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Plan Finalisation Report – PP-2021-6099

Canada Bay Local Environmental Plan 2013
160 Burwood Road, Concord (Bushells Factory)

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Acknowledgment of Country

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

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1 Introduction

1.1 Overview

1.1.1 Name of draft LEP

Canada Bay Local Environmental Plan 2013 (Amendment No. 22).

1.1.2 Site Description

An overview of the site is provided in **Table 1**.

Table 1: Site Description

Site	The planning proposal (Attachment A) applies to land at 160 Burwood Road, Concord.
Lot/DP	Lot 5, DP 129325, Lot 2, DP 230294, Lots 398 and 399, DP 752023
Council	City of Canada Bay Council (Council)
LGA	Canada Bay

The site is located in Concord, on a peninsula between Exile Bay and Canada Bay. It has been used as a coffee manufacturing facility since the early 1960s and has a total area of approximately 3.9ha.

The north the site is bound by Zoeller Street and the Massey Park Golf Course. The east the site is bound by medium density housing and Exile Bay. Low density housing is located to the south across Burwood Road and to the west along Duke Avenue (see **Figure 1** and **Figure 2**).

The site is approximately 1.5km north-east of the Parramatta Road Corridor and the future Burwood North Metro Station. Burwood Station is located approximately 2.6km to the south-west.



Figure 1 - Site Context (Source: Planning Proposal)

Most of the site is occupied by the Bushells Factory. The main structure of the factory is the Central Roasting Hall, which is a multi-storey brick, glass and concrete building. It features a prominent 78m high chimney stack and a large sign with the Bushells 'B' logo on the eastern façade, and glazing on the northern and southern facade (see **Figure 3** and **Figure 4**). It has an existing roof height 46.6m AHD. For setting planning controls for the site, the Central Roasting Hall is located on what is known as Block 4 (see **Figure 5** below). The remainder of the site is occupied by an administrative building, hardstand car parking, landscaping, and a gatehouse entry on Burwood Road.



Figure 2 - Bushells Factory Site (Source: Six Maps)



Figure 3 - Bushells Factory (Source: Planning Proposal)



Figure 4 - Bushells Factory, viewed from Burwood Road (Source: Planning Proposal)

1.1.3 Purpose of Plan

The planning proposal seeks to amend the planning controls in the *Canada Bay Local Environmental Plan 2013* (Canada Bay LEP 2013) to facilitate the renewal of the Bushells Factory site at 160 Burwood Road, Concord.

The existing and proposed planning controls are outlined in **Table 2** below. For the purposes of setting maximum building heights and floor space ratios (FSR) the site has been split into Blocks 1-5 (see **Figure 5**).

Table 2: Current and Proposed Planning Controls

Planning Control	Current	Proposed
Land Use Zoning	E4 General Industrial	E1 Local Centre R3 Medium Density Residential RE1 Public Recreation.
Height of Buildings	12m	Block 1: 11m Block 2: 11m, 15m, 20m Block 3: 11m, 17m and 20m Block 4: 20m Block 5: 11m, 18m and 20m
Floor Space Ratio	1:1	Block 1: 1.1:1 Block 2: 1.3:1 Block 3: 1.8:1 Block 4: 1:1 (or 3:1 if the Central Roasting Hall is adaptively reused)* Block 5: 2.1 * A bonus FSR of 2:1 for Block 4 is available if the Central Roasting Hall is adaptively reused. To give effect to the FSR bonus, Block 4 is to be identified on the Floor Space Ratio Map (as 'Area 7'). The block-by-block FSRs equate to a maximum overall site FSR of 0:96:1, or 1.11:1 if the Central Roasting Hall is adaptively reused.
Part 6 Additional Local Provisions	N/A	A new site specific provision requiring that: <ul style="list-style-type: none"> a minimum of 7,500m² of non-residential gross floor area (GFA) (excluding car parks and hotel or motel accommodation) is provided, including a minimum of 3,000m² of GFA for light industry the upper and lower ground floors of the Central Roasting Hall be used wholly or partly for light industry the parts of buildings used for light industry have minimum floor to ceiling heights of 4.5m shops do not have more than 1,000m² of GFA. Introducing a 2:1 FSR bonus for Block 4 if the Central Roasting Hall is adaptively reused.

Planning Control	Current	Proposed
Affordable Housing Contribution Levy	5% of residential GFA.	10% of residential GFA. Update the reference to Council's Affordable Housing Contributions Scheme from 18 October 2022 to March 28 2023.
Foreshore Building Line	N/A	Introduce a foreshore building line on the Foreshore Building Line Map.
Land Reservation Acquisition	N/A	Identify the part of the site to be zoned RE1 Public Recreation as 'local open space' on the Land Reservation Acquisition Map. This land is to be dedicated to Council as part of the Planning Agreement.
Schedule 1 Additional Permitted Uses	N/A	Add a clause to permit (with consent) development for following purposes on the part of the site mapped on the Key Sites Map: <ul style="list-style-type: none"> • office premises • shops • restaurants and cafes.
Key Sites Map	N/A	Amend the Key Sites Map to identify the part of the site where the new additional permitted uses clause in Schedule 1 applies.
Schedule 5 Environmental Heritage	N/A	List the former Bushells Factory (including the Central Roasting Hall, chimney stack, eastern 'B' façade and landscape garden setting) as an item of local heritage significance in Schedule 5. Identify the site on the Heritage Map.

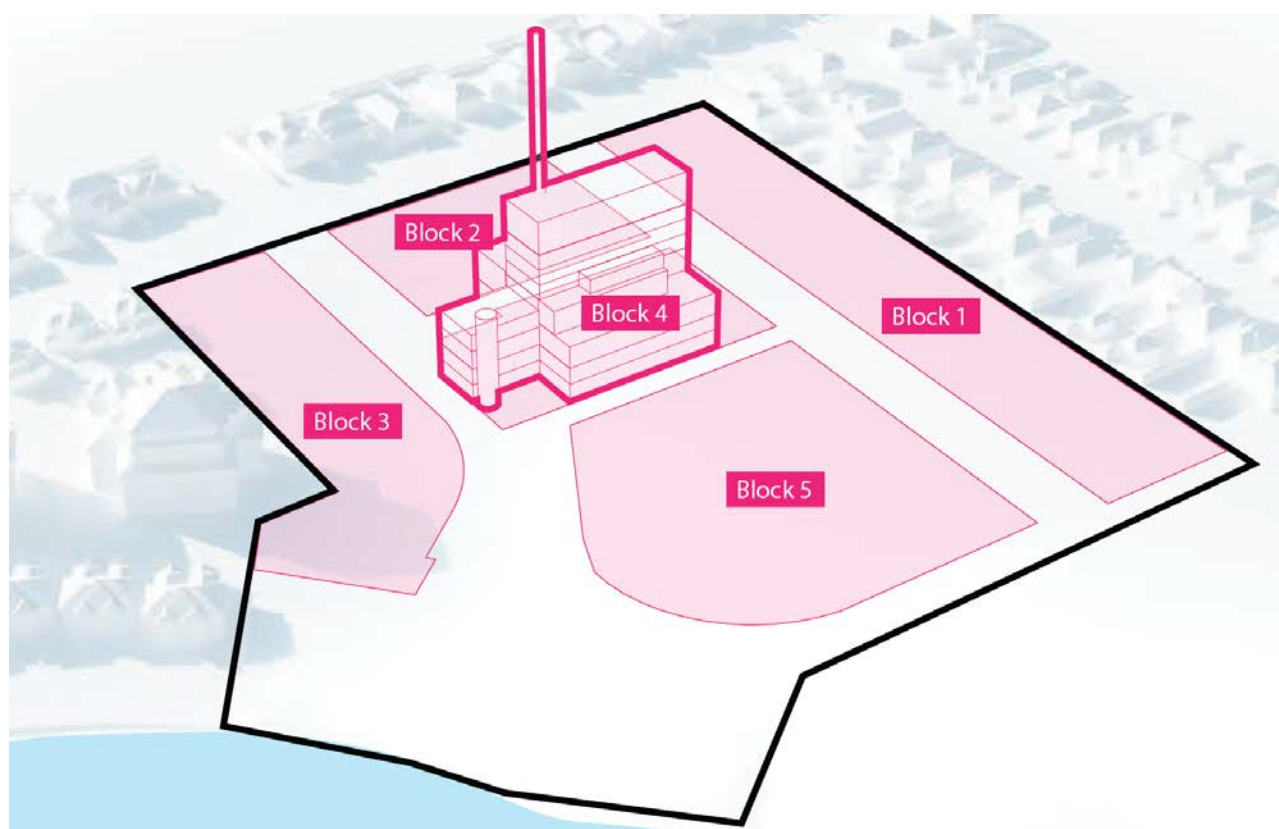


Figure 5 - Blocks 1-5 (Source: Planning Proposal)

Concept Development Scheme

A concept scheme was submitted with the planning proposal, which demonstrates the intended built form and public domain outcomes. It forms the basis of the site specific development control plan (DCP) that has been prepared. Key features of the concept scheme are:

- The adaptive reuse of the Bushells Factory's Central Roasting Hall for a mix of residential, retail and light industry.
- 7,500m² of non-residential uses, including a minimum of 3,000m² of light industry.
- Approximately 384 dwellings, spread across a mix of terraces, shop top housing, and residential flat buildings, ranging in height from 3 to 6 storeys.
- A new 5,900m² public park on the foreshore of Exile Bay.
- A street network that provides new publicly accessible spaces and links for pedestrians and cyclists to and from Exile Bay.
- An affordable housing contribution of 10% of residential GFA.

Development Control Plan

A draft site specific DCP has been prepared. It provides detailed planning controls to guide future development that must be considered during the preparation and assessment of any future development applications (DAs). The site specific DCP includes planning controls for:

- the design of the built form, including building heights, setbacks and massing
- overshadowing and privacy
- access for vehicles, pedestrians and cyclists
- heritage, including the adaptive reuse of the Central Roasting Hall
- sustainability measures
- public spaces and public access
- landscaping, deep soil, species selection, tree retention and canopy coverage
- non-residential uses, including the design of spaces to be used for light industry.

Planning Agreement

The proponent proposes to provide public benefits by entering into a Planning Agreement with Council for:

- Dedication of 5,900m² of land to Council as public open space on the foreshore of Exile Bay, subject to the renewal of the seawall and remediation of the land to the satisfaction of Council.
- Registration of an easement over the privately owned public domain (approximately 9,700m²) to allow public access.
- Embellishment of the public domain and public foreshore park.
- A monetary contribution to Council for the maintenance of the public foreshore park.

The privately owned public domain area and public foreshore park are shown in **Figure 6** below.

The draft Planning Agreement was publicly exhibited from 20 September to 28 October 2022. Council. A revised Planning Agreement was placed on public exhibition by Council on 9 June 2023 (until 10 July).

It is proposed that the commencement of the LEP be deferred until 25 August 2023 to allow for the finalisation of the Planning Agreement.

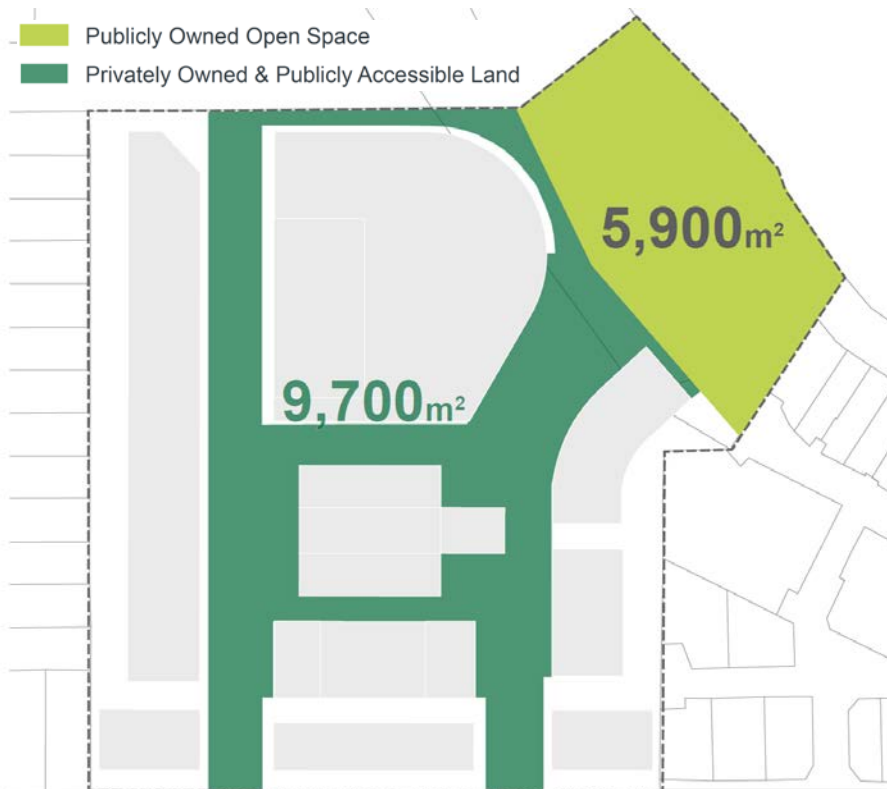


Figure 6 - Public Spaces Diagram (Source: Planning Proposal)

1.1.4 State and Federal Electorates

The site falls within the State electorate of Drummoyne and the Federal electorate of Reid. The State Member is Stephane Di Pasqua MP, and the Federal Member is Sally Sitou MP.

To the team's knowledge:

- Neither MP has made any written representations regarding the planning proposal.
- There are no donations or gifts to disclose, and a political donation disclosure is not required.
- There have been no meetings or communications with registered lobbyists.

2 Gateway Determination and Alterations

The Gateway determination issued on 31 October 2021 (**Attachment B**) determined that the proposal should proceed subject to conditions.

The Gateway determination has been altered three times:

- On 31 August 2022, the Gateway was altered, and condition 7 was replaced with a new condition 7: *"The time frame for completing the LEP is by 28 February 2023"*
- On 19 January 2023, the Gateway was altered and condition 7 was replaced with a new condition 7: *"The time frame for completing the LEP is by 26 May 2023"*
- On 24 May 2023, the Gateway was altered, and condition 7 was replaced with a new condition 7: *"The time frame for completing the LEP is by 23 June 2023"*

Council has met all the conditions of the Gateway determination.

In accordance with the Gateway determination (as altered) the planning proposal is due to be finalised by 23 June 2023.

3 Public Exhibition and Post-Exhibition Changes

In accordance with the Gateway determination, the planning proposal was publicly exhibited by Council from 10 June to 8 July 2022.

A total of 188 submission were received. Of the submissions received there were:

- 150 individual submissions from the community (19 residents made more than one submission)
- 11 from non-government organisations and strata committees
- 6 from government agencies.

Most submissions from the community, non-government organisations and strata committees objected to the planning proposal. Issues raised by the community are discussed in **Section 3.1** below.

3.1 Submissions during Exhibition

The key issues raised by the community in submissions, Council's response, and the Department's assessment of Council's response is summarised in **Table 3** below.

Table 3 Summary of Key Issues and Council/Department Response

Issue Raised	Council/Department Response
Density, Scale and Height	
<p>Many submissions raised concerns regarding the maximum building heights and FSRs.</p> <p>There was concern that the planning proposal would allow buildings that would be inconsistent with the character of the surrounding area and result in overshadowing and a loss of privacy for neighbouring properties.</p>	<p>Council Response:</p> <p>Following exhibition, Council commissioned an independent Urban Design Review to consider the issues raised in submissions. As detailed in Section 3.3.2 and Section 4.1.3, refinements have been made to the planning proposal and site specific DCP to address issues raised and ensure future development responds appropriately to the location of the site and the context of the surrounding area.</p> <p>Department Response:</p> <p>Council's response is adequate. Changes to the massing and layout of future buildings is discussed further in Section 3.3.2 and Section 4.1.3.</p>
Traffic	
<p>Many submissions raised concerns that future development would generate traffic and cause congestion.</p> <p>Many submissions also raised concerns regarding the proposed opening of Marceau Drive to Crane Street and the proposed secondary site access via Zoeller Street.</p>	<p>Council Response:</p> <p>Council is satisfied that the revised Traffic Impact Assessment addresses issues raised in submissions and demonstrates that traffic impacts from future development can be appropriately managed</p> <p>Council noted that it did not support the opening from Marceau Drive to Crane Street. The Traffic Impact Assessment has been updated accordingly.</p> <p>Department Response:</p> <p>Council's response is adequate. Traffic impacts are considered further in Section 4.1.4.</p>

Issue Raised	Council/Department Response
Parking	
<p>Some submissions suggested that not enough car parking would be provided, which could reduce the availability of on-street car parking in the surrounding area.</p>	<p>Council Response:</p> <p>Council is satisfied that the higher Category A car parking rates in the Canada Bay DCP will provide sufficient on-site car parking for residents, workers and visitors. This will reduce impacts on the availability of on-street car parking in the surrounding area. Council also noted that the adequacy of the car parking provision will be assessed further as part of any future DA.</p> <p>Department Response:</p> <p>Council's response is adequate. Car parking is considered further in Section 4.1.4.</p>
Transport and Cycleways	
<p>Some submissions raised concerns that existing bus services in the area would be unable to support future development, particularly on weekends.</p> <p>There was also concern that the proposed walkway along the foreshore could encourage cyclists to cycle between the site and Bayview Park (where they are currently required to dismount).</p>	<p>Council Response:</p> <p>Council acknowledged that like other peninsulas in the LGA, bus services are limited. As discussed above, Council has applied Category A car parking rates to the site, which are higher than elsewhere in the LGA.</p> <p>Council also noted that cyclists will continue to be prohibited from cycling between the site and Bayview Park.</p> <p>Department Response:</p> <p>Council's response adequately addresses the issues raised.</p>
Open Space	
<p>Some submissions questioned the need for the public foreshore park. There was also concern that the ongoing maintenance costs would be borne by Council.</p>	<p>Council Response:</p> <p>Council noted that the public foreshore park is consistent with its Community Strategic Plan and Social Infrastructure (Open Space and Recreation) Strategy, which identified local parks and opportunities to be near the water as something that was valued by residents of the LGA.</p> <p>Council also noted that there is an operational budget for maintaining public open spaces in the LGA.</p> <p>Department Response:</p> <p>Council's response adequately addresses the issues raised. The Department also notes that the draft Planning Agreement includes a monetary contribution to Council for the maintenance of the public foreshore park.</p>
Heritage	
<p>Some submissions expressed concern that the heritage listing of the Central Roasting Hall may not prevent its future demolition.</p> <p>There was also concern that future buildings around the Central</p>	<p>Council Response:</p> <p>Council noted that to provide an incentive to retain the Central Roasting Hall, the planning proposal has been amended to provide a bonus FSR if the Central Roasting Hall is retained and adaptively reused.</p>

Issue Raised	Council/Department Response
<p>Roasting Hall may detract from its 'garden setting'.</p> <p>Submissions raised concern regarding the encroachment of the Zoeller Street extension onto part of the locally heritage-listed Massey Park Golf Course.</p>	<p>Council also updated the site specific DCP to increase setbacks between future buildings and the Central Roasting Hall.</p> <p>Council noted that the reconfiguration of the Zoeller Street extension, as recommended by the independent Urban Design Review, has minimised encroachment onto the Massey Park Golf Course (which is owned by Council).</p> <p>Department Response:</p> <p>Council's response is adequate. Heritage impacts are considered further in Section 4.1.5.</p>

Environmental Impacts

<p>Some submissions raised concerns regarding noise from construction and the adequacy of contamination investigations, particularly in relation to the public foreshore park and the Central Roasting Hall.</p>	<p>Council Response:</p> <p>Council noted that they will enforce compliance with permitted construction hours to ensure that impacts on residents are minimised.</p> <p>Based on the findings of the Detailed Site Investigation, Council advised they are satisfied that the site can be made suitable for the proposed uses. Further investigations will occur as part of any future DA to determine whether remediation is required.</p> <p>Department Response:</p> <p>Council's response adequately addresses the issues raised.</p>
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Natural Environment

<p>Some submissions raised concerns regarding potential impacts on wildlife and suggested that more trees should be retained, including mature trees in the north-eastern corner and along the eastern boundary with 162 Burwood Road.</p>	<p>Council Response:</p> <p>Council noted that existing trees in the north-east corner and eastern and western boundaries will be retained. Planning controls to this effect are included in the site specific DCP.</p> <p>Council noted that the site does not contain any land identified for habitat connectivity, biodiversity, or as environmentally sensitive in the Canada Bay LEP or DCP.</p> <p>Department Response:</p> <p>Council's response adequately addresses the issues raised.</p>
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3.2 Advice from Agencies and Organisations

In accordance with the Gateway determination, Council was required to consult with the following agencies and organisations:

- Environment, Energy and Science Group (now the Environment and Heritage Group)
- NSW Environment Protection Agency
- Greater Sydney Commission (now the Greater Cities Commission)
- NSW Department of Education
- Transport for NSW
- Roads and Maritime Service (now Transport for NSW)
- Sydney Water
- Ausgrid
- Jemena
- Metropolitan Local Aboriginal Land Council (LALC) and other relevant Aboriginal groups
- Massey Park Golf Club.

Submissions were received from the Environment and Heritage Group (EHG), Transport for NSW (TfNSW), the NSW Environment Protection Agency (NSW EPA), Sydney Water, Schools Infrastructure (SINSW) (as part of the NSW Department of Education), and Jemena. The NSW EPA had no comments. No objections were raised.

Council's response to the advice from organisations and government agencies is summarised in **Table 4** below.

Table 4 - Advice from Government Agencies and Organisations

Agency	Advice	Council and Department Response
Environment and Heritage Group	<p>EHG raised concerns about the Flood Assessment Report and recommended that it be updated to identify and analyse:</p> <ul style="list-style-type: none"> impacts on flood behaviour and flood risk to the existing community impacts and risks of flooding on the development and futures users how impacts can be managed to minimise the growth in risk to the community emergency response issues and requirement management measures. <p>EHG also advised that a 'shelter in place' flood emergency strategy should not be considered and that the NSW State Emergency Service (SES) should be consulted.</p>	<p>The Flood Assessment Report has been updated to respond to the advice from EHG.</p> <p>The Department commissioned an independent review of the updated Flood Assessment Report. It confirmed that the updated Flood Assessment Report satisfactorily addresses the matters raised by EHG.</p> <p>Council requested feedback from the SES, but no response was received. The SES will be consulted as part of any future DA.</p>
Jemena	<p>Jemena raised no objections to the planning proposal, subject to there being no threats to the integrity of their assets during construction and operation.</p>	<p>Council noted Jemena's submission.</p> <p>The Department also notes that any potential impacts on Jemena's assets will be assessed as part of any future DA.</p>
Sydney Water	<p>Sydney Water provided advice on water and wastewater servicing requirements (including trade wastewater) and recommended that the proponent submits a feasibility application given the potential need for amplification of services to meet future demand.</p>	<p>Council noted Sydney Water's submission.</p> <p>The Department notes that further consideration of servicing requirements will occur as part of any future DA.</p>
Schools Infrastructure NSW	<p>SINSW provided advice on the Traffic Impact Assessment and the Social Infrastructure and Community Demand Assessment.</p>	<p>Council noted SINSW's submission and have committed to liaising with SINSW to ensure schools in the area can meet anticipated growth.</p> <p>The Department notes that further consultation with SINSW will occur as part of any future DA.</p>

Agency	Advice	Council and Department Response
Transport for NSW	<p>TfNSW provided advice on:</p> <ul style="list-style-type: none"> The need to assess potential traffic impacts on the intersection of Parramatta Road/Burwood Road. The measures proposed to mitigate traffic impacts at nearby intersections, including peak period right turn bans. <p>TfNSW also provided advice on opportunities for car share schemes, shared pedestrian and vehicle zones, targets for the proportion of trips made by walking and cycling, and pedestrian and cycling connections (including along Burwood Road).</p>	<p>The Traffic Impact Assessment has been updated and Council is satisfied that it addresses the issues raised by TfNSW.</p> <p>Further detail on how the updated planning proposal and Traffic Impact Assessment responds to TfNSW's advice is provided in Section 4.1.4.</p>

The Department considers that all matters raised by organisations and government agencies have been satisfactorily addressed by Council.

3.3 Post-Exhibition Changes

3.3.1 Employment Zone Reform

On 16 December 2022, new employment zones were introduced into the Canada Bay LEP 2013. The new zones commenced on 26 April 2023. Of relevance to the planning proposal:

- The IN1 General Industrial zoning of the site has transitioned to E4 General Industrial.
- The proposed B1 Neighbourhood Centre zone has transitioned to the new E1 Local Centre zone.

The new E1 Local Centre zone is appropriate for the site as it permits generally the same uses as the former B1 Neighbourhood Centre zone.

3.3.2 Council Post-Exhibition Changes

Following exhibition, Council commissioned an independent Urban Design Review to provide feedback on design-related aspects of the planning proposal. The Urban Design Review comprehensively assessed issues raised in submissions, with a particular focus on the proposed massing and layout of future built form.

It recommended various refinements to the planning proposal and site specific DCP to address issues raised and ensure future development responds appropriately to the location of the site and the context of the surrounding area. Council have updated the planning proposal and site specific DCP in accordance with the recommendations of the Urban Design Review.

At its meeting on 28 March 2023, Council resolved to submit the planning proposal to the Department for finalisation, subject to the following changes:

- Relocating the proposed E1 Local Centre zone to the centre of the site and introducing R3 Medium Density Residential zoning along Burwood Road.
- Reducing the minimum amount of non-residential floor space to be provided from 10,000m² to 7,500m².

- Limiting additional permitted uses in the R3 Medium Density Residential zone to office premises, restaurants, cafes, and shops.
- Minor amendments to the Height of Buildings Map to align maximum building heights with the intended number of storeys in the site specific DCP.
- Reducing the block-by-block FSRs on the Floor Space Ratio Map and introducing a bonus 0.15:1 FSR if the Central Roasting Hall is adaptively reused. The changes reduce the overall maximum FSR for the site from the exhibited 1.25:1 to 1.11:1 (inclusive of the FSR bonus for adaptively reusing the Central Roasting Hall).
- Including Lot 2 in DP 230294 and Lots 398 and 399 in DP 752023 as part of the local heritage listing of the former Bushells Factory.
- Amending the Foreshore Building Line Map to align it with outer edge of Block 3.

3.3.3 The Department's Recommended Changes

After receiving the revised planning proposal from Council, the Department has made the following further changes:

- Amending the Land Reservation Acquisition Map to identify the part of the site to be zoned RE1 Public Recreation as 'local open space'.
- Introducing an FSR bonus of 2:1 for Block 4 if the Central Roasting Hall is adaptively reused. This is what was recommended by the independent Urban Design Review and makes it clearer that the FSR bonus applies to the Central Roasting Hall (Block 4).
- Amending Clause 6.12(10) of the LEP to reference Council's most recent Affordable Housing Contributions Scheme.
- Excluding car parks and hotel or motel accommodation from being counted towards the minimum amount of non-residential GFA (7,500m²).
- Introducing a clause deferring the commencement of the LEP until 25 August 2023 to allow for the finalisation of the Planning Agreement.

The Department's recommended changes are discussed in further detail in **Section 4**.

3.3.4 Justification for Post-Exhibition Changes

The Department notes that the post-exhibition changes are justified and do not require re-exhibition. This is because the changes:

- are relatively minor and do not change the intent of the exhibited planning proposal
- do not result in any significant additional impacts
- are a reasonable response to the issues raised in submissions and the advice provided by public authorities.

4 Department's Assessment

The planning proposal has been subject to detailed review and assessment through the Department's Gateway determination (**Attachment B**) and subsequent planning proposal processes. It has also been subject to a high level of public consultation and engagement (see **Section 3**).

The following reassesses the proposal against relevant Ministerial Directions under section 9.1 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) (Section 9.1 Directions), State environmental planning policies (SEPPs), Regional and District Plans, and Council's Local Strategic Planning Statement. It also reassesses any potential key impacts associated with the planning proposal (as amended).

The planning proposal submitted to the Department for finalisation:

- Gives effect to the District Plan, as determined by the Sydney Eastern City Planning Panel.
- Is consistent with Council's Local Strategic Planning Statement.
- Has demonstrated that any inconsistencies with Section 9.1 Directions are appropriately justified and minor in nature (see **Section 4.1.1**).
- Is consistent with all relevant SEPPs.

The following table identifies whether the planning proposal is consistent with the assessment undertaken at the Gateway determination. Where the updated planning proposal is inconsistent with this assessment, requires further analysis or requires reconsideration of any unresolved matters, these are addressed in **Section 4.1**.

Table 5 Summary of Strategic Assessment

	Consistent with Gateway Determination Assessment	
Regional Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
District Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Local Strategic Planning Statement	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Section 9.1 Directions	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 4.1
SEPPs	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 4.1

4.1 Detailed Assessment

The following section provides details of the Department's assessment of key matters and any recommended revisions to the planning proposal. This assessment should be read in conjunction with the assessment undertaken as part of the Department's original Gateway determination.

4.1.1 Section 9.1 Ministerial Directions

Consistency with the following Section 9.1 Directions has been resolved since Gateway:

- 1.4 Site Specific Provisions (previously 6.3)
- 3.2 Heritage Conservation (previously 2.3)
- 4.1 Flooding (previously 4.3)

- 4.4 Remediation of Contaminated Land (previously 2.6)
- 5.2 Reserving Land for Public Purposes (previously 6.2).

1.4 Site Specific Provisions

The Direction seeks to discourage unnecessarily restrictive site specific planning provisions in LEPs. While the planning proposal will introduce site specific provisions into the Canada Bay LEP 2013, inconsistency with the Direction is considered minor and justified.

The site specific provisions are the most appropriate mechanism for addressing the Gateway conditions and ensuring consistency with the recommendations of the Sydney Eastern City Planning Panel:

- future development provides an appropriate mix of residential and employment generating non-residential uses, including light industry
- floor space for non-residential uses, particularly light industry, is appropriately designed and located.

3.2 Heritage Conservation

The Gateway assessment noted that although the planning proposal is consistent with the Direction, it should be updated to address the Direction and redact any culturally sensitive information from the Aboriginal Due Diligence Assessment. The planning proposal and Aboriginal Due Diligence Assessment were updated prior to public exhibition. The Department is satisfied that the planning proposal remains consistent with the Direction.

4.1 Flooding

The Gateway assessment noted that part of the site is identified as ‘flood fringe’ in the draft Exile Bay Flood Study and the planning proposal should be updated to address potential flood risks in accordance with the Direction.

Prior to exhibition, a Flood Assessment was prepared, and the planning proposal updated to address the Direction. The Flood Assessment has been updated following exhibition to address matters raised by EHG (see **Section 3.2**).

The Department commissioned an independent review of the updated Flood Assessment and Council’s final Exile Bay Catchment Flood Study. It confirmed that the planning proposal is generally consistent with the Direction and any potential inconsistencies are of minor significance because flood hazard and flood impacts can be managed.

The Department agrees with the findings of the independent review and notes that consideration of flood risk and mitigation measures will occur as part of any future DA

4.4 Remediation of Contaminated Land

The Gateway assessment noted that while the planning proposal is consistent with the Direction, it should be updated to specifically address the Direction and include a Detailed Site Investigation (DSI) that addresses the recommendations of the preliminary Soil Contamination Assessment.

Prior to exhibition, a DSI was prepared, and the planning proposal updated to address the Direction.

Based on the findings of the DSI, the Department is satisfied that the site can be made suitable for the proposed uses and the planning proposal is consistent with the Direction. Further investigations will occur as part of any future DA to determine whether remediation is required.

5.2 Reserving Land for Public Purposes

Under this Direction, a planning proposal must not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the relevant public authority and the Planning Secretary (or their delegate).

The planning proposal seeks to reserve the public foreshore park (to be zoned RE1 Public Recreation) for the public purpose of 'local open space'. This land will be identified on the Land Reservation Acquisition Map and is therefore to be subject to Clause 5.1 of the Canada Bay LEP 2013, which identifies Council as the relevant acquisition authority for the land.

Consistent with the Direction, Council has written to the Department to formally approve the listing of the land on the Land Reservation Acquisition Map (see **Attachment F**).

4.1.2 E1 Local Centre Zoning and Non-Residential Uses

The E1 Local Centre zone (formerly the B1 Neighbourhood Centre zone) has been relocated to the centre of the site, away from Burwood Road (see **Figure 7** and **Figure 8**). The R3 Medium Density Residential zone has been introduced along Burwood Road.

This was recommended by the Urban Design Review because it will better integrate light industry and other non-residential uses into future development, helping to activate the foreshore area and public park.

The Department is also satisfied that relocating the E1 Local Centre zone and introducing the R3 Medium Density Residential zone along Burwood Road will provide a better transition to the lower density residential character of Burwood Road.

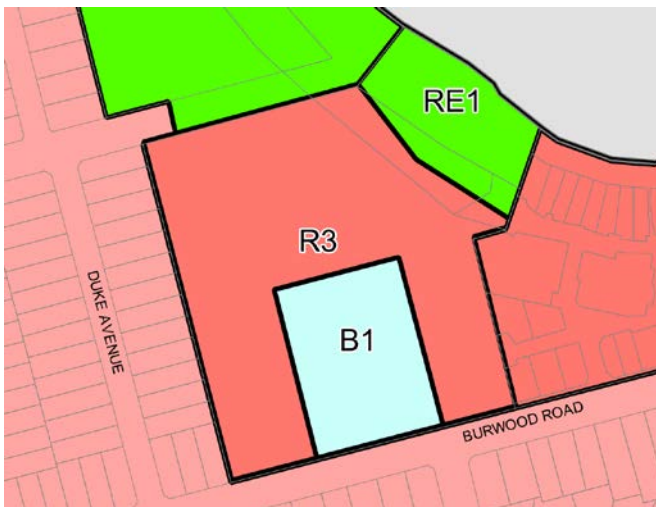


Figure 7 - Exhibited Planning Proposal

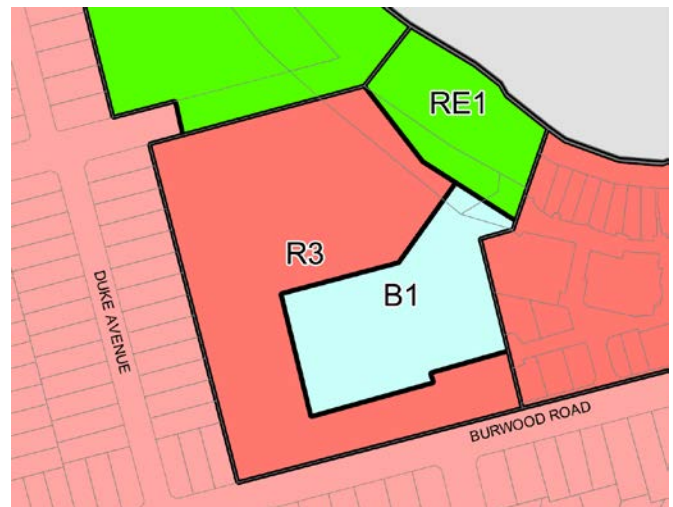


Figure 8 - Updated Planning Proposal

Note: The B1 Neighbourhood Centre zone has transitioned to the E1 Local Centre zone (refer to Section 3.3.1).

Non-Residential Floor Space

Since exhibition, the minimum amount of non-residential floor space required to be provided as part of future development has been reduced to 7,500m² (from 10,000m²). The minimum amount of floor space for light industry remains 3,000m².

The Department considers the reduction in the required amount of non-residential floor space to be appropriate because it responds to the recommendations of the Retail Demand Analysis, which found that the site could support between 3,000 and 3,500m² of retail floor space.

Car parks and hotel or motel accommodation have also been specifically excluded from being counted towards the minimum amount of non-residential GFA. This is to encourage non-residential uses that help:

- meet the needs of future residents and workers, reducing trips by private vehicles and traffic
- activate the site, including the foreshore area and public park.

Additional Permitted Uses

The exhibited planning proposal sought to make ‘commercial premises’ an additional permitted use on the part of the site zoned R3 Medium Density Residential.

Since exhibition, the planning proposal has been updated to limit additional permitted uses to:

- office premises, shops, restaurants and cafes; and
- the part of the R3 zone closest to the public foreshore park.

This responds to the recommendations of the Urban Design Review, which found that:

- Making ‘commercial premises’ an additional permitted use across the R3 zone may inadvertently allow for a much broader range of land uses than intended, some of which would not be appropriate for the site (e.g. vehicle sale and hire premises).
- Additional permitted uses should be located on the part of the R3 zone close to the public foreshore park. This is to ensure they are away from surrounding residential uses and help activate the public foreshore park.

4.1.3 Built Form

Many submissions raised concerns regarding the proposed maximum building heights and FSRs. There was concern that the planning proposal would allow future development that would be inconsistent with the character of the surrounding area and result in overshadowing and a loss of privacy for neighbouring properties.

As discussed in **Section 3.3.2**, following exhibition Council commissioned an independent Urban Design Review to comprehensively assess issues raised in submissions, with a particular focus on the layout and massing of future built form.

Refinements to the planning proposal and the site specific DCP have been made to address issues raised. The key changes are:

- Increasing the northern setback of Block 5 to Massey Park Golf Course to 4.5m (from 3m). This will safeguard public pedestrian access along the northern boundary and provide additional room for landscaping. The minimum setback for future buildings within Block 5 remains 6m.
- Requiring an upper-level setback for buildings facing Exile Bay and along the eastern boundary with 162 Burwood Road.
- Increasing the setback of Block 2 to Burwood Road to 6m (from 3m).
- Reducing building widths and depths to better accommodate balconies and avoid encroachment into side setbacks with neighbouring properties to the east at 162 Burwood Road and to the west along Duke Avenue.
- Increasing separation distances between buildings where they do not meet the minimum criteria in the Apartment Design Guide.
- Aligning the maximum building heights with the intended number of storeys shown in the site specific DCP.

- Removing the maximum building heights from road reserves to provide greater certainty regarding the siting of future buildings.

The changes reduce the maximum overall site FSR from 1.25:1 to 1.11:1, inclusive of the FSR bonus for the adaptive reuse of the Central Roasting Hall (see **Section 4.1.5** below).

A comparison of the exhibited and updated block-by-block FSRs is provided in **Figure 9** and **Figure 10**, and a comparison of exhibited and updated block-by-block maximum building heights is provided in **Figure 11** and **Figure 12**.

The Department is satisfied that the changes appropriately respond to concerns raised in submissions and will reduce the bulk and scale of future buildings, minimise overshadowing and overlooking of neighbouring properties, and improve the amenity of future dwellings and the public domain.

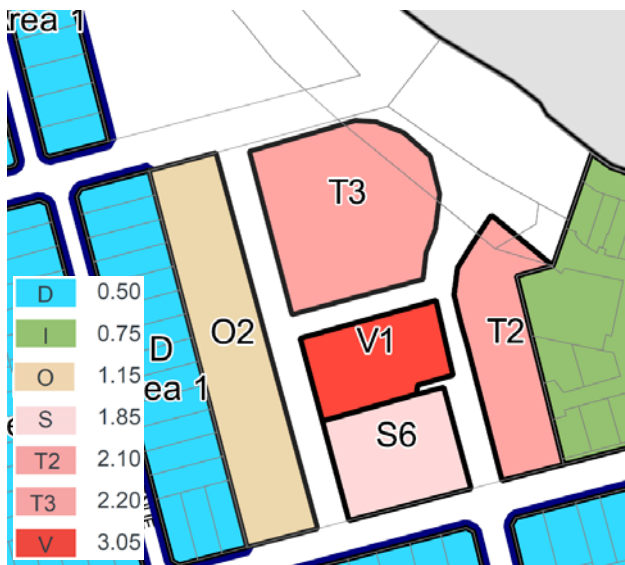


Figure 9 - Exhibited Maximum FSRs

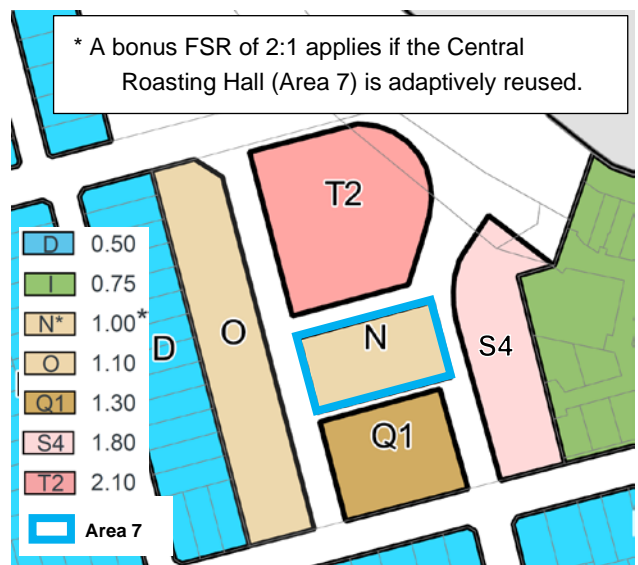


Figure 10 - Updated Maximum FSRs

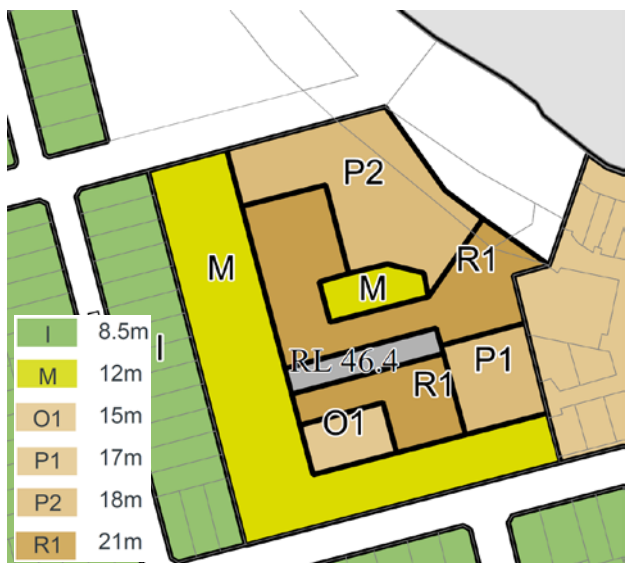


Figure 11 - Exhibited Maximum Building Heights



Figure 12 - Updated Maximum Building Heights

SEPP No. 65 Design Quality of Residential Apartment Development

The Gateway assessment noted that it was unclear whether future development would be capable of meeting the minimum solar access requirements for apartments and communal open space in the Apartment Design Guide (Objectives 3D-1 and 4A-1).

The planning proposal was updated prior to exhibition to demonstrate that future development can achieve:

- communal open space receiving a minimum of 50% direct sunlight to the principal part of the communal open space for a minimum of 2 hours between 9am and 3pm on 21 June (Objective 3D-1)
- living rooms and private open space of at least 70% of apartments in all blocks receiving a minimum of 2 hours direct sunlight between 9am and 3pm on 21 June (Objective 4A-1).

The Department notes that changes to the planning proposal and the site specific DCP following exhibition will further improve solar access to apartments and areas of communal open space. Compliance with the Apartment Design Guide will be assessed in detail as part of any future DA.

4.1.4 Traffic, Transport and Parking

The Gateway assessment noted that the Transport Impact Assessment (TIA) needed to be updated to reflect the latest version of the planning proposal and following consultation with TfNSW.

During consultation, TfNSW provided advice on:

- The need to assess potential traffic impacts on the intersection of Parramatta Road/Burwood Road.
- The measures proposed to mitigate traffic impacts at nearby intersections, including peak period right turn bans.

And as set out in **Section 3.1**, during exhibition many submissions raised concerns regarding the:

- proposed opening of Marceau Drive to Crane Street
- proposed secondary site access from Zoeller Street
- car parking rates
- adequacy of the assessment of existing traffic conditions, potential traffic generation, and weekend parking demand.

The TIA was updated following exhibition to reflect the current proposal and respond to feedback from the community, Council and TfNSW. The updated TIA has:

- provided additional justification for the traffic generation rates used
- removed reference to the potential re-opening of Marceau Drive to Crane Street, which was not supported by Council
- removed reference to right turn bans during peak periods
- been informed by expanded traffic counts undertaken on weekdays for 3 hours in both the AM and PM peak periods and on Saturdays for 4 hours during the midday peak period, at the intersections of:
 - Burwood Road and Crane Street, Gipps Street, and Parramatta Road
 - Broughton Street and Zoeller Street/Ian Parade, Gipps Street, Crane Street, and Parramatta Road

- included additional modelling of potential impacts on surrounding intersections, including the intersection of Burwood Road and Parramatta Road (as requested by TfNSW).

The Department is satisfied that the updated TIA demonstrates that traffic impacts can be appropriately managed and addresses the feedback from the community, Council and TfNSW. Further consultation with TfNSW and a detailed traffic, access and parking assessment will occur as part of any future DA.

Zoller Street Extension

The proposed extension of Zoeller Street has been reconfigured to minimise encroachment onto the locally heritage-listed Massey Park Golf Course, which was a concern raised in community submissions (see **Figure 13** and **Figure 14**).

The extent of Block 1 in the FSR and Height of Building maps and the site specific DCP has been modified to accommodate the reconfiguration of the extension of Zoeller Street. The Zoeller Street extension, which will be slow speed and have a reduced width, will function as a secondary access to the site, with the primary access to the site remaining Burwood Road.

The Department is satisfied that the reconfiguration of the Zoeller Street extension adequately minimises encroachment onto the Massey Park Golf Course.

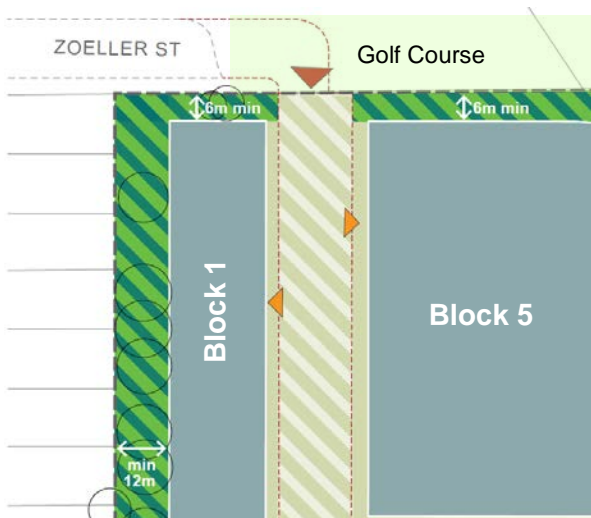


Figure 13 - Exhibited Planning Proposal
(Source: Planning Proposal)

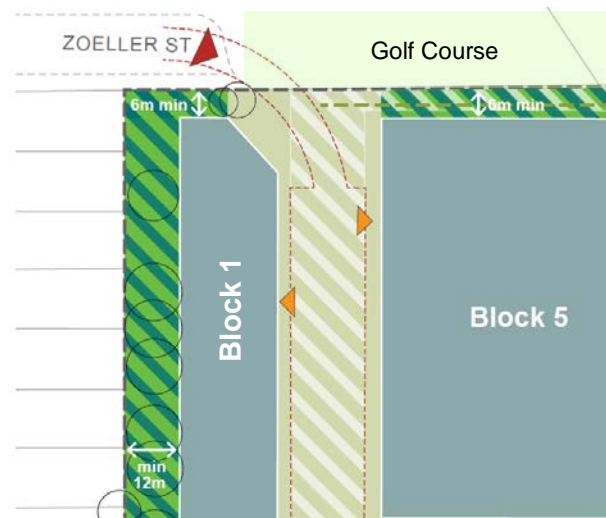


Figure 14 - Updated Planning Proposal
(Source: Planning Proposal)

Car Parking

Future development will be required to provide car parking consistent with the requirements of the Canada Bay DCP. The site is identified as Category A on the Residential Car Parking Rates Map in the Canada Bay DCP. Category A car parking rates apply to land that is not near major transport infrastructure or a town centre and are higher than the rates that apply elsewhere in the LGA. The Canada Bay DCP also sets car parking rates for industrial and commercial uses, including shops, offices, cafes and restaurants.

The Department and Council are satisfied that the higher Category A car parking rates in the Canada Bay DCP will provide sufficient on-site car parking for residents, workers and visitors. This will reduce impacts on the availability of on-street car parking in the surrounding area. The adequacy of the car parking provision will be assessed further as part of any future DA.

4.1.5 Heritage

The Gateway assessment recommended that planning proposal be updated to support the retention and adaptive reuse of the Central Roasting Hall of the Bushells Factory.

Prior to public exhibition, a site specific DCP was prepared which includes detailed planning controls to guide the adaptive reuse of the Central Roasting Hall to ensure that future development preserves its landmark quality and ‘factory in the garden’ setting. The site specific DCP must be considered during the preparation and assessment of any future DAs.

Since exhibition, the planning proposal has also been updated to:

- Strengthen the ‘landscape garden setting’ of the Central Roasting Hall by including Lot 2 in DP 230294 and Lots 398 and 399 in DP 752023 as part of the listing of the former Bushells Factory.
- Incentivise the retention and adaptive reuse of the Central Roasting Hall by providing a bonus FSR of 2:1 for Block 4 (allowing for a maximum FSR of 3:1) if the Central Roasting Hall is adaptively reused.

The Department is satisfied that the updated planning proposal and site specific DCP will ensure that future development retains, and is designed to be sympathetic towards, the Central Roasting Hall.

5 Post-Assessment Consultation

After assessing the planning proposal, the Department consulted with the stakeholders identified in **Table 7** when preparing the draft LEP.

Table 6 Consultation following the Department’s Assessment

Stakeholder	Consultation	Department satisfied with the draft LEP
GIS Team	Digital maps which meet the technical requirements have been prepared by the Department’s GIS Team.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Canada Bay Council	Council was consulted on the terms of the draft instrument under section 3.36(1) of the <i>Environmental Planning and Assessment Act 1979</i> (Attachment E). Council confirmed on 1 June 2023 that it approved the draft and that the plan should be made (Attachment F).	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Parliamentary Counsel’s Office	On 5 June 2023, Parliamentary Counsel’s Office provided the final Opinion that the draft LEP could legally be made (Attachment PC).	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

6 Recommendation

It is recommended that the Minister's delegate as the local plan-making authority determine to make the draft LEP under section 3.36(2)(a) of the EP&A Act because:

- The draft LEP has strategic merit, being consistent with the strategic planning framework under the EP&A Act, including Council's Local Strategic Planning Statement.
- It is consistent with the Gateway determination.
- The issues raised during consultation have been addressed and there are no outstanding objections from government agencies.

A handwritten signature in black ink, appearing to read 'Katie Joyner', is positioned above the name and title of the signatory.

Katie Joyner

Director, City of Sydney and Eastern District

Assessment Officer

Tom Atkinson

Senior Planning Officer, City of Sydney and Eastern District