

Extraordinary Council Meeting

24/06/2020

Item No	8.1
Subject	Post Exhibition - Draft Bayside Local Environmental Plan
Report by	Michael McCabe, Director City Futures
File	F18/201

Summary

On 12 September 2018, Bayside Council received a \$2.5 million grant under the State Government's Local Environmental Plan Accelerated Program. The funding has been used to undertake detailed analysis of the various constraints and opportunities that impact future development.

In October 2018, Council submitted the Bayside Local Environmental Plan (LEP) Review (Health Check) to the Department of Planning to satisfy legislative requirements pursuant to Section 3.8(4) of the *Environmental Planning & Assessment Act 1979*. The Review provided an assessment of Councils' LEP's against the planning priorities and actions outlined in the Eastern City District Plan.

On 25th November 2019, the draft Planning Proposal for the Bayside Local Environmental Plan was reported to the Bayside Local Planning Panel. The comments and recommendations of the Bayside Local Planning Panel are included in this report.

Council staff subsequently submitted a request to DPIE for a Gateway Determination for the draft Planning Proposal on 20 December 2019. The Gateway Determination was received on 19 March 2020 (see **Attachment 10**), and included several conditions. DPIE decided not to issue an authorisation for Council to exercise delegation to make the LEP, meaning that DPIE will instead finalise the LEP.gu7777q

In accordance with the Gateway Determination, the Planning Proposal and supporting documentation were publicly exhibited for 48 days from Wednesday 8 March 2020 to Monday 1 June 2020.

This report provides Council with (i) a summary of the submissions received; (ii) the officer's response to the submissions; and (iii) a recommendation to Council as to how to proceed

The Planning Proposal (**Attachments 1 – 9**) outlines the preparation of the Draft Bayside Local Environmental Plan 2020 (BLEP 2020), which is the first stage in the implementation of the Bayside Local Strategic Planning Statement. The overriding objective of the Planning Proposal is to harmonise the existing LEPs to create one comprehensive LEP for the Bayside LGA.

It is intended that the Bayside Local Environmental Plan 2020 (the BLEP 2020) will:

- Carry forward most of the provisions contained in the following environmental planning instruments:
 - Botany Local Environmental Plan 1995 (BLEP 1995);
 - Rockdale Local Environmental Plan 2011 (RLEP 2011); and

- Botany Bay Local Environmental Plan 2013 (BBLEP 2013).
- Create a common set of objectives, land use tables and clauses for the Bayside LGA;
- Reflect the objectives of the Greater Sydney Region Plan: A Metropolis of Three Cities, the priorities of the Eastern City District Plan; and the vision set out in Future Transport 2056.
- Implement the relevant Priorities and Actions of the draft Bayside Local Strategic Planning Statement; and
- Address anomalies in the written instruments and rectify mapping errors.

Whilst the harmonisation of existing LEPs is not intended to result in extensive changes to planning controls, there are differences between the provisions of the existing LEPs which need to be addressed in the BLEP 2020. As such, this Planning Proposal recommends some limited changes to the planning controls currently applying in certain areas of the LGA.

Two areas of the LGA that will continue to be excluded from application of the proposed Bayside LEP 2020 are those areas covered by the following environmental planning instruments:

- Sydney Regional Environmental Plan No 33 – Cooks Cove; and
- State Environmental Planning Policy (Three Ports) 2013.

Council intends to prepare a number of additional Planning Proposals, commencing in 2020 to give effect to more complex and extended projects which are outlined in the draft Bayside Local Strategic Planning Statement. Several land use planning studies, which are currently being finalised, will provide an evidence base to inform those Planning Proposals.

A number of Planning Proposals that affect specific sites in the Local Government Area are being progressed concurrently, but are separate to this LEP harmonisation process. Where these site-specific LEP amendments are made prior to the finalisation of this Bayside LEP 2020, it is intended that they will be incorporated into the new LEP. Where a separate LEP amendment is made after the finalisation of the Bayside LEP 2020, it will be included as an amendment to the new Bayside LEP.

Officer Recommendation

- 1 That Council acknowledges the submissions received during the Public Exhibition of the Draft Planning Proposal for the Bayside Local Environmental Plan and the officer's response to them.
 - 2 That Council, in accordance with Section 3.36(1) of the Environmental Planning & Assessment Act 1979, forwards a copy of the Planning Proposal and relevant supporting information to the Department of Planning, Industry and Environment (the DPIE) requesting that the draft Bayside Local Environmental Plan be finalised and notified.
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Background

In early 2016 the Greater Sydney Commission (GSC) was established to co-ordinate and align planning for Greater Sydney. The GSC prepared the Eastern City District Plan, which applies to the Bayside Local Government Area (LGA). The GSC has oversight of the implementation of the District Plan by councils through a process that will lead to updates of Local Environmental Plans. At present, the focus is on local strategic planning that addresses district plans as well as council Community Strategic Plans.

The implementation process has three key parts:

- **Local strategic planning statements (LSPSs):** Councils are developing LSPSs to set the 20-year vision for their local government area, including identifying the special character and values to be preserved and how change will be managed. The LSPS explains how council is implementing the planning priorities and actions in the relevant district plan in conjunction with their Community Strategic Plan.
- **Local housing strategies:** District plans require councils to prepare local housing strategies to address housing needs. This work informs 6–10 year housing targets for each local government area.
- **Updates to local environmental plans (LEPs):** LEPs provide the rules that guide local development and contain controls such as land use zoning and height. All Councils are required to update their LEPs to reflect the district plan and deliver the vision set out in their LSPSs.

A new assurance process led by the Commission has meant State agencies are working closely with councils to progress implementation. Assurance milestones have included:

- **LEP reviews:** commenced in October 2018 when councils reported to the Commission on reviews to their LEPs against local circumstances and district plan priorities and actions. These reviews established the groundwork for the draft LSPSs.
- **LSPS health checks:** in March-April 2019, councils were hosted by their district commissioner to gauge progress of draft LSPSs.

On 9 September 2016, the proclamation of the new Bayside Local Government Area (LGA), amalgamating the former Rockdale and Botany Bay LGAs, was declared by the New South Wales Government – Department of Premier and Cabinet under the *Local Government Act 1993*. One of the identified milestones for amalgamated Councils was the preparation of a consolidated Local Environmental Plan. The Bayside LGA has three Local Environmental Plan's (LEP):

- Botany Bay Local Environmental Plan 2013 (BBLEP 2013)
- Rockdale Local Environmental Plan 2011 (RLEP 2011)
- Botany Local Environmental Plan 1995 (BLEP 1995)

Both the BBLEP 2013 and RLEP 2011 were prepared in accordance with the *Standard Instrument (Local Environmental Plans) Order 2006*, and provide the provisions for the majority of the lands that constitute eastern and western parts of the Bayside LGA, respectively. The BLEP 1995 only applies to land deferred from BBLEP 2013, referred to as "Deferred Matters" in the BBLEP 2013.

In 2017 the *Environmental Planning and Assessment Act 1979* was amended to introduce a new planning framework which places an increased emphasis on strategic planning. The amended Act includes a requirement (s.3.9) for Councils to prepare a 'Local Strategic Planning Statement' which must include or identify:

- the basis for strategic planning in the area, having regard to economic, social and environmental matters,
- the planning priorities for the area that are inconsistent with any strategic plan applying to the area and any applicable community strategic plan
- the actions for achieving those planning priorities, and
- the basis on which Council is to monitor and report on the implementation of those actions

The Act was also amended to introduce a requirement that all Planning Proposals include justification for the objectives, outcomes and provisions including:

- s.3.33 (2)(c) 'whether the proposed instrument will give effect to the local strategic planning statement of the Council of the area'

On 12 September 2018, Bayside Council received a \$2.5 million grant under the State Government's Local Environmental Plan Accelerated Program. The funding has been used to undertake detailed analysis of the various constraints and opportunities that impact future development. These constraints include the Hazardous Transport Route, high pressure gas line buffer and the M6 motorway. The NSW Government grant identifies Bayside as a 'priority' Council and requires Council to submit this Draft Planning Proposal for the Bayside Local Environmental Plan to the Department of Planning, Industry and Environment (DPIE) for Gateway Determination by 31 December 2019. The relevant Planning Proposal documents are attached.

In October 2018, Council submitted the Bayside Local Environmental Plan (LEP) Review (Health Check) to the Department of Planning to satisfy legislative requirements pursuant to Section 3.8(4) of the *Environmental Planning & Assessment Act 1979*. The Review provided an assessment of Councils' LEP's against the planning priorities and actions outlined in the Eastern City District Plan.

Upon receiving confirmation of grant funding Council commissioned background studies and strategies:

- Local Housing
- Transport
- Heritage
- Aboriginal Heritage
- Flooding and stormwater
- Land Use Limitations
- Environmental Issues
- Social Infrastructure (Community facilities, Open space & Recreation)

- Centres and Employment lands.

The strategies will provide evidence and inform strategic planning for Bayside Council for the next 20 years and beyond. These will be reported to Council in 2020 to (i) seek endorsement to exhibit, and (ii) post-exhibition for Council's consideration of any submissions, and, ultimately, adoption.

During 2018 and 2019 Council progressed detailed review, analysis and masterplanning to inform potential strategic changes to the Local Environmental Plan. However, given the strict deadlines imposed on Bayside Council by the NSW Department of Planning, Infrastructure and Environment, Council has not been able to incorporate strategic changes, as it had previously anticipated. Areas and issues subject to further investigation and potential future changes to the Bayside Local Strategic Planning Statement and Bayside Local Environmental Plan include:

- Brighton Le Sands Masterplan – Stage 1
- Rockdale Town Centre
- Area marked as grey, west of Arncliffe Station in Figure 2 of the *Bayside West Precincts 2036 Plan*
- Low rise medium density housing
- Heritage Conservation Areas
- Biodiversity mapping
- Minimum lot size

It is anticipated that Council will progress amendments to planning controls in relation to some of those areas and issues, which is likely to commence in 2020, once land use planning studies have been finalised and adopted by Council.

Prior to preparing the draft Bayside LEP, Council was required to prepare a Local Strategic Planning Statement (LSPS) to inform Bayside's strategic planning framework. The LSPS outlines the direction of Council's economic, social and environmental priorities for the local area and will act as a linking document between the Eastern City District Plan and the new, consolidated Bayside Local Environmental Plan 2020.

In September 2019, Council placed the draft Bayside Local Strategic Planning Statement on public exhibition and implemented a community engagement plan to reach a wide range of community members. Additionally, to help inform the community about the LSPS, Council hosted eight Information stations at strategic locations across the LGA, over a four week period.

Purpose of the Planning Proposal

The purpose of this Planning Proposal is to create a consolidated Bayside Local Environmental Plan. This is largely an administrative process, and is not a comprehensive review of provisions that would result in an increase in densities, which would otherwise require significant additional public infrastructure.

However, it is noted that Council is in the process of preparing new infrastructure strategies in accordance with the Bayside Asset Management Strategy, and as outlined in the draft

Local Strategic Planning Statement, the strategies will inform provision of additional local infrastructure to meet the needs of the future population. The strategies are:

- Social Infrastructure (Open Space, recreation and community facilities)
- Transport Strategy
- Bike Plan
- Employment and Centres Strategy
- Environment Strategy

Council has also commenced the preparation of several key statutory policies, which will assist in the implementation of local infrastructure:

- Bayside Development Contributions Plan
- Bayside Plan of Management
- Planning Agreement Policy

The new Draft BLEP comprises a combination of the most appropriate provisions from the RLEP 2011 and BBLEP 2013 – including key controls such as building height, floor space ratios and minimum lot sizes. Where identical provisions exist, they have been carried over without change. In instances of inconsistency between the planning controls (where the clause/objective adversely impacts the overall intention of the subject zone including its application), a review has been undertaken and the most suitable provision has been proposed. Site specific provisions and additional permitted uses have also been retained.

The Draft BLEP does not propose to rezone land except:

- Where Council has completed appropriate background studies;
- Where an anomaly has been identified and is required to be rectified; and
- Where zoning or planning controls were previously silent for specific sites (e.g. “Deferred Matter” sites in BBLEP 2013, or “Unzoned Land” in RLEP 2011).

For detailed information and explanation of the Draft Bayside Local Environmental Plan 2020 refer to attachments to this report as follows:

- **Attachment 1:** Draft Planning Proposal Report
- **Attachment 2:** Appendix A – Bayside Local Environmental Plan 2020 (written instrument)
- **Attachment 3:** Appendix B – Maps (to be issued as an Addendum)
- **Attachment 4:** Appendix C – Justification Table
- **Attachment 5:** Appendix D – LEP Comparison Table
- **Attachment 6:** Appendix E – Land Use Comparison and Justification Matrix
- **Attachment 7:** Appendix F – DPIE Land Use Matrix

- **Attachment 8:** Appendix G – Explanatory Paper
- **Attachment 9:** Appendix H – Bonus Provisions Justification

Bayside Local Planning Panel

The Planning Proposal was considered by the Bayside Local Planning Panel (BLPP) on 25 November 2019, prior to requesting a Gateway Determination from DPIE. The BLPP made the following recommendations:

“That the Bayside Local Planning Panel recommends to Council, or its delegate, that pursuant to Section 3.34 of the Environmental Planning and Assessment Act 1979 (EP&A Act), the Draft Planning Proposal be submitted to the Department of Planning, Industry and Environment (DPIE) for a Gateway Determination subject to the following amendments:

1. *Changing the proposed RE1 land use table to be consistent with that in the Standard Instrument.*
2. *Changing the zoning of the 6 RFB sites from R3 to R4 (the zone that permits RFB’s).*
3. *Correction of some typographical errors, mapping errors and minor issues brought to the attention of the Panel.*
4. *Any further refinement which may be required of both the Draft LEP and the Draft DCP (currently under preparation) prior to gazettal. This includes the current housing and other strategies currently being finalized.”*

Response

In response to these recommendations, it was considered that ‘registered clubs’ and ‘take-away food shops’ should be prohibited in the RE1 zone. Given that this zone is not subject to planning controls such as height and FSR, it is considered that the best way to manage these uses is via an Additional Permitted Use, if planning justification can be demonstrated to consider any such use on specific sites zoned RE1 Public Recreation in the future.

Gateway Determination

Council received a Gateway Determination for the Planning Proposal on 19 March 2020 (see **Attachment 10**). The conditions in the table below were attached to the Gateway Determination. The conditions were required to be addressed prior to exhibition. The conditions and actions are detailed in the table below:

Gateway Condition	Action
1. a) clearly state that the draft instrument attached to the planning proposal is for exhibition purposes only and is subject to change as part of the drafting of the final LEP;	- Planning Proposal was updated with this wording. - Appendix A (written instrument) was updated with this wording.
1. b) retain multi dwelling housing and residential flat buildings as permitted land uses in the R2 Low Density Residential zone in Botany Bay LEP 2013 areas;	- An Additional Permitted Use (APU) has been inserted into Appendix A (written instrument) to ensure multi-dwelling housing and RFB’s remain permissible in former BBLEP 2013 R2 zone. - Clause 6.11 BBLEP 2013 has been

	inserted into the newly created APU clause discussed above.
1. c) retain residential flat buildings as a permitted use in the R3 Medium Density Residential zone in Botany Bay LEP 2013 areas	- An APU has been inserted into Appendix A (written instrument) to ensure RFB's remain permissible in former BBLEP 2013 R3 zone.
1. d) address the consistency with Ministerial Direction 6.2 – Reserving Land for Public Purposes in relation to the Dransfield Avenue deferred site and consolidation of land reservation and acquisition clauses;	- Appropriate wording inserted into Planning Proposal and approved by DPIE.
1. e) accurately reflect all amendments made to 128 Bunnerong Road, Pagewood and 120 Banks Avenue, Eastgardens (Amendment No.8 to the Botany Bay LEP 2013);	- Maps have been updated to reflect Amendment No. 8 to BBLEP 2013.
1. f) ensure proposed clause 6.1 – Acid Sulfate Soils is consistent with the adopted model provision;	- Appendix A (written instrument) has been updated with correct wording.
1. g) include the supporting information regarding the deletion of the bonus building height (Cl. 4.3(2A)) and floor space (Cl.4.4B) clauses under the Botany Bay LEP 2013, including the concept plans that support retention of the provisions on identified sites;	- A new Appendix H has been included with supporting information and concept plan, and supporting information approved by DPIE.
1. h) delete the bonus floor space clause (cl.4.4(2A)) under the Botany Bay LEP 2013;	- Planning Proposal has been updated and wording has been approved by DPIE.
1. i) include the additional information provided on the proposed amendments for dual occupancy, attached dwellings and semi-detached dwellings;	- Planning Proposal has been updated and wording has been approved by DPIE.
1. j) include discussion about proposed clause 4.1(3A) concerning the exclusion of the access handle from lot area calculations for a battle-axe lot;	- Appendix C (clause justification) has been updated accordingly.
1. k) include a map to clearly identify the intensive urban development area, referenced in Part 7 of the Rockdale LEP 2011 and meaning the Arncliffe and Banksia Planned Precincts;	- New map created and exhibited.

1. l) ensure no amendments on land identified under State Environmental Planning Policy (Three Ports) 2013; and	- Maps have been checked to ensure no changes to this area.
1. m) include a savings provision which will not result in the proposed amendments affecting current development applications or appeal processes.	- Planning Proposal has been updated.
2. The final LEP should be updated where required to have regard to any endorsed Local Strategic Planning Statement (LSPS).	- Planning Proposal has been updated to reflect the endorsed LSPS.
3. Public exhibition is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows: (a) the planning proposal must be made publicly available for a minimum of 28 days; (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 section 6.5.2 of A guide to preparing local environmental plans (Department of Planning and Environment, 2018); (c) write to the landowners and operators of the Botany Industrial Park; and (d) write to the affected landowners in the residential zones under the Botany Bay LEP 2013.	- In accordance with the Gateway Determination, the Planning Proposal and supporting documentation were publicly exhibited for 48 days from Wednesday 8 March 2020 to Monday 1 June 2020. - All landowners in the Bayside LGA have been written to, includes landowners and operators of the BIP and Botany Bay residents.
4. Consultation is required with the following public authorities/organisations under section 3.34(2)(d) of the Act and/or to comply with the requirements of relevant section 9.1 Directions: • Transport for NSW • Department of Education; • NSW Port Authority; • Heritage NSW; • Sydney Airport; • Civil Aviation Safety Authority; • Commonwealth Department of Infrastructure, Transport, Regional Development and Communications; • NSW Land and Housing Corporation; • Office of Environment, Energy and Science; • Sydney Water Corporation; • Natural Resource Access Regulator; • Office of Environment, Energy and Science; • State Emergency Service; • Environmental Protection Authority; and	- All public authorities and organisations were notified and given 21 days to make a submission.

• Adjoining Councils.	
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Each public authority/organisation is to be provided with a copy of the planning proposal and any relevant supporting material and given at least 21 days to comment on the proposal.	
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Community Consultation

The Planning Proposal and associated documents were exhibited for 48 days from Wednesday 8 March 2020 to Monday 1 June 2020 in accordance with the Gateway Determination. The exhibition was extended beyond the minimum 28 day exhibition requirement, given that physical copies of the documentation were not able to be displayed in Council's Customer Service Centre or libraries due to Covid-19. Legislative amendments to the NSW Environmental Planning and Assessment Act, 1979 enabled Councils to exhibit materials online for viewing, in lieu of providing hard copies for physical inspection at libraries, due to the limitations caused by COVID-19, and the enforcement of library closures during this time.

Notification letters were sent to approximately 85,000 property owners in the Bayside LGA. The Planning Proposal was also advertised in the St. George and Sutherland Shire Leader being 8th, 15th, 22nd 29th April, the Southern Courier on 8th April and the Daily Telegraph on the 15th, 22nd 29th April. The Planning Proposal and supporting documents were made available for inspection on Council's 'Have Your Say' website.

A total of 6,411 people visited the Have Your Say Page. Of those that visited the webpage, 4,720 people engaged with information on the webpage (e.g. such as downloading a document, viewed key dates or the FAQ page, or contributed to the survey tool). 3,094 people viewed the 'Summary of changes in the Draft LEP' document. 2,228 people viewed the Draft Bayside LEP and Appendices

A dedicated hotline and email address were set up to answer any queries from the community. During the exhibition period, approximately 50 email enquiries were responded to and approximately 500 phone calls were taken.

Public Submissions

A total of 166 public submissions were received, including 1 petition signed by 39 people.

A summary and response to each of the key points in every submission has been formulated (see **Attachment 11**) to assist Council with identifying the key matters associated with the Planning Proposal. The key themes relate to:

- General objections against the proposal;
- Zoning
- Height of Buildings;
- Floor Space Ratio;
- Stormwater/Flooding;
- Wetlands, Riparian Land and Waterways;
- Terrestrial Biodiversity;
- Heritage;
- Traffic and Parking;
- Public Open Space

- Minimum Lot Sizes/Dual occupancy; and
- General support for the proposal.

Submissions Made by Public Authorities

The following agencies were required to be consulted in accordance with the conditions of the Gateway Determination:

- Transport for NSW;
- Department of Education;
- NSW Port Authority;
- Heritage NSW;
- Sydney Airport;
- Civil Aviation Safety Authority;
- Commonwealth Department of Infrastructure, Transport, Regional Development and Communications;
- NSW Land and Housing Corporation;
- Office of Environment, Energy and Science;
- Sydney Water Corporation;
- Natural Resource Access Regulator;
- Office of Environment, Energy and Science;
- State Emergency Service;
- Environmental Protection Authority; and
- Adjoining Councils

No response was received from Department of Education, Natural Resources Access Regulator, State Emergency Service and Environmental Protection Authority. One objection was received from TfNSW in relation to one of the “Deferred Matter” sites in the BBLEP 2013 (Lot 6 DP776212 Dransfield Avenue, Mascot), which is discussed below. Other submissions made by Public Authorities have been addressed in the response to submissions in **Attachment 12**.

Assessment of Submissions

Zoning/Height/Floor Space Ratio

Many submissions were against any changes to zoning that would facilitate increased development. Other comments were supportive of zoning controls that would encourage development opportunities in the area, while others indicated general support for medium density housing throughout the LGA. A number of submissions were made requesting a rezoning and changes to planning controls such as height and FSR at a particular site. Such requests were generally with consideration to upzoning to meet future housing requirements, enabling development opportunities, leveraging strategic sites for their best and highest order use, improving consistency and alignment within neighbourhoods, suburbs and across the LGA. Others highlighted the limitations that were imposed with their current zoning (e.g. land acquisition) or incompatibility with adjacent zones (e.g. IN1 and residential zones).

Response:

As the draft Bayside LEP largely represents an exercise in consolidating three LEPs (RLEP 2011, BBLEP 2013 and BLEP 1995), there are currently no plans in the draft Bayside LEP to further amend the zoning or density of the majority of land in the Bayside LGA.

Council is progressing the ‘Bayside Housing Strategy’ which will be exhibited in 2020. The Strategy will identify areas for further growth and further investigation. It is noted that the Eastern City District Plan Action 16(d) requires a Council's housing strategy to meet the requirements of A Metropolis of Three Cities Objective 10. This requires Council to identify

where housing targets can be achieved in the 6-10 year time frame that aligns with existing and proposed local infrastructure. The alignment of growth and transport infrastructure is key to achieving "more housing in the right locations" in line with the Bayside Local Strategic Planning Statement. The Bayside Local Housing Strategy will provide an evidence base and recommendations in relation to housing to progress any future changes.

No changes are proposed to zoning, height or FSR as a result of submissions received during the exhibition period. Further consideration may be given to amending zoning, height and floorspace ratios in the Bayside LGA after the consolidated LEP has been notified, and when any strategic land use planning studies have been finalised.

Overdevelopment

Many submissions provided a range of opinions on development more generally in Bayside, with a number of them suggesting that Bayside has been overdeveloped, that this overdevelopment has ongoing impacts on neighbourhood character, traffic congestion, health, and infrastructure capacity. A number of submissions argued that such development should not be further supported through this LEP amendment. A few submissions noted the increased demand on infrastructure, and/or requested investment to support or improve available infrastructure for community benefit.

Response:

As the draft Bayside LEP largely represents an exercise in consolidating three LEPs, there are currently no plans in the draft Bayside LEP to further amend the zoning or density of the majority of land in this Bayside LGA.

Council is progressing a number of strategies which will address housing, social infrastructure and transport to ensure any future housing growth is aligned with the provision of necessary infrastructure.

Stormwater/Flooding

A number of submissions drew attention to flooding issues in specific areas, and highlighted the need for this to be addressed (e.g. through better drainage, regular maintenance, better rubbish collection systems, and community involvement). Another submission raised concern that some properties are now located in flood prone zones due to new flood zoning maps, and asserted that Council has a responsibility to protect areas from flooding (e.g. by increasing the height of storm drains, reducing the amount of impermeable surfaces etc.).

Response:

It is proposed to apply the existing Rockdale LEP flooding clause to the whole of the Bayside LGA. This is to ensure that all development incorporates appropriate measures to manage flood hazards, where there are known potential risks of flooding. As such, all new developments in a site identified as affected by 1% AEP flooding requires compliance with the flood planning requirement stated in clauses 6.5 and 6.6 of the LEP, and against DCP flood planning controls.

Environment (Wetlands, Riparian Land, Terrestrial Biodiversity)

A number of submissions called for wetland or other environmentally significant areas to be preserved through limiting development near or around such areas, or applying appropriate planning controls (e.g. environmental protection zoning). Other comments indicated the need for better and more regular maintenance of environmental areas, or areas prone to flooding. A number of submissions highlighted the importance of preserving, maintaining and protecting areas of natural value (such as native habitats, remnant vegetation) so as to ensure the long term viability of these areas, as well as to protect flora and fauna that live in these environments.

Response:

Council recognises the social and environmental value of local waterways and wetlands, and the importance of, maintaining, managing, and protecting them. Council also has a strong commitment to regenerate and protect Bayside's waterways and riparian corridors as reflected in our Community Strategic Plan and Local Strategic Planning Statement. Priorities for Council, as outlined in these strategic documents, seek to protect and improve the health of Bayside's waterways and biodiversity.

To ensure riparian land, waterways and wetlands and their inhabiting native flora and fauna are protected, Council have harmonised and amended the Riparian Land and Waterways/ Watercourse clause in the draft LEP. This clause is now supported by Riparian Corridor mapping across the Bayside LGA, based on best practise guidelines and has been updated with additional objectives and requirements to ensure the protection of flora and fauna, not just their habitats. The above proposed changes to the LEP helps to regulate impacts to our waterways and achieve these priorities 'on the ground'.

Heritage

In addition to general support for maintaining heritage buildings throughout Bayside, there was some concern for the lack of protection offered to heritage elements through this LEP amendment, both post-colonial and Aboriginal heritage (built and cultural). Some sites were identified as appropriate to apply heritage controls as part of the draft LEP.

Response:

Heritage Strategies are currently being prepared for both Aboriginal Heritage and Non-Aboriginal Heritage. This includes consideration of new heritage conservation areas and the listing of additional heritage items. These Strategies are expected to be placed on exhibition in 2020. The Non-Aboriginal Heritage Strategy will provide an evidence base and recommendations in relation to heritage to progress any future changes to the Bayside LEP.

Traffic and Parking

Concerns were raised regarding increased traffic congestion, current infrastructure capacity, and lack of parking. Specific comments were also made in relation to the M6 motorway.

Response:

Council is preparing a draft Transport Strategy that recognises the importance of public transport, cycling and walking to Sydney's strategic centres and local and neighbourhood centres to reduce the need for car dependency. The Strategy is expected to be publicly exhibited in 2020.

It should be noted that no large scale transport projects are being proposed as part of the draft BLEP. Any future large scale transport infrastructure projects will be under the remit of the NSW Department of Planning, Infrastructure and Environment and Transport NSW. Should any future transports projects affect the Bayside LGA, Council will be consulted and submit comments on the proposals.

With regard to the proposed M6 motorway, Stage 2 is included in Transport Future 2056 released by TfNSW. If this project goes ahead, it will potentially remove more vehicles from surface roads through Bayside. The Bayside Local Strategic Planning Statement includes an action for Council to advocate for this second stage to be underground.

Public Open Space

General comments were made about the need for the provision of the protection of existing open space and facilitation of new open space in the Bayside LGA, noting that as the population increase in the Bayside LGA, more open space will be required.

Response:

A Social Infrastructure Strategy is currently being prepared by Council. This will include an analysis of supply and demand for open space and recreation opportunities as well as community facilities and services. It will be placed on exhibition for community feedback. This will provide the evidence base to inform Council on how to plan for open space and recreation across the LGA into the future.

Minimum lot size

A number of submissions requested amendments to decrease minimum lot size for subdivision and dual occupancy development.

Response:

No changes are proposed to minimum lot sizes as part of the Bayside LEP. Minimum subdivision lot size (Clause 4.1 of the Standard Instrument LEP) is an optional clause for any LEP. The Botany Bay LEP 2013 did not adopt the clause, whereas the Rockdale LEP 2011 did adopt the clause. Clause 4.1 is proposed to be adopted in the consolidated Bayside LEP.

Minimum lot sizes under Rockdale LEP will be adopted unchanged and for former Botany, residential zones will continue to be guided by the development controls in the Botany Bay DCP 2013 until a new consolidated Bayside DCP has been adopted, or until such time as the new Bayside LEP can be amended to include minimum lot sizes for residential zones in the former Botany LGA.

It should be noted that the draft Bayside LEP does not include minimum lot sizes for dual occupancy development. However, the minimum lot size requirements for dual occupancy torrens title subdivision currently within Rockdale LEP 2011 will remain.

A more comprehensive review of the LEP will be undertaken in the near future and will include consideration of the findings of a number of strategies, including a housing strategy, which will be used to inform appropriate minimum lot sizes and locations.

Dransfield Avenue site

Transport for NSW has objected to the rezoning of Lot 6 DP776212 to RE1 Public Recreation, as they state that the site is still required for operational purposes. The site is currently zoned 5(d) *Special Uses - Proposed Road* pursuant to Botany LEP No. 26, which amended the County of Cumberland Planning Scheme, and Botany IDO No. 19. The remainder of TfNSW's submission is addressed in **Attachment 12**.

On this particular matter, TfNSW state *"This approach is also not consistent with a 'harmonisation' like-for-like approach. TfNSW does not agree to the proposed change and does not concur with the justification provided for the proposed zone change for the following reasons:*

- 1. The subject site is not surplus to the Agencies requirements.*
- 2. As evidenced in Figure 1 of the Botany Wetlands Plan of Management 2018-2028 (Sydney Water Corporation) the subject site does not form part of the Botany Wetlands system*
- 3. Planning Priorities E17 & E18 of the Eastern City District Plan (District Plan) are not applicable as the subject site is not public open space or land within the public realm.*

4. *The Planning Portal does not identify the subject site as being a 'Green Grid - Existing Green Asset'.*

5. *Rezoning the land to RE1 Public Recreation is not considered to be the most compatible zone. Land adjoining the subject sites north western boundary is zoned B5 Business Development under the BBLEP 2013. As previously requested, an extension of the B5 Business Development zone eastward to the subject site would be compatible with surrounding land uses. A B5 Business Development zone would also be complementary to Action 51 of the District Plan."*

Response:

The site has been deferred from several LEPs, despite Council's recommendations to zone the land for public recreation purposes.

The land is zoned 5(d) *Special Uses - Proposed Road* pursuant to Botany LEP No. 26, which amended the County of Cumberland Planning Scheme, and Botany IDO No. 19.

The former Botany Bay Council resolved to rezone the land to *Open Space 6(a) — Recreation Existing* when it was preparing the Botany LEP 1995. However, because the (then) RTA objected, the land was deferred from the BLEP 1995.

The former Botany Bay Council recommended zoning the land RE1 Public Recreation Zone as part of the Draft BBLEP 2013, which the Department supported at the time. TfNSW (RMS) requested that the land be zoned B5 Business Development at the time.

TfNSW's requests in 2013, and again now in 2020, to rezone the subject land to B5 Business Development Zone, would suggest that the land is surplus to TfNSW's needs. However, TfNSW have included in their objection that *"The subject site is not surplus to the Agencies' requirements"*. If the case TfNSW would be best placed to request a Special Use Zone on the site. However, Council has not received a request in that regard.

Council staff opinion is that the application of the RE1 zone to the subject land is a logical extension of the adjoining RE1 zoned land which is located to the west of the site, and which is a State-owned site (Department Planning, Industry and Environment) comprising significant, contiguous vegetation with evidence of significant regeneration. That land now owned by the DPIE, along with the subject site that remains in the ownership of TfNSW, was included in an amendment to the Cumberland County Planning Scheme dated 5 October 1982, where it was zoned 5(d) *Special Uses – (d) Proposed Road* (Southern Cross Drive Extension).

Application of the RE1 Public Recreation Zone would be consistent with the strategic direction of the Eastern City District Plan, particularly Planning Priorities 17 and 18, as the site forms part of the 'Botany Wetlands' BioMap Regional corridor identified in the Government Architect's Office publication *'Sydney Green Grid – Spatial Framework and Project Opportunities: Central District'*. Page 123 highlights the ecological status of the site, while Page 131 of the document identifies realisation of this corridor as a "Priority Project". Pages 133 and 139 of the *Sydney Green Grid* document identify the site as "Existing Open Space", highlighting the strategic intent for achieving the Green Grid by including the site under this status.

Further to the objection from TfNSW about the site not being surplus land, it is noted that *State Environmental Planning Policy (Infrastructure) 2007* would permit, without consent, a number of uses on the subject site if it were to be zoned RE1 Public Recreation, including:

- outdoor recreation areas and facilities
- landscape structures and features

- amenities such as toilets/ change rooms
- food preparation and related facilities for people using the reserve
- maintenance depots
- cycleways and pathways

As such, no changes are proposed to be made to the draft Bayside LEP in response to this submission.

Post-Exhibition Amendments

A number of minor amendments are proposed to the draft Bayside LEP either in response to submissions received, or to correct errors within the exhibited document. Additions are represented by **blue** font, and deletions are represented in **red** font with strikethrough.

Issue	Amendment	Amended documents
<u>Aims of the LEP</u> Heritage NSW has suggested that Clause 1.2(a) of the Aims of the Plans be expanded to include built and Aboriginal cultural heritage.	Clause 1.2 (a) <i>to protect, conserve and enhance</i> Aboriginal cultural heritage <i>and the environmental, cultural, scenic, built and landscape heritage of Bayside.</i>	- Appendix A – Written Instrument - Appendix D – LEP Comparison Table
<u>Permissible Uses in the RE1 zone</u> - ‘Registered clubs’, ‘Restaurants or cafes’, ‘Take-away food & drink premises’ have been left in Appendix D (LEP comparison table) in error. - ‘Take away food and drink premises’ has been left in Appendix A (written instrument) in error. - However, Appendix E and F (Land Use comparison and Land Use matrix) both highlight that these uses are not permitted in the RE1 zone. - Both Appendix A and D are to be amended to address this error.	Written Instrument: Zone RE1 Public recreation 1 Objectives of zone • To enable land to be used for public open space or recreational purposes. • To provide a range of recreational settings and activities and compatible land uses. • To protect and enhance the natural environment for recreational purposes. 2 Permitted without consent Environmental protection works; Flood mitigation works 3 Permitted with consent Aquaculture; Boat launching ramps; Centre-based child care facilities; Community facilities; Emergency services facilities; Information and education facilities; Environmental facilities; Jetties; Kiosks; Recreation areas; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Respite day care centres; Roads; Signage; Take-away food & drink	- Appendix A – Written Instrument - Appendix D – LEP Comparison Table

	premises; Water supply systems. 4 Prohibited Any development not specified in item 2 or 3 LEP Comparison Table: 1 Objectives of zone • To enable land to be used for public open space or recreational purposes. • To provide a range of recreational settings and activities and compatible land uses. • To protect and enhance the natural environment for recreational purposes. 2 Permitted without consent Environmental protection works; Flood mitigation works 3 Permitted with consent Aquaculture; Boat launching ramps; Centre-based child care facilities; Community facilities; Emergency services facilities; Information and education facilities; Environmental facilities; Jetties; Kiosks; Recreation areas; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Registered clubs; Respite day care centres; Restaurants or cafes; Roads; Signage; Take-away food & drink premises; Water supply systems. 4 Prohibited Any development not specified in item 2 or 3	
<u>Bonus Provisions Clause</u> LAHC have requested that the wording of the clause be amended to remove the criteria and refer simply to the sites and the relevant bonus. This is considered appropriate, as Council has consulted the owners of R3 and R4 zoned land and identified a number of sites	Clause 4.4 (10) Despite subclause (2), development consent may be granted to development for the purposes of multi dwelling housing and residential flat buildings on land identified as Area 4 on the Floor Space Ratio Map that results in a floor space ratio that does not exceed 1.65:1 if:	- Appendix A – Written Instrument - Appendix D – LEP Comparison Table

which have demonstrated, through submission of concept designs (refer to Attachment 1 - Appendix H), their ability to be developed without unreasonably impacting on the owners of adjoining land utilising the bonus provisions. As such, it is considered unnecessary to continue to require these sites the meet the specific criteria currently identified in the clause.	(a) the site area is equal to or greater than 2,000 square metres, and (b) the site area is land identified on the Acid Sulfate Soils Map, and (c) the consent authority considers that the development is, or is likely to be, adversely affected by any of the following: (i) contamination, (ii) noise (including aircraft, rail or road noise), and (d) the consent authority is satisfied that: (i) the development will be compatible with the desired future character in terms of building bulk and scale, and (ii) the development will contribute to the amenity of the surrounding locality, and (iii) any consolidation of lots for the purposes of this clause is not likely to result in adjoining lots that cannot be developed in accordance with this Plan.	
<u>Design Excellence Clause</u> Clause - 6.12 (2)(b) refers to incorrect clauses.	6.12 Design Excellence (1) The objective of this clause is to deliver the highest standard of architectural, urban and landscape design. (2) This clause applies to the following development— (a) development involving the erection of a new building or external alterations to an existing building within the Arncliffe Precinct or the Banksia Precinct, (a) development involving the erection of a new building or external alterations to an existing building on land bounded by a heavy black line on the Design Excellence Map, (b) development that is the subject of a development application that relies on clause 4.3 (2A) (3) (a), (f), (g), (h), (i) or (k).	- Appendix A – Written Instrument - Appendix D – LEP Comparison Table
<u>Mapping Errors:</u>	The following maps have been	- Appendix B -

- FSR and HOB: Lot 7 DP241650; and Lot 9 DP241650 (LAHC site). - HOB: Incorrect P1, P2 and P3 value on map.	updated and corrected: - FSR_011 - HOB_004 - HOB_005 - HOB_006 - HOB_007 - HOB_011	Maps
<u>Home-base child care:</u> - Appendix E – Land Use Justification Matrix incorrectly refers to the ‘Exempt and Complying’ SEPP rather than the ‘Education’ SEPP.	“Home-based childcare is an appropriate use and is consistent with the objectives of the R2 Low Density Residential zone. Permitting the use without consent is consistent with the Exempt and Complying Codes Educational Establishments and Child Care Facilities SEPP, where homebased childcares are exempt development.”	- Appendix E – Land Use Justification
Clause 6.7 - Riparian Land The current wetlands and riparian clauses of the Rockdale and Botany LEP sought to achieve similar objectives in the draft Bayside LEP, so both were merged to create the proposed Clause 6.7 Riparian land, wetlands and waterways. This was done to reduce the complexity of the LEP, making it more legible. Furthermore, Council reduced the area that is affected by the riparian component of Clause 6.7. Previously, it applied to all properties within 40 metres of a watercourse, however, now the distance it applies to is dependent on the importance of the waterway, with the maximum distance that it can apply being 40 metres. Council also mapped the area that is affected by the clause, as previously the clause made reference to all land that is within 40 metres of the top of the bank of each watercourse, without mapping the land. These changes were highlighted at the Councillor briefing 2 October 2019.	Clause 6.7 (2) (2) This clause applies to: (a) Land identified as ‘Riparian Land’ on the Riparian Lands Map; (b) Land identified as ‘Waterway’ on the Waterways Map; (c) Land identified as ‘Wetlands’ on the Wetlands Map. (2) This clause applies to: (a) Land identified as ‘Waterway’ on the Waterways Map. (b) Land identified as ‘Wetlands’ on the Wetlands Map. (c) Applies to land within: 10 metres of streams mapped as Stream Order 1 20 metres of streams mapped as Stream Order 2 30 metres of streams mapped as Stream Order 3 40 metres of streams mapped as Stream Order 4 On the Stream Order map The following maps have been updated and corrected, and are currently being completed by Council’s GIS Team, for submission to DPIE following Council’s resolution:	- Appendix A – Written Instrument - Appendix B – Maps - Appendix D – LEP Comparison Table - Appendix G – Explanatory Paper

The mapping was included in the public exhibition materials, and Council received no submissions in relation to the mapping. However, since exhibition Council has received legal advice that by mapping the area, complying development is now not permitted under the Exempt and Complying Code.

Development under the Low Rise Medium Density Code within the mapped riparian area clause would also not be allowed. This is because by mapping the area the land is now identified by an environmental planning instrument and complying development cannot be carried out on land identified as within a river front area or land with a similar description to a 'natural wetland' under the Excluded Codes. This would mean that applicants will need to submit a development application (rather than a Complying Development Certificate) for certain works on the land affected by the riparian clause, including development under the Low Rise Medium Density Code.

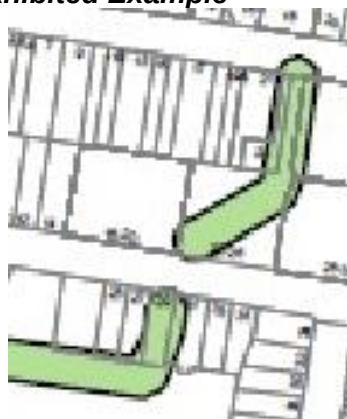
To reduce the possibility of complying development or low rise medium density code not being permitted on the land affected by the riparian clause it is recommended that the wording of the draft Bayside LEP section (2) of Clause 6.7 Riparian land, wetlands and waterways be amended.

Therefore individual properties would not be mapped, but the streams and their relevant order would be mapped. NSW Department of Planning, Industry and Environment have been consulted on this matter, and have not raised concerns with this approach.

- RIP_001
- RIP_002
- RIP_004
- RIP_005
- RIP_006
- RIP_007
- RIP_008
- RIP_009
- RIP_011
- RIP_012
- RIP_013

An example showing exhibited vs proposed mapping for this item is included below:

Exhibited Example



Amended Example



In addition, small changes have been made to existing mapping to rectify some minor errors. Further interrogation of the mapping by Council staff has identified there are a number of locations where this clause should not apply (and the land should not be mapped as riparian area), as the water course it applies to is actually underground for a certain distance in these locations. An example of this is Bardwell Valley Golf Course, where Bardwell Creek is piped underground for a distance of 250 metres through a section of the golf course. As the waterway is no longer at the surface of the land, Council has removed this land as being identified as a riparian area.		
<u>Clause 6.9 - Airspace operations</u> Sydney Airport raised in their submission the current drafting of clause 6.9 does not capture all of the airspace protection surfaces that comprise Sydney Airport's prescribed airspace. A more appropriately worded clause – which, Council notes is already used in other LEPs, including the Hurstville and Liverpool LEPs – is suggested.	Appendix A – Written Instrument: 6.9 Airspace Operations (1) The objectives of this clause are to: (a) provide for the effective and ongoing operation of the Sydney (Kingsford-Smith) Airport by ensuring that such operation is not compromised by proposed development that penetrates the Limitation or Operations Surface for that airport, (b) protect the community from undue risk from that operation. (2) If a development application is received and the consent authority is satisfied that the proposed development will penetrate the Obstacle Limitation Surface or the Procedures for Air Navigation Systems Operations Surface as shown on the Obstacle Limitation Surfaces Map or Procedures for Air Navigation Systems Operations Surface	- Appendix A – Written Instrument - Appendix C – Clause Justification Table - Appendix D – LEP Comparison Table - Appendix G – Explanatory Paper

	Map for Sydney (Kingsford-Smith) Airport, the consent authority must not grant development consent unless it has consulted with the relevant Commonwealth body about the application. (3) The consent authority may grant development consent for the development if the relevant Commonwealth body advises that the: (a) development will penetrate the Obstacle Limitation Surface or the Procedures for Air Navigation Systems Operations Surface but it has no objection to its construction, or (b) the development will not penetrate the Obstacle Limitation Surface or the Procedures for Air Navigation Systems Operations Surface. (4) The consent authority must not grant development consent for the development if the relevant Commonwealth body advises that the development will penetrate the Obstacle Limitation Surface or the Procedures for Air Navigation Systems Operations Surface and should not be constructed. (5) In this clause: <i>Limitation or Operations Surface</i> means the Obstacle Limitation Surface or the Procedures for Air Navigation Services Operations Surface as shown on the <i>Obstacle Limitation Surface Map</i> or the <i>Procedures for Air Navigation Services Operations Surface Map</i> for the Sydney (Kingsford-Smith) Airport. <i>relevant Commonwealth body</i> means the body that is responsible for development approvals for development that penetrates the Obstacle Limitation Surface or The Procedures for Air Navigation Systems Operations Surface for the Sydney (Kingsford-Smith)	
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	Airport under Commonwealth legislation. (1) The objective of this clause is to protect airspace around airports. (2) The consent authority must not grant development consent to development that is a controlled activity within the meaning of Division 4 of Part 12 of the <i>Airports Act 1996</i> of the Commonwealth unless the applicant has obtained approval for the controlled activity under regulations made for the purposes of that Division. Note. <i>Controlled activities</i> include the construction or alteration of buildings or other structures that causes an intrusion into prescribed airspace (being generally airspace around airports). Controlled activities cannot be carried out without an approval granted under regulations made for the purposes of Division 4 of Part 12 of the <i>Airports Act 1996</i> of the Commonwealth. Note: the final drafting of this clause will be subject to the discretion of Parliamentary Counsel.
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Next Step

Council does not have delegation from the Minister to make this LEP amendment. Following this meeting (if Council resolves to endorse finalisation of the LEP), the resolution of Council and a copy of the Planning Proposal and relevant supporting information will be sent to the Department of Planning, Industry and Environment (the DPIE) requesting that a draft Local Environmental Plan is prepared (subject to any amendments resolved by Council).

Financial Implications

Not applicable	☒
Included in existing approved budget	☐
Additional funds required	☐

Community Engagement

The Planning Proposal was exhibited in accordance with the requirements (including the conditions) of the Gateway Determination, for a period of 48 days in accordance with the provisions of the *EP&A Act 1979*, the *Environmental Planning & Assessment Regulation 2000* and the Bayside Community Participation Plan.

Public exhibition of the draft Planning Proposal included:

- Newspaper advertisement in local newspapers
- Exhibition notice on Council's website
- Community engagement project set up on Council's Have Your Say website
- Written notification to all landowners and residents in the LGA, this will include letters to landowners of properties affected by a proposed change in the planning controls
- Written notification to all Talking Bayside Members
- Written notification to anyone who submitted feedback as part of Council's Planning Our Future and Local Strategic Planning Statement consultation projects
- Letters to State and Commonwealth Government agencies identified in the Gateway Determination.

Attachments

The attachments listed below can be accessed in our [file share area](#)

Please note: the file size is 295Mb

- 1 Draft Planning Proposal Bayside Local Environmental Plan (under separate cover) ➡
- 2 Appendix A - Draft Bayside LEP Written Instrument (under separate cover) ➡
- 3 Appendix B - LEP Maps (Excluding Riparian Land Maps) (under separate cover) ➡
- 4 Appendix C - LEP Clauses Justification Table (under separate cover) ➡
- 5 Appendix D - LEP Comparison Table (under separate cover) ➡
- 6 Appendix E - Land Use Comparison & Justification Matrix (under separate cover) ➡
- 7 Appendix F - Land Use Table Matrix (under separate cover) ➡
- 8 Appendix G - LEP Explanatory Discussion Paper (under separate cover) ➡
- 9 Appendix H - Additional information Bonus Provisions (under separate cover) ➡
- 10 Gateway Determination (under separate cover) ➡
- 11 Response to Submissions (under separate cover) ➡
- 12 Response to Government Submissions (under separate cover) ➡