i), (ii) and (iii) requiring additional justification concerning certain proposed APUs in the formerly proposed B7 zone.

In December 2022, new employment zones were introduced into 134 individual LEPs through six self-repealing SEPPs. The new employment zones replace the former business and industrial zones in the Standard LEP -this includes the B7 zone proposed in the original proposal.

The revised proposal states that the *Employment zones reform - Equivalent zones tables per LEP* identifies the new E3 Productivity Support (E3) zone as equivalent to the B7 Business Park (B7) zone under the Bayside LEP 2021.

The revised proposal justifies the SP4 zone by:

- stating that the broad zone objectives of the B7 and E3 zones seek to respond to varying areas character across the Bayside LGA.

The revised proposal considers that in applying this broad approach, the original proposal resulted in numerous maximum floor area restrictions for the site for uses which were not preferred for Cooks Cove, but which were otherwise permissible in these zones. The revised proposal also considers this approach to:

- not be optimal outcome in terms of Standard Instrument template; and
- potentially create 'precedent' issues for Council in the future.

In this regard, the revised proposal seeks to include the following objectives for the new SP4 zone:

- to encourage economic activity and trade-focussed businesses that benefit directly from, or benefit from a synergy due to, the physical proximity of land within the zone to Sydney Airport and Port Botany, and the regional transport network links;
- to promote trade-related enterprises that are associated with trade logistics and distribution, just-in-time supply, the movement of perishables, time-sensitive goods processing, and the management of air and sea commerce;
- to facilitate local employment opportunities through the range of logistics and business uses as well as visitor accommodation; and
- to promote high quality development adjacent to public open space areas.
- the Department's Employment Zones Reform Implementation – Explanation of Intended Effect of May 2022 outlines the intent of SP4 Enterprise zone as supporting '*precinct*

planning where a specific enterprise outcome is sought beyond the strategic intent of another zone’.

The revised proposal considers the SP4 zone is appropriate and encouraged for unique precincts that require tailored land use planning with an enterprise focus – which is aligned with Cooks Cove as a key site within a core trade gateway and accords with the strategic importance of the site; and

- the SP4 zone can provide for a bespoke series of land use permissibility to resolve any consistency issues arising from the B7 and E3 zones, whilst still controlling development outcomes to retain the uniqueness of the site.

Department’s Assessment:

The application of the SP4 zone in response to the introduction of the new employment zones is appropriate, because:

- the application of the SP4 zone is consistent with the Department’s *Employment Zones Reform Implementation – Explanation of Intended Effect (May 2022)*, as the revised proposal seeks to provide for a mixed use logistics and warehousing precinct, supported by uses including office premises and hotel and motel accommodation which supports the Trade Gateways at Sydney Airport and Port Botany.
- the application of the SP4 zone provides for the intended outcomes of the planning proposal, including the various uses which are intended to support the ongoing operation of the Sydney Airport and Port Botany Trade Gateways;
- the SP4 zone will minimise the use of APUs which can now be included in this zones land use table – see **Section 3.1.2** further discussion.

This approach is encouraged by the Departments’ LEP practice note (PN 11-011) *‘Preparing LEPs using the Standard Instrument: standard clauses’* which emphasises the importance of the land use tables in regulating land use permissibility over Schedule 1 in the LEP; and

- Council has not raised objection to the introduction of the SP4 zone on the site. It is noted Council can provide further comment during public exhibition.

The proposed updates to the Gateway description and Conditions 1(i)(i), (ii) and (iii) and 1(k) (**Table 3**) to address the introduction of the SP4 zone are satisfactory with no amendments required.

3.1.2 Revised APUs

The Gateway includes conditions requiring additional justification for several proposed APUs proposed in the original proposal, being:

- ‘advertising structures’;
- ‘retail premises¹’ (uses to still be permitted under this umbrella term in revised proposal highlighted green in footnote);
- ‘tourist and visitor accommodation²’ (uses to still be permitted under this umbrella term in revised proposal highlighted green in footnote);
- provide a plain English explanation of the proposed new land use definition ‘trade related enterprises’; and
- clarification as to whether ‘industrial training facilities’ are proposed as an APU and if so, provide further details and justification.

Table 2 of this report identifies the changes in the proposed APUs between the original and revised proposal, with the revised proposal’s justification being:

- the APUs to be retained by revised proposal:

¹ **retail premises** means a building or place used for the purpose of selling items by retail, or hiring or displaying items for the purpose of selling them or hiring them out, whether the items are goods or materials (or whether also sold by wholesale), and includes any of the following—

- (a), (b) (Repealed)
- (c) food and drink premises,
- (d) garden centres,
- (e) hardware and building supplies,
- (f) kiosks,
- (g) landscaping material supplies,
- (h) markets,
- (i) plant nurseries,
- (j) roadside stalls,
- (k) rural supplies,
- (l) shops,
- (la) specialised retail premises,
- (m) timber yards,
- (n) vehicle sales or hire premises,

but does not include farm gate premises, highway service centres, service stations, industrial retail outlets or restricted premises.

Note—

Retail premises are a type of **commercial premises**—see the definition of that term in this Dictionary.

² **tourist and visitor accommodation** means a building or place that provides temporary or short-term accommodation on a commercial basis, and includes any of the following—

- (a) backpackers’ accommodation,
- (b) bed and breakfast accommodation,
- (c) farm stay accommodation,
- (d) hotel or motel accommodation,
- (e) serviced apartments,

but does not include—

- (f) camping grounds, or
- (g) caravan parks, or
- (h) eco-tourist facilities.

- ‘advertising structures’ - are proposed to the immediate north of Marsh Street, which is consistent with other advertising signage along this road approach Sydney Airport; and
- ‘trade-related enterprises’ - will allow the Precinct to serve any combination of air, land or sea commerce and trade purposes. The incorporation of this land use within Blocks 2 and 3 will ensure the intent of Chapter 6 in the SEPP, being to support trade uses to be able to locate within the site is maintained despite the zoning change sought;
- the APUs which have been updated and are now included in the revised proposals SP4 land use table:
 - ‘tourist and visitor accommodation’ to ‘hotel and motel accommodation’ and ‘serviced apartments’; and
 - ‘retail premises’ to ‘food and drink premises’ and ‘shops’.

These amendments seek to address the specific intentions for the site and prevent land uses which do not directly align with the intended outcomes, including ‘bed and breakfast accommodation’ and the formerly proposed ‘hardware and building supplies’.

The revised proposal notes that serviced apartments are currently permissible on the site under SEPP (Precincts—Eastern Harbour City) 2021 and support the ongoing operation of Sydney Airport;

- the ‘industrial training facilities’ APU that the revised proposal now proposes to prohibit.
The revised proposal no longer seeks to permit this land use as it does not give effect to its intended outcomes.
- the APUs to now be permit in the revised proposal’s SP4 land use table:
 - ‘freight transport facilities’
 - ‘environmental facilities’,
 - ‘environmental protection works’; and
 - ‘light industries’.

The revised proposal seeks to permit these land use in the SP4 land use table because they give effect to the revised proposals intended outcomes and align with the proposed zone’s objectives.

Department’s Assessment:

The updates to the APUs in the revised proposal are appropriate, because:

- the remaining APUs respond to the unique strategic circumstances of the site neighbouring the Trade Gateways of Sydney Airport and Port Botany;
- the refinement of uses to be permitted under the umbrella terms ‘retail premises’ and ‘tourist and visitor accommodation’ ensure appropriate land uses are permitted which support the intended outcomes, including the ongoing operation of Sydney Airport and Port Botany Trade Gateways;
- the prohibition of ‘industrial training facilities’ is in keeping with the revised proposals intended outcomes; and
- the other formerly proposed APUs to now be included in the new SP4 land use table are consistent with the zones objectives and revised proposals intended outcomes.

The proposed updates to the relevant Gateway conditions to address these proposed APUs are generally appropriate.

However, it is necessary to revise the proposed altered Gateway description and Condition 1(i)(i) to ensure that the proposed permissibility of ‘serviced apartments’ is addressed with ‘hotel and motel accommodation’ (**Table 3**). This ensures consistency between the Gateway and revised proposal.

3.1.3 Maximum GFA caps

As noted in **Sections 3.1.1** and **3.1.2** of this report, the introduction on the SP4 zone has resulted in refinement of the permitted land uses and APUs.

In response, the revised proposal has amended the proposed GFA caps to:

- update the 20,000m² GFA cap for ‘hotel and motel accommodation’ and ‘serviced apartment’ because it is no longer proposed to permit the umbrella term of ‘tourist and visitor accommodation’. No change has occurred to the maximum floor space for this intended land use outcome;
- update the 10,000m² GFA cap for ‘retail premises’ to only specify ‘shops’ and ‘food and drink premises’ noting these will be the only permitted uses under the ‘retail premises’ umbrella term. No change has occurred to the maximum floor space for this intended land use outcome; and
- remove the GFA cap for ‘hardware and building supplies’ because this land use is now proposed to be prohibited with the prohibition of umbrella term ‘retail premises’.

Department’s Assessment:

These amendments to the GFA caps are appropriate, because:

- they respond to the introduction of the SP4 zone and revised land use permissibility
- they retain the intended purposes of the GFA caps, being to ensure the predominate use of the site as a warehouse and logistics precinct. This includes no change to the quantum of floor space for specific land use categories, such as tourism and retail uses.

The proposed updates to the Gateway description (**Table 3**) to address the introduction of the SP4 zone are satisfactory with no amendments required.

3.2 Reclassification Condition

As discussed earlier, following the Gateway determination, Bayside Council raised concern with the wording of Condition 6 which addresses the proposal land reclassification.

This concern and the response are discussed in further detail below.

The Trust Lands & Land Reclassification

Part of the site is affected by ‘Charitable Trusts’ (the Trusts). This affects two lots of land (Trust Lands) being Lot 1 DP 108492 and Lot 14 DP 213314 (**Figure 10**).

The obligations of the Trusts require Bayside Council (the landowner) to hold these lands as trustee, with Transport for NSW as the beneficiary, for the following purposes:

- a County road,
- pending use for County road purposes, only for a public park, public reserve or public recreation area.

The revised proposal still seeks to obtain road access that crosses over the Trust Lands through proposed extensions to Gertrude Street and Flora Street (**Figure 10**).

These intended works are not in accordance with the terms of the Trust.

As such, in conjunction with the proposed rezoning of Lot 1 in DP 108492 and Lot 14 in DP 213314, it is still also proposed to reclassify these lots from ‘community’ to ‘operational’ under

section 30 of the *Local Government Act 1993* the extinguishment of the Charitable Trusts which currently affects the land.

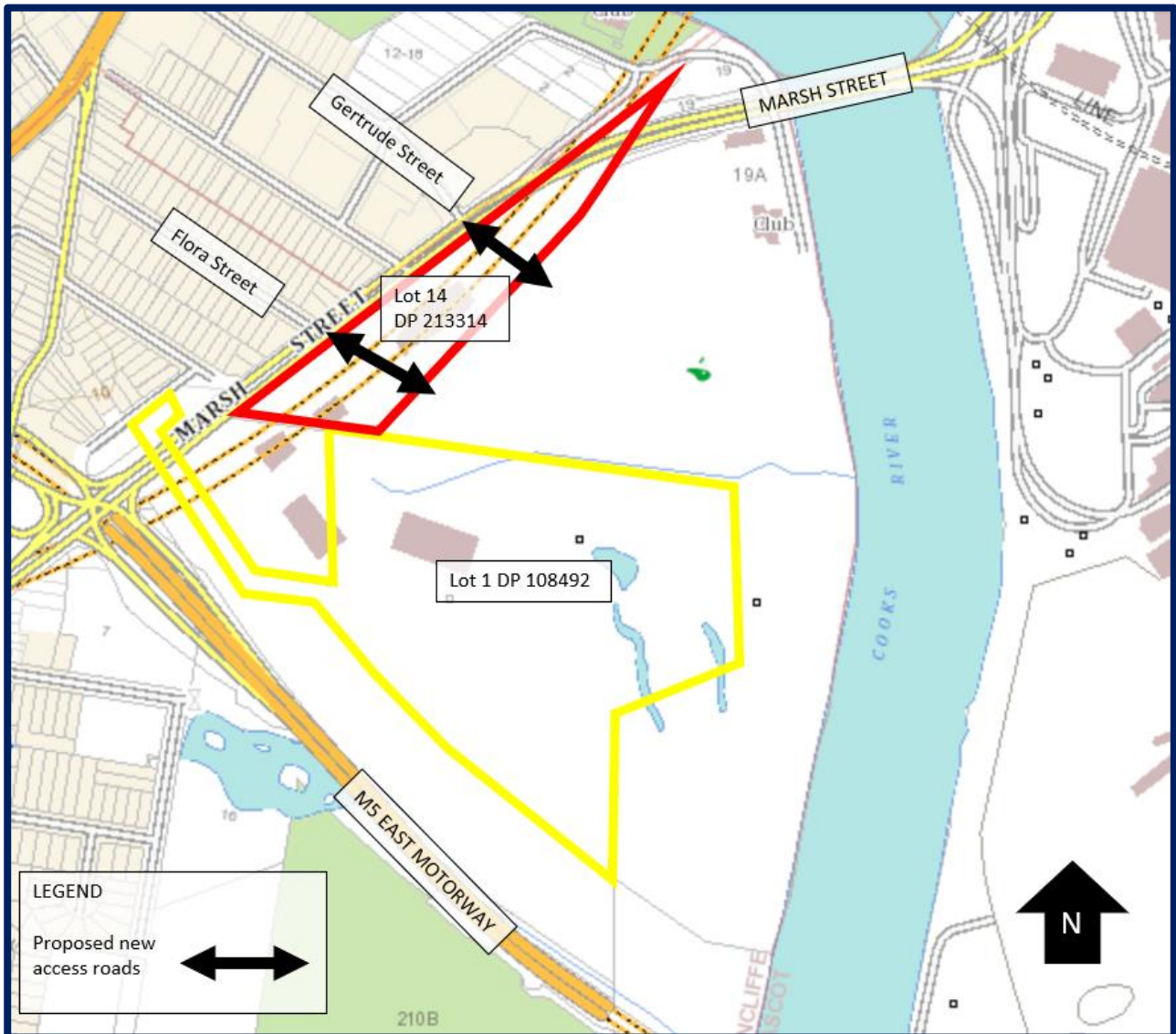


Figure 10: Proposed access across land affected by Charitable Trusts

The Gateway

As noted in **Section 2.2** of this report – the revised proposal does not seek to amend the land reclassification or proposed access arrangements considered at Gateway.

The Gateway assessment noted that this proposed reclassification could proceed because:

- other than the requirements of the M6 Stage 1 and M8, TfNSW currently has no other identified need for a County Road purpose on the Trust Lands; and
- once these lands are made operational and the extent of land required to be utilised to support the proposal for roads and flood mitigation is determined, it is recommended council seeks to reclassify this residual land back to 'community land', to enable future open space uses for this land. It is expected that this will be the larger portion of the land to be reclassified by this proposal.

This resulted in Condition 6 of the Gateway, being:

'A public hearing is required to be held into the matter by any person or body under section 3.34 of the Environmental Planning and Assessment Act 1979 and Section 29 of the Local Government Act 1993. After the community consultation period has ended, at least 21 days public notice is to be given before the hearing is held.'

Council concerns with Gateway Condition 6

As discussed, following the issuing of the Gateway, Bayside Council raised concerns that the wording of Condition 6 was ambiguous. This included referencing the Local Government Act 1993 despite the Panel being the PPA.

Section 3.34(2)(e) of the Environmental Planning and Assessment Act 1979 gives the Minister the power to have the Panel hold a public hearing. In this instance, the requirement in section 29 of the Local Government Act 1993 does not apply when this has occurred.

In response, it is proposed to alter Condition 6 to:

- reference the Panel as the PPA being required to hold the public hearing; and
- removing reference to the Local Government Act 1993 as it is not relevant in this circumstance.

The reference to the Environmental Planning and Assessment Act 1979 will be retained, with Section 3.34 specified.

This is reflected in the proposed revised wording for Condition 6, being:

'A public hearing is required to be held into the matter by the Sydney East City Planning Panel under Section 3.34 of the Environmental Planning and Assessment Act 1979.

After the community consultation period has ended, at least 21 days public notice is to be given before the meeting is held.'

These amendments are appropriate because they respond to:

- the Panel being the PPA for the revised proposal, clarifying the relevant statutory requirements for the reclassification the Trust Lands and public hearing process; and
- Bayside Council's conflict as trustee of the Trust.

4 Timeline for proposal

Condition 9 of the Gateway specifies the need for completion of this LEP by 5 May 2024.

No change to Condition 9 of the Gateway is proposed.

5 Community consultation

Condition 4 of the Gateway determination includes the requirements for community consultation, with the timeframe by when this consultation should commence.

This is in response to the LEP Making Guideline which includes benchmark timeframes for plan making, to ensure the process is efficient, transparent, accountable, and outcomes focused – avoiding delays to development and setting clear expectations on decision making.

The timeframes for which a LEP is made are determined by the Department and set out in the Gateway.

These timeframes can be varied if supported by justification and include clear revised milestones for completion.

In response to the revised proposal and consideration of the documentation by the PPA, removal of the requirement to exhibit within 8 months of the Gateway has been requested in the proposed Gateway alteration (**Table 2**).

The removal of this condition is appropriate, because:

- the Panel has determined to exhibit the revised proposal;
- the proposed Altered Gateway (**Table 3**) does not require further amendment to the revised proposal prior to public exhibition. This will allow for the exhibition period to commence promptly once the altered Gateway is issued; and
- it is understood the PPA intends to exhibit the proposal promptly, not jeopardising the other timeframes in the Gateway.

6 Consultation with public authorities

Condition 5 of the Gateway determination specifies the requirements of the PPA to consult with relevant public authorities and government agencies in respect to the planning proposal.

No change to Condition 5 of the Gateway is proposed.

7 Recommendation

It is recommended that the Gateway be altered in accordance with the revised conditions in accordance with suggested wording found in **Table 4** below. These recommendations have been made for the reasons outlined in **Section 3** of this report.

Table 4: Departments recommended amendments to the Cooks Cove Gateway determination

DPE's recommended amendments to the Gateway conditions (changes highlighted blue)

Delete the Gateway description and replace with:

'To facilitate the development of part of the Cooks Cove precinct by removing the subject land from the operation of Chapter 6 of State Environmental Planning Policy (precincts – Eastern Harbour City) 2021 and insert new planning provisions into Bayside Local Environmental Plan for:

- *Land to be zoned a combination of SP4 (Enterprise), RE1 (Public Recreation) and SP2 (Infrastructure);*
- *Maximum building height of RL51 for the majority of the land zoned SP4 (Enterprise) (Blocks 2 and 3), stepping down to RL48, RL44 and RL40 at the southern portion of this zone, and maximum building height of 24m for Block 1 at the north of the site;*
- *Maximum Gross Floor Area across the site of:*
 - *Block 1: maximum FSR of 1.25:1 (P2);*
 - *Blocks 2 and 3 (Area 16) Development is not to exceed:*
 - *a total of 340,000sqm GFA,*
 - *20,000sqm GFA of office premises,*
 - *20,000sqm GFA of hotel or motel accommodation and serviced apartments, and*
 - *10,000sqm GFA of shops and food and drink premises.*
- *Additional permitted uses:*
 - *'Advertising Structures' permitted in Block 1; and*
 - *'Trade Related Enterprises' permitted in SP4 land.'*

Delete condition 1(i)(i) and replace with:

- (i) *apply to the land proposed to be rezoned to SP4 Enterprise and encompassing the proposed food and drink premises, shops, office, hotel and motel accommodation, serviced apartment, trade- related enterprises and warehouse logistics development; and*
-

Delete conditions:

1(j)(ii);

1(j)(iii); and

1(k).

Delete and replace condition 4 with:

'Public exhibition is required under section 3.34(2)(c) and clause 4 of Schedule 1 to the Act as follows:

(a) the planning proposal is categorised as complex as described in the Local Environmental Plan Making Guidelines (Department of Planning and Environment, 2021) and must be made publicly available for a minimum of 30 days; and

(b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in Local Environmental Plan Making Guidelines (Department of Planning and Environment, 2021).'

Delete and replace condition 6 with:

'A public hearing is required to be held into the matter by the Sydney East City Planning Panel under Section 3.34 of the Environmental Planning and Assessment Act 1979.

After the community consultation period has ended, at least 21 days public notice is to be given before the meeting is held.'



(Signature)

6/4/2023

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