



IRF20/2607

Gateway determination report – PP-2022-1147

88-96 New Illawarra Road and 307-311A Bexley
Road, Bexley North

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Table 1 Reports and plans supporting the proposal

Relevant reports and plans
Request for Gateway, Bayside Council, 23 June 2020
Planning Proposal, Bayside Council, 14 February 2022
Draft site specific DCP not endorsed by Council dated 14 February 2022
Survey Plan dated 19 May 2019
Urban Design Report dated 21 February 2018

Relevant reports and plans

Traffic Impact Assessment dated 5 April 2017

Addendum Traffic Report – response to RMS dated 25 September 2018

Contamination Report dated 31 July 2017

Geotechnical Report dated 19 January 2017

Flood Risk Management Study dated 5 May 2018

Council Traffic Peer Review dated 13 June 2017

Bayside Local Planning Panel Report dated 1 May 2018

Bayside Local Planning Panel recommendation dated 1 May 2018

RMS comments dated 2 July 2018

Elton Peer Review of Council Officer's Assessment

Report to Council dated 12 June 2019

Council Resolution dated 12 June 2019

Sydney Eastern City Planning Panel Rezoning Review Recommendation dated 7 May 2020

Bayside Council acceptance of PPA role dated 2 June 2020

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Sydney
PPA	Bayside Council
NAME	88-96 New Illawarra Road and 307-311A Bexley Road, Bexley North
NUMBER	PP-2022-1147
LEP TO BE AMENDED	Bayside Local Environmental Plan 2021
ADDRESS	88-96 New Illawarra Road and 307-311A Bexley Road, Bexley North
DESCRIPTION	Various – see Section 1.3
RECEIVED	10/12/2021
FILE NO.	IRF20/2607
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

1.2 Description of the Proposal

The planning proposal seeks to amend the Bayside Local Environmental Plan (LEP) 2021 at 88-96 New Illawarra Road and 307-311A Bexley Road, Bexley North (the site), by:

- rezoning the land from R2 Low Density Residential to R4 High Density Residential;
- removing the 450m² minimum lot size;
- increasing the maximum height of buildings from 8.5m (2 storeys) to 20.5m (6 storeys); and
- increasing the maximum floor space ratio from 0.5:1 to 2:1.

The planning proposal seeks to facilitate a residential development on the site (see **Section 1.6 – Explanation of Provisions** for concept details).

1.3 Site Description

The site comprises nine allotments with a total area of approximately 4,257m², with the land described below (**Figure 1**):

Service station

- 307-309 Bexley Road, Bexley North, legally known as:
 - Lot 35 DP 663036;

- Lot 1 DP 1045200; and
- Lot B DP 388204.

Residential dwellings

- 311 Bexley Road, Bexley North, legally known as:
 - Lot 6 DP 508629 ;
- 311A Bexley Road, Bexley North, legally known as:
 - Lot 5 DP 508629;
- 88 New Illawarra Road, Bexley North, legally known as:
 - Lot 3 DP 508629;
- 90 New Illawarra Road, Bexley North, legally known as:
 - Lot 4 DP 508929;
- 94 New Illawarra Road, Bexley North, legally known as:
 - Lot 1 DP 40034; and
- 96 New Illawarra Road, Bexley North, legally known as:
 - Lot A DP 388204.



Figure 1 - Site map with lots (Source: Land Registry Services NSW)

The site is an irregular shape bounded by a small public reserve to the north, New Illawarra Road to the west, Bexley Road to the east and a 3 to 4 storey residential development to the south (**Figure 2**).

Currently, the northern end of the site is used as a service station and vehicle workshop. The remainder of the site is used for residential purposes being composed of detached dwellings with a former butcher shop at 90 New Illawarra Road (**Figures 3 to 4**).

The site is not identified as a heritage item or within a heritage conservation area. The closest heritage item is the locally listed Glendalough McIlveen Museum and Research Centre (item 158), which is 230m to the east of the site.



Figure 2 - Aerial photo of the site (Source: Nearmaps)



Figure 3 - Existing development on the site from Bexley Road looking south west (Source: Google Streetview)



Figure 4 - Existing development on the site from New Illawarra Road looking north east (Source: Google Streetview)

1.4 Surrounding Area

The site is located in the Bayside Local Government Area (LGA), approximately (**Figure 6**):

- 250m south of Bexley North Station; and
- 50m south of the Bexley North Local Centre.

The surrounding area is characterised by one and two storey dwellings of varying styles and ages to the east, west and south. Directly adjoining the northern side of the site is a small public reserve.

The Bexley North Local Centre, an identified Local Centre in the Eastern City District Plan, consists of a mix of mainly two and three storey commercial premises and shop top housing. The eastern area of the centre contains three, four and five storey residential flat buildings and shop top housing developments.



Figure 5 - 5 storey shop housing developments at 2-6 Sarsfield Circuit (left) and 238 Slade Road (right) Bexley North.



Figure 6 - Locality map (Source: Nearmaps)

To the immediate south of the site, a 3 to 4 storey residential flat building development has been **recently completed** (highlighted blue in **Figure 6** above, with a street view image at **Figure 7** below).

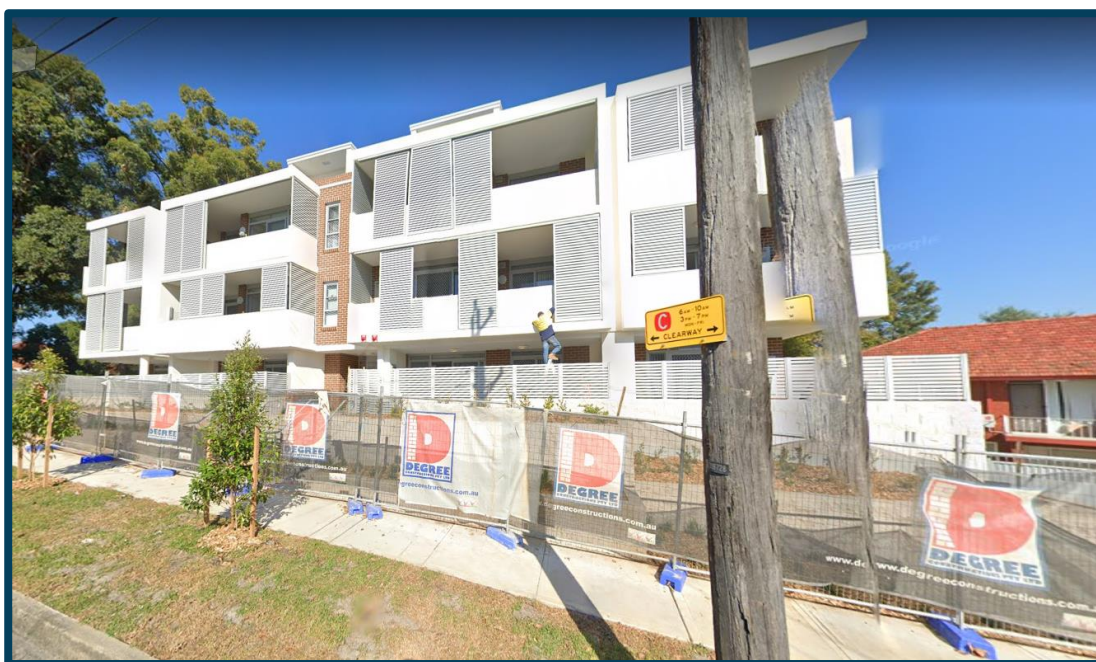


Figure 7 - Land to the south (84 New Illawarra Road and 313 Bexley Road, Bexley North) from Bexley Road looking south west (Source: Google Streetview)

Approximately 50m to the south of the site is a small park, known as Whitbread Park (**Figure 8**). This is a passive public recreation space.



Figure 8 - Whitbread Park from Barnsbury Grove looking north (Source: Google Streetview)

1.5 Objectives of the Planning Proposal

The objectives of the planning proposal are to facilitate the construction of three residential buildings ranging in height from 5 to 6 storeys, to accommodate approximately 100 new apartment dwellings.

The planning proposal seeks to:

- increase housing supply, affordability and diversity;
- provide additional housing near existing transport infrastructure and services;
- provide housing with access to jobs; and
- provide housing near a local centre with existing commercial land uses, including a supermarket.

The planning proposal is accompanied by an indicative concept plan for the development.

1.6 Explanation of provisions

The planning proposal seeks to amend the Bayside LEP 2021 at 88-96 New Illawarra Road and 307-311A Bexley Road, Bexley North, by:

- rezoning the land from R2 Low Density Residential to R4 High Density Residential;
- removing the 450m² minimum lot size;
- increasing the maximum height of buildings from 8.5m (2 storeys) to 20.5m (6 storeys); and
- increasing the maximum floor space ratio from 0.5:1 to 2:1.

The explanation of provisions are consistent with:

- those considered by the Regional Panel at the rezoning review; and
- the intended outcomes of the planning proposal.

It is noted that parts of the proposal make incorrect reference to this explanation of provisions. In response, a Gateway condition has been included to address this matter.

Intended land use outcomes

The planning proposal intends to facilitate a residential development including (**Figures 9 and 10**):

- 3 residential flat buildings with heights of between 5 and 6 storeys;
- approximately 100 dwellings;
- a total gross floor area of 7,124.7m²;
- approximately 1,900m² of deep soil area; and
- vehicular access from New Illawarra Road only.



Figure 9 - Proposed site map with heights and setbacks (Source: Urban Context Report prepared by Urban Link)



Figure 10 - 3D perspective of proposed development (highlighted red) viewed from the east (Source: Urban Context Report prepared by Urban Link)

Development Control Plan

On 14 February 2022, Council clarified it is preparing a draft development control plan (draft DCP) associated with the planning proposal. It is drafted to include controls which address matters raised by the Bayside Local Planning Panel and Sydney Eastern City Planning Panel, including building setbacks, height transitions, lot consolidations, car parking, vehicular access and public domain interfaces (see **Section 1.8 - Background and Planning Proposal History**).

Council advises that the draft DCP has not been endorsed and has been provided with the planning proposal for information purposes only.

Voluntary Planning Agreement

It is understood preliminary discussions have occurred between Council and the proponent about entering into a voluntary planning agreement (VPA).

It is understood these discussions have included providing for matters raised in the Sydney Eastern City Planning Panel rezoning review decision dated 7 May 2020, such as affordable housing, improved pedestrian links and embellishment of adjoining public open spaces.

1.7 Mapping

The planning proposal seeks to amend Sheet_001 of the following maps under the Bayside LEP 2021:

- Land Zoning Map;
- Height of Buildings Map;
- Floor Space Ratio Map; and
- Minimum Lot Size Map.

The planning proposal includes mapping showing the proposed changes to the relevant maps, which are suitable for community consultation. Mapping extracts are provided in **Figures 11 to 14** below, comparing the existing and proposed controls.



Figure 11 - Existing and Proposed Land Zoning Maps

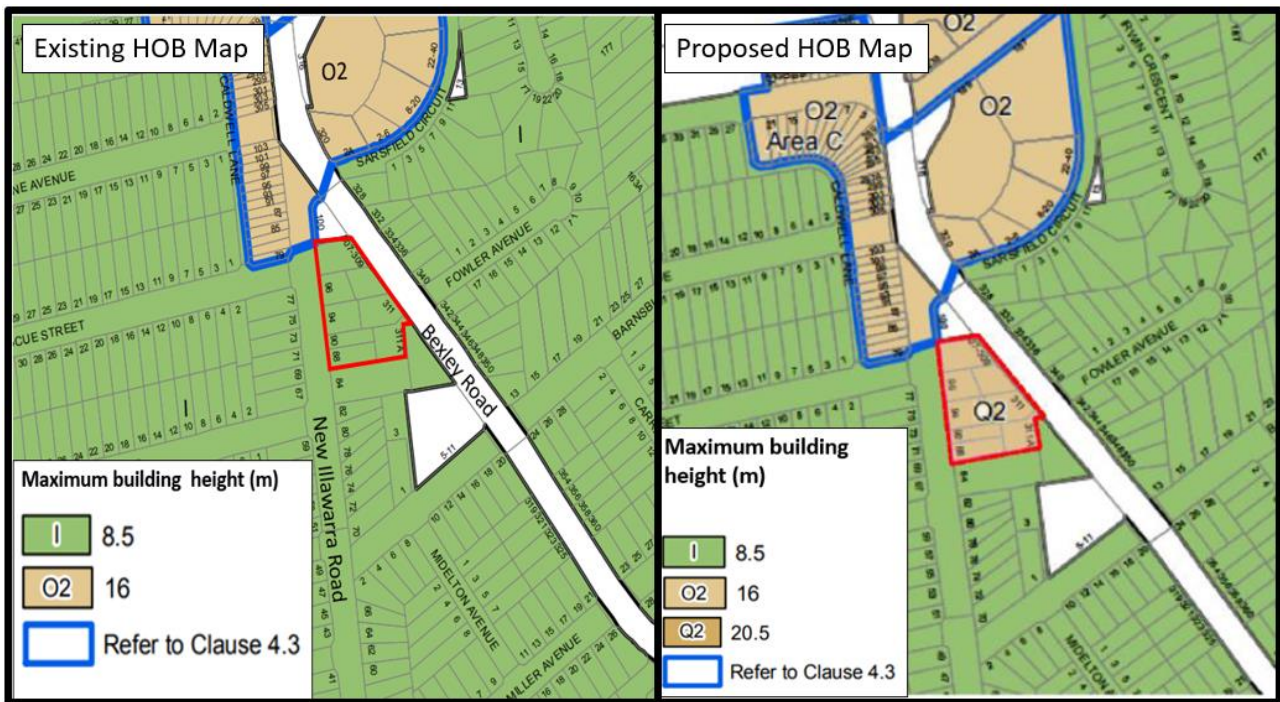


Figure 12 - Existing and Proposed Maximum Height of Buildings Maps

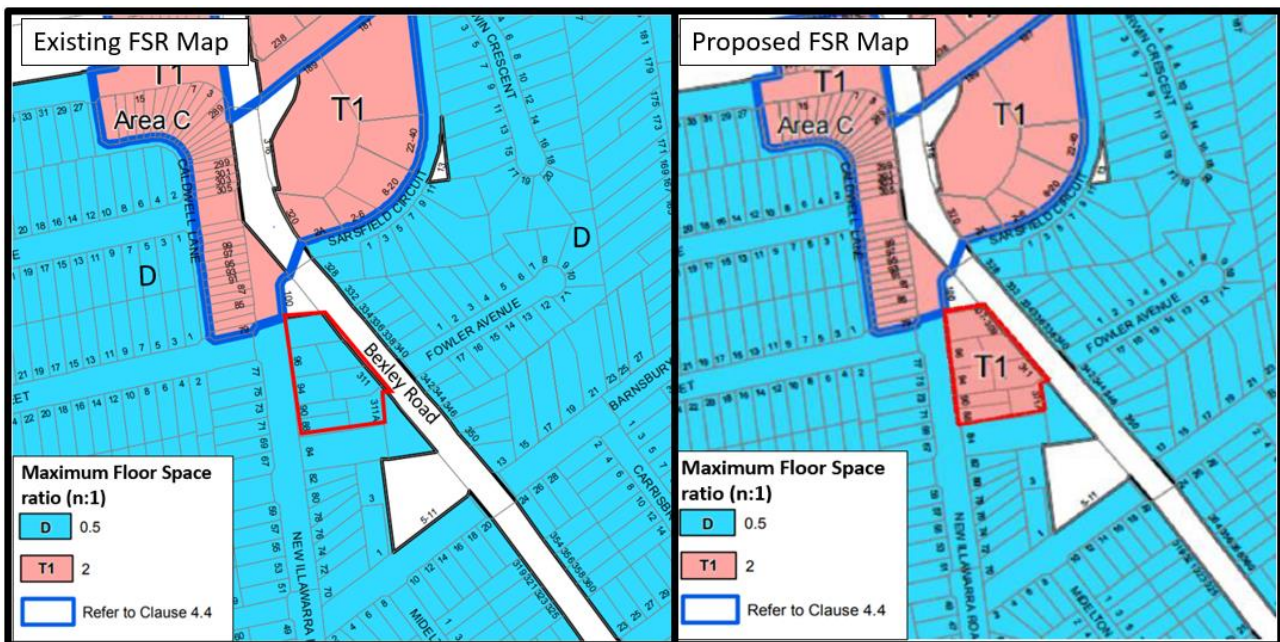


Figure 13 - Existing and Proposed Maximum Floor Space Ratio Maps

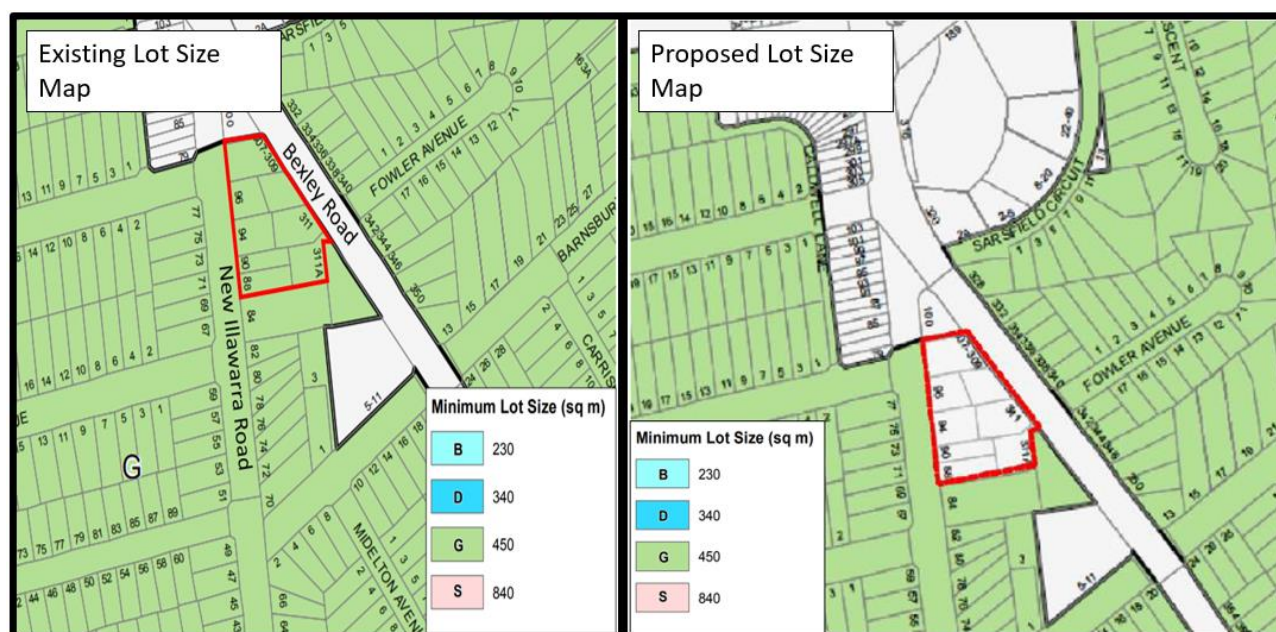


Figure 14 - Existing and Proposed Minimum Lot Size Maps

1.8 Background and Planning Proposal History

On 21 April 2017, the draft planning proposal for the land at 88-96 New Illawarra Road and 307-311A Bexley Road, Bexley North was lodged with Bayside Council.

Bayside Local Planning Panel

On 1 May 2018, the planning proposal was considered by the Bayside Local Planning Panel (the Local Panel). The Local Panel considered a Council Officer report which supported the planning proposal. The Local Panel recommended to Council that the planning proposal be submitted to the Department for a Gateway determination, however recommended:

- a Flood Plain Risk Management Plan be submitted for the Council staff's review in accordance with the Flood Plain Development Manual 2005. Exhibition of the planning proposal should not proceed until the study is completed to allow it to also be publicly exhibited concurrently.
- similarly, the former Roads and Maritime Services (RMS) comments on the planning proposal should also be available for concurrent exhibition.
- an additional provision be drafted prior to exhibition to require a minimum lot size area of 1,650m² for development.
- the Panel recommends that Council request the Gateway Determination require a minimum of 28-day exhibition for the planning proposal to allow for community consultation.

The Local Panel's reasons for the above recommendations were to provide greater certainty and transparency in the process and public consultation. The minimum lot size was to ensure that the site is comprehensively redeveloped to minimise fragmentation and amenity impacts.

Following the Local Panel's recommendation, Council wrote to Roads and Maritime Services (RMS) seeking comment on the planning proposal.

On 2 July 2018 RMS provided comments confirming they did not object in principle to the planning proposal.

Bayside Council Meeting

Following consideration of the planning proposal by the Local Panel and prior to it being considered at a Council Meeting, a Councillor declared a conflict of interest. Consequently, Council engaged Elton Consulting to:

1. review the adequacy of the assessment of the draft planning proposal undertaken by Council to date against the strategic planning framework;
2. undertake an independent, merit-based assessment in accordance with relevant NSW and Commonwealth statutory planning and environmental legislation, relevant regional and strategic planning legislation, and relevant Council plans and policies to determine the suitability of the site for rezoning; and
3. prepare a Section 3.34 Gateway recommendation report to Bayside Council.

This independent merit assessment endorsed the Council Officer's recommendation to the Panel, as it was found that the planning proposal had strategic planning merit for the following reasons:

- it gives effect to the directions, priorities and objectives of the Greater Sydney Region Plan and Eastern City District Plan, particularly where it provides additional housing within a 400m catchment of a train station, as well as shops, services and parkland;
- the proposed planning controls are generally consistent with the planning controls applicable to the surrounding development within the Bexley North Local Centre; and
- the site specific merit has generally shown the capacity and capability of site to accommodate the proposal.

On 12 June 2019, Bayside Council considered the planning proposal. It is understood the local community was informed of this Council Meeting a week prior to it occurring as part of Council policy. Once informed, 43 submissions, a resident petition and representations to Chris Minns MP, Member for Kogarah were received. The community raised concerns in relation to traffic, flooding, building height, local character, capacity of rail services at Bexley North and the strategic planning framework for Bexley North.

At this meeting, Council Officers' recommended the planning proposal be forwarded to the Department for a Gateway determination because:

1. the proposal gives effect to the directions, priorities and objectives of the Greater Sydney Region Plan and Eastern City District Plan, particularly where it provides additional housing within a 400m catchment of a train station, as well as shops, services and parkland;
2. the proposed planning controls are generally consistent with the planning controls applicable to the surrounding development within the Bexley North Local Centre;
3. the site-specific merit has generally shown the capacity and capability of the site to accommodate the proposal.

The following additional requirements were recommended to be addressed following a favourable Gateway determination:

1. preparation of a site-specific Development Control Plan to support the planning proposal;
2. further detailed traffic modelling and analysis of potential solutions to traffic issues; and
3. improvements to pedestrian and cycle links from the development to Bexley North Station, as well as the investigation of appropriate traffic mitigation measures, should be considered as part of any site-specific Development Control Plan and Voluntary Planning Agreement.

Nonetheless, on 12 June 2019, Council resolved:

1. that Council does not support the submission of the planning proposal for 88-96 New Illawarra Road and 307-311A Bexley Road, Bexley North to the Department of Planning and Environment for a Gateway Determination on the grounds of density, car parking, traffic issues and the lack of strategic direction in the Bexley North area.
2. that all sites are being considered as part of the Bayside LEP review process.

In response, the applicant submitted a rezoning review.

Rezoning Review

On 7 May 2020, the Sydney Eastern City Planning Panel (the Regional Panel) determined that the planning proposal had both strategic and site-specific merit to proceed to the Department of Planning, Industry and Environment for a Gateway determination.

The Regional Panel considered that the planning proposal is consistent with the relevant District Plan, Rockdale City Community Strategic Plan, Rockdale Urban Strategy and residential and access strategies. The proposal is within 200m of Bexley North Station and 50m south of the town centre. The proposed densities would be transitional from the town centre to the recently approved social housing project.

The Regional Panel considered the likely traffic impacts of this proposal to be acceptable within the town centre location.

The Regional Panel considered that this matter should proceed to Gateway but does not suggest a minimum lot size in the LEP. Rather this can be dealt with in a site specific DCP.

The Regional Panel did however make the following suggestions to the delegate in relation to the Gateway determination, being:

1. include a site specific DCP to address site area, setbacks and transitions to adjoining development; and
2. that the public benefits offered by the proponent, such as affordable housing, augmentation of open space and improved pedestrian access to the station, to the Regional Panel be formalised with Council prior to finalising of any instrument.

Following this decision, the Regional Panel wrote to Council offering the planning proposal Authority (PPA) role. Council resolved to accept the PPA role at the 27 May 2020 Council Meeting.

Gateway request

On 23 June 2020, Council submitted the planning proposal to the Department for a Gateway determination.

Following the planning proposal's submission for Gateway, the Department wrote to Council requesting clarification on matters of adequacy which needed to be addressed to progress the Gateway assessment. These adequacy matters related to the Regional Panel's rezoning review decision, including clarification on the preparation of a site specific DCP.

Since this request for information, Council and the Department have been in ongoing discussions.

On 14 February 2022, Council provided the additional information requested, including clarification around the preparation of a site specific DCP.

2 Need for the planning proposal

Is the planning proposal a result of an assured local strategic planning statement, or Department approved local housing strategy, employment strategy or strategic study or report?

The planning proposal was prepared by the proponent and lodged with Council. The proposal seeks to rezone and amend the development standards for the site in response to increasing the need for housing supply near existing infrastructure and services.

The planning proposal seeks to give effect to local assured local strategies but was not prepared as a consequence of their preparation or endorsement.

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

The planning proposal seeks to implement specific LEP provisions. There are no other mechanisms other than a planning proposal to amend statutory planning controls to facilitate the intended outcome.

3 Strategic assessment.

3.1 District Plan

The site is within the Eastern District and the Greater Sydney Commission released the Eastern City District Plan on 18 March 2018. The plan contains planning priorities and actions to guide the growth of the district while improving its social, economic, and environmental assets.

The planning proposal is consistent with the priorities for infrastructure and collaboration, liveability, productivity, and sustainability in the plan as outlined below.

The Department is satisfied the planning proposal gives to the District Plan in accordance with section 3.8 of the *Environmental Planning and Assessment Act 1979*. The following table includes an assessment of the planning proposal against relevant directions and actions.

Table 5 District Plan assessment

District Plan Priorities	Assessment
E1: Planning for a city supported by infrastructure	<p>This Planning Priority seeks to align future growth with infrastructure.</p> <p>The planning proposal responds to this Planning Priority as it seeks to provide increased residential density:</p> <ul style="list-style-type: none"> • near existing bus services; • approximately 250m south of Bexley North Station; and • approximately 500m south of the M5 Motorway entry at Bexley.

District Plan Priorities	Assessment
<p>E5: Providing housing supply, choice and affordability, with access to jobs, services and public transport</p>	<p>This Planning Priority seeks to provide housing supply, choice and affordability, with access to jobs, services and transport.</p> <p>The planning proposal responds to this Planning Priority as it:</p> <ul style="list-style-type: none"> • provides additional housing near public transport, which gives access to jobs in nearby centres and the Sydney CBD; • is located near the Bexley North Local Centre, which includes shops, a Woolworths supermarket and other services; and • is located near public open space, being approximately 50m from Whitbread Park.
<p>E6: Creating and renewing great places and local centres and respecting the District's heritage</p>	<p>This Planning Priority aims to create places which bring people together and where heritage is identified, conserved and enhanced.</p> <p>The site is located near Bexley North, a Local Centre identified in the District Plan.</p> <p>The District Plan acknowledges that Local Centres account for close to 18 per cent of all Greater Sydney's jobs. These centres also provide essential local functions, with access to goods and services, both social and community based.</p> <p>The planning proposal responds to this Planning Priority because the proposed additional residential density will facilitate economic activity within the centre by providing new consumers who will live near the centre. This will be beneficial to the centre by supporting existing businesses and encouraging new businesses. This provides the opportunity to increase economic activity, improving the centre's vitality and long term viability.</p>
<p>E10: Delivering integrated land use and transport planning for a 30minute city</p>	<p>This Planning Priority seeks to guide decision-making on locations for new transport, housing, jobs, education, health and other facilities. This will enable more efficient access to workplaces, services and community facilities.</p> <p>The planning proposal responds to this Planning Priority because it will increase housing supply with 30 minute access to new and existing employment opportunities at Sydney Airport, Port Botany, Sydney CBD and the Hurstville Strategic Centre.</p>
<p>E17: Increasing urban tree canopy cover and delivering Green Grid connections</p>	<p>This Planning Priority seeks to increase the urban tree canopy and create a Green Grid which links parks, open spaces, bushland and walking and cycling paths.</p> <p>The site is near the Wolli Creek Regional Park and Bardwell Valley Parklands Green Grid Priority Corridor and will benefit from these green grid connections. It is also adjoins a small town centre park to the north of the site, with the opportunity for enhancement through redevelopment of the site.</p> <p>The planning proposal responds to this Planning Priority because it has been demonstrated that the future development is capable of</p>

District Plan Priorities	Assessment
	achieving the minimum deep soil requirements specified within the Apartment Design Guide.
E20: Adapting to the impacts of urban and natural hazards and climate change	<p>This Planning Priority seeks to ensure development is compatible with urban and natural hazards.</p> <p><u>Flooding</u></p> <p>The planning proposal responds to this Planning Priority, because it is supported by a flood impact assessment (FIA) which, in summary, concludes the proposed future development is compatible with the potential flooding risk (see Section 3.4 of this Report for further detail).</p> <p><u>Moomba Sydney High Pressure Ethane Pipeline</u></p> <p>The planning proposal is located approximately 300m to the south of the Moomba Sydney High Pressure Ethane Pipeline (the pipeline) and seeks to increase residential density. As such, the Department has considered the hazard risk of this pipeline in accordance with the relevant NSW Land Use Safety Planning Guidelines¹ (the Guidelines). The Department is responsible for preparing and administering these Guidelines.</p> <p>The Department considers that the planning proposal will not result in unsatisfactory land use safety planning impacts because the site is located a sufficient distance from the Pipeline. Consequently, a land use safety study assessing the pipelines hazard risk impacts is not required.</p> <p>However, the planning proposal is located within the 590m notification zone of the pipeline. As required by AS 2885 - Pipelines - Gas and Liquid Petroleum, the pipeline operator should be notified of any change of land uses within the notification zone. This is to ensure the pipeline can continue comply with AS 2885. Depending on the consultation outcome with the pipeline operator, the preparation of a Safety Management Study may be required. This will review the operational and construction risk both to and from the pipeline. Consequently, the pipeline operator, APA Group, should be consulted during community consultation. The Gateway determination has been conditioned accordingly.</p>

3.2 Local

Bayside Local Strategic Planning Statement

The Bayside Local Strategic Planning Statement was assured by the Greater Sydney Commission on 18 March 2020.

This assurance confirmed that the Commission supports Bayside Council's draft Local Strategic Planning Statement (March 2020) as being consistent with the Greater Sydney Region Plan and Eastern City District Plan under Section 3.9(3A) of the EP&A Act.

¹ *Hazardous Industry Planning Advisory Paper 10 – Land Use Safety Planning*

The LSPS sets out the 20 year vision for land use in the Local Government Area (LGA). It also describes the special character and values that are to be retained and how change will be managed over a 20 year period.

The planning proposal is consistent with the Bayside LSPS, with the following Bayside Planning Priorities discussed in further detail below:

Table 6 Local strategic planning statement assessment

LSPS Planning Priority	Assessment
<p>B1: Align land use planning and transport infrastructure planning to support the growth of Bayside</p>	<p>This Bayside Planning Priority seeks to align land use and transport planning to support growth in the Bayside LGA.</p> <p>This planning proposal responds to this Bayside Planning Priority because it seeks to increase residential density near existing transport infrastructure, being approximately:</p> <ul style="list-style-type: none"> • 250m south of Bexley North Station; and • 500m south of the M5 Motorway entry at Bexley.
<p>B6: Support sustainable housing growth by concentrating high density urban growth close to centres and public transport corridors</p>	<p>This Bayside Planning Priority seeks to provide high density housing supply near centres and transport corridors.</p> <p>The planning proposal responds to this Bayside Planning Priority, because:</p> <ul style="list-style-type: none"> • the Bayside LSPS identifies Bexley North as a Local Centre. This planning proposal seeks to appropriately increase residential density near the Bexley North Local Centre which has access to existing transport infrastructure, being approximately: <ul style="list-style-type: none"> ○ 50m south of the Bexley North Local Centre; ○ 250m south of Bexley North Station; and ○ 500m south of the M5 Motorway at Bexley. • the Bexley North Local Centre is identified for investigation of urban renewal opportunities in the medium term. The residential investigations identified within the LSPS are being informed by the Bayside Local Housing Strategy (LHS). The Department endorsed Bayside LHS demonstrates the capacity for steady housing supply in the LGA for the next 20 years. This includes details on housing needs, locations, supply and diversity of housing that needs to be provided. The Bayside LHS found that Bexley North is one of the most appropriate centres in the LGA for additional housing intensification as it is near the T4 Line with land available for redevelopment. The Bayside LHS action plan identifies the Bexley North Centre for investigation and planning in the next 2 years. It is understood Council is preparing detailed investigations in accordance with the Bayside LHS; and • though the site is flood affected and is approximately 300m from the Moomba Sydney High Pressure Ethane Pipeline, no unsatisfactory impacts from natural or urban hazards affect the planning proposal (see Section 3.1 of this Report for further detail).

LSPS Planning Priority	Assessment
B7: Provide choice in housing to meet the needs of the community	<p>This Bayside Planning Priority seeks to provide housing choice and diversity which is cognisant of the needs of the Bayside Community.</p> <p>The planning proposal responds to this Bayside Planning Priority because it seeks to facilitate the opportunity for approximately 100 dwellings providing housing choice and diversity. The proposal facilitates an appropriate housing typology near an existing local centre and transport infrastructure.</p>
B12: Deliver an integrated land use and a 30-minute city	<p>This Bayside Planning Priority seeks to implement the 30-minute city initiative. The proposed implementation includes providing high amenity and walkability within 10 minutes of centres. It also seeks to plan for urban development, centres, better places and employment uses that are integrated with existing transport infrastructure and proposed transport projects.</p> <p>This planning proposal responds to this Bayside Planning Priority because it provides additional residential density near a Local Centre which provides essential local functions, with access to goods and services, both social and community based. The increase in residential density through this planning proposal will provide economic stimulus to improve and increase these goods and services whilst improving the vitality of the centre.</p> <p>The Local Centre is serviced by existing public transport which provides access to jobs in neighbouring centres and the Sydney CBD.</p>
B20: Increase urban tree canopy cover and enhance green grid connections	<p>This Bayside Planning Priority seeks to increase urban tree canopy and enhance green grid connections.</p> <p>The planning proposal responds to this Bayside Planning Priority because it has been demonstrated that the future development is capable of achieving the minimum deep soil requirements specified within the Apartment Design Guide.</p>

3.3 Bayside Local Housing Strategy 2019 (LHS)

The Bayside Local Housing Strategy (the Bayside LHS) was adopted by Council on 10 March 2021 and endorsed by the then Department of Planning, Industry and Environment on 30 June 2021.

The Bayside LHS sets a 20 year vision for housing supply, which targets the provision of 26,021 additional dwellings between 2016 and 2036, being:

Timeframe	Dwelling Target
2016 – 2021	10,150
2021 - 2026	7,720
2026 - 2036	8,151
Total 2016 - 2036	26,021

One of the key principles of the Bayside LHS is that growth should occur in centres with good access to public transport and proximity to facilities and services, such as Bexley North.

The Bayside LHS found that Bexley North is one of the most appropriate centres in the LGA for additional housing intensification as it is near the T4 Line and land available for redevelopment. The Bayside LHS action plan identifies the Bexley North Centre for investigation and planning in the next 2 years.

3.4 Section 9.1 Ministerial Directions

The planning proposal's consistency with relevant section 9.1 Directions is discussed below:

Table 7 – Section 9.1 Ministerial Direction assessment

Directions	Consistency	Assessment
Direction 4.1 Flooding	Unresolved – Gateway condition	<p>This Direction aims to ensure appropriate consideration of flood prone land in line with government policies and plans when a planning proposal seeks to create, remove or alter a zone or a provision that affects flood prone land. This Direction requires a planning proposal to be consistent with and give effect to the NSW Flood Prone Land Policy and the Floodplain Development Manual 2005.</p> <p>The planning proposal is supported by a flood impact assessment (FIA) prepared by John Romanous & Associates Pty Ltd. (dated 5 May 2018).</p> <p>The FIA states that a detailed assessment of the proposal has been undertaken against existing LEP and DCP flooding requirements as well as the matters found within Appendix G of the NSW Floodplain Manual 2005.</p> <p>The FIA states that a flood study was completed to assess the average recurrence interval (AVI) on 5 April 2017.</p> <p>The FIA subsequently concludes that:</p> <ul style="list-style-type: none"> the building layout for the proposed site has been thoughtfully considered; the safety of the proposed residents has been of paramount importance and will be incorporated into the ultimate design; no access across the major flowpath is proposed; there is no adverse impact to the neighbours or the community due to flooding and has potential for the erection of coordinated built form, which also addresses local overland flooding issues; the removal of the service station could result in a significant improvement by eliminating contamination from potential spills and discharges during a flood event; and the potential to update the drainage system to a higher standard as part of the development will result in additional improvements as the overland flows will reduce over the section of upgrade.

Directions	Consistency	Assessment
		<p>The FIA also notes that:</p> <ul style="list-style-type: none"> the subject properties are impacted by a 900mm pipeline within a stormwater drainage easement and will need to be relocated; and it was reviewed by Council engineers whose comments are found in the Council Report. The FIA was deemed satisfactory by Council's engineers with a further detailed development specific flood study required as part of a future development application. <p>Because the FIA was prepared in 2018, the Gateway is conditioned to require a relevant technical expert confirm these conclusions remain valid with the planning proposal updated accordingly prior to community consultation. Consistency with this Direction can then be confirmed at finalisation.</p> <p>The Gateway determination has been conditioned to require consultation with the Environment, Energy and Science Group because the site is flood affected.</p>
Direction 4.4 Remediation of Contaminated Land	Unresolved – Gateway condition	<p>This Direction aims to reduce the risk of harm to human health and the environment by ensuring that contamination and remediation are considered by planning proposal authorities. This direction applies to the rezoning of land for residential purposes, such as intended by the planning proposal.</p> <p>This Direction requires that before including any land specified in paragraph (2) (of the Direction) in a particular zone, the planning proposal authority is to obtain and have regard to a report specifying the findings of a preliminary investigation of the land carried out in accordance with the contaminated land planning guidelines.</p> <p>The planning proposal is supported by a Stage 1 and Stage 2 – Environmental Site Assessment (the Contamination Report) prepared by Geo-environmental Engineering (dated 31 July 2017).</p> <p>This Contamination Report states the site can be made suitable for the proposed land-uses as described in the planning proposal. This would be subject to the removal of the underground petrol storage system (UPSS) and the Contamination Report recommends that a Remedial Action Plan should be prepared.</p> <p>Because the Contamination Assessment was prepared in 2017, the Gateway is conditioned to require a relevant technical expert confirm these conclusions remain valid with the planning proposal updated accordingly prior to community consultation. Consistency with this Direction can then be confirmed at finalisation.</p> <p>It is noted that since the preparation of this planning proposal, this Direction has been endorsed by the Minister for Planning, replacing the previous provisions in clause 6 of SEPP No.55 –</p>

Directions	Consistency	Assessment
		<p>Remediation of Land. As such, the planning proposal will need to be updated to include discussion of this Direction. The Gateway determination has been conditioned accordingly.</p> <p>Because the site contains an existing service station, the Environmental Protection Authority is to be consulted during community consultation.</p>
Direction 4.5 Acid Sulfate Soils	Unresolved – Gateway condition	<p>This Direction requires an acid sulfate soils study where intensification is likely to occur in an area identified as being affected by acid sulfate soils.</p> <p>The planning proposal includes a Geotechnical investigation (dated 19 January 2019) which considers acid sulfate soils and has regard to the existing Acid Sulfate Soils LEP provisions.</p> <p>This Geotechnical investigation concludes:</p> <ul style="list-style-type: none"> that there is no need for an acid sulphate soil assessment or management plan; and This matter can be further considered and addressed through existing LEP provisions as part of the development application process. <p>Because the Geotechnical assessment was prepared in 2019, the Gateway is conditioned to require a relevant technical expert confirm these conclusions remain valid with the planning proposal updated accordingly prior to community consultation. Consistency with this Direction can then be confirmed at finalisation.</p>
5.1 Integrating Land Use and transport	Consistent	<p>This Direction aims to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts:</p> <ul style="list-style-type: none"> improve active and public transport access to homes and jobs; increase transport choices and reduce car dependency; reduce travel demand; support the operation of public transport services; and provide for the efficient movement of freight. <p>This direction applies when a planning proposal seeks to create, alter or remove a zone or a provision relating to urban land, such as in this instance.</p> <p>This planning proposal is consistent with this Direction because it seeks to appropriately increase residential density near the</p>

Directions	Consistency	Assessment
		<p>Bexley North Local Centre which has access to existing transport infrastructure, being approximately:</p> <ul style="list-style-type: none"> • 250m south of Bexley North Station; and • 500m south of the M5 Motorway at Bexley. <p>This provides for the efficient use of existing transport infrastructure, encourages walkability and improves access to jobs and services.</p>
Direction 6.1 Residential Zones	Consistent	<p>This Direction aims to encourage a variety and choice of housing types, make efficient use of infrastructure and services, and minimise the impact of residential development on the environment and resource lands. The Direction applies when a planning proposal will affect residential land, such as in this instance.</p> <p>This planning proposal is consistent with this Direction as it seeks to appropriately increase residential density near the Bexley North Local Centre which has access to existing transport infrastructure, being approximately:</p> <ul style="list-style-type: none"> • 250m south of Bexley North Station; and • 500m south of the M5 Motorway at Bexley.

3.5 State environmental planning policies (SEPPs)

The planning proposal is consistent with all relevant SEPPs as discussed in the table below.

Table 8 Assessment of planning proposal against relevant SEPPs

SEPPs	Requirement	Consistency	Assessment
State Environmental Planning Policy (Transport and Infrastructure) 2021	Clause 2.119	Consistent	<p>Though Bexley Road does not appear to generate the necessary traffic volume to trigger the requirements of this clause, it is a classified road. Though an acoustic assessment of this roads noise impacts does not support this planning proposal, high density residential development exists on Bexley Road within the Bexley North Local Centre.</p> <p>As such, it is considered that this matter can be adequately addressed as part of the DA assessment process.</p>
SEPP No. 65 - Design Quality of Residential Apartment Development	The planning proposal seeks to facilitate the development of residential flat buildings	Consistent	<p>A general assessment has been undertaken by the Department and the concept scheme in support of the proposal has been shown to be in keeping with the Apartment Design Guide (ADG).</p> <p>Detailed design of buildings that comply with the proposed envelopes sought by this</p>

SEPPs	Requirement	Consistency	Assessment
			<p>planning proposal will be undertaken at the DA stage, where compliance with SEPP 65 will need to be demonstrated. Nonetheless, the concept scheme provides:</p> <ul style="list-style-type: none"> • building height that responds to the desired future scale and character of the street and local area, with proposed transition from 6 storeys down to 5 storeys on the southern portion of the site; • building height controls consider the height of existing buildings that are unlikely to change (for example a heritage item or strata subdivided building); • a minimum 12m of building of building separation being generally achieved in accordance with the ADG; • a maximum 18m building depth is proposed to ensure that apartments receive adequate daylight and natural ventilation and optimise natural cross ventilation, in accordance with the ADG; • building depths that will support a range of apartment layouts and can achieve compliance with the ADG; • building orientations that seek to maximise solar access for apartments; • satisfactory solar access to neighbouring residential development, the public domain and open spaces; • communal open space which is anticipated to receive adequate solar access; and • deep soil zones will meet the minimum requirement of 7% of the site area. <p>Overall, the planning proposal has adequately demonstrated that the proposed increases in building height and FSR are capable of appropriately responding to SEPP 65.</p>
State Environmental Planning Policy (Housing) 2021 (the Housing SEPP)	The rezoning review decision discussed providing affordable housing through a	Consistent	<p>Chapter 2, Part 1 of the Housing SEPP provides for Bayside Council to prepare an affordable housing contribution scheme to levy for the provision of affordable housing.</p> <p>Bayside Council is yet to prepare and endorse an affordable housing contribution scheme. The next step in the process will be for Council to prepare an affordable housing contribution</p>

SEPPs	Requirement	Consistency	Assessment
	public benefit offer		<p>scheme and amend their local environmental plan to reference the scheme.</p> <p>Until this occurs, other mechanisms are available to deliver affordable housing, including a VPA. It is understood discussions remain ongoing between Council and the proponent to enter into a VPA, with these discussions including the potential for providing affordable housing on site.</p> <p>It is understood Bayside Council is continuing to investigate the introduction of an affordable housing contribution scheme in accordance with clauses 13, 14 and 15 the Housing SEPP, the supporting guidance has been issued by the Department as part of its approval for council's LHS.</p>

4 Site-specific assessment

4.1 Environmental

The following table provides an assessment of the potential environmental impacts associated with the proposal.

Table 9 Environmental impact assessment

Environmental Impact	Assessment
Natural environment	<p>The site is occupied by an existing low density residential development and a petrol station. The site does not contain any known critical habitat or threatened species, populations or ecological communities or habitats.</p>
Height & Built Form	<p>The planning proposal is supported by an Urban Context Report prepared by Urban Link and dated 21 February 2018. This includes analysis of the proposed built form and how it responds to the surrounding locality. Discussion of solar access and overshadowing to and from the proposal is assessed under its own heading immediately below this height and built form assessment. The Bexley North Local Centre, to the north of the site, is zoned B4 Mixed Use under the Bayside LEP 2021 with:</p> <ul style="list-style-type: none"> a 16m maximum building height, plus a 6m height bonus if a site has an area of at least 1,200m² (maximum of 7 storeys); and a 2:1 maximum FSR plus a 0.5:1 bonus if a site has an area of at least 1,200m². <p>These existing standards in the Bexley North Town Centre allow for a built form outcome which equates to a maximum 7 storeys. To the immediate</p>

south of the site is a recently completed residential development being part 3 and part 4 storeys.

The intended 5 and 6 storey development of the planning proposal provides for a transition from the maximum 7 storeys in the centre to the part 3 and part 4 storey residential development to the immediate south (**Figure 15**).



Figure 15 - Built form context diagram of Bexley North Town Centre, the site and 84 New Illawarra Road and 313 Bexley Road, Bexley North (Source: Nearthmaps)

The small parcel of public open space adjoins the site to the north and is located such that potential built form impacts of the proposal will have minimal impact in terms of overshadowing.

The site is otherwise separated from surrounding development to the east and west by public roads. This separation reduces bulk, scale and other built form impacts to nearby development on these aspects.

The other notable aspect of the proposal is that it has the potential to be as tall as that permitted in the core part of the town centre (ie. 22m) – see **Figure 15**. Further work is needed in the planning proposal demonstrate the built form being as dense and high as permitted in the town centre core. This requires revised photomontages that reflect the proposal and the current controls for the Bexley North town centre, as these are incorrect in the current documentation supporting the planning proposal.

A Gateway condition has been included to ensure the proposal documents correctly reflect the current zoning and development standards of the surrounding area under the Bayside LEP 2021.

It is noted that the Regional Panel did recommend in its decision to support the planning proposal proceeding to Gateway, that a site specific DCP address site area, setbacks and transitions to adjoining development. This also included a minimum lot size control in the DCP rather than the LEP to be consistent with Council's existing approach for its R4 zoned land. Council has since clarified that a site specific DCP is being prepared which seeks to address these matters in accordance with the Regional Panel's decision.

Overshadowing

A shadow analysis was undertaken as part of the Urban Context Report prepared by Urban Link (**Figures 16 to 18**).



Figures 16 and 17 - Shadow 9:00am, 21 June (left) and 12:00pm 21 June (right)
(Source: Urban Link)



Figure 18: Shadow 3:00pm, 21 June (Source: Urban Link)

This shows the shadows from the intended development at 9am, 12pm and 3pm at winter solstice. The shadows fall to the west at 9am and shift to the south by 3pm.

However, the proposal does appear to significantly overshadow itself and the subject site and may result in reducing suitable solar access to

eventual apartment development on the site and any communal open space internal to the site.

It is recommended that prior to community consultation, the planning proposal be updated to provide hourly shadow diagrams at winter solstice. These revised diagrams will need to clearly demonstrate shadowing impacts and solar access both on the site and to surrounding development to inform community consultation. This should include 3D perspectives of shadowing impacts to the residential development to the south of the site.

Traffic & Parking

Initial Traffic Report supporting the planning proposal

The planning proposal is supported by a Traffic Impact Assessment prepared by Varga Traffic Planning Pty Ltd, dated 5 April 2017 (the proponent's traffic study). This Traffic Impact Assessment was modelled from a proposal which is expected to facilitate a development of 100 dwellings and concluded that the proposal would not have any adverse impact on the local road network.

Council Peer Review of initial Traffic Assessment

Prior to consideration by the Local Panel and as part of the assessment of the planning proposal, Bitzios Consulting was engaged by Bayside Council to undertake an independent traffic peer review of this Traffic Impact Assessment. The independent traffic peer review agreed with the findings of the proponent's traffic study. It also included some recommendation to be addressed as part of a future development application.

Pre-Gateway TfNSW Comments

On 8 May 2018, Council Officers referred the planning proposal to TfNSW (previously RMS) in response to the recommendation of the Local Planning Panel.

On 2 July 2018, comments were received from TfNSW which did not raise objection in principle to the planning proposal. TfNSW recommendations and conclusions included:

- TfNSW acknowledged that this would have a moderate impact on the overall traffic generation;
- the planning proposal and subsequent redevelopment of the site may result in a reduction of trips generated by that portion of the site in the PM peak hours;
- improvements to pedestrian links to Bexley North Station be investigated and identified to support the planning proposal; and
- the preparation of a site-specific Development Control Plan (DCP) to support the planning proposal, which includes identifying appropriate maximum parking rates.

Council subsequently sort comment from the proponent and an Addendum Traffic Report was prepared by Varga Traffic Planning Pty Ltd, dated 25 September 2018 in response to TfNSW's comments.

Council Report

On 12 June 2019, the planning proposal was reported to Council for endorsement to submit for a Gateway determination. The Council Report contested the position that the proposed development would substantially reduce traffic. The Report to Council considered that the proposal would:

- not reduce the traffic in the surrounding street network, but increase traffic along Bexley Road and New Illawarra Road; and
- inevitably contribute to the ongoing traffic issues in the area, including the adjoining intersection of New Illawarra Road and Bexley Road.

The Report to Council recommended that further detailed traffic modelling and potential solutions post Gateway determination, including:

- a site specific DCP which reduces the provision for off-street parking, particularly where the site is in close vicinity to rail and a frequent bus network; and
- road upgrades (though not currently proposed) could form part of more detailed analysis post-Gateway, including discussions regarding section 7.11 contributions and any future VPA.

The Council subsequently resolved to not support the planning proposal proceeding to the Department for Gateway. The reasons for this resolution included concerns with traffic and car parking impacts.

Rezoning Review

In the reasons for decision, the Regional Panel considered that the likely traffic impacts of the planning proposal to be acceptable within the town centre location.

Department Assessment

The Department notes that:

- the proposed development will no longer result in any vehicle access from Bexley Road – a classified road;
- TfNSW did not object in principle to the planning proposal; and
- TfNSW and Council have considered that potential traffic impacts could be further mitigated through a site-specific DCP.

Council have since clarified they are preparing a site specific DCP to address car parking, vehicular access and pedestrian connectivity. This draft site-specific DCP includes providing for maximum car parking rates consistent with the RMS (now TfNSW) Guide for Traffic Generating Developments.

Because the detailed traffic analysis and consultation with RMS date from 2018, the Gateway is conditioned to require a relevant technical expert confirm these conclusions remain valid with the planning proposal updated accordingly prior to community consultation.

In this regard, it is proposed to consult with TfNSW on this planning proposal, due to previous consultation undertaken, the proposed increase in residential density and the site adjoining a classified road. The Gateway determination has been conditioned accordingly. This consultation can also inform any further necessary refinements of traffic and car parking measures.

4.2 Social and economic

The following table provides an assessment of the potential social and economic impacts associated with the planning proposal.

Table 10 Social and economic impact assessment

Social and Economic Impact	Assessment
Economic	The planning proposal will facilitate the delivery of housing supply, choice and diversity. The accompanying development concept proposes three residential flat buildings composing a total of 100 dwellings. The planning proposal will have the following economic benefits which are considered acceptable, because it will provide housing choice and diversity in an established residential area near infrastructure and services.
Social	<p>The planning proposal will allow for positive social impacts as:</p> <ul style="list-style-type: none"> • it will increase housing supply and diversity near Bexley North Local Centre; and • it will provide housing that can utilise existing infrastructure and services.

4.3 Infrastructure

Any future development may require utility services to be upgraded and/or augmented to enable the intended future development to occur.

As the proposal will intensify development on the site, it is recommended that relevant state infrastructure service providers are consulted as part of the Gateway determination, including Sydney Water and Ausgrid.

5 Consultation

5.1 Community

The planning proposal states that it will be publicly exhibited with the length of the public exhibition period to be informed by the Gateway determination. A period of 20 working days is considered appropriate for the public exhibition of the planning proposal. The Gateway determination has been conditioned accordingly.

5.2 Agencies

Consultation is required with the following government authorities:

- Transport for NSW;
- Environmental Protection Authority;
- Environment, Energy and Science Group;
- Sydney Water; and
- Ausgrid.

Due to the site being within the 590m notification zone of the Moomba Sydney High Pressure Ethane Pipeline, consultation with the pipeline operator APA Group is required. The Gateway determination has been conditioned accordingly.

6 Timeframe

Council proposes a seven (7) month time frame to complete the LEP.

The Department recommends a time frame of nine (9) months to ensure it is completed in line with its commitment to reduce processing times. It is recommended that if the Gateway is supported it also includes conditions requiring council to exhibit and report on the proposal by specified milestone dates.

A condition to the above effect is recommended in the Gateway determination.

7 Local plan-making authority

Council has advised that it would like to exercise its functions as a Local Plan-Making authority.

As Bayside Council did not support the planning proposal and it was subsequently the subject of a rezoning review, the Gateway determination should not be conditioned for Council to be the local plan-making authority.

8 Assessment summary

The planning proposal is supported to proceed with conditions because it:

- is consistent with the Eastern City District Plan and the Bayside Local Strategic Planning Statement (LSPS);
- is consistent with relevant section 9.1 Ministerial Directions and State Environmental Planning Policies, with any inconsistencies addressed by prior to community consultation Gateway conditions;
- provides additional housing near the Bexley North Local Centre and its existing service and amenity;
- increases residential density near existing public transport, providing access to jobs and service in neighbouring centres and Sydney CBD; and
- is consistent with the built form, character and land uses in the surrounding area.

9 Recommendation

It is recommended that the delegate of the Secretary:

- Note that the consistency with section 9.1 Directions: 4.1, 4.4 and 4.5 are unresolved and will require justification prior to exhibition.

It is recommended the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. Prior to community consultation, the planning proposal is to be updated to:
 - include information that clearly demonstrates consistency with, or that any inconsistency is justified and/or of minor significance, for the following section 9.1 Directions:
 - 4.1 Flooding - include confirmation from a qualified technical expert that the conclusions in the supporting flooding impact assessment remain valid;

- 4.4 Remediation of contaminated land - include confirmation from a qualified technical expert that the conclusions in the supporting contamination assessment remain valid; and
 - 4.5 Acid Sulfate Soils - include confirmation from a qualified technical expert that the conclusions in the supporting geotechnical assessment remain valid.
 - include confirmation from a qualified technical expert that the conclusions in the supporting traffic assessment remain valid;
 - include revised 3D perspectives or photomontages of the proposed development when viewed from various adjoining streets and to reflect a consistent built form that maximises the proposed building height controls (to part 7 storeys) the proposed fuller FSR;
 - ensure the proposal documents correctly reference the proposed controls in the explanation of provisions;
 - ensure the proposal documents correctly reflect the current zoning and development standards of the surrounding area under the Bayside LEP 2021; and
 - provide hourly shadow diagrams at winter solstice. These revised diagrams will need to clearly demonstrate shadowing impacts and solar access both on the site and to surrounding development to inform community consultation. This should include 3D perspectives of shadowing impacts to the residential development to the south of the site.
2. Consultation with APA Group, operator of the Moomba Sydney High Pressure Ethane Pipeline, is required to occur during community consultation.
 3. Consultation is required with the following government authorities:
 - Transport for NSW;
 - Environmental Protection Authority;
 - Environment, Energy and Science Group;
 - Sydney Water; and
 - Ausgrid.
 4. The planning proposal should be made available for community consultation for a minimum of 20 working/business days.
 5. The planning proposal must be exhibited within 4 months from the date of the Gateway determination.
 6. The planning proposal must be reported to Council for a final recommendation 7 months from the date of the Gateway determination.
 7. The timeframe for completing the LEP is to be 9 months from the date of the Gateway determination.
 8. As the planning proposal was subject to a rezoning review, Council should not be delegated local plan-making authority.



_____ (Signature)

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_____ (Signature)

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