

Planning Services

Plan Finalisation Report

Local Government Area: Bayside Council

File Number: PP_2015_BOTAN_006_00 (15/15283)

1. NAME OF DRAFT PLAN

Botany Bay Local Environmental Plan 2013 Amendment No.6 (draft Plan).

2. SITE DESCRIPTION

The Planning Proposal applies to land at Henry Kendall Crescent, Mascot legally known as Lot 126A DP 21810.

3. PURPOSE OF PLAN

The draft Plan seeks to reclassify Council owned land zoned R2 Low Density Residential from 'community' to 'operational' at Lot 126A DP 21810, Henry Kendall Crescent, Mascot. The proposal does not amend the zone applying to the land.

4. STATE ELECTORATE AND LOCAL MEMBER

The site falls within the Heffron electoral district. The Hon. Ron Hoenig is the State Member for Heffron.

The Hon Matt Thistlewaite MP is the Federal Member for Kingsford Smith.

To the regional planning team's knowledge, neither MP has made any written representations regarding the proposal.

NSW Government Lobbyist Code of Conduct: There have been no meetings or communications with registered lobbyists with respect to this proposal.
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5. STATE ENVIRONMENTAL PLANNING POLICIES AND S117 DIRECTIONS

The draft LEP is not considered inconsistent with any SEPPs, deemed SEPPs or Section 117 Directions.

6. PUBLIC CONSULTATION

In accordance with the Gateway determination, public exhibition and consultation with agencies was undertaken by Council from 11 November 2015 to 8 December 2015.

Two (2) submissions were received from surrounding residents, in response to consultation requirements. One (1) of these submissions objected to the proposed reclassification and sale of the land. The residents raised a number of issues, which Council addressed. A summary of these issues and responses is below.

Issue Raised in Submission	Council's Response
The existing building line of 10 and 12 Henry Kendall Crescent, including of garages should remain and not be extended out to the new property boundary.	Developments at 10 and 12 Henry Kendall Crescent must comply with the setback requirements contained in the <i>Botany Bay Development Control Plan (BBDCP) 2013</i> . The setback will be taken from the new property boundary.
Any new fences erected along the new property boundary of 10 and 12 Henry Kendall Crescent should not exceed a height of 85cm or (thereabouts).	Part 4A – Dwelling Houses of the <i>BBDCP 2013</i> discourages fences along residential frontages that are higher than 1 metre but may allow fences to be constructed to a maximum of 1.2 metres provided the top 600mm of the fence is 50% transparent or open style to allow for passive surveillance.
The Planning Proposal does not mention that 10 and 12 Henry Kendall Crescent are owned by one person who has expressed an interest in purchasing the subject site. The lots could be sold to a developer for the construction of townhouses or multi-dwelling structures which would be unsuitable on a congested and narrow street.	The subject properties are located in the R2 zone. Dwelling houses, attached dwellings and semi-detached dwellings would be permissible but only one dwelling is permitted per lot. The land would need to be subdivided to satisfy the requirements of the <i>BBDCP 2013</i>. The proposed subdivision must be consistent with the prevailing subdivision pattern. Any development application on the site will be subject to assessment. It must be noted that multi dwelling housing is only permissible in the R2 zone if it satisfies the provisions of Clause 6.11 (Residential flat buildings and multi dwelling housing in Zone R2) of the <i>BBLEP 2013</i>. Residential flat buildings and multi dwelling housing are only permitted in the R2 zone if the site was previously used for a non-residential purpose. Accordingly, residential flat buildings and multi dwelling housing are not permitted on the subject site.

7. PUBLIC HEARING

Upon conclusion of the public exhibition period, a public hearing was held. Verbal submissions received at the hearing raised the following issues:

- the loss of greenspace in the street which should be retained by limiting future building works to the current property boundary;
- the type of fencing permitted;
- transparency of the process, including publication of the sale price of the land should the sale proceed; and
- whether there are any underground services or utilities on the subject site.

Following the public hearing, the independent chair (Walsh Consulting) provided a report supporting the reclassification and recommended that,

“Overall I am satisfied with the current planning position when considering the merits of the land reclassification. That is, existing planning controls do seem to bring reasonable prospects for balancing future development and amenity impacts with development involving the subject area. At the same time, I believe that the subject area, as residentially-zoned

land, should be considered as having the potential to release quite significant relative value back to the community, given its strongly positive locational attributes."

The report also recommended consideration be given to whether any underground utilities or services affect the land, and if there will be any implications should the land be sold. Accordingly, Council obtained a copy of the *Dial Before You Dig* report which does not indicate the presence of any underground services.

8. POST EXHIBITION CHANGES

No amendments were made to the draft Plan following public exhibition.

9. MAPPING

There are no maps associated with this amendment.

10. GATEWAY EXTENSIONS

There have been no Gateway extensions requested or issued with regard to the draft Plan.

11. CONSULTATION WITH COUNCIL

Council was consulted on the terms of the draft instrument and supported the draft Plan being made (Tab C).

12. PARLIAMENTARY COUNSEL OPINION

On 12 January 2017, Parliamentary Counsel provided the final Opinion that the draft Plan could be legally made. This Opinion is provided at Tab PC.

13. GOVERNORS APPROVAL

As this is a non-delegated matter without any interests to be discharged, Governor's approval is not required to be sought.

14. ASSESSMENT

It is recommended the draft Plan is supported for the following reasons:

- it enables Council to dispose of and sell the site, which given its size, configuration and location, has no material benefit to Council or the community, as it is a relatively small open space site which appears as a narrow nature strip along the roadway with little recreational value;
- it enables Council to facilitate use of the land consistent with the R2 Low Density Residential zone applying to the land;
- the sale of the site will rescind Council's maintenance costs of the site; and
- the issues raised during exhibition and the public hearing were satisfactorily addressed.

14. RECOMMENDATION

It is recommended that the Minister's delegate determine to make the draft Plan based on the above assessment.

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