

Planning Services

Gateway Determination Report

LGA	Bayside
PPA	Bayside Council
NAME	Reclassification of land from 'Community land' to 'Operational land' (0 homes, 0 jobs)
NUMBER	PP 2019 BSIDE 003 00
LEP TO BE AMENDED	Rockdale Local Environmental Plan 2011
ADDRESS	9 Bidjigal Road, Arncliffe
DESCRIPTION	Lot 3 in DP1247416
RECEIVED	28 March 2018
FILE NO.	IRF19/2489
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

INTRODUCTION

Description of planning proposal

The proposal seeks to amend Rockdale Local Environmental Plan (LEP) 2011 to reclassify the land at Lot 3 DP1247416, 9 Bidjigal Road, Arncliffe (the subject site) from Community land to Operational land and discharge any interests.

The certificate of title notes that the subject site is a 'public reserve' (**Attachment I**). The developer of the Martin Avenue Site has entered into a Voluntary Planning Agreement (VPA) with Bayside Council. This VPA includes the dedication of land for and embellish of the Bonar Street Community Park Stage 2 and Central Square (2,105.2m²), a monetary contribution towards the embellishment of Bonar Street Community Park Stage 1 and the transfer of the subject land to the developer of the Martin Avenue site (**Figure 1**, page 2).

This planning proposal will enable the extinguishment of this interest and allow the transfer of the land to the owner of the adjoining Martin Avenue Site. The planning proposal does not propose to rezone any land, and thereby retains the current R4 High Density Residential zone, nor does it amend any LEP mapping.

This will facilitate the delivery of public open space by transferring the subject site through the VPA to the owners of the Martin Avenue Site. The subject land is a residual parcel of land from the construction and dedication of Bidjigal Road, which although having a public reserve notation, is not being used for community purposes with its dimensions and size making it impractical for use as public open space.

The reclassification of the land from Community to Operational land will allow the use of this land to be consistent with this zoning and the current use of the land for residential purposes.

Site description

This Planning Proposal relates to Lot 3 DP 1247416, 9 Bidjigal Road, Arncliffe. The land has an irregular shape and an area of 514.1m². It has a 90.47m frontage to the newly created Bidjigal Road and a narrow frontage of 4.5m to Martin Avenue.

The land is owned by Bayside Council and is classified as Community land. As shown on the certificate of title, the land is a 'public reserve' as defined in the Local Government Act 1993 (LG Act).

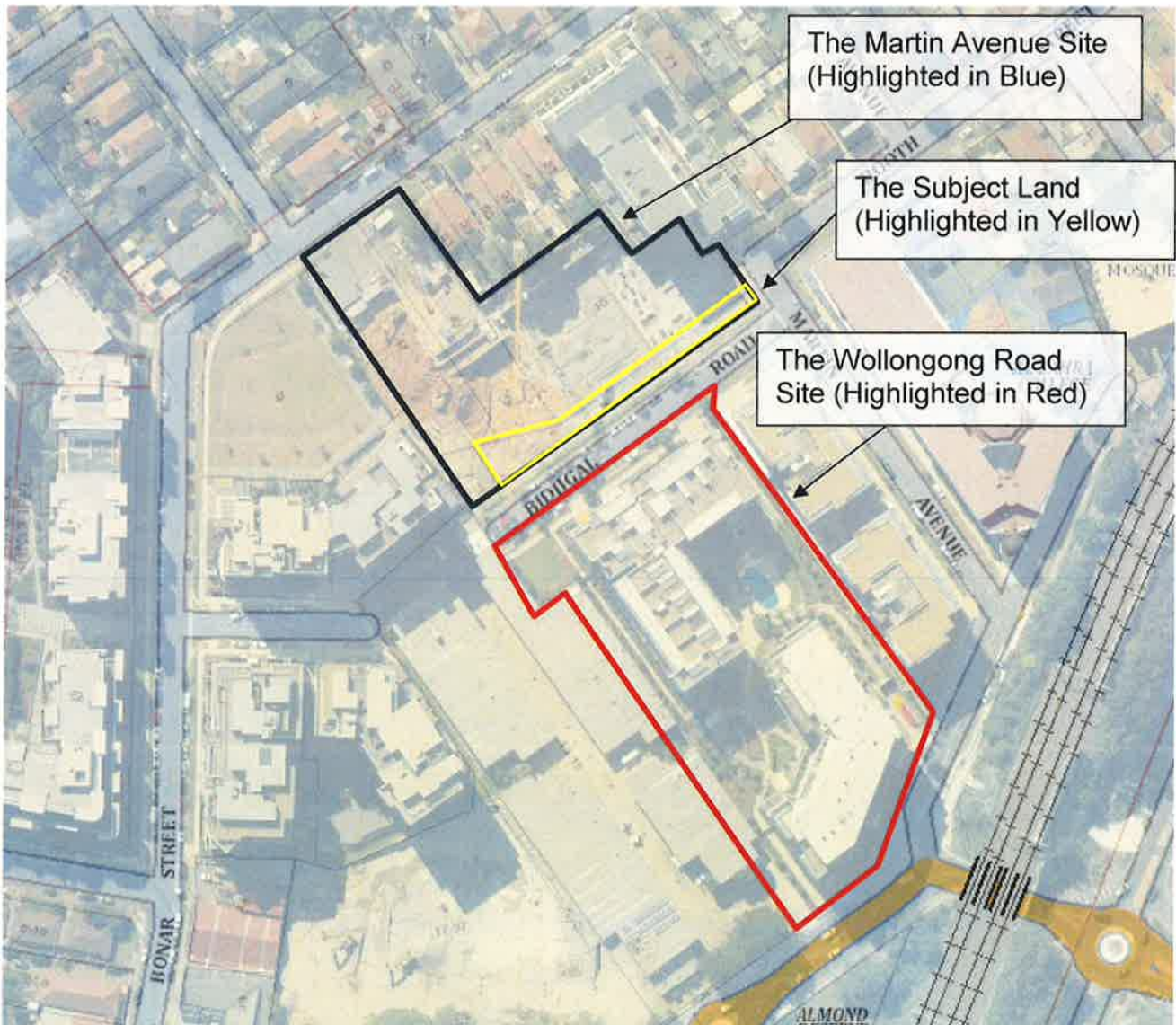


Figure 1 – Aerial photo of the subject land (Source: Sixmaps).

Development consent was granted (DA2015/421) by the NSW Land & Environment Court (L&EC) on 15 June 2016 on the Martin Avenue Site for the construction of a part 7 and part 9 storey residential flat building comprising 149 residential units, community park, public domain works and consolidation of 5 existing lots and subdivision into 6 lots.

The approved plan of subdivision sought to subdivide the Martin Avenue Site to align with the zone boundaries. This included nominating part of the site for acquisition by Council for a public road, being proposed Lot 3 on the approved subdivision plan (**Figure 2**, page 3). This lot of land has since been dedicated to Council for the purposes of a public road as part of the registration of Deposited Plan 1247416.

However, the residential development was approved over the subject site of this planning proposal, as part of the consent by the L&EC (**Figure 3**), despite being Community land. This land was intended by Council to have been reclassified prior to development approval, however this didn't occur.

Now, this land is not required by Council to facilitate the road as the Bidjigal Road provide direct access to this and other sites.

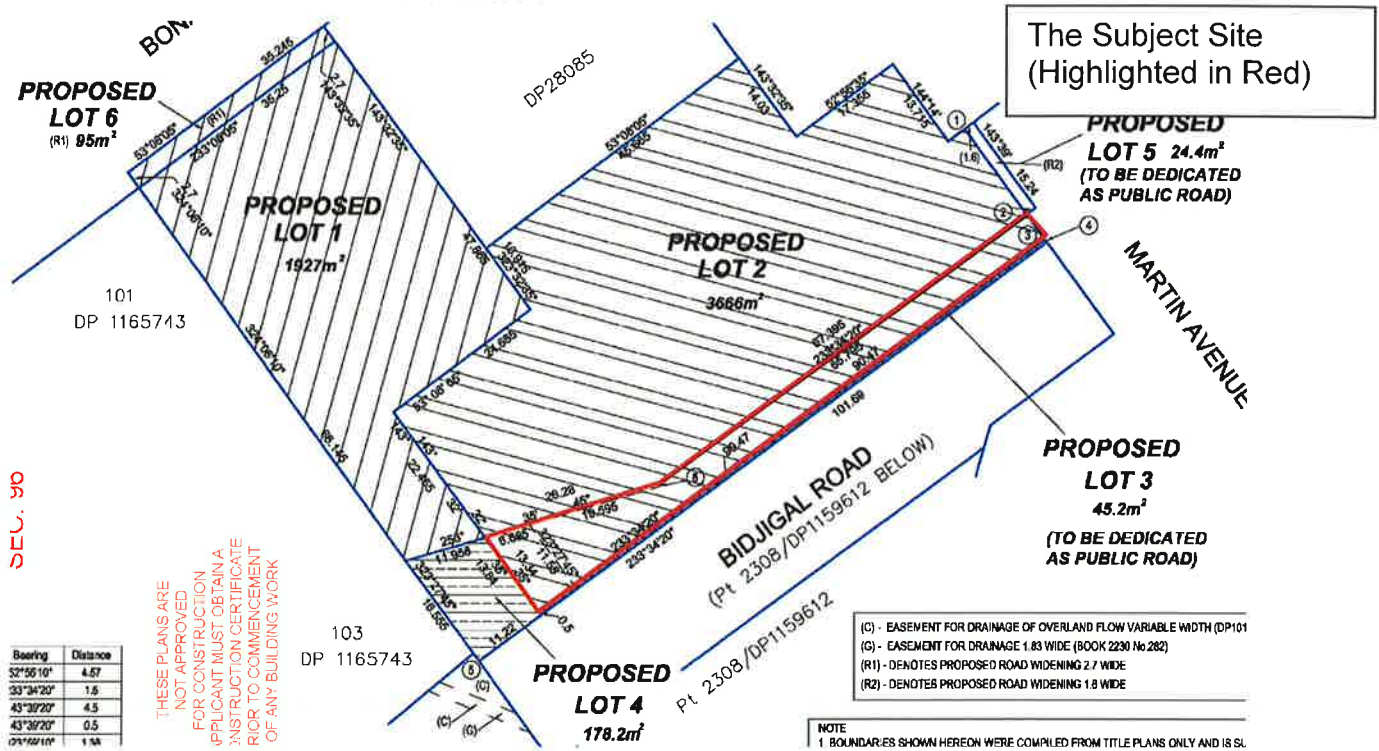


Figure 2 – Plan of Subdivision approved under DA2015/421/A (Source: Bayside Council)



Figure 3 –Site Plan approved under DA2015/421 (Source: Bayside Council)

Surrounding Area

The subject site is located within the Bonar Street Precinct which is identified in the Rockdale DCP 2011 (**Figure 4**).

This precinct is currently in transition from industrial land uses to high density residential.

The precinct is near the recently gazetted Arncliffe and Banksia Precincts, which form part of the Bayside West Precincts 2036 Plan (**Figure 4**).

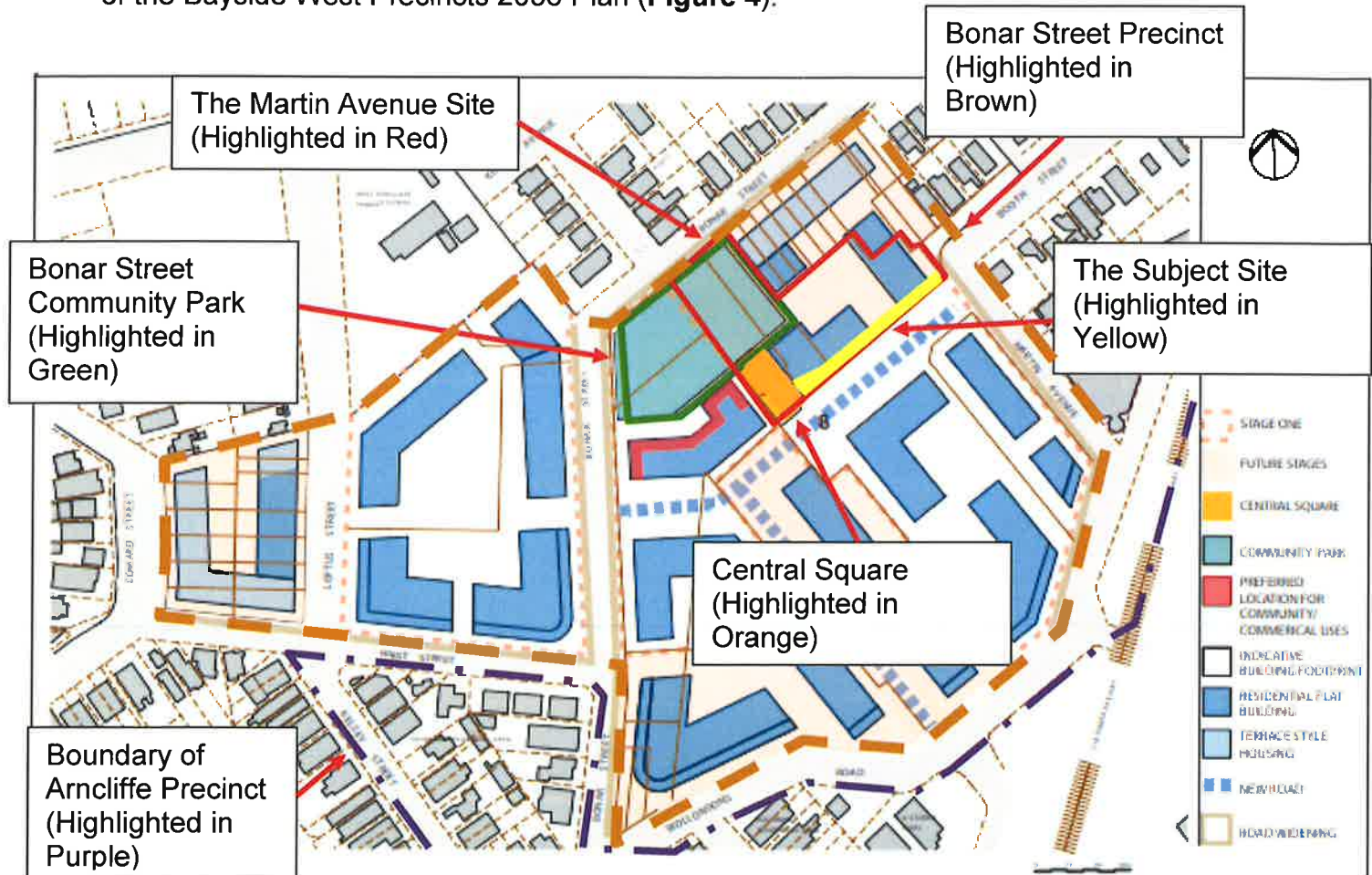


Figure 4: Bonar Street Precinct (Source: Rockdale DCP 2011)

Existing planning controls

The site is zoned R4 High Density Residential under the Rockdale LEP 2011 (**Figure 5**, page 5). No change to the zoning is proposed. The subject site has a maximum Floor Space Ratio of 2:1 and a maximum building height of 31m (**Figures 6 and 7**, pages 5 to 6).

The planning proposal states that land acquisition applies to the subject site of this planning proposal. Council has clarified that this is not the case with the land nominated for acquisition having already been dedicated to Council, for the purposes of a public road, as part of the registration of DP1247416. The Gateway has been conditioned to delete reference of land acquisition applying to the subject site of this planning proposal.

The subject site does not contain any heritage items and is not near any heritage items.

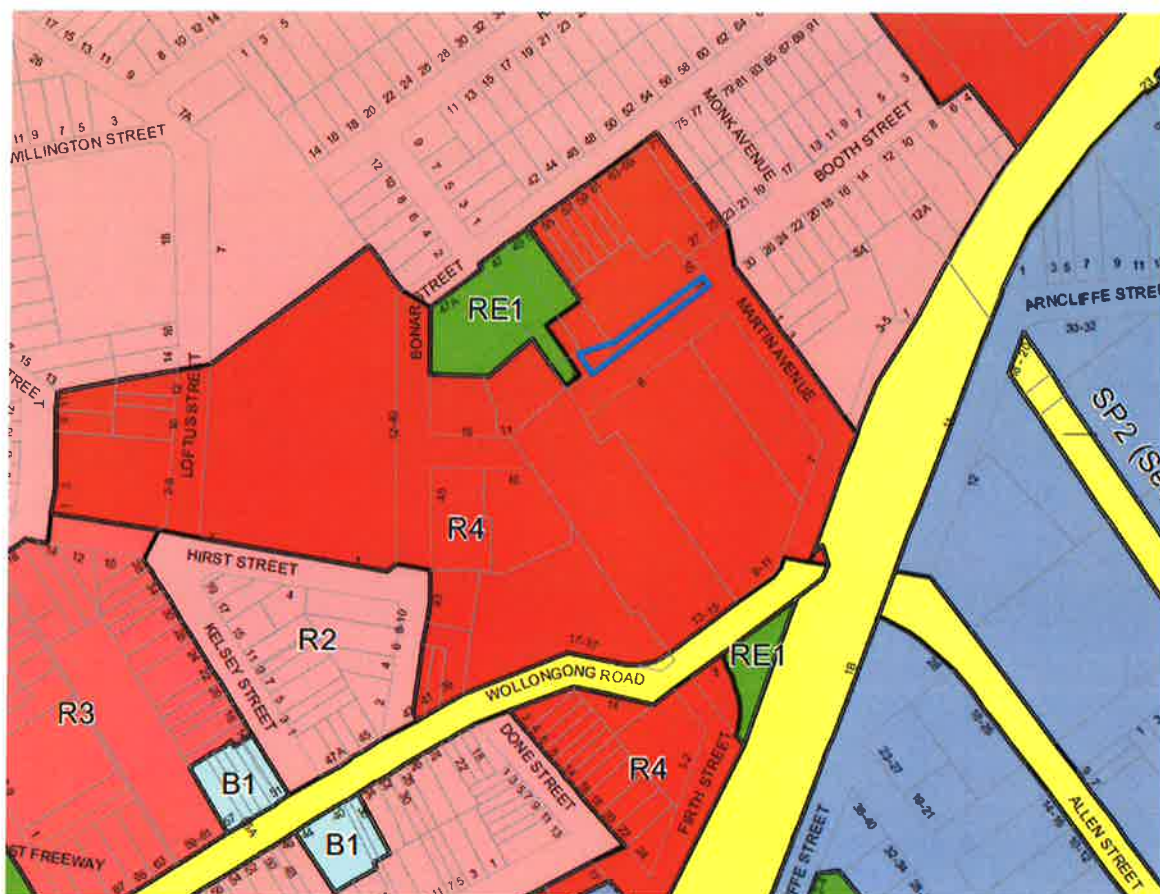


Figure 5: Land zoning map (Source: Rockdale LEP 2011)

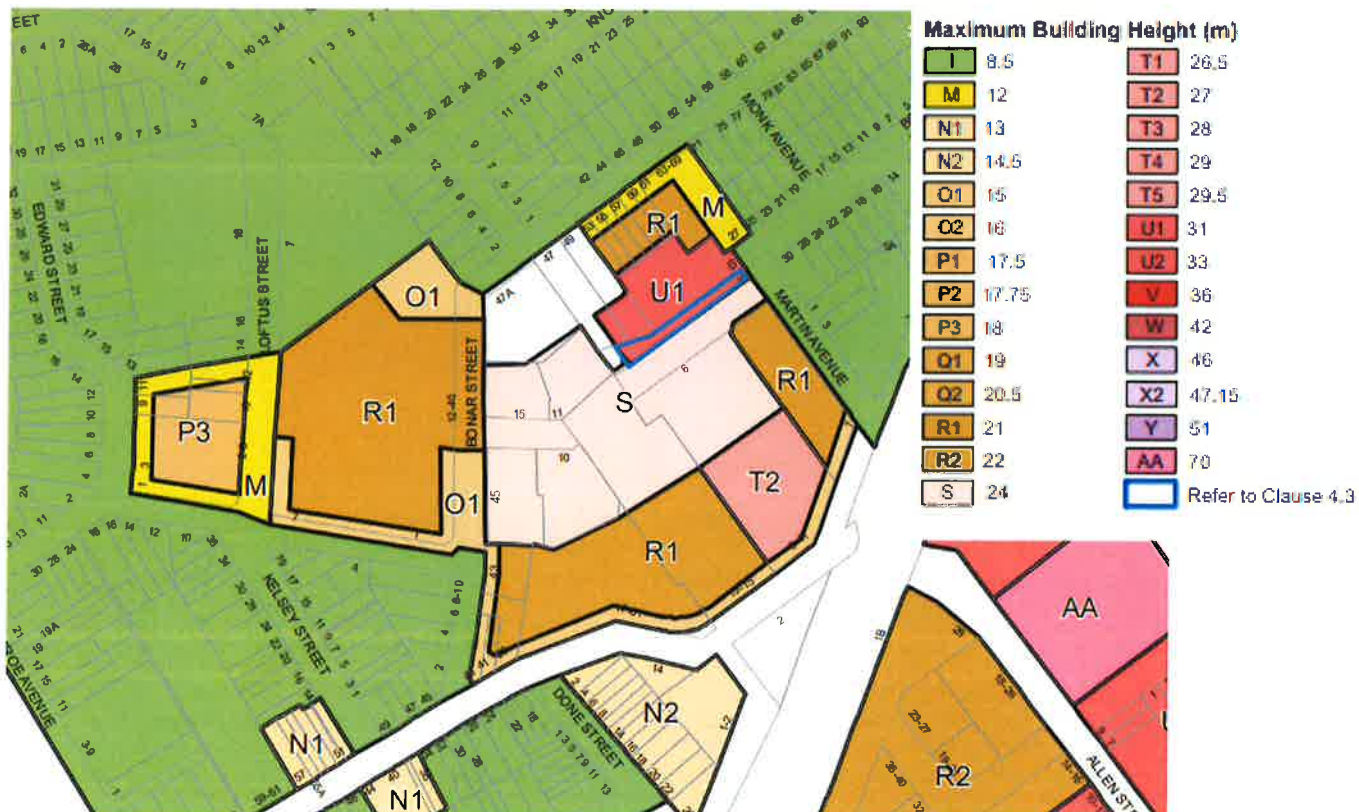


Figure 6: Height of building map (Source: Rockdale LEP 2011)

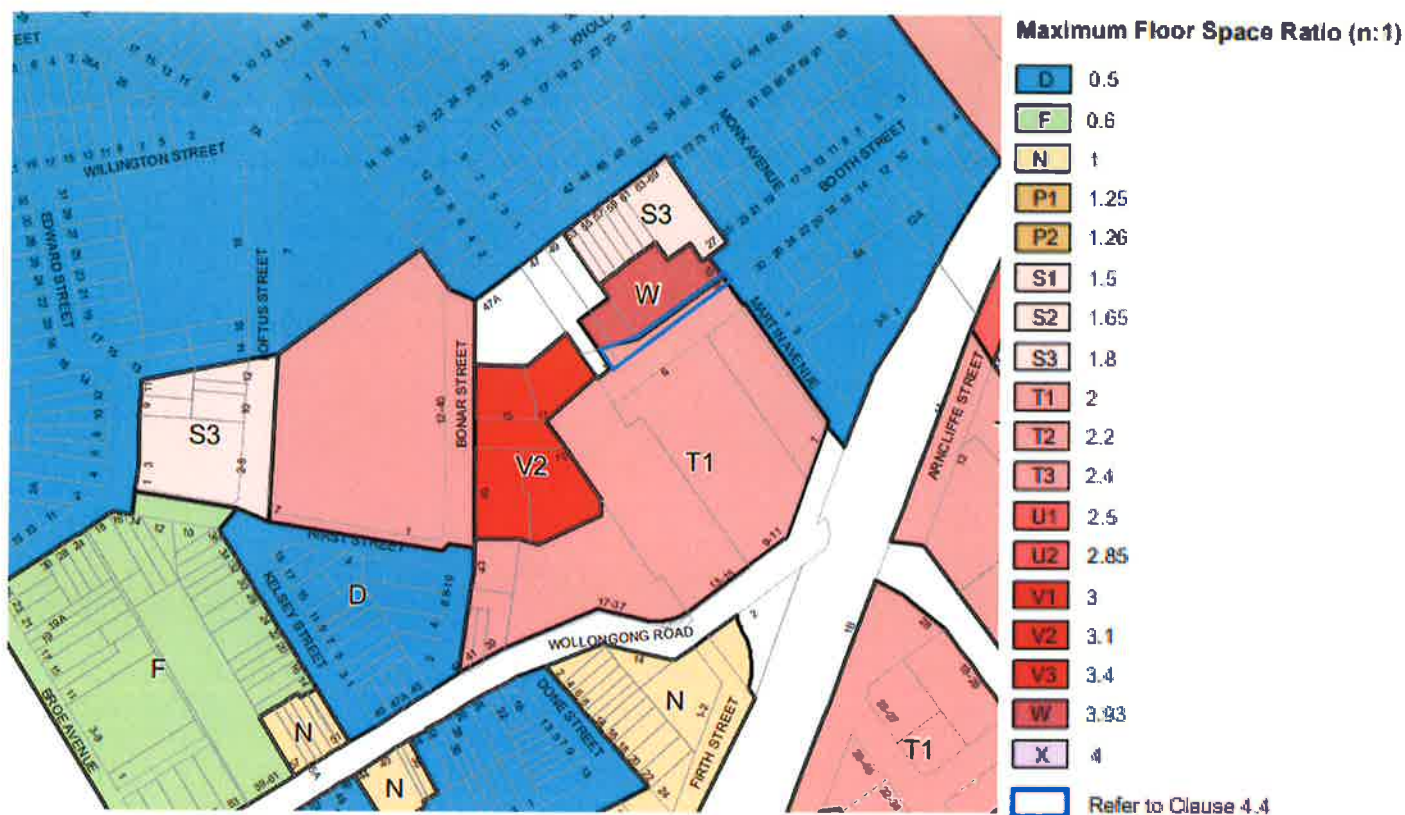


Figure 7: Floor space ratio map (Source: Rockdale LEP 2011)

Background

9-11 Wollongong Road, Arncliffe

The land was previously part of the site to the south that formed 9-11 Wollongong Road Site (**Figure 1** on page 2).

Most of the site at 9-11 Wollongong Road is zoned R4 High Density Residential with the northern portion reserved for a local road with an open space connection (the Central Square) to the future Bonar Street Park.

On 5 August 2009, Rockdale City Council granted development consent (DA2006/453) for a residential development at 9-11 Wollongong Road, with a new roadway (Bidjigal Road) to be dedicated and constructed by the developer.

Bidjigal Road was required to implement the Bonar Street Precinct Structure Plan as now described in the Rockdale DCP 2011 and the Wollie Creek and Bonar Street Precinct Public Domain Plan (May 2011) (the Bonar Street PDP).

Construction of the residential development at 9-11 Wollongong Road and Bidjigal Road is now complete.

The land the subject of this planning proposal is a residual parcel from the construction and dedication of Bidjigal Road.

Condition 68 of the consent for 9-11 Wollongong Road Site (DA2006/453) relates to the land subject of this planning proposal (referring to it as "the strip of land between the access road and adjoining properties the north-west"). It states:

68.In accordance with the applicant's offer and in the public interest of promoting and coordinating the orderly and economic use and development of land within the Bonar Street Precinct, the strip of land located between the new access road and the adjoining properties to the north-west is to be dedicated to Council at

no cost as a separate allotment for the purpose of allowing its future transfer at no cost and with no floor space ratio entitlements to the future developer of Development Site 7.

In accordance with Condition 68:

- At its Meeting of 7 November 2012, the Rockdale City Council considered a report and established the following resolution to classify the land:
 1. That the report titled Land Dedication Arising from The Development of 9-11 Wollongong Road, Arncliffe be received and noted.
 2. That Council classify 8 Martin Avenue, Arncliffe (Lot 2309 in DP 1159612) and 9 Bidjigal Road, Arncliffe (Lot 2310 in DP 1159612) as Operational land in accordance with Section 31 of the Local Government Act 1993.
- The land was dedicated to Rockdale City Council by the owner of 9-11 Wollongong Road Site by way of registration of Deposited Plan 1159612 on 13 August 2012;
- The certificate of title for land holds a notation on the second schedule, being 'the land within described is public reserve';
- On 4 February 2015, the Rockdale City Council resolved to transfer the land to the owner of the Martin Avenue Site; and
- Upon transfer, the land is to be burdened by a positive covenant that provides that the land has no floor space ratio (FSR) entitlement. The positive covenant may only be released or varied by Council.

Martin Avenue Site

The subject site of this planning proposal forms part of the Martin Avenue Site at 10 Martin Avenue, 47 Bonar Street, 49 Bonar Street and 9 Bidjigal Road, Arncliffe (**Figure 1** on page 2).

On 4 February 2015, Council resolved to support and exhibit a planning proposal prepared by the owner of the Martin Avenue Site to increase the building height to 31m and FSR to 3.93:1. A concurrent Voluntary Planning Agreement (VPA) was prepared which provided for the dedication and embellishment of the Bonar Street Park Stage 2 and Central Square (combined area of 2,105.2m²) and a monetary contribution towards the embellishment of the Bonar Street Park Stage 1. The VPA included the transfer of the land subject to this planning proposal from the Council to the owner of the Martin Avenue Site.

On 3 June 2015, Council resolved to endorse and exhibit the Martin Avenue Site VPA, with the planning proposal.

On 24 July 2015, Gateway determination for the Martin Avenue Site planning proposal issued. The planning proposal was exhibited from 26 November 2015 until 13 January 2016.

On 3 February 2016, following completion of the required community and public authority consultation, Council resolved to adopt the Martin Avenue Site planning proposal and enter into the VPA.

On 10 June 2016, the Martin Avenue Site planning proposal was made with the height of building increased to 31m and the FSR increased to 3.93:1.

On 15 June 2016, Development consent was granted on the subject land by the NSW Land & Environment Court for the construction of a part 7 and part 9 storey residential flat building comprising 149 residential units, community park, public domain works and consolidation of 5 existing lots and subdivision into 6 lots.

On 20 June 2016, Council and the owner of the Martin Avenue Site entered into a deed of agreement to transfer the subject planning proposal land. The deed contained conditions to be fulfilled prior to transfer including subdivision of the Council lots to align the physical boundary with the zoning boundary (complete), the registration of a no FSR covenant on the title (prepared) and the removal of the public reserve notation from the title.

On 8 November 2018, Deposited Plan 1247416 is registered. This is the current plan for the subject site of this planning proposal, which is Lot 3 DP 1247416.

Summary of recommendation

It is recommended that the proposal proceed subject to conditions because:

- it is consistent with the Greater Sydney Region Plan, the Eastern City District Plan and the relevant section 9.1 Ministerial Directions and state environmental planning policies;
- the subject land is a residual parcel of land from the construction and dedication of Bidjigal Road, which though it has a public reserve notation, the land is not being used for community purposes and its dimensions and size make it impractical for use as public open space;
- The subject land is zoned R4 High Density Residential and the reclassification of the land to Operational will allow the use of this land to be consistent with this zoning;
- facilitates the delivery of public open space by transferring land to Council from the Martin Avenue Site land owners, through a VPA, for the delivery of Bonar Street Community Park and Central Square; and
- it would have minimal environmental, social and economic impacts.

PROPOSAL

Objectives or intended outcomes

The statement of objectives accurately describes the intent of the planning proposal.

The planning proposal seeks to reclassify the land from Community land to Operational land and which will allow for the removal of the Public Reserve notation from the land title.

The planning proposal will allow Council to sell, exchange, or otherwise deal with the subject site.

The reclassification of the subject site to Operational land will enable this land to be transferred to the owner of the adjoining Martin Avenue Site to provide a street frontage for the high-density residential development which is currently under construction.

Explanation of provisions

This planning proposal seeks to amend Schedule 4 - Classification and reclassification of public land in the Rockdale LEP 2011 by inserting the following at the end of Part 2 - Land classified, or reclassified, as operational land – interests changed.

The planning proposal includes the following wording that is proposed to be inserted:

Part 2 Land classified, or reclassified, as operational land—interests changed

Column 1	Column 2	Column 3
Locality	Description	Any trusts etc not discharged
9 Bidjigal Road, Arncliffe	Lot 3 in DP 1247416	Nil

The explanation of provisions is consistent with the objectives and intended outcomes of the planning proposal and as such is satisfactory for community consultation.

Mapping

No amendments are required or proposed to the existing Rockdale LEP 2011 mapping to facilitate the reclassification of land from Community land to Operational land.

NEED FOR THE PLANNING PROPOSAL

The planning proposal submitted by Council considered whether the planning proposal was the result of any strategic study or report and whether a planning proposal was the best means of achieving the stated outcome.

Is the planning proposal a result of any strategic study or report?

The planning proposal is the result of the following Council resolution and in response to the development control plan and public domain plan:

- Council resolved at its Meeting of 7 November 2012 to classify the land Operational land; and
- The Bonar Street Precinct Structure Plan is now Part 7.2 of the Rockdale DCP 2011 and Bonar Street Public Domain Plan. These plans illustrate the indicative concept plan for the Bonar Street Community Park and Central Square. This planning proposal, to reclassify the subject land, will facilitate the delivery of these public open spaces.

Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Depending on the circumstances, land can be classified or reclassified through either:

- a resolution of Council under ss.31, 32, or 33 of the Local Government Act 1993 (LG Act) under s.27(2) of the LG Act, or
- an LEP under the Environmental Planning and Assessment Act 1979 under s.27(1) of the LG Act.

Reclassification of land through an LEP is the mechanism for Council to remove the public reserve status applying to land, as well as any interests affecting all or part of the public land.

Council is not able to develop, sell, exchange, or dispose of the community land under the provisions of the LG Act. Amending Rockdale LEP 2011 is the only means of achieving the objectives of the planning proposal and is therefore considered appropriate.

STRATEGIC ASSESSMENT

State

Greater Sydney Region Plan

In March 2018, the Greater Sydney Commission released *Greater Sydney Region Plan*, which aims to coordinate and manage Sydney's growth. The plan contains objectives for the region over the next 40 years and informs the actions and directions of the district plans.

The Greater Sydney Region Plan sets out four goals:

1. Infrastructure and collaboration: securing 'a city supported by infrastructure' and 'a collaborative city';
2. Liveability: achieving 'a city for people', 'housing the city' and 'a city of green places';
3. Productivity: creating 'a well-connected city' and 'jobs and skills for the city'; and
4. Sustainability: delivering 'a city in its landscape', 'an efficient city' and 'a resilient city'.

To achieve these goals and directions, the plan proposes 40 objectives, with 15 associated actions. Objectives relevant to this planning proposal include:

- Objective 1: Infrastructure supports the three cities;
- Objective 5: City of great places;
- Objective 12: Great places that bring people together;
- Objective 30: Urban tree canopy cover is increased; and
- Objective 31: Public open space is accessible, protected and enhanced.

The planning proposal is consistent with the above objectives as it would:

- allow the transfer of a residual parcel of land, which despite having a public reserve notation is not being used for community purposes and its dimensions and size make it impractical for use as public open space, will facilitate the delivery of public open space through a VPA; and
- facilitate the occupation of an approved residential flat building development by allowing the transfer of a residual parcel of land through its reclassification from Community land to Operational land.

District

Eastern City District Plan

The *Eastern City District Plan*, released in March 2018, identifies 22 planning priorities and associated actions that are important to achieving a liveable, productive and sustainable future for the district, including the alignment of infrastructure with growth.

This planning proposal is consistent with the following planning priorities of the plan:

- Planning Priority E1: Planning for a city supported by infrastructure;
- Planning Priority E17: Increasing urban tree canopy cover and delivering Green Grid connections;
- Planning Priority E18: Delivering high quality open space;

This planning proposal is consistent with the relevant objectives in the district plan as it would:

- allow the transfer of a residual parcel of land, which despite having a public reserve notation is not being used for community purposes and its dimensions and size make it impractical for use as public open space, will facilitate the delivery of public open space through a VPA; and
- facilitate the occupation of an approved residential flat building development by allowing the transfer of a residual parcel of land through its reclassification from Community land to Operational land.

Local

The planning proposal is consistent with Bayside Council's Community Strategic Plan 2030 as it will:

- facilitate the delivery of Bonar Street Community Park which will provide for the recreational needs of the community and deliver public open space for the Bonar Street Precinct;
- facilitate healthy and active lifestyles with a place for people to meet and socialise;
- the planning proposal will facilitate the delivery of embellished public open space;
- provide improved pedestrian linkages through Central Square to Bidjigal Road from Bonar Street Community Park; and
- reclassification of the subject land will facilitate occupation of the approved residential flat building, providing housing for the community.

Section 9.1 Ministerial Directions

The proposal is consistent with the following section 9.1 Ministerial Directions.

3.1 Residential Zones

The subject land is zoned R4 High Density Residential and the reclassification of the land to Operational will allow the use of this land as is consistent with this zoning.

4.1 Acid Sulfate Soils

The site is identified as having Class 5 Acid Sulfate Soils. The subject land is currently zoned R4 High Density Residential. The reclassification of the land to Operational will allow the use of this land to be consistent with this zoning.

6.2 Reserving Land for Public Purposes

The planning proposal is consistent with this Direction. The Bayside Council has resolved to support the planning proposal to reclassify the land to Operational. Furthermore, when the subject land was dedicated to Rockdale Council, it was intended to be transferred to the future developer of the lots to the north west, now known as the Martin Street Site. Despite Rockdale Council's resolution the title was registered as Lot 2309 in DP1159612, being for a public reserve.

The planning proposal does not also seek to alter or rezone the subject land nor amend any land nominated for acquisition.

6.3 Site Specific Provisions

The subject land is zoned R4 High Density Residential. The planning proposal seeks to reclassify the subject land to Operational land. This will allow the use of the land as is consistent with this zoning. No additional amendments to the LEP are sought under this proposal.

State environmental planning policies

SEPP No. 55 – Remediation of Land

Clause 6 of SEPP 55 requires the planning authority to be satisfied that the land is suitable, or can be made suitable, for all the uses permissible in the zone. The site was deemed suitable for residential uses under DA-2015/421. A residential flat building is currently under construction on the subject land. As such, the subject land has been made suitable for its intended use.

SITE-SPECIFIC ASSESSMENT

Social

The planning proposal will have a positive social impact on the community. The developer of the Martin Avenue Site has entered into a Voluntary Planning Agreement with Bayside Council to dedicate land for and embellish of both Bonar Street Community Park Stage 2 and Central Square (2,105.2m²) along with making a monetary contribution towards the embellishment of Bonar Street Community Park Stage 1. This will help cater to the recreational needs of the community.

Environmental

Street frontage

The approved residential flat building development at the Martin Street Site obtains its public road access through the subject land to Bidjigal Road (**Figure 8**).

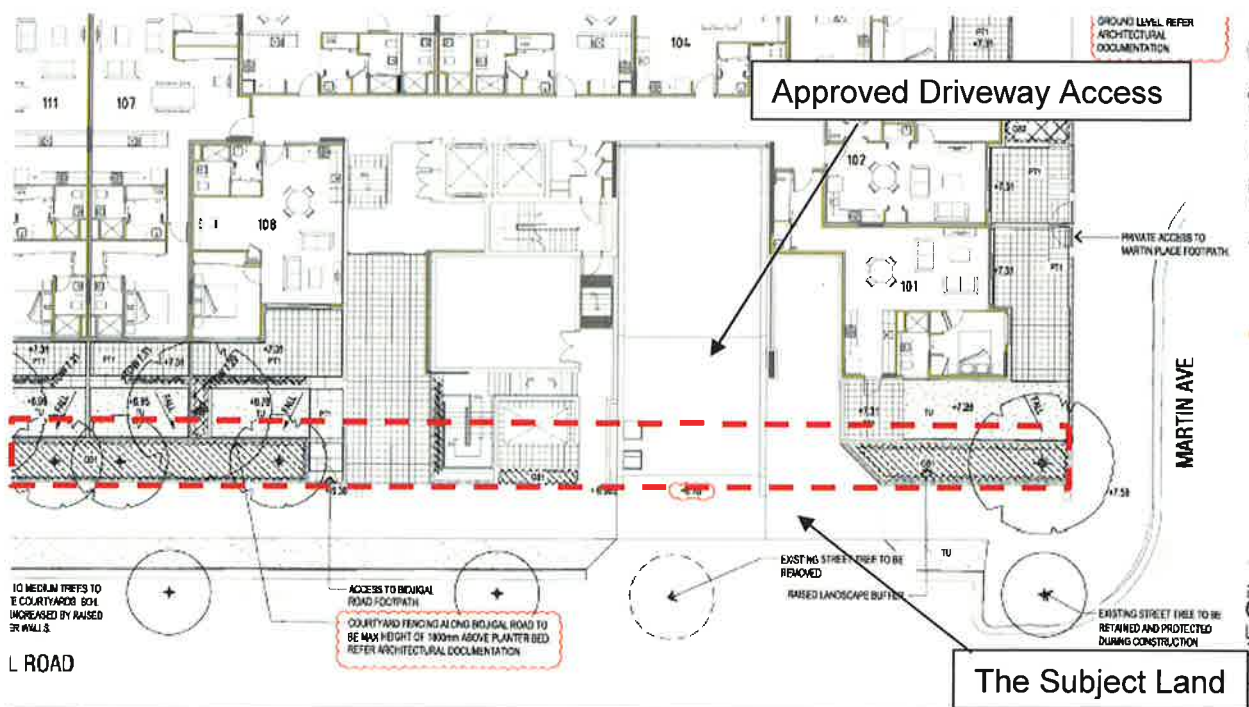


Figure 8: Site plan (Source: Bayside Council)

The reclassification of this land will enable the subject development, as approved, to obtain public road access and road frontage to Bidjigal Road.

Economic

The planning proposal will not result in any significant economic impacts. The proposal will facilitate delivery of embellished public open space and an approved residential flat building by a land swap between Council and the Martin Street Site developer.

This will promote the use of the land in accordance with Council's Bonar Street Precinct Plan and DA consent DA2015/421.

CONSULTATION

Community

The planning proposal seeks to reclassify land from Community land to Operational land, community consultation must be for a period of 28 days. Council has proposed a public exhibition period of 28 days and a condition has been included in the Gateway determination to this effect.

As per the requirements of LEP Practice Note PN 16-001 *Classification and reclassification of public land through a local environmental plan*, the practice note is to be placed on exhibition alongside the planning proposal.

Agencies

The planning proposal includes a list of agencies to consult during public exhibition. These are as follows:

- Transport for NSW;
- Roads and Maritime Services;
- Energy Australia (Integral Energy);
- Sydney Water; and
- NSW Office of Strategic Lands.

Consultation with these agencies during public exhibition is not necessary as the planning proposal only seeks to reclassify a small parcel of land currently subject to the construction of the approved residential flat development. Council has confirmed that no agencies have interests in the subject land. The Gateway has been conditioned to remove reference of consultation with these various agencies.

TIME FRAME

Council anticipates a 6 month timeframe to make the local environment plan. The Department considers a 12 month time frame to be more appropriate as the process includes reclassification of land and the need to have a public hearing.

A condition has been included in the Gateway determination to amend the project timeline accordingly. This does not preclude the making of the LEP sooner.

DELEGATION

Council has requested delegation to make the plan as planning proposal authority. However, the planning proposal involves the reclassification of land from Community land to Operational land and consequently the Governor's approval is required to remove the public reserve status under Section 30 of the LG Act. Consequently, the Department cannot issue an authorisation for Council to exercise delegation to make this plan.

CONCLUSION

It is recommended that the proposal proceed subject to conditions because:

- it is consistent with the Greater Sydney Region Plan, the Eastern City District Plan and the relevant section 9.1 Ministerial Directions and state environmental planning policies;
- the subject land is a residual parcel of land from the construction and dedication of Bidjigal Road, which though it has a public reserve notation, the land is not being

used for community purposes and its dimensions and size make it impractical for use as public open space;

- The subject land is zoned R4 High Density Residential and the reclassification of the land to Operational will allow the use of this land to be consistent with this zoning;
- facilitates the delivery of public open space by transferring land to Council from the Martin Avenue Site land owners, through a VPA, for the delivery of Bonar Street Community Park and Central Square; and
- it would have minimal environmental, social and economic impacts.

RECOMMENDATION

It is recommended that the Director Sydney Region East, as delegate of the Minister for Planning and Public Spaces, determine that the planning proposal should proceed subject to the following conditions:

1. The planning proposal is to be amended prior to community consultation as follows:
 - (a) remove references to consultation with various agencies; and
 - (b) remove reference to land acquisition applying to the subject site of this planning proposal.
2. Community consultation is required under 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 relevant planning 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 5.5.2 of *A guide to preparing local environmental plans* (Department of Planning and Environment 2016); and
 - (c) a copy of practice note PN 16-001 *Classification and reclassification of public land through a local environmental plan* is to be included in the public exhibition material.
3. Consultation with public authorities/organisations under section 3.34(2)(d) of the Environmental Planning and Assessment Act 1979 is not required for this planning proposal.
4. A public hearing is required to be held into this matter under Section 3.34 of the Environmental Planning and Assessment Act 1979 and Section 29 of the Local Government Act 1993. After the public exhibition period has ended, at least 21 days public notice is to be given before the hearing is held.
5. The time frame for completing the LEP is to be 12 months following the date of the Gateway determination.



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9/5/19

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