



IRF22/1743

Gateway determination report – PP-2022-1517

Bayside LEP 2021 Removal of Additional Permitted
Uses 34 & 35 and retention of residential flat buildings
as an Additional Permitted Use on 6 sites

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Table 1 Reports and plans supporting the proposal

Relevant reports and plans
Attachment 1: Planning Proposal (Bayside Council)
Attachment 2: Bayside Council Meeting Minutes
Attachment 3: Bayside Local Planning Panel Report for Gateway (Minutes on Page 15 of Report)
Attachment 4: LAHC Sites Urban Design Block Modelling Study
Attachment 5: 96 Bay Street, Botany Bay Urban Design Modelling
Attachment 6: 97 Banksia Street, Botany Urban Design Modelling

1 Introduction

1.1 Overview of planning proposal

Table 2 Planning proposal details

LGA	Bayside Council
PPA	Bayside Council
NAME	Planning proposal to amend Bayside LEP 2021 to remove Additional Permitted Uses 34 & 35 and introduce an Additional Permitted Use for retention of Residential Flat Buildings in the R3 zone at 6 separate sites
NUMBER	PP-2022-1517
LEP TO BE AMENDED	Bayside Local Environmental Plan 2021
ADDRESS	<p>Land identified as '34' and '35' on Additional Permitted Uses Map to be removed.</p> <p>Additional Permitted Use for Residential Flat Buildings on the below sites:</p> <ul style="list-style-type: none"> • 96A Bay Street, Botany; • 97 Banksia Street, Botany; • 70 Macintosh Street, Mascot; • 10-12 Middlemiss Street, Rosebery (also known as 10-12 Coward Street, Mascot); • 68-80 Beauchamp Road, Hillsdale; and • 68-80 Banks Avenue, Pagewood.
PROPERTY DESCRIPTION	<p>Various.</p> <p>Allotments to be added (in order of above):</p> <ul style="list-style-type: none"> • Lot 3 DP 629040 • Lot 1 DP 200187 • Part Lot 1 DP 668902 • Lot 2 DP 771111 • Lot 12 DP 736905 • Lots 5-13, Part Lots 14 & 15 and Lots 16 & 17 DP 35180 and Lot 1 DP 527564.
RECEIVED	28 April 2022
FILE NO.	IRF22/1743
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 planning proposal

The planning proposal seeks to amend Schedule 1 – Additional Permitted Uses (APU) of the Bayside LEP 2021 (LEP) to:

- remove Multi-Dwelling Housing and Residential Flat Buildings as Additional Permitted Uses for areas in the former Botany LGA zoned R2 Low Density Residential (R2). These areas are identified as Item '34' on the existing APU Maps in the LEP;
- remove Residential Flat Buildings as Additional Permitted Use in areas in the former Botany LGA zoned R3 Medium Density Residential (R3). These areas are identified as Item '35' on the existing APU Maps in the LEP; and
- continue to permit Residential Flat Buildings as an Additional Permitted use on six sites zoned R3 in former Botany LGA. These sites are to be identified as Item '34' on the proposed APU Maps in the LEP – which is the next proposed sequential number after the above-mentioned Items are removed from Schedule 1 of the LEP.

Further details are discussed throughout this report.

1.3 Site description

Existing APU Items '34' and '35' sites are former Botany LGA areas zoned R2 and R3 under the Bayside LEP 2021.

The six sites zoned R3 where residential flat buildings will be retained as an additional permitted use in Schedule 1 of the LEP are described as and shown in Figures 1-6:

- 96A Bay Street, Botany – Lot 3 DP629040
- 97 Banksia Street, Botany – Lot 1 DP200187
- 70 Macintosh Street, Mascot – Part Lot 1 DP668902
- 10-12 Middlemiss Street, Rosebery – Lot 2 DP771111 (also known as 10-12 Coward Street, Mascot)
- 68-80 Beauchamp Road, Hillsdale – Lot 12 DP736905
- 68-80 Banks Avenue, Pagewood – Lots 5-13, Part Lots 14 & 15, Lots 16 & 17 DP35180 and Lot 1 DP527564

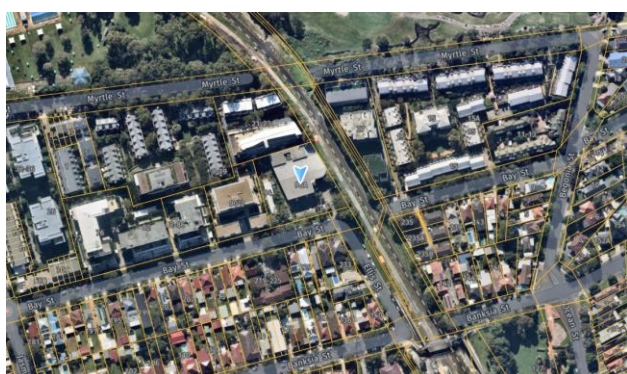


Figure 1: 96A Bay Street, Botany

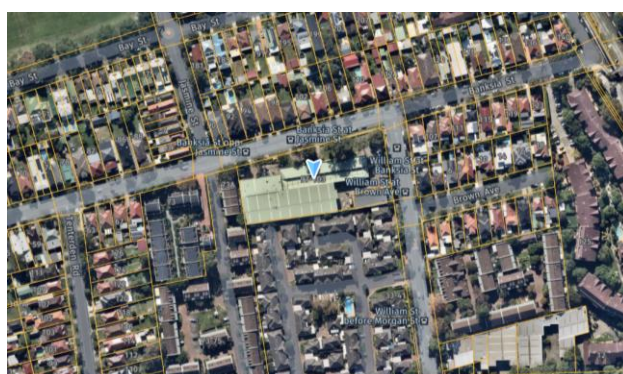


Figure 2: 97 Banksia Street, Botany



Figure 3: 70 Macintosh Street, Mascot

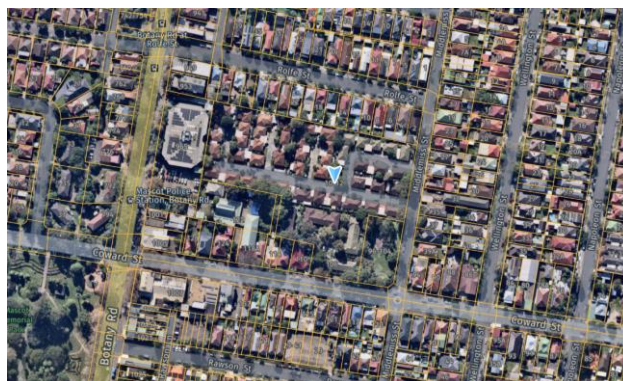


Figure 4: 10-12 Middlemiss Street, Rosebery



Figure 5: 68-80 Beauchamp Road, Hillsdale



Figure 6: 68-80 Banks Avenue, Pagewood

2 Proposal

2.1 Objectives or intended outcomes

The objectives of the planning proposal are to:

- remove the existing Additional Permitted Uses identified as '34' and '35'
- to retain Residential Flat Buildings as an additional permitted land use on six sites zoned R3
- ensure land uses permitted within the R2 Low Density and R3 Medium Density zones generally reflect the objectives of the zoning with exception of the six unique sites
- harmonise permissible land uses in the R2 Low Density and R3 Medium Density zones across the Bayside LGA.

The planning proposal states that removing the existing Additional Permitted Uses will prohibit the multi-dwelling housing and residential flat building use in the R2 zone and prohibit the residential flat building use in the R3 zone.

2.2 Explanation of provisions

Table 3 provides details of the proposed amendments to the Bayside LEP 2021.

Table 3 Current and Proposed controls

Control	Current	Proposed
Additional Permitted Use 34	Multi Dwelling Housing and Residential Flat Buildings permitted with consent in the R2 zone on mapped areas	Remove
Additional Permitted Use 35	Residential Flat Buildings permitted with consent in the R3 zone on mapped areas	Remove
Additional Permitted Use '34' (34 will be the next sequence number after the existing APUs 34 and 35 are deleted)	NIL	Residential Flat Buildings continue to be permitted with consent on the following land: <ul style="list-style-type: none"> • 96A Bay Street, Botany; • 97 Banksia Street, Botany; • 70 Macintosh Street, Mascot; • 10-12 Middlemiss Street, Rosebery (also known as 10-12 Coward Street, Mascot); • 68-80 Beauchamp Road, Hillsdale; and • 68-80 Banks Avenue, Pagewood.

2.3 Mapping

The planning proposal includes mapping changes to Additional Permitted Use map sheets APU_008, APU_009, APU_011 and APU_012. The areas subject of this planning proposal are the former R2 and R3 zoned land of Botany Bay Council as displayed below in Figures 7-10.

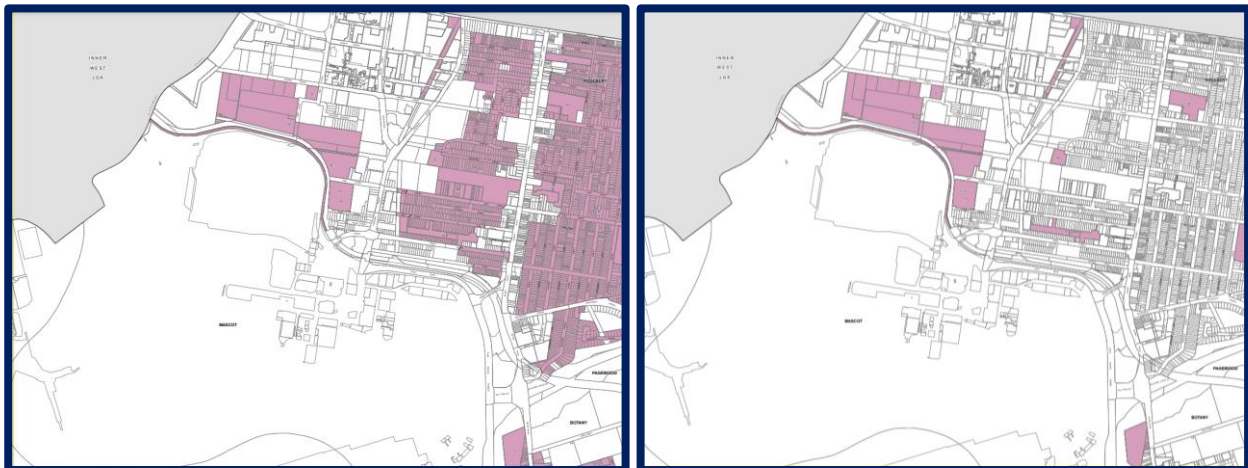


Figure 7: Existing (Left) and Proposed (Right) Additional Permitted Uses Map – Sheet APU_008



Figure 8: Existing (Left) and Proposed (Right) Additional Permitted Uses Map – Sheet APU_009

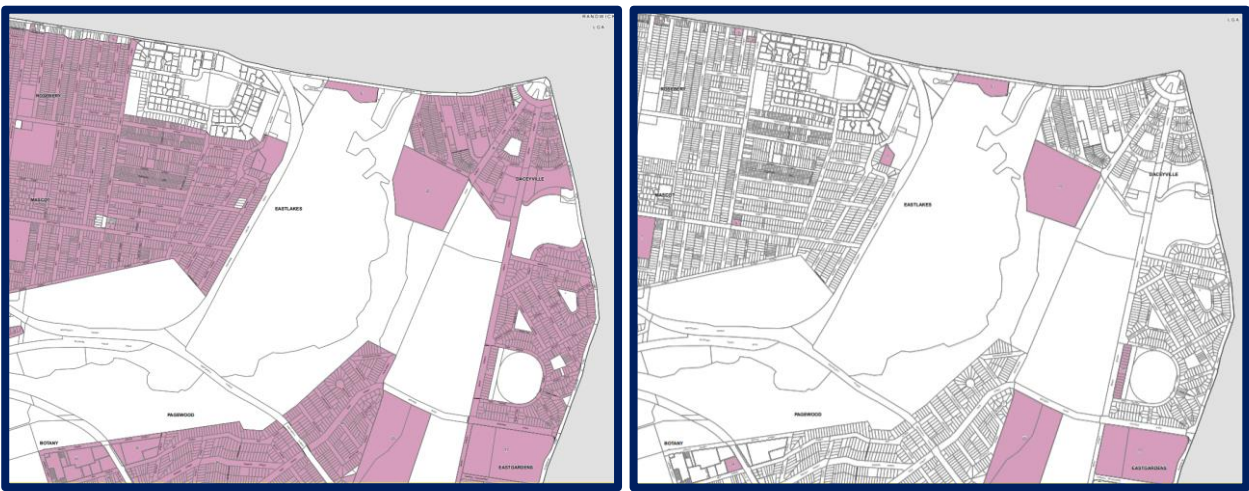


Figure 9: Existing (Left) and Proposed (Right) Additional Permitted Uses Map – Sheet APU_011



Figure 10: Existing (Left) and Proposed (Right) Additional Permitted Uses Map – Sheet APU_012

2.4 Background and planning proposal history

Context of use permissibility - former Botany Bay LEP 2013 and Botany Bay LEP 1995:

The former Botany Bay Local Environmental Plan 2013 (Botany LEP 2013) permitted:

- multi-dwelling housing in the R2 zone; and
- residential flat buildings within the R2 and R3 zone.

The Botany Bay Local Environmental Plan 1995 (Botany Bay LEP 1995):

- permitted multi dwelling housing in the 2a and 2b residential zones.
- prohibited residential flat buildings in the 2a and 2b residential zones.

Botany Bay LEP 2013

In June 2013 the Botany Bay Standard Instrument LEP was gazetted, becoming the Botany Bay LEP 2013. The intent of permitting the uses in the zones subject to this proposal (with associated development standards), was to facilitate development on 'opportunity sites', characterised as those having an area greater than 2,000m². This reflected the Botany LEP 1995, recognising the importance large sites by giving sites larger than 2,500m² an increased floor space ratio (FSR) of 1:1 within the residential 2(b) zone in lieu of a maximum 0.5:1 FSR.

In preparing the Botany Bay LEP 2013, Council considered it necessary to allow additional FSR and height to achieve the Botany Bay dwelling targets identified under the then Botany Bay Planning Strategy 2031. Subsequently, a FSR of 1.5:1, and a maximum height of building (HOB) to 4-6 storeys was included in the Botany Bay LEP 2013 to encourage higher density residential redevelopment. This has informed the current LEP clauses 4.3(2A) and 4.4(2A).

Multi-dwelling housing and residential flat buildings were made permissible in the R2 zone to provide for the adaptive reuse of existing industrial and commercial buildings within the R2 zone to provide the opportunity to make these existing developments consistent with the residential form in the area. Council noted in the planning proposal to draft the original Botany Bay LEP 2013 Instrument the following:

'Multi dwelling houses and residential flat buildings are only permitted in this zone (R2) where the existing land contains an industrial, office, business or retail building that was used, designed or constructed for an industrial, office, business or retail use which was in existence on the appointed day, whether or not existing use provisions of the Act have ceased to apply'.

The above was reflected in the Land Use Table and the requirements of Clause 6.11 of the Botany LEP 2013.

Residential flat buildings in the R3 zone were added to maximise the range of uses permitted in the zone. Council constructed the land use tables to be consistent with recently gazetted LEPs and the Standard Instrument. There was little strategic justification however provided by Council in the original Botany Bay LEP planning proposal to warrant these uses in these zones.

Bonus Clause Deletion Planning Proposal – six sites to retain residential flat building land use

In February 2015, Council submitted a Planning Proposal seeking to delete clauses 4.3(2A) and 4.4B from the Botany Bay LEP 2013 (Table 4).

Table 4 Overview of clauses to be deleted

To be deleted	Overview of clause
Clause 4.3(2A)	This clause offered a bonus height of up to 22 metres for sites which exceed 2,000m ² in area where the building height would otherwise be limited to 10-14 metres depending on location. The objective of this clause was to allow increased densities on larger or amalgamated sites in medium and high-density residential zones.
Clause 4.4B	This clause offered a bonus floor space ratio (FSR) of 1.65:1 as a cost off-set and an incentive to amalgamate and develop sites over 2,000m ² zoned R3 and R4 and affected by constraints including acid sulfate soils, and either contamination or noise (aircraft, rail, road).

A Gateway Determination was issued in September 2015. This was subject to a public exhibition process which allowed the community to express interest in the development of any of the sites Council has assessed as part of the planning proposal, with a view to the possibility of these being included as an APU in the LEP with the bonus provisions and a proposed urban design clause.

During the preparation of the Bayside LEP 2021 (discussed further below), Council sought to implement community feedback received during the exhibition of the bonus clause deletion Planning Proposal. This included permitted residential flat buildings and the bonus provisions on a limited number of sites, supported by detailed analysis prepared under a Peer Review of the bonus provision deletion Planning Proposal by SJB and concept development plans/urban design analysis provided by the landowners. The sites were:

- 96A Bay Street, Botany
- 97 Banksia Street, Botany
- Seven (7) sites owned by the NSW Land and Housing Corporation:
 - Slattery Place, Eastlakes (corner of Southern Cross Drive and Gardners Road)
 - 1-5 Florence Avenue, Eastlakes
 - 16-18 Maloney Street, Eastlakes
 - 70 Macintosh Street, Mascot
 - 10-12 Middlemiss Street, Rosebery (also known as 10-12 Coward Street, Mascot)
 - 68-80 Beauchamp Road, Hillsdale
 - 68-80 Banks Avenue, Pagewood

In November 2020, Council requested that the bonus clause deletion Planning Proposal not proceed. Council stated that the objectives of the Planning Proposal were satisfied as part of the draft Bayside LEP. An altered Gateway Determination for the proposal to not proceed was issued in December 2020 and the LEP was not altered.

Bayside LEP 2021 – Drafting and proposed removal of uses

In drafting the Bayside LEP 2021, Council sought to remove the residential flat building and multi-dwelling housing land uses from the former Botany Bay R2 zones and residential flat buildings from the former Botany Bay R3 zones. The uses were considered inconsistent with the objectives of the R2 and R3 zones in the new Bayside LEP.

The draft Bayside LEP however sought to retain six individual R3 zoned sites (discussed throughout this report), that would maintain Additional Permitted Use provisions to allow for residential flat buildings on these sites.

These sites had undertaken previous urban design modelling to demonstrate that the sites could meet planning requirements to facilitate future DA consideration for residential flat buildings within those sites (as previously discussed above).

Citing insufficient strategic justification to remove the uses from the former Botany Bay R2 and R3 zones, the Department conditioned the Bayside LEP Gateway Determination to require the uses to be retained until such time an endorsed Local Housing Strategy provided justification for their removal. To satisfy this condition, Council permitted multi-dwelling housing and residential flat buildings in the R2 zone and residential flat buildings in the R3 zone via an APU.

This is what is currently reflected in the Bayside LEP 2021 APU Map sites identified by numbers '34' and '35' (Figure 11).

34 Use of certain land in R2 Low Density Residential zone for multi-dwelling housing and residential flat buildings

- (1) This clause applies to land identified as "34" on the [Additional Permitted Uses Map](#).*
- (2) Development for the following purposes is permitted with development consent—*
 - (a) multi-dwelling housing,*
 - (b) residential flat buildings.*
- (3) Despite subclause (2), development consent must not be granted to development for the purposes of residential flat buildings or multi-dwelling housing on land to which this clause applies unless—*
 - (a) the development is a building that was designed and constructed for, or on land that, on the commencement of this Plan, was used for, a purpose other than residential accommodation, and*
 - (b) the consent authority has considered—*
 - (i) the impact of the development on the scale and streetscape of the surrounding locality, and*
 - (ii) the suitability of the building or land for adaptive reuse, and*
 - (iii) the degree of modification of the footprint and facade of the building.*

35 Use of certain land in R3 Medium Density Residential zone for residential flat buildings

- (1) This clause applies to land identified as "35" on the [Additional Permitted Uses Map](#).*
- (2) Development for the purposes of a residential flat building is permitted with development consent.*

Figure 11: Extract of Schedule 1 Additional Permitted Uses of the Bayside LEP 2021

As the R2 and R3 zones of the former Botany Bay LEP already permitted the uses and the new Bayside LEP 2021 was to permit multi-dwelling housing and residential flat buildings, there was no requirement the additional permitted use for the 6 identified sites.

The Bayside Local Housing Strategy was endorsed by the Department in June 2021. Following the endorsement of the Local Housing Strategy the Planning Proposal was prepared. The Planning Proposal outlines that uses are inconsistent with the objectives of the R2 and R3 zones in the Bayside LEP and as such are proposed to be removed.

Bayside Local Planning Panel 16 December 2021

On 16 December 2021, the proposal was considered by the Bayside Local Planning Panel (the Local Panel). The Local Panel recommended that the proposal proceed to Gateway Determination. The full recommendation is listed below:

- 1 *The Bayside Local Planning Panel recommends to Council that pursuant to s3.33 of the Environmental Planning and Assessment Act 1979 (EP&A Act) the draft Planning Proposal for the deletion of Items 34 and 35 of Schedule 1 (Additional Permitted Uses) of the Bayside Local Environmental Plan 2021 be submitted to the Department of Planning, Industry and Environment for a Gateway determination.*
- 2 *The Bayside Local Planning Panel recommends to Council that, should a Gateway Determination be issued, a further report be presented to Council following the public exhibition period to demonstrate compliance with the Gateway determination, and to provide details of any submissions received throughout that process.*

Bayside City Planning and Environment Committee 9 March 2022

On 9 March 2022, the proposal considered by the Bayside City Planning and Environment Committee. The report recommended that the planning proposal be sent to the Department of Planning and Environment for Gateway Determination assessment. A Council minute was not made at this Committee meeting as it was for information purposes only. The Council minute would be taken at the Council meeting.

Bayside Council Meeting 23 March 2022

On 23 March 2022, the proposal was considered by Bayside Council. The proposal was supported at the Council meeting to proceed to Gateway. The Council's resolution was as follows:

1. *That Council considers the recommendations of the Bayside Local Planning Panel, and, pursuant to s3.33 of the Environmental Planning and Assessment Act 1979 (EP&A Act), endorse the draft Planning Proposal – Deletion of Additional Permitted Uses Items 34 and 35 from the Bayside Local Environmental Plan 2021 to be submitted to the Department of Planning and Environment for a Gateway determination;*
2. *That, should a Gateway Determination be issued, a further report be presented to Council following the public exhibition period to demonstrate compliance with the Gateway determination, and to provide details of any submissions received throughout that process.*
3. *That Council inform the affected property owners when the matter is on public exhibition.*

3 Need for the planning proposal

The Planning Proposal states that it is the result of having to satisfy Gateway conditions for the Bayside LEP 2021. The Draft Bayside LEP intended to remove multi-dwelling housing and residential flat buildings from the R2 zone and residential flat buildings from the R3 zone. The Gateway conditions required Council to remove this provision from the planning proposal to retain the land uses in the zones until sufficient justification could be provided in the form of the Bayside Local Housing Strategy.

The planning proposal states that it is consistent with Council's adopted and Department approved Housing Strategy in that it will ensure that the uses permissible in the R2 and R3 zones are consistent with the objectives of the zone. This will be discussed further below in Section 4.

The proposal will also achieve harmonisation of permitted land uses within the R2 and R3 zones across the merged LGA. Multi-dwelling housing and residential flat buildings are prohibited land uses within the R2 zone and residential flat buildings are a prohibited land use within the R3 zone of the former Rockdale LGA.

A planning proposal is the best means to deliver the intended outcomes as it is the only means of amending the Bayside LEP 2021 to remove and introduce the Additional Permitted Uses accordingly.

4 Strategic assessment

4.1 District Plan

The area is located in the Eastern City 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 applicable priorities for infrastructure and collaboration, liveability, productivity, and sustainability in the plan as outlined in Table 6 below.

The Department is satisfied the planning proposal gives effect to the District Plan in accordance with section 3.8 of the *Environmental Planning and Assessment Act 1979*.

Table 5 District plan assessment

District Plan Priorities	Justification
Planning Priority E1: Planning for a city supported by infrastructure	<p>Planning Priority E3 seeks to ensure infrastructure supports projected population growth, adapts to meet future needs and its use is optimised.</p> <p>The planning proposal outlines that it will not intensify development, therefore not creating pressure on transport infrastructure. The prohibition of multi dwelling housing and residential flat building land uses in the R2 and R3 zones ensures future development will be consistent with existing and planned infrastructure capacity.</p>
Planning Priority E3: Providing services and social infrastructure to meet people's changing needs	<p>Planning Priority E3 highlights the need for the Eastern District to provide services and social infrastructure to accommodate population growth and demographic change.</p> <p>Removing additional permitted used from the R2 and R3 zones will not create any increased demand on existing social infrastructure or trigger the need for any additional social infrastructure. The 6 sites identified within the R3 zone as suitable for residential flat buildings have undergone previous built form testing which identified compliance with SEPP 65. Any associated social infrastructure impacts and/or requirements will be considered at the time of future development applications, as currently applicable to the sites.</p>
Planning Priority E4: Fostering healthy, creative, culturally rich and socially connected communities	<p>Planning Priority E4 places importance on social connections and physically activity as key aspects that contribute to creating healthy lifestyles in communities.</p> <p>The planning proposal will ensure that the permissible land uses in the R2 and R3 zones are harmonised across the LGA and reflect the objectives of the zones. This will also ensure land uses are consistent with the established levels of residential amenity within the zones, conducive to achieving the objectives of the planning priority.</p>

District Plan Priorities	Justification
<p>Planning Priority E5: Providing housing supply, choice and affordability, with access to jobs, services and public transport</p>	<p>The objectives of Planning Priority E5 are greater housing supply and housing which is more diverse and affordable.</p> <p>The planning proposal will reduce the permissible residential uses in the R2 and R3 zones in the former Botany Bay LGA locality. The planning proposal contests that these uses were never intended to be in the R2 and R3 zone of the Bayside LEP and as such this amendment would be correcting an inconsistency between the uses and the objectives within the LEP land use tables. The planning proposal outlines that the land uses were only maintained in the LEP due to a Gateway condition of the draft LEP requiring further strategic justification to remove the uses.</p> <p>As assessment of the proposal against the Bayside Local Housing Strategy (which gives effect to the LSPS) shows that housing supply and diversity will not be detrimentally impacted (Section 4.3). The Local Housing Strategy outlines areas that are suitable for development intensification based on their constraints, proximity to public transport and land availability for redevelopment. The areas which are the subject of the proposal are largely listed as being poor to fair when scored against the criteria. There are some areas that score well will still be able to be developed for lower impact residential development, consistent with zone objectives. Investigation areas for future dwellings to be delivered in the LGA are concentrated to the west, predominantly in the former Rockdale LGA locality.</p> <p>The proposed introduction of the new APU '34' to permit residential flat buildings on the six individual sites will provide for housing supply and diversity. The sites are well located with access to jobs, services and public transport.</p>
<p>Planning Priority E6: Creating and renewing great places and local centres and respecting the District's heritage</p>	<p>Planning Priority E6 recognises the importance of creating great places that bring people together and the conservation of environmental heritage. The proposal is consistent with the objectives of the priority. There will be no direct adverse impacts to existing local centres or environmental heritage within the various localities.</p>
<p>Planning Priority E12: Retaining and managing industrial and urban services land</p>	<p>The objective of Planning Priority E12 is for Industrial and urban services land to be planned, retained and managed. The planning proposal only relates to land zoned R2 and R3. The 6 individually identified sites proposed to retain residential flat buildings as an additional permitted use are all zoned R3. There will be no loss of industrial or urban services land.</p>

4.2 Local

The proposal states that it is consistent with the following local plans and endorsed strategies. It is also consistent with the strategic direction and objectives, as stated in Table 6 and Table 7 below:

Table 6 Bayside Local Strategic Planning Statement assessment

Local Strategic Planning Statement Priorities	Justification
<p>Planning Priority 1: Align land use planning and transport infrastructure planning to support the growth of Bayside</p>	<p>The planning proposal intends to align the land uses within R2 and R3 zoned land with the relevant zone objectives. The proposal also harmonises permissible land uses within R2 and R3 zoned land across the LGA.</p> <p>The planning proposal outlines that it will not intensify development, therefore not creating pressure on transport infrastructure. The prohibition of multi dwelling housing and residential flat building land uses in the R2 and R3 zones ensures future development will be consistent with existing and planned infrastructure capacity.</p> <p>The sites proposed to receive an additional permitted use have undergone previous urban design modelling and assessment that has displayed the capability to be developed for residential flat building uses under the prevailing LEP standards. Council has previously identified that infrastructure for these sites is capable/can be made capable to align with residential flat building developments.</p>
<p>Planning Priority 5: Foster healthy, creative, culturally rich and socially connected communities</p>	<p>The planning proposal will ensure that the permissible land uses in the R2 and R3 zones are harmonised across the LGA and reflect the objectives of the zones. This will also ensure land uses are consistent with the established levels of residential amenity within the zones, conducive to achieving the objectives of the planning priority.</p>
<p>Planning Priority 6: Support sustainable housing growth by concentrating high density urban growth close to centres and public transport corridors</p>	<p>Council has prepared a Local Housing Strategy (the LHS) which was endorsed by the Department in June 2021 which gives effect to the LSPS and Eastern District Plan. Whilst the Planning Proposal could be seen to limit housing growth within the LGA, it will not impact on Council's ability to deliver their required housing targets set by the LHS (as discussed in Section 4.3 further in this report).</p> <p>The planning proposal seeks to retain residential flat buildings as an additional permitted use for 6 sites which have undergone design analysis outlining their suitability for higher density residential development and are in proximity to centres and public transport corridors.</p>
<p>Planning Priority 7: Provide choice in housing to meet the needs of the community</p>	<p>As above, Council has prepared a Local Housing Strategy (the LHS) which was endorsed by the Department in June 2021 which gives effect to the LSPS and Eastern District Plan. Whilst the Planning Proposal could be seen to limit housing choice within the LGA, it will not impact on Council's ability to deliver a diverse range of housing typologies and their required housing targets set by the LHS (as discussed in Section 4.3 further in this report).</p> <p>Providing greater clarity in the zones is supported as it will help to achieve the objectives of the zones. The prohibition of residential flat buildings and multi-dwelling housing in the respective R2 and R3 zones will achieve greater</p>

	harmonisation of the Bayside LEP and provide consistency in the zones across the entire LGA. See also existing use assessment in Section 4.6 of this report.
Planning Priority 8: Provide housing that is affordable	Council has prepared a Local Housing Strategy (the LHS) which was endorsed by the Department in June 2021 which gives effect to the LSPS and Eastern District Plan. Whilst the Planning Proposal could be seen to limit housing affordability within the LGA due to alerting the permissibility of housing typologies in the R2 and R3 zones, it will not impact on Council's ability to deliver their required housing targets and a variety of dwelling typologies as per the LHS (as discussed in Section 4.3 further in this report).
Planning Priority 9: Manage and enhance the distinctive character of the LGA through good quality urban design, respect for existing character and enhancement of the public realm	<p>The planning proposal is consistent with this priority as it will ensure that the development occurring within the R2 and R3 zones reflects the objectives of these zones. Prohibiting higher density uses such as residential flat buildings and multi-dwelling housing in low density and medium density zones will ensure a consistency in the bulk and scale of the built form outcomes in these zones. This consistency will help to respect the existing character and improve amenity for existing residents within these areas.</p> <p>The proposed additional permitted use for the 6 identified sites has been subject to urban design modelling which has shown that the sites are appropriate for residential flat building developments. This ensures development of the sites will not adversely impact the surrounding areas and existing developments.</p>
Planning Priority 24: Reduce community risk to urban and natural hazards and improve community's resilience to social, environmental and economic shocks and stressors	<p>The planning proposal outlines that given the potential risks from gas pipelines and land uses within Port Botany the proposal to limit the scale of land uses to match zone objectives is seen as an appropriate planning response in relation to this planning priority.</p> <p>The Department considers that limiting the residential development to development types that are consistent with the objectives of the zone will reduce potential impact of development on the surrounding environment. Lower density residential uses are also less likely to impact on the gas pipeline network, as outlined in the planning proposal.</p>

Table 7 Other local strategies

Other Local Strategies	Justification
Bayside 2032 – Community Strategic Plan (CSP 2032)	<p>At the time the Planning Proposal was prepared, the Bayside Council Community Strategic Plan 2018-2030 (CSP 2030) was in force. The Planning Proposal demonstrates consistency with CSP 2030.</p> <p>On 11 May 2022, Council adopted the new CSP 2032. The Planning Proposal generally aligns with the themes of the plan and in particular, the following community outcomes:</p> <ul style="list-style-type: none"> • Bayside's places are dynamic and connected • Bayside's transport system works • Bayside is resilient to economic, social, and environmental impacts <p>Conditions of any subsequent Gateway Determination will require the Planning Proposal to be updated to address CDP 2032.</p>

4.3 Bayside Local Housing Strategy

The Bayside Local Housing Strategy was endorsed by Council in March 2021 and approved by the Department in June 2021. The LHS outlines the housing targets Council is to meet over the next 20 years (see Figure 12) to accommodate future population growth across the LGA.

2016-2021	2021-2026	2026-2036	TOTAL 2016-2036
10,150	7,720	8,151	26,021

Figure 12: Bayside key dwelling delivery targets as outlined in the Bayside Local Housing Strategy

The LHS explains that short and medium-term housing opportunities will be provided by utilising existing capacity in the following localities:

- Medium and high-density infill housing opportunities around local centres with good accessibility and moderate lot sizes (i.e. >600m²) that are within 800m walking distance of a train station, 200m of open space and are unconstrained by heritage, slope or strata titling; and
- lower-impact medium-density development on lots between 450-600m² that is carefully managed to minimise its impact and conform with local character that is within 800m walking distance of a train station, 200m of open space and are unconstrained by heritage, slope or strata titling.

The long-term development capacity will be preserved in centres earmarked for long term transport infrastructure investment until timing for delivery is available and following completion of detailed master planning. Nominated investigation areas include Banksia, Arncliffe, Rockdale, Kogarah, Carlton, Bexley North, Bardwell Park, Brighton Le Sands, Eastgardens, and Ramsgate.

The LHS also recognises that some centres are inappropriate for development due to constraints, and in these cases, no additional development is intended around these centres.

The Spatial Plan seen in Figure 13 below visualises the above, the results from LHS land use opportunities and constraints and aligns with the LHS housing objectives. As can be seen, the vast majority of the former Botany Bay LGA (to which this proposal applies) is not identified as being

suitable for future change or investigation.

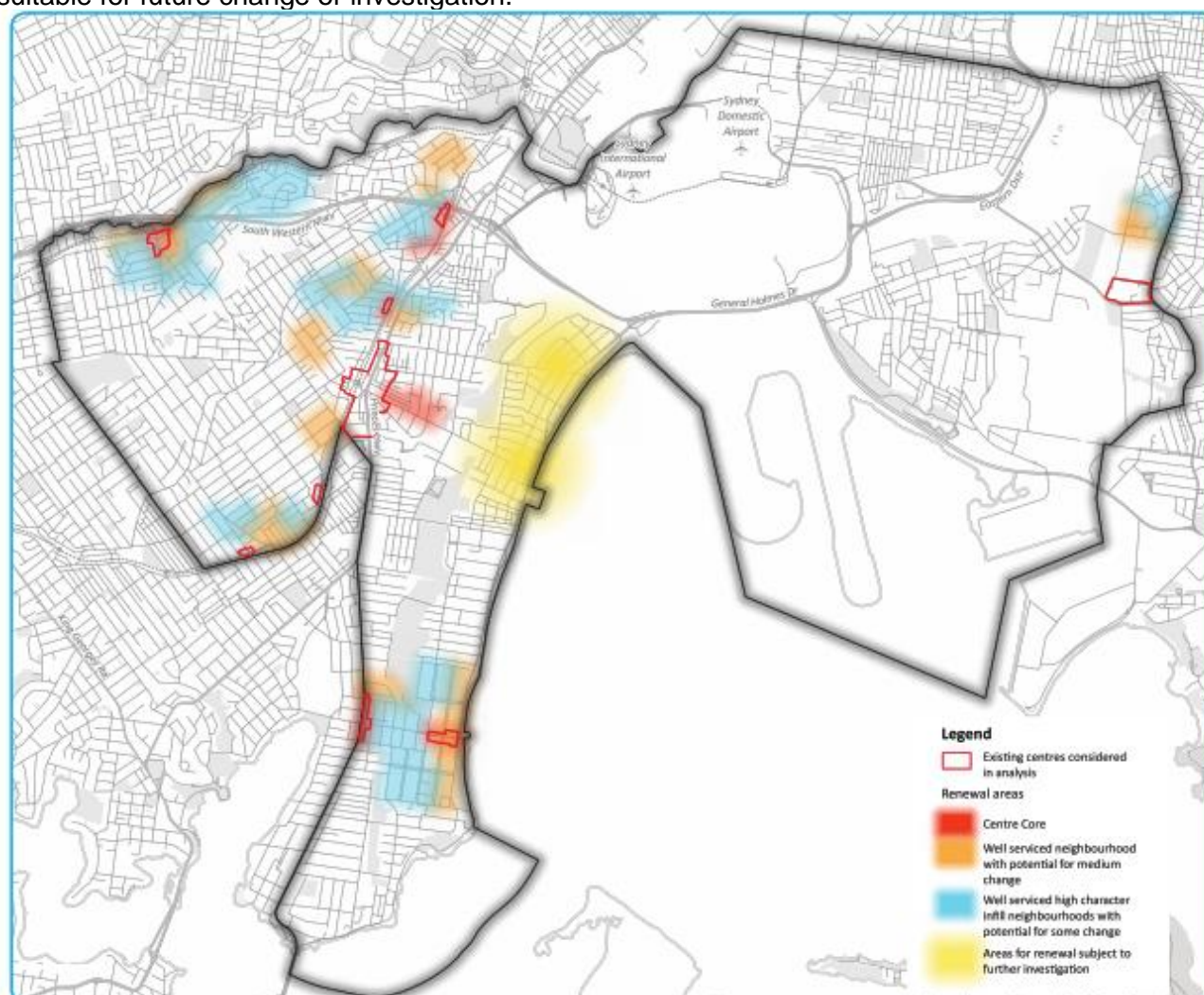


Figure 13: Spatial Housing Plan for the Bayside LGA (Source: Bayside Local Housing Strategy)

Housing Diversity Needs

The LHS identifies the future need for an additional 5,169 separate houses between 2016 and 2036 to accommodate an increased number of couples with children, however as the Bayside LGA is already fully developed, there is no capacity for additional separate houses.

The LHS calls for a shift in dwelling preferences to medium-density dwellings to respond to the long-term housing demand. Attached dwellings are accordingly considered a potential alternative housing choice as they are generally larger than apartments. Two scenarios are presented (Tables 4 and 5 in the LHS) and are reproduced in Figures 2 and 3 below.

DWELLING TYPE	2016	2021	2026	2031	2036	CHANGE 2016-36
Separate house	24,670	27,768	28,711	29,404	29,829	5,159
Attached dwelling	8,831	10,387	11,410	12,430	13,423	4,592
Flat, unit or apartment	29,286	34,078	37,920	41,885	45,811	16,525
Other dwelling	888	561	559	597	633	-254
Total Private Dwellings	63,675	72,794	78,601	84,317	89,695	26,021

Source: SGS, 2019

Figure 14 – Forecast dwellings by housing type, 2016 – 2036, Base Case (Source: Bayside LHS)

DWELLING TYPE	2016	2021	2026	2031	2036	CHANGE 2016-36
Separate house	24,670	26,293	26,263	25,874	25,103	433
Attached dwelling	8,831	11,724	14,387	17,292	20,390	11,559
Flat, unit or apartment	29,286	33,938	37,243	40,608	43,855	14,569
Other dwelling	888	839	707	543	347	-541
Total Private Dwellings	63,675	72,794	78,601	84,317	89,695	26,021

Source: SGS, 2019

Figure 15 – Forecast dwellings by housing type, 2016 – 2036, Adjusted Scenario (Source: Bayside LHS)

There is a growing demand for social and affordable housing in Bayside, with 27% of households in housing stress (compared to 23% in Greater Sydney). By 2036, 5,405 additional dwellings across the Bayside LGA are expected to require social or affordable housing.

The Department notes the LHS evaluation and concurs the observations fairly represent the future projected outcomes for Bayside. However, it is noted that the LHS has not evaluated specific cohorts such as seniors living, key worker housing, student accommodation and group homes. Future iterations of the LHS will need consider these cohorts and their housing needs to ensure they are appropriately accommodated

Housing Target: 6-10 Years (2021 – 2026)

As part of the GSC's assurance process for the Bayside Local Strategic Planning Statement (the LSPS), it provided Council with a 6-10 year (2021 to 2026) housing target of 8,500 to 10,500 dwellings.

The Department's assessment of the LHS considered that when slower take up rates, approval to completion conversion rates and potentially refusals or withdrawals, approximately 11,867 dwellings are expected to be delivered by 2026 as follows:

- 945 dwellings being the total dwellings completed that exceeded Bayside's 0-5 year target of 10,500 dwellings;
- 2,240 DA approved dwellings (construction not started and no Construction Certificate issued);
- 1,850 DA approved dwellings and construction started (Construction certificate issued);
- 1,365 DA dwellings lodged but not yet determined;
- 43,216 potential dwellings to be delivered by planning proposals (excluding the Public Spaces Legacy Proposal); and
- 2,251 potential dwellings to be delivered under the Public Spaces Legacy Program.

Housing 10+ year (2026 – 2036)

Council's LHS forecasts that the planned approaches for the period 10 to 20 years (2026-2036) will deliver approximately 8,151 dwellings. The future investigation areas of Banksia, Arncliffe, Rockdale, Kogarah, Carlton, Bexley North, Bardwell Park, Brighton Le Sands, Eastgardens, and Ramsgate are proposed to be the key sources of this supply. A breakdown of the potential yields and mix of dwellings within these investigation centres has not been identified in the LHS.

The Department provides a forecast range of 13,365 – 16,901 dwellings from 2016 to 2036 for the Bayside LGA. The Department's evaluation is that based on historical housing delivery and anticipated development take-up rates under existing controls, there is sufficient capacity when compared to the implied dwelling forecast range. However, it is acknowledged that the LHS does indicate that longer term supply will be contingent on transport and other infrastructure provision.

The Planning Proposal

The proposal is supported by dwelling approval number for multi dwelling housing and residential flat buildings in each of the residential and B4 Mixed Use zones from 2016 to 2021 in the former. Botany Bay LGA areas (**Table 8**).

Table 8 Residential Flat Building (RFB) and Multi-Dwelling Housing (MDH) DA Uptake in High Density Areas

Year	R2	R3	R4	B4 (MDH not permitted)
2016	MDH – 0 dwellings RFB – 0 dwellings	MDH – 0 dwellings RFB – 35 dwellings	MHD – 0 dwellings RFB – 285 dwellings	Apartments – 919 (RFB and Mixed Use)
2017	MDH – 0 dwellings RFB – 0 dwellings	MDH – 0 dwellings RFB – 115 dwelling	MDH – 0 dwellings RFB – 0 dwellings	Apartments (RFB and Mixed Use) – 62
2018	MDH – 0 dwellings RFB – 0 dwellings	MDH – 3 dwellings RFB – 13 dwellings	MDH – 0 dwellings RFB – 36 dwellings	Apartments (RFB and Mixed Use) - 105
2019	RFB – 0 dwellings RFB – 19 dwellings	MDH – 0 dwellings RFB – 0 dwellings	MDH – 0 dwellings RFB – 0 dwellings	Apartments (RFB and Mixed Use) - 0
2020	MDH – 0 dwellings RFB – 0 dwellings	MDH – 0 dwellings RFB – 0 dwellings	MDH – 0 dwellings RFB – 0 dwellings	Apartments (RFB and Mixed Use) - 0
2021	MDH – 0 dwellings RFB – 0 dwellings	MDH – 0 dwellings RFB – 0 dwellings	MDH – 0 dwellings RFB – 411 dwellings	Apartments (RFB and Mixed Use) – 0
Total	MDH – 0 dwellings RFB – 19 dwellings	MDH – 13 dwellings RFB – 153 dwellings	RFB – 732 dwellings MDH – 36 dwellings	Apartments (RFB and Mixed Use) – 1,086

The table above shows a small completion rate over the past 5 years for residential flat buildings within the R3 zoning and zero completions within the past four years. Given that the 10-year period from 2016-2026 requires 17,870 dwellings to be built and the above 10-year period only produced 1714 dwellings, these numbers need to be significantly higher to have any real impact on the housing targets.

It should be noted that there has been no substantive change to development standards within the R3 zone that would explain the reduction in DA numbers from 2019-2022. As outlined in Table 8, it is evident that there is less take up of these developments in the R2 and R3 zone because developments are occurring in zones that have higher development standards such as R4 High Density Residential and B4 Mixed Use zones.

The suburbs that largely make up APU '34' and '35' are Rosebery, Eastlakes, Mascot, Botany, Pagewood, Banksmeadow, Eastgardens and Daceyville. The LHS outlines that these areas are not suitable for residential intensification due to several factors, show in Figure 16 below.

CENTRE	PROXIMITY SCORE	MASS TRANSIT AVAILABILITY	LAND USE CONSTRAINTS	AVAILABLE LAND FOR REDEVELOPMENT
Mascot	Fair	No	Some land use limitations, including aircraft noise	Most surrounding lots are too small
Eastlakes	Good	No	Some land use limitations, including hazard contours for the Botany Industrial Park and proximity to dangerous goods routes.	Most surrounding lots are too small
Botany	Poor	No	Significantly land use limitations, including proximity to industrial land, port and heavy vehicle traffic and aircraft noise	Most surrounding lots are too small
Eastgardens	Poor, fair around Jellico Park	No	Constrained on the southern side of the Centre, including from proximity to heavy industry and hazardous goods traffic	Surrounding lots south of the centre are too small
Southpoint / Hillsdale	Good	No	Significantly constrained, including from proximity to Botany Industrial Park	Many lots are strata subdivided
Daceyville (Kingsford centre)	Fair	Light rail	-	No, surrounding lots are heritage listed

Figure 16: Opportunities and constraints for housing intensification around the subject areas as outlined in the Bayside Local Housing Strategy

The table above sets out that the areas identified as APU '34' and '35' have mostly poor and fair proximity to public transport and existing services and have significant land use constraints that would prohibit further intensification of residential development. Importantly, these areas are too constrained by small lot sizes in individual ownership and heritage listings to allow for any large-scale residential redevelopment of key significance.

These factors combined provide evidence and further indication as to why there has been such little uptake in residential flat building and multi-dwelling housing development as per Table 7. The combination of constraints and low development rates for these uses display that the uses are not compatible with these zones and as such provide adequate justification for the prohibition of the uses within these zones.

The Planning Proposal is consistent with the LHS, because:

- it will not impact on Council's ability to delivery on their 0-5, 6-10 and 10+ year housing targets;
- it will not impact the housing diversity needs of the LGA. Higher impact, medium to high density dwellings will be delivered in areas with greater access to transport and services. Removing multi-dwelling housing from the R2 zone and residential flat buildings from the R2 and R3 zones will enable the continued delivery of lower impact housing (i.e. attached dwellings, semi-detached, secondary dwellings) in the zones, consistent with the zone objectives;
- the areas which are the subject of the planning proposal are not considered suitable for higher density residential development and are not identified for future investigation to deliver housing; and
- dwelling numbers over the past 5 years show that most high-density development has been concentrated in higher density zones and localities with greater access to services, employment and transport. This is consistent with the aims of the LHS.

4.4 Local Planning Directions (Section 9.1 Ministerial Directions)

The Minister's current Local Planning Directions commenced on 1 March 2022 and apply to planning proposals lodged with the Department on or after the date the particular direction was issued and commenced. The Local Planning Directions have thematically re-aligned and re-numbered the prior Section 9.1 Ministerial Directions, with previously revoked directions removed.

At the time of preparation of the Planning Proposal, the prior iteration of the Section 9.1 Ministerial Directions were in place and this is reflected in the proposal. A condition of any subsequent Gateway Determination issued would require the Planning Proposal to be updated to reflect the current Local Planning Directions numbering.

The planning proposal's consistency with the relevant Local Planning Directions is discussed in Table 9 below.

Table 9 Local Planning Direction assessment

Directions	Consistent/Not Applicable	Reasons for Consistency or Inconsistency
1.1 Implementation of Regional Plans	Consistent	The planning proposal is consistent with parts of the priorities within the Greater Sydney Regional Plan. The assessment against the District Plan above in Section 4 displays how the planning proposal complies with and implements the provisions of the Greater Sydney Regional Plan.
1.4 Site specific provisions	Consistent	<p>This Direction aims to discourage unnecessarily restrictive site-specific planning controls.</p> <p>The planning proposal will remove site-specific planning controls from the sites currently identified on the APU map as numbers '34' and '35'. This will promote consistency in the R2 and R3 zones across the LGA and provide greater clarity in the LEP and on the APU maps.</p> <p>The sites that have been identified to retain residential flat buildings as a permitted land use have undergone design analysis and found to be a suitable land use on the sites. This APU will simply allow for residential flat buildings but will not imposing any development standards or requirements in addition to those already in the Bayside LEP 2021.</p>
4.1 Flooding	Consistent	<p>The objectives of this direction are to ensure that development of flood prone land is consistent the NSW Government's Flood Prone Land Policy, and to ensure that provisions of an LEP are commensurate with flood hazard and considers flood impacts on and off the land.</p> <p>The planning proposal is consistent with this Direction as it does not seek to rezone land within a flood planning area and does not result in the intensification of development on flood prone land.</p> <p>The proposal seeks to prohibit multi-dwelling housing and residential flat buildings on potentially flood prone lands. The planning proposal reduces residential development density</p>

Directions	Consistent/Not Applicable	Reasons for Consistency or Inconsistency
		<p>potential in flood prone lands, in turn mitigating risk to life and property from flooding events.</p> <p>The 6 sites where residential flat buildings are proposed to be retained as a permitted use have undergone prior analysis to demonstrating their land use capabilities. Further assessment of these sites for any potential flooding impacts will be undertaken at any future development application stage.</p>
4.4 Remediation of Contaminated Land	Consistent	<p>This Direction aims to reduce the risk of harm to human health and the environment by ensuring that contamination and remediation are considered at the planning proposal stage.</p> <p>The planning proposal is consistent with the Direction as it does not seek to rezone land or include any additional land uses to those already permitted with consent in the R2 and R3 zones.</p> <p>The 6 sites where residential flat buildings are proposed to be retained as a permitted use have undergone prior analysis to demonstrating their land use capabilities. Further assessment of these sites for remediation and contamination purposes will be undertaken at any future development application stage.</p>
4.5 Acid Sulfate Soils	Consistent	<p>The objective of this direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils. Whilst the direction applies to the proposal, it does not seek to rezone land or include any additional land uses to those already permitted with consent in the R2 and R3 zones.</p> <p>The 6 sites where residential flat buildings are proposed to be retained as a permitted use have undergone prior analysis to demonstrating their land use capabilities. Further assessment of these sites for acid sulfate soils impact purposes will be undertaken at any future development application stage.</p>
5.1 Integrated Land Use and Transport	Consistent	<p>This Direction requires a planning proposal to consider improving access to housing, jobs and services by walking, cycling and public transport and reducing reliance on cars.</p> <p>By removing APUs '34' and '35' the planning proposal seeks to ensure housing typologies permissible in the R2 and R3 zones reflect the objectives of the zones. This will result in higher density residential developments being only permitted in R4, B2 and B4 zones which typically have greater access to services and public transport.</p> <p>The 6 sites where residential flat buildings are proposed to be retained as a permitted use have undergone prior analysis to demonstrating their land use capabilities. Further assessment of these sites for transport and infrastructure requirements will be undertaken at any future development application stage.</p>

Directions	Consistent/Not Applicable	Reasons for Consistency or Inconsistency
5.2 Reserving Land for Public Purposes	Consistent	<p>The objectives of this direction are to facilitate the provision of public services and facilities by reserving land for public purposes and facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition.</p> <p>The Planning Proposal is consistent with this direction as it does not propose to create, alter or reduce existing zonings or reservations of land for public purposes.</p>
5.3 Development Near Regulated Airports	Consistent	<p>This direction applies to all relevant planning authorities when preparing a planning proposal that will create, alter or remove a zone or a provision relating to land near a regulated airport which includes a defence airfield.</p> <p>The Sydney Kingsford Smith International Airport is in the Bayside LGA and is within the vicinity of the land subject to the proposal. The proposal is consistent with the direction as it does not seek to rezone land or include any additional land uses to those already permitted with consent in the R2 and R3 zones.</p>
6.1 Residential Zones	Inconsistent - Justified	<p>This Direction aims to encourage housing choice, make efficient use of infrastructure and services and minimise the impact of residential development on environment and resource lands.</p> <p>The planning proposal seeks to prohibit multi-dwelling housing and residential flat buildings in the R2 zone and residential flat buildings in the R3 zone by removing the existing APUs '34' and '35', while retaining some sites as being suitable for residential flat buildings. This is inconsistent with the provisions of clauses 1 and 2 of this direction:</p> <ol style="list-style-type: none"> 1) <i>A planning proposal must include provisions that encourage the provision of housing that will: (a) broaden the choice of building types and locations available in the housing market, and...</i> 2) <i>A planning proposal must, in relation to land to which this direction applies: ...</i> <ol style="list-style-type: none"> (b) <i>not contain provisions which will reduce the permissible residential density of land.</i> <p>Although the proposal is inconsistent with these provisions it is supported by and gives effect to the Bayside Local Housing Strategy (as discussed in Section 4.3 of this report previously).</p> <p>The sites identified in APU '34' and '35' are largely not considered suitable for housing intensification in the LHS due to site constraints. Rationalising land uses in the R2 and R3 zones across the LGA ensures development reflects the objectives of these zones.</p> <p>The Local Housing Strategy also identifies the areas that are suitable for residential intensification that are expected to meet the key dwelling targets, all of which are located outside of the</p>

Directions	Consistent/Not Applicable	Reasons for Consistency or Inconsistency
		<p>APU '34' and '35' site areas. These areas are not constrained and have good proximity to existing services and public transport. This indicates that removing the APUs on these sites will not have a detrimental impact on housing delivery within Bayside but rather will ensure that the housing is being developed in suitable areas that are consistent with the recently endorsed Bayside Local Housing Strategy.</p> <p>The 6 sites identified to permit residential flat buildings have already undergone urban design analysis/testing and have proven they can support residential flat building development. The proposed Additional Permitted Uses on these sites are consistent with the provisions of this Direction as they will permit a greater diversity of housing typology without any adverse impacts on the surrounding environment.</p> <p>Whilst the planning proposal is inconsistent with this Direction, the Department notes the inconsistency is justified and considered of minor significance. The planning proposal does not impact the delivery requirements of the Bayside Local Housing Strategy and will provide greater consistency to the R2 and R3 zones in the Bayside LEP.</p>

4.5 State Environmental Planning Policies (SEPPs)

The names of SEPPs have changed since the preparation of the Planning Proposal, a condition of any Gateway Determination will require the proposal to be updated accordingly.

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

Table 10 Assessment of planning proposal against relevant SEPPs

SEPPs	Requirement	Proposal
SEPP No. 65 – Design Quality of Residential Apartment Buildings	Whilst specific design details will be assessed as part of any future development application, it is relevant to consider the design principles of this SEPP and its relationship to the Apartment Design Guide (ADG)	<p>The planning proposal outlines that each of the six sites proposed to be retained on the Additional Permitted Uses map have undergone SEPP 65 and ADG testing. The studies undertaken on each of these sites outline that the sites are consistent with the requirements of SEPP 65 and the ADG and therefore should permit residential flat building development. Each of the studies outline consistencies with overshadowing requirements, solar access requirements and provide that development for residential flat buildings on these sites will not have a detrimental impact to the amenity of the surrounding areas. Please also refer to Built Environment impact discussion in Section 5.1 below.</p> <p>The modelling for these sites can be found in Attachment 4, 5 and 6.</p> <p>The assessment of any residential flat building on these sites will be provided for in any future DAs on these sites.</p>

SEPPs	Requirement	Proposal
SEPP (Resilience and Hazards) 2021	The SEPP regulates development on and remediation of contaminated land.	Please refer to assessment of Local Planning Direction 4.4 Remediation of Contaminated Land in Table 9. The proposal is consistent with the SEPP.

4.6 Existing use rights

A result of the Planning Proposal will be that existing multi-dwelling housing and residential flat building land uses to which APUs '34' and '35' currently apply having to rely upon 'existing use' provisions of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and *Environmental Planning and Assessment Regulation 2021* (EP&A Reg).

Reliance on existing use provisions for the continuance and/or future alteration or expansion of existing multi-dwelling housing and residential flat building land uses is not a sound planning outcome.

The Department notes that there may be existing localities within the subject areas predominantly characterised by multi-dwelling housing and residential flat buildings developments. These areas would likely no longer reflect the objectives of the R2 or R3 zoning in which they are located. The Department recommends that the Council undertake a detailed investigation of the subject areas to determine the suitability of prohibiting residential flat buildings and multi-dwelling housing development and any potential existing use impacts. Consideration should be given to retaining any identified areas as permissible land uses. Existing uses would inheritably be inconsistent with the intent of this planning proposal. Recommended conditions of the Gateway Determination reflect this.

5 Site-specific assessment

5.1 Environmental

Natural Environment

The removal of APUs '34' and '35' will not adversely impact any critical habitats or threatened species. The proposed amendments in the planning proposal will ensure that the objectives of the low and medium density zones are achieved, and that residential development typology reflects the desired density.

Built Environment

The planning proposal will prohibit multi-dwelling housing from the R2 zone and residential flat buildings from the R2 and R3 zone of the former Botany LGA, except the 6 sites identified to retain residential flat buildings as a permissible use. The Department acknowledges that this will ensure the developments occurring in the R2 and R3 zones reflect the objectives of the zones, leading to consistency of built form across the LGA within the R2 and R3 zones. This will help to ensure the harmonisation of the R2 and R3 zones across the LGA.

The 6 sites proposed for retention of a residential flat building land use have been subject to previous urban design analysis/testing. This however was completed at a time when the Botany Bay LEP 2013 was in force (5-6 years ago). To ensure urban design testing is current, reflects the development controls of the Bayside LEP 2021 and clearly demonstrates to the community that the

sites are suitable for residential flat building development, a condition of any Gateway Determination would require the urban design analysis/testing to be updated accordingly.

5.2 Social and economic

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

Table 12 Social and economic impact assessment

Social and Economic Impact	Assessment
Social	<p>The planning proposal seeks to ensure the development permissible in the R2 and R3 zones reflects the objectives of these zones. This will ensure that the built form in these areas is consistent across the LGA which will reduce any potential amenity impacts from residential development. Consistent built form that reflects the objectives of the zone will create a positive social outcome for existing residents who would expect the built form of an area to reflect the zone of that area, be it low density or medium density residential.</p> <p>The sites that will permit residential flat buildings will provide greater housing choice within the Bayside area on sites that have already been proven to be capable of having residential flat building development occur without adverse amenity or environmental impacts.</p>
Economic	<p>Whilst the planning proposal will prohibit multi dwelling housing and residential flat buildings in the R2 zone and residential flat buildings in the R3, it will not adversely impact development within these zones as table 7 has outlined that there has been minimal uptake of these developments within these zones. It is unlikely that this planning proposal will have an adverse impact on the Bayside economy.</p>

6 Consultation

6.1 Community

An exhibition period of 20 days working days is considered appropriate and would form a condition of any subsequent Gateway Determination.

6.2 Agencies

The planning proposal does not specifically identify which agencies will be consulted.

It is recommended the following agencies be consulted on the planning proposal and given 30 days to comment:

- Land and Housing Corporation

7 Timeframe

A project timeline is included in the planning proposal which has a timeframe of 9 months after Gateway Determination to complete the LEP.

The Department recommends a time frame of 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.

8 Local plan-making authority

Given the scale and nature of the planning proposal, the Department supports Council being authorised as the Local Plan-Making Authority for this proposal.

9 Assessment Summary

The planning proposal is supported to proceed with conditions for the following reasons:

- it demonstrates strategic merit by being consistent with the Bayside Local Housing Strategy;
- it is consistent with the Eastern City District Plan and Council's local strategic plans;
- it will harmonise permitted land uses in the R2 and R3 zones across the Bayside LGA;
- the proposed amendment will ensure the developments permissible in the R2 and R3 zones reflect the zone objectives; and
- The inconsistency with Local Planning Direction 6.1 Residential zones is considered minor and justified. The subject areas are identified as constrained in the Bayside LHS for residential intensification and are not identified as investigation areas for future residential development. Removing the Additional Permitted Uses will not impact on dwelling typology or delivery targets in the LGA.

As discussed in the previous sections, the proposal must be updated before consultation to:

- That the planning proposal undertake a detailed investigation of the subject areas to determine the suitability of prohibiting residential flat buildings and multi-dwelling housing development in areas that are already predominately built as residential flat buildings or multi-dwelling housing. Consideration should be given to retaining these uses to remove the need for these developments to rely upon existing use rights for any future improvements and alterations;
- Update the planning proposal with the data outlining the uptake of residential flat building and multi-dwelling housing development in the R2, R3, R4 and B4 zones, providing further justification for the removal of the uses from the R2 and R3 zones.

10 Recommendation

It is recommended the delegate of the Secretary:

- Note that the inconsistencies with Local Planning Direction 6.1 Residential Zones are justified; and
- Note that the planning proposal and supporting documentation needs to be updated in line with the requirements below prior to community consultation.

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:
 - a) include existing and proposed Additional Permitted Use mapping

- b) include clear descriptions and images of the six sites identified to retain permissibility of a residential flat building land use;
 - c) reflect the current Local Planning Directions (section 9.1 Ministerial Directions) numbering;
 - d) reflect the current titles/naming of State Environmental Planning Policies;
 - e) provide an assessment of the proposal against the Bayside 2032 – Community Strategic Plan
 - f) include a detailed investigation of the land subject to this Planning Proposal to determine the suitability of prohibiting multi-dwelling housing and residential flat building developments where this type of development is in areas already predominately characterised with such developments or this permitted use is already constructed on the subject sites. Any identified areas must:
 - i. be assessed against the objectives of the R2 and R3 zones to determine any inconsistencies with the intent of this planning proposal, providing analysis of whether such identified areas should be included or excluded from the proposal; and
 - ii. consider any impacts of existing use provisions applicable under the *Environmental Planning and Assessment Act 1979*; and
 - g) include updated urban design analysis/testing for the six sites identified to retain permissibility of a residential flat building land use. The updated urban design analysis/testing must consider current legislative requirements, including the Bayside LEP 2021.
- 2) Public exhibition is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:
 - a) the planning proposal must be made publicly available for a maximum of 20 days; and
 - b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in *Local Environmental Plan Making Guidelines (Department of Planning and Environment, 2021)*.
- 3) Consultation is required with the following public authorities:
 - Land and Housing Corporation.
 - Affected landowners subject to the changes sought by this planning proposal.

Each public authority/organisation is to be provided with a copy of the planning proposal and any relevant supporting material and given at least 30 days to comment on the proposal
- 4) A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
- 5) The planning proposal must be placed on exhibition not more than 4 months from the date of the Gateway determination.
- 6) The planning proposal must be reported to council for a final recommendation no later than 7 months from the date of the Gateway determination.
- 7) The Council as planning proposal authority is authorised to exercise the functions of the local plan-making authority under section 3.36(2) of the EP&A Act subject to the following:

- (a) the planning proposal authority has satisfied all the conditions of the gateway determination;
 - (b) the planning proposal is consistent with applicable directions of the Minister under section 9.1 of the EP&A Act or the Secretary has agreed that any inconsistencies are justified; and
 - (c) there are no outstanding written objections from public authorities.
- 8) The LEP should be completed on or before 3 May 2023.

15 July 2022



Kendall Clydsdale

Manager, Infrastructure and Planning

2 August 2022

Laura Locke

Director, Eastern and South Districts

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