

Appendix E – Assessment of Part 6 Amendments

This appendix discusses proposed changes to Part 6 as identified for further consideration with the Explanation of Provisions in the body of the Assessment Report.

1. Proposed Clause 6.1 - Acid Sulfate Soils

Explanation of Provision

This clause ensures that development is designed to appropriately mitigate the impacts of acid sulfate soils. It also ensures that development does not adversely impact the water table.

The affectation of acid sulfate soils is currently mapped in Legacy LEPs. The only amendment proposed to the acid sulphate mapping as part of the Bayside LEP 2020 is to identify the existing deferred sites under the Botany Bay LEP 2013. Further discussion regarding the existing deferred sites is discussed in **Appendix F**.

The only other amendment to the clause compared to the Legacy LEPs concerns proposed subclause 6. This clause considers exemption to minor works, which disturb less than 1 tonne of soil, requiring consent. The existing clauses currently list examples of such work, which the proposal seeks to delete.

Council Justification

It is proposed to adopt the wording of the DPIE's adopted model provision, in line with the current BBLEP 2013 wording. This will ensure a consistent approach across the whole LGA.

The Acid Sulfate Map from each LEP has been combined into a new map, applying to the whole LGA, based on the latest data available to Council. Development applications within areas identified on the Acid Sulfate Soils Map will need to address the impact of development on acid sulfate soils and prepare an acid sulfate soils management plan, if an initial assessment indicates a management plan is required.

Department Comment

The proposed amendments to this clause are satisfactory, because:

- the amendment does not change the intent of the existing clauses in the Legacy LEPs; and
- ensures development affected by acid sulfate soils is designed to mitigate the effects of acid sulfate soils and does not adversely affect the water table.

However, the wording amendment does result in a variation to the wording of the adopted model provision. Though this change does not affect to intent of subclause 6 from the existing Legacy LEP clauses or the adopted model clause, it is recommended the gateway be conditioned for the clause to be consistent with the model provision. Similarly this would conflict with Council's intent for this clause.

2. Proposed Clause 6.3 - Stormwater and water sensitive urban design clauses

Explanation of Provision

The proposed stormwater and water sensitive urban design clause is intended to avoid or minimise the adverse impacts of urban stormwater on the land on which development is to be carried out, adjoining properties, native bushland, waterways, receiving waters and groundwater systems.

To achieve these objectives, the clause seeks to ensure that the consent authority be satisfied that a development achieves these objectives by satisfy water sensitive urban design principles. These principles broadly align with the objectives of the clause.

The clause also provides consideration for the mitigation of any adverse impacts which cannot be reasonably prevented.

Council Justification

Council is seeking to not only consolidate but update the stormwater and water sensitive urban design provision from the Legacy LEPs. This update seeks to ensure principles of water sensitive urban design are incorporated into the design of development.

Council considers that this inclusion will help meet environmental and water quality objectives with the Bayside LSPS and Eastern City District Plan.

Council also considers that this clause will give effect to Council's Engineering Guide for Development.

Department Comment

The consolidation of the stormwater and water sensitive urban design clauses, in keeping with the existing Rockdale LEP 2011 clause is satisfactory, because:

- the intent of the proposed clause under the Bayside LEP 2020 remains in keeping with the existing clauses in the Legacy LEPs;
- it contributes to the planning priorities in the District Plan and LSPS to improving the water quality of the District's and LGA's waterways; and
- it provides for development which incorporates water sensitive urban design.

3. Proposed Clause 6.4 - Terrestrial Biodiversity Clause

Explanation of Provision

The objectives and operation of the proposed clause is in keeping with the existing clauses in the Legacy LEPs. This clause seeks to protect and conserve native fauna, flora, ecosystems and habitats.

The only amendments to the proposed clause compared to the existing clauses is to now seek and require consideration of rehabilitation of areas identified as having Terrestrial Biodiversity.

The mapping associated with this clause is consistent with the mapping in the Legacy LEPs.

Council Justification

The Legacy LEPs each include a terrestrial biodiversity clause. Council considers that the amendments to this clause are an update to ensure consistency and give effect to LSPS and District Plan. These plans seek to enhance environmental outcomes, including the regeneration of native bushland.

Council considers that has been addressed by:

- the addition of the following objectives:
 - maintain and enhance terrestrial biodiversity by protecting, restoring and enhancing biodiversity corridors; and
 - including an opportunity for offsetting biodiversity impacts.
- the addition of the following consideration:
 - any opportunity to restore or enhance remnant vegetation, habitat and biodiversity corridors.
- the addition of the following test:
 - the development includes measures to offset the loss of biodiversity values.

Department Comment

The proposed amendments to seek the rehabilitation of existing areas identified as having biodiversity significance seeks to give effect to the District Plan and LSPS.

Council has clarified that methods used to ensure the rehabilitation requirements are satisfied under a development application will include landscaping, naturalisation, native planting or water sensitive urban design works. Council have also clarified that they do not anticipate significant offset works with these to be informed by Council's proposed Tree Offset Policy.

4. Proposed Clause 6.5 - Flood Planning

Explanation of Provision

A Flood Planning clause is proposed for the Bayside LEP 2020. Such a clause exists under the Rockdale LEP 2011 but not the Botany Bay LEP 2013. This proposed clause is intended to ensure flood prone development is designed that it is compatible with the flooding hazard and associated flooding risk.

This clause will not identify flood prone land through a flood planning map. This mapping will be relocated to the Bayside DCP 2020.

This consolidated clause also seeks to amend the existing flood planning level¹ in the existing Rockdale LEP 2011 clause from 1 in 100 average recurrence interval (ARI)² plus 0.5m free board to 1% annual exceedance probability (AEP)³ plus 0.5m free board.

Council Justification

Though Council intends to apply a clause in keeping with existing controls, either LEP or DCP, Flood Planning Mapping will not be included in this clause. Council states this will be located in the forthcoming Bayside Development Control Plan. Council considers that this will allow updates to the flood mapping without the need to amend the Bayside LEP 2020, which facilitates it remaining current as conditions change.

Council states that the amendment to the flood planning level to be a 1% AEP flood event plus 0.5 metre freeboard is justified, because:

- This proposed FPL has been informed by flood studies and Flood Risk Management Plans. Council states that these are periodically reviewed to maintain currency. Council states that this included a recent review of the flood study methodology which has resulted in changes to flood modelling and the flood planning areas;
- The 1% annual exceedance probability (or 1% AEP) is preferred because it avoids a misconception that a '1 in 100 year flood' can only occur once every 100 years; and
- the Annual Exceedance Probability (AEP) was used as the preferred flood measure in Australian Rainfall and Runoff Guidelines 2019.

¹ **Flood planning levels (FPLs)** are the combination of flood levels (derived from significant historical flood events or floods of specific AEPs) and freeboards selected for floodplain risk management purposes, as determined in management studies and incorporated in management plans. FPLs supersede the 'standard flood event' in the 1986 manual.

² **Average recurrence interval (ARI)** means the long-term average number of years between the occurrence of a flood as big as or larger than the selected event. For example, floods with a discharge as great as or greater than the 20-year ARI flood event will occur on average once every 20 years. ARI is another way of expressing the likelihood of occurrence of a flood event.

³ **Annual exceedance probability (AEP)** means the chance of a flood of a given or larger size occurring in any one year, usually expressed as a percentage. E, if a peak flood discharge of 500m³/s has an AEP of 5%, it means that there is a 5% chance (that is a 1 in 20 chance) of a 500m³/s or larger events occurring in any one year.

Department Comment

The consolidation of the flood planning clauses and the proposed amendments are satisfactory, because:

- the NSW Floodplain Manual 2005 (the Manual) considers that local Council are the responsible authority and best placed to set the flood planning level;
- the proposed amendment to the flood planning level has been informed by several flood studies, undertaken in accordance with the Manual. It is also noted that the flood study methodology has been recently reviewed and informs the proposed amendment to the FPL;
- the removal of the flood planning map from the Legacy LEPs to the proposed Bayside DCP 2020 will facilitate the ready updating of flood planning maps, which respond to changing conditions, without needing to amend the a LEP;
- the proposed clause is in keeping with the adopted model provision; and
- this clause gives effect to the District Plan and LSPS priorities of ensuring development is resilient to natural hazards and risks.

It is also understood that Council has also undertaken and completed Flood Studies and Floodplain Risk Management Studies and Plans and endorsed these studies, including the public exhibition of preferred options and revisions in response to submissions.

The Gateway determination has also been conditioned to require consultation with Office of Environment, Energy and Science, as the responsible agency for the Manual, during community consultation. It is also proposed to consult with the State Emergency Service regarding the amendments under the Bayside LEP 2020 concerning flooding provisions.

5. Proposed Clause 6.6 - Floodplain Risk Management

Explanation of Provision

It is proposed to introduce a new Flood Risk Management clause into the Bayside LEP 2020. The Floodplain Risk Management clause seeks to provide consideration for development with particular evacuation or emergency response issues, to enable evacuation of the land subject to flooding outside the Flood Planning Area⁴. This clause also seeks to protect the operational capacity of emergency response facilities and critical infrastructure during extreme flood events.

This clause seeks to ensure that development consent cannot be granted unless the consent authority is satisfied that the development incorporates appropriate measures to manage the risk of life from flooding. These uses are proposed as follows:

- a) caravan parks,
- b) moveable dwellings,
- c) correctional centres,
- d) emergency services facilities,
- e) group homes,
- f) hospitals,
- g) residential care facilities,

⁴ **Flood planning area (FPA)** means the area of land below the FPL and this subject to flood related development controls. The concept of flood planning area generally supersedes the 'flood liable land' concept in the 1986 Manual.

- h) tourist and visitor accommodation,
- i) educational establishments,
- j) centre-based child care facilities,
- k) seniors housing

For these uses, the Probable Maximum Flood (PMF)⁵ is the applicable FPL.

Council Justification

Council deems this clause necessary to meet the objectives of the NSW Flood Prone Land Policy (2005) and considers it consistent with Ministerial Direction 4.3 – Flood Prone Land.

Council argues that this clause ensures special consideration is given to essential community facilities and critical services including emergency response facilities such as hospitals and critical infrastructure. Council also states that these uses have been formulated in consideration with identified sensitive uses from the NSW Floodplain Manual 2005.

Council also states that the Manual considers the PMF as the suitable FPL for these uses. Consequently, Council is adopting this FPL for these uses.

Department Comment

The introduction of this clause through the Bayside LEP 2020 is satisfactory, because:

- the Manual considers that local Council are the responsible authority and best placed to set the flood planning level;
- the identified sensitive land uses are in keeping with those identified in Parts I and K of the Manual;
- the proposal seeks to apply a FPL that is consistent with the Manual, being the PMF for sensitive land uses;
- the clause, due to its consistency with the Manual, is therefore consistent with Ministerial Direction 4.3 – Flood Prone Land; and
- this clause gives effect to the District Plan and LSPS priorities of ensuring development is resilient to natural hazards and risks.

It is also understood that Council has also undertaken and completed Flood Studies and Floodplain Risk Management Studies and Plans and endorsed these studies, including the public exhibition of preferred options and revisions in response to submissions.

The Gateway determination has also been conditioned to require consultation with Office of Environment, Energy and Science, as the responsible agency for the Manual, during community consultation. It is also proposed to consult with the State Emergency Service regarding the amendments under the Bayside LEP 2020 concerning flooding provisions.

6. Proposed Clause 6.7 - Riparian Land, Wetlands and Waterways clause

Explanation of Provisions

This proposed clause seeks to consolidate four existing clauses in the Legacy LEPs into a single Riparian Land, Wetlands and Waterways clause. The existing clauses being consolidated are;

- Clause 6.5 Riparian land and watercourses – Botany Bay LEP 2013;

⁵ **Probable maximum flood (PMF)** means the largest flood that could conceivably occur at a particular location, usually estimated from probable maximum precipitation, and where applicable, snow melt, coupled with the worst flood producing catchment conditions.

- Clause 6.6 Wetlands – Botany Bay LEP 2013;
- Clause 6.9 Riparian land, watercourses and artificial waterbodies – Rockdale LEP 2011; and
- Clause 6.10 Wetlands – Rockdale LEP 2011;

The proposed Riparian Land, Wetlands and Waterways clause is in keeping with the existing clauses in the Legacy LEPs. The consolidated clause does seek and require consideration towards the rehabilitation of land identified as Riparian Land, Wetlands and Waterways clause.

It is also proposed to retain the associated wetlands mapping without any change, whilst introducing two new maps:

- A riparian land map; and
- A waterways map.

These two new maps seek to identify land to which this clause applies, as well as the existing wetlands mapping. This replaces generic wording which identified that the existing clauses applied to land within 40m of a watercourse.

Riparian and Waterways mapping

The riparian and waterways mapping identifies the waterways and riparian corridors within the LGA. This mapping has been prepared using the Strahler system (the System), which is the methodology used by the NSW Government in the *Water Management (General) Regulation 2018*. This System provides a hierarchy of watercourses. **Table 1** below provides a breakdown of this hierarchy and associated buffers prescribed by the Strahler System:

Watercourse type	VRZ width (each side of watercourse)	Total RC width
1 st order	10 metres	20 m + channel width
2 nd order	20 metres	40 m + channel width
3 rd order	30 metres	60 m + channel width
4 th order and greater (includes estuaries, wetlands and any parts of rivers influenced by tidal waters)	40 metres	80 m + channel width

Table 1: Recommended riparian corridor widths under Strahler system (*Source: Water Management (General) Regulation 2018*)

As such, the Cooks River and other higher order waterways have a 40m buffer whilst smaller 1st order streams provide a 10m buffer. These waterways and riparian corridors have been identified through a desktop analysis.

It is also intended that any terms (i.e. watercourse or waterbody) in this clause will be consistent with those in the standard instrument.

Council Justification

Council states that the consolidation of the riparian and wetlands clauses into a single new clause is appropriate given the similarity of objectives. This will also simplify the controls concerning these matters.

Council states that they have identified wetlands as a natural resource in the Legacy LEPs, whilst the identification of the riparian corridors is based off the Strahler system which Council considers best practise. Council also states that this identification has also been informed by Green Grid mapping.

Council states that they have followed the Strahler system classification and applied the relevant riparian buffers nominated.

Department Comment

The proposed mapping amendments under this clause, though consistent with the District Plan, LSPS and undertaken applying the Strahler System methodology, are only informed by desktop analysis. Division 4.8 of the EP&A Act 1979 requires that development within 40m, top of bank, of a watercourse is considered '*nominated integrated development*'. This requires that concurrence be provided for a development application by Natural Resource Access Regulator prior to development consent being granted. This ensures that a proposed development is undertaken in accordance with *Water Management Act 2000* through a controlled activity approval.

Though the proposed waterways and riparian corridor mapping seeks to clearly identify where the clause applies compared to the generic wording of the existing clauses in the Legacy LEPs, this process may be undermined by only undertaking a desktop analysis of potential watercourses and riparian corridors. This may result in areas of potential riparian significance not being identified and development not being undertaken in accordance with the *Water Management Act 2000*.

Consequently, it is recommended that consultation be undertaken with the Natural Resource Access Regulator to determine the suitability of this mapping and its potential implications in consideration of Division 4.8 of the EP&A Act 1979.

7. Proposed Clause 6.8 - Limited development in the Foreshore building line

Explanation of Provision

It is proposed to consolidate the foreshore building area clauses from the Legacy LEPs under a new clause that is in keeping with the existing clause from the Botany Bay LEP 2013.

The differences in this clause in comparison to the existing provision in the Rockdale LEP 2011 provide for consideration of public access to and the character of the foreshore to be considered. This is also an additional consideration to the adopted model provision, but is an existing consideration from the Botany Bay LEP 2013.

To accompany this amendment, it is proposed to map the remaining private land fronting Wolli Creek in the Turrella Industrial Park. This amendment is intended complete the identification of all privately held foreshore land within this mapping. The mapping is taken from the mean high water mark. This is shown in **Figure 1** below:

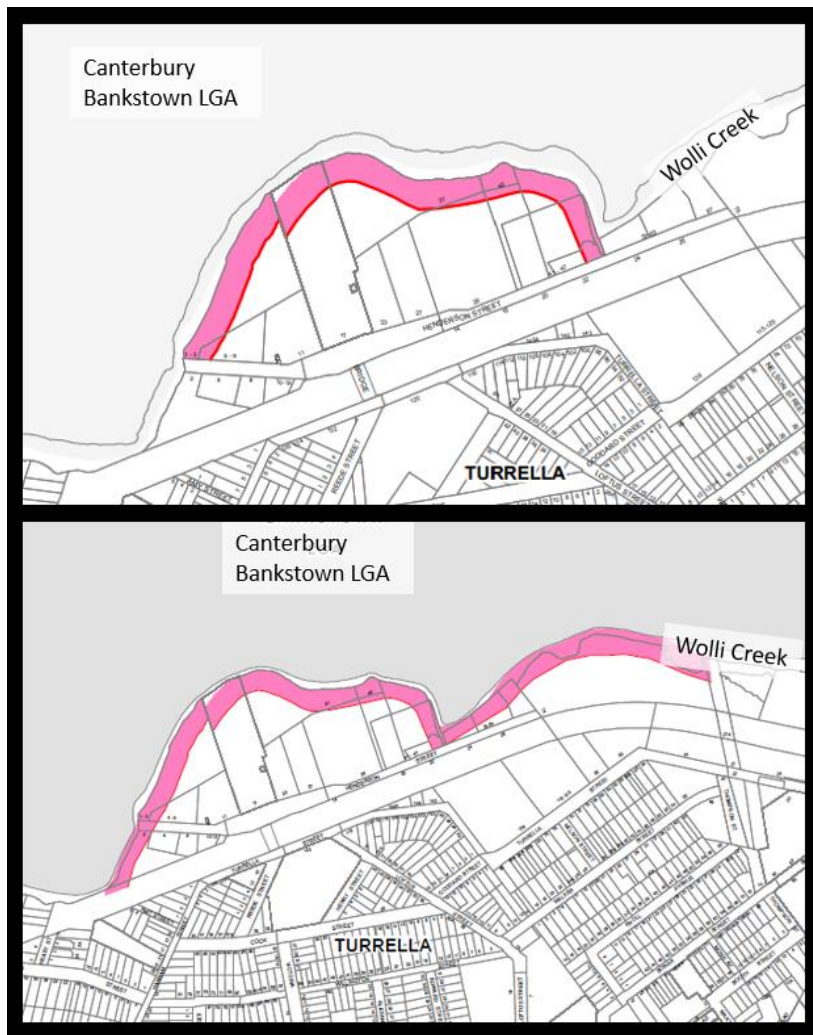


Figure 1: Comparison of existing (top) and proposed (bottom) foreshore building line map to be amended (*Source: Planning Proposal*)

Council Justification

Council states that this amendment will be consistent with other mapped land, which only identifies land fronting a waterway which is in private ownership, with the exception of land identified under SREP No. 33 - Cooks Cove regulated by SREP 33.

This will ensure that development will not impact on natural foreshore processes or affect the significance and amenity of the area.

Department Comment

The introduction of this clause through the Bayside LEP 2020 is acceptable, because:

- It seeks to apply this clause to all privately held land in the LGA which fronts a waterway to ensure that development will not impact on natural foreshore processes or affect the significance and amenity of the area; and
- Will ensure consistent application of this clause across the LGA.

8. Proposed Clause 6.11 - Active Street Frontages

Explanation of Provision

Active Street Frontage (ASF) clauses currently apply to;

- certain land currently zoned B1, B2 & B4 in the Botany Bay LEP 2013; and

- certain land zoned B4 in the Rockdale LEP 2011.

It is intended that no amendments be made to the active street frontage mapping, with the exception of the inclusion of the deferred site at the corner of MacIntosh Street and Botany Road. The application of ASF at this site is discussed in **Appendix E** of this Assessment Report.

It is intended that the new ASF provision be consistent with existing clauses in the Legacy LEPs with the exception of the following amendments:

- A building has an active street frontage if all premises on the entire ground floor of the building facing the street are used for the purposes of one or more of the following uses:
 - business premises;
 - retail premises; or
 - medical centre.
- Despite any other provision of this Plan, development consent may be granted to a mixed-use development, on land to which this clause applies, incorporating residential accommodation and one or more of the uses listed above.
- Development consent must not be granted to development under the above for a mixed-use development incorporating residential accommodation unless the consent authority is satisfied that no part of the ground floor of the building with the active street frontage will be used for the purpose of residential accommodation.

Council Justification

Council is seeking to allow for the most suitable application of the ASF clause in certain locations zoned for business purposes, rather than application through a zoning hierarchy.

Council argues that where there is an ASF defined by the LEP Map, residential flat buildings (RFBs) are not to be permitted, which is consistent with the existing provisions in the Legacy LEPs. Rather shop top housing or a mixed-use development including residential accommodation will be permitted with consent in these locations.

Council considers this will assist in preventing the loss of ground floor activation in commercial areas, through residential use or other uses which do not contribute to an activated streetscape. Though this clause is based on the ASF model provision it does incorporate an amendment accommodates for the appropriateness of Medical Centres contributing to an ASF.

The inclusion of this wording would prevent the need for another clause and cross-referencing whilst also facilitating a land use which contributes to key centres and active street frontages.

Department Comment

The introduction of this clause through the Bayside LEP 2020 is satisfactory, because:

- provides opportunities for mixed use development incorporating residential development with compatible uses that promote active street frontages to encourage vibrant centres;
 - seeks to promote pedestrian activity, social interaction, walkability and streetscape interface within existing centre in the LGA; and
- promotes passive surveillance and security within the streetscape.

9. Proposed Clause 6.12 - Design Excellence

Explanation of Provision

It is proposed to consolidate the existing design excellence clauses under the Bayside LEP 2020. The proposed clause will be consistent with the design excellence clause under the Rockdale LEP 2011. This clause was introduced by the NSW Government as part of the rezoning of the Arncliffe Banksia Precincts under the Bayside West Precincts Plan in 2018.

It is not proposed to apply this clause to any land not already identified under the Legacy LEPs for design excellence. This land will be identified through a consolidated design excellence map.

This clause, compared to the existing clause in the Botany Bay LEP 2013, provides greater detail around what constitutes design excellence and what the consent authority must have regard towards. The clause will, consistent with the existing Rockdale LEP 2011 provision, require:

- if the development is in respect of a building that is, or will be, higher than 12 metres or 3 storeys (or both) but not higher than 40 metres or 12 storeys (or both)—
 - a design review panel reviews the development, and
 - the consent authority takes into account the findings of the design review panel, or
- if the development is in respect of a building that is, or will be, higher than 40 metres or 12 storeys (or both)—
 - an architectural design competition is held in relation to the development, and
 - the consent authority takes into account the results of the architectural design competition.

Council Justification

Council considers that because the current design excellence clause in the Rockdale LEP 2011 was introduced as part of the rezoning of the Arncliffe Banksia Precincts under the Bayside West Precincts Plan in 2018, it is current best practice for design excellence.

Council states that this clause will provide for a Bayside Design Review Panel (DRP) throughout the LGA, which will include a sitting member with demonstrated experience in determining design excellence. Council states this will ensure design excellence is achieved on already identified sites in the Legacy LEPs.

Council also considers that the clause captures The Rockdale LEPSEPP introduced to the clause in October 2018, predominantly around buildings between 12m (or greater than 3 storeys) and 40m (or greater than 12 storeys), where the former version of the DEX clause (and supporting map) captured some sites for individual Design Excellence Competitions.

Department Comment

The intent of retaining design excellence on previously identified sites under the Legacy LEPs is supported. The District Plan identifies design excellence as building on local strengths and focuses on public places and open spaces to create great places.

It is noted that the proposed clause is in keeping with the existing clause in the Rockdale LEP 2011, which was introduced as part of the NSW Government's rezoning of the Arncliffe Banksia Precincts in 2018 under the Bayside West Precincts Plan 2036.

10. Proposed Clause 6.14 - Converting Serviced apartments to residential flat buildings

Explanation of Provision

The Botany Bay LEP 2013 currently includes a provision requiring that when n of serviced apartments are converted to a residential flat building, the development proposal will need to comply with SEPP No.65. It is proposed to introduce this clause into areas zoned under the Rockdale LEP 2011 without amendment.

Serviced apartments are defined as:

“a building (or part of a building) providing self-contained accommodation to tourists or visitors on a commercial basis and that is regularly serviced or cleaned by the owner or manager of the building or part of the building or the owner’s or manager’s agents.

Serviced apartments are currently permitted in the B2 and B4 business and SP3 tourist zones across the Legacy LEPs. With amendments to the land use tables, as discussed in **Appendix B** of this report, this clause will only be applicable in the B4 Mixed Use zone of the Bayside LEP 2020. This is the only zone where there will be a crossover of serviced apartments and residential flat building permissibility.

This clause seeks to ensure that serviced apartment conversions achieve adequate amenity requirements consistent with SEPP No.65 and the associated Apartment Design Guide (ADG).

Council Justification

The purpose of this clause is to ensure that serviced apartments that are converted to residential flat buildings comply with SEPP No. 65 and the ADG. The clause provides the mechanism to ensure that serviced apartments that are converted to residential flat buildings will provide the same level of amenity, in order to prevent substandard accommodation occurring through conversion.

Department Comment

The introduction of this clause into areas under the Rockdale LEP 2011 through the Bayside LEP 2020 is satisfactory, because:

- the proposed clause is consistent with the existing clause in the Botany Bay LEP 2013; and
- seeks to ensure that where serviced apartments are proposed to be converted to residential accommodation, adequate amenity impacts, consistent with other residential flat building development, will be achieved.

11. Proposed Clause 6.16 - Essential Services clause

Explanation of Provision

This clause only applies in land currently zoned under the Rockdale LEP 2011. It is proposed to introduce this clause into land zoned under the Botany Bay LEP 2013. This clause seeks to ensure that development consent is granted only where the consent authority is satisfied that utilities and services crucial for development are available. These services are:

- (a) the supply of water,
- (b) the supply of electricity,
- (c) the disposal and management of sewage,
- (d) stormwater drainage or on-site conservation,

(e) suitable road access.

Council Justification

This clause is to be included in Bayside LEP 2020, as it will ensure that availability of essential services is considered at the development application stage.

Department Comment

The introduction of this clause into areas zoned under the Botany Bay LEP 2011 through the Bayside LEP 2020 is satisfactory, because:

- the proposed clause is consistent with the existing clause in the Rockdale LEP 2011; and
- this will ensure essential services are available for development within an existing urban area.