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Gateway Determination Assessment Report – PP-2022-1748

Cooks Cove Planning Proposal

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Acknowledgment of Country

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

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Table 1 Reports and plans supporting the proposal

Relevant reports and plans
Planning Proposal (Ethos Planning – 21 October 2021 and addendum 20 April 2022)
Draft Bayside LEP 2021 Mapping – Ethos Urban
Cooks Cove Master Plan 2021 – SOM
Strategic Transport Plan – JMT Consulting & GTA
Site Survey & Land Reclassification Diagrams - RPS
Flood Impact Assessment - Arup
Stormwater Management - Arup
Wind Shear and Turbulence Assessment - Arup
Acoustic Assessment - Arup
Airspace Impact Assessment – Strategic Airspace
Servicing and Utilities Infrastructure Assessment - Arup
Environmental, Remediation, Erosion and Salinity Assessments – Consulting Earth Scientists
Flora and Fauna Assessment – Cumberland Ecology
Archaeological Report - Biosis
Pipeline Safety Management Study - Arup

1 Introduction

1.1 Overview of planning proposal

Table 2 Planning proposal details

LGA	Bayside Council
PPA	Sydney Eastern City Planning Panel
NAME	Cooks Cove Planning Proposal
NUMBER	PP-2022-1748
LEP TO BE AMENDED	Bayside Local Environment Plan 2021
SEPP TO BE AMENDED	State Environmental Planning Policy (Precincts – Eastern Harbour City) 2021 – Chapter 6 Cooks Cove
SITE ADDRESS	19 Marsh Street, Arncliffe 19A Marsh Street, Arncliffe 15 Marsh Street, Arncliffe 13 Marsh Street, Arncliffe
DESCRIPTION	In order of above Lot 14 DP 213314 (19 Marsh Street) Lot 31 DP 1231486 (Also 19 Marsh Street) Lot 100 DP 1231954 (19A Marsh Street) Lot 1 DP 329283 (15 Marsh Street) Lot 1 DP 108492 (13 Marsh street)
RECEIVED	25/05/2022
FILE NO.	IRF22/1752
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

The planning proposal seeks to facilitate the development of part of the Cooks Cove Precinct as a logistics and warehousing precinct, together with supporting uses such as tourist and visitor accommodation, office and retail. It also seeks to remove the subject site from the operation of Chapter 6 of *State Environmental Planning Policy (precincts – Eastern Harbour City) 2021* (EHC SEPP) and insert new planning provisions into *Bayside Local Environmental Plan 2021* (Bayside LEP).

The planning proposal seeks to:

- Introduce the following three land use zones across the site including:

- B7 Business Park across the majority of the Kogarah Golf Course freehold land;
 - RE1 Public Recreation for the foreshore area of the site adjacent to the Cooks River and land adjacent to Marsh Street; and
 - SP2 Infrastructure to the existing Marsh Street roadway and Arncliffe Permanent Motorway Facilities.
- Introduce an overall maximum building height of RL51m.
 - Limit gross floor area (GFA) within different areas of the site to an aggregate of 342,000m² and insert floor area requirements to achieve the intended logistics and warehousing outcomes for the site.
 - Introduce Additional Permitted Uses within the B7 Business Park zone and site-specific planning provisions.
 - Reclassify Lot 14 DP213314 and Lot 1 DP108492 from 'community' to 'operational' land to facilitate local road access and the provision of infrastructure to support development within the B7 Business Park zone. This also seeks to concurrently extinguish the application of a Charitable Trust which applies to part of the land that is the subject of the planning proposal.

1.2 Site description

The planning proposal site is situated within the Bayside Local Government Area and the suburb of Arncliffe (**Figure 1**). The site is directly north of the M5 Motorway, west of the Cooks River and Sydney Kingsford Smith Airport, approximately 10km south of the Sydney Central Business District (CBD), 6km west of Port Botany and 1.5km north-east of the Rockdale local town centre (**Figure 1**).

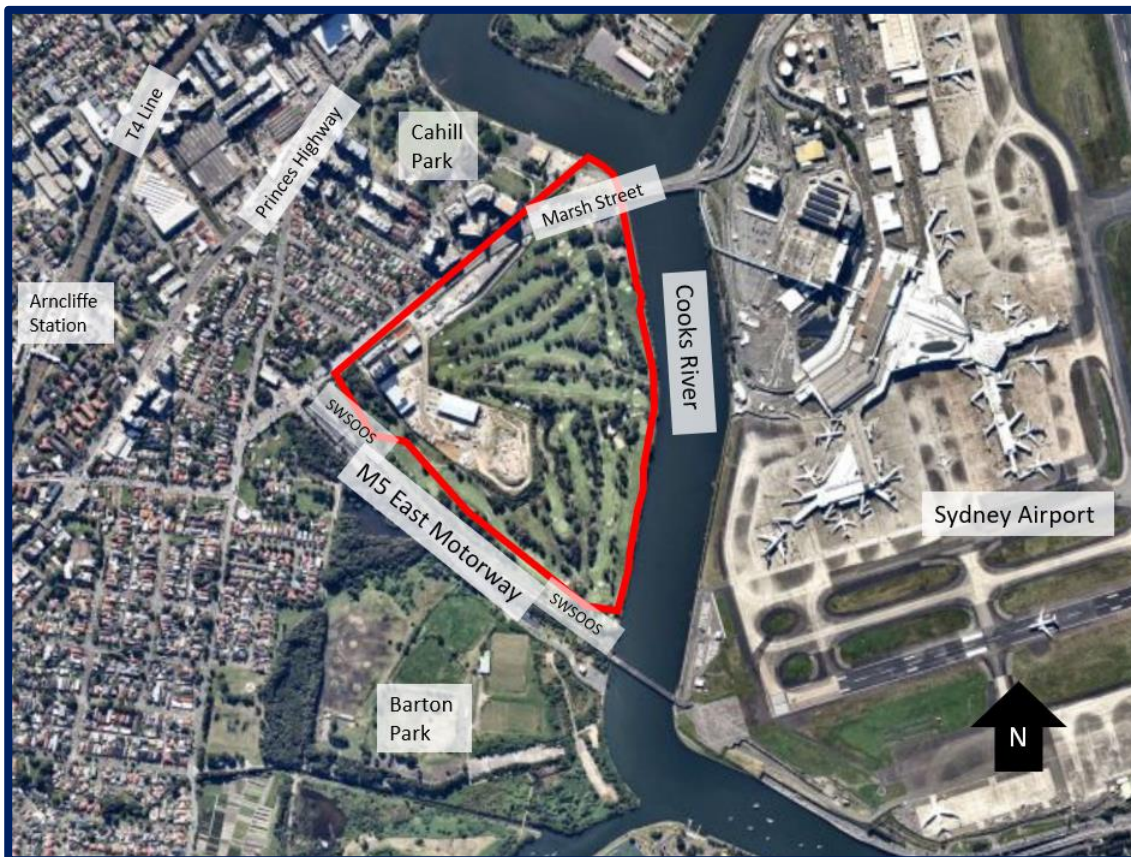


Figure 1: Context Map – extent of proposal site in red

The site comprises 36.2ha of land as described in **Table 3** and show in **Figure 2**.

Table 3: Land Descriptions

Land	Address	Ownership	Current uses
Lot 100 in DP 1231954	19A Marsh Street, Arncliffe	Kogarah Golf Club Freehold	Golf course
Lot 31 in DP 1231486	19 Marsh Street, Arncliffe	Kogarah Golf Club Freehold	Valve Station
Lot 14 in DP 213314	19 Marsh Street, Arncliffe	Bayside Council	Construction compound for WestConnex
Lot 1 in DP 108492	13 Marsh Street, Arncliffe	Bayside Council	Part golf course, part construction compound for WestConnex
Lot 1 in DP 329283	15 Marsh Street, Arncliffe	Transport for NSW	Construction compound for WestConnex

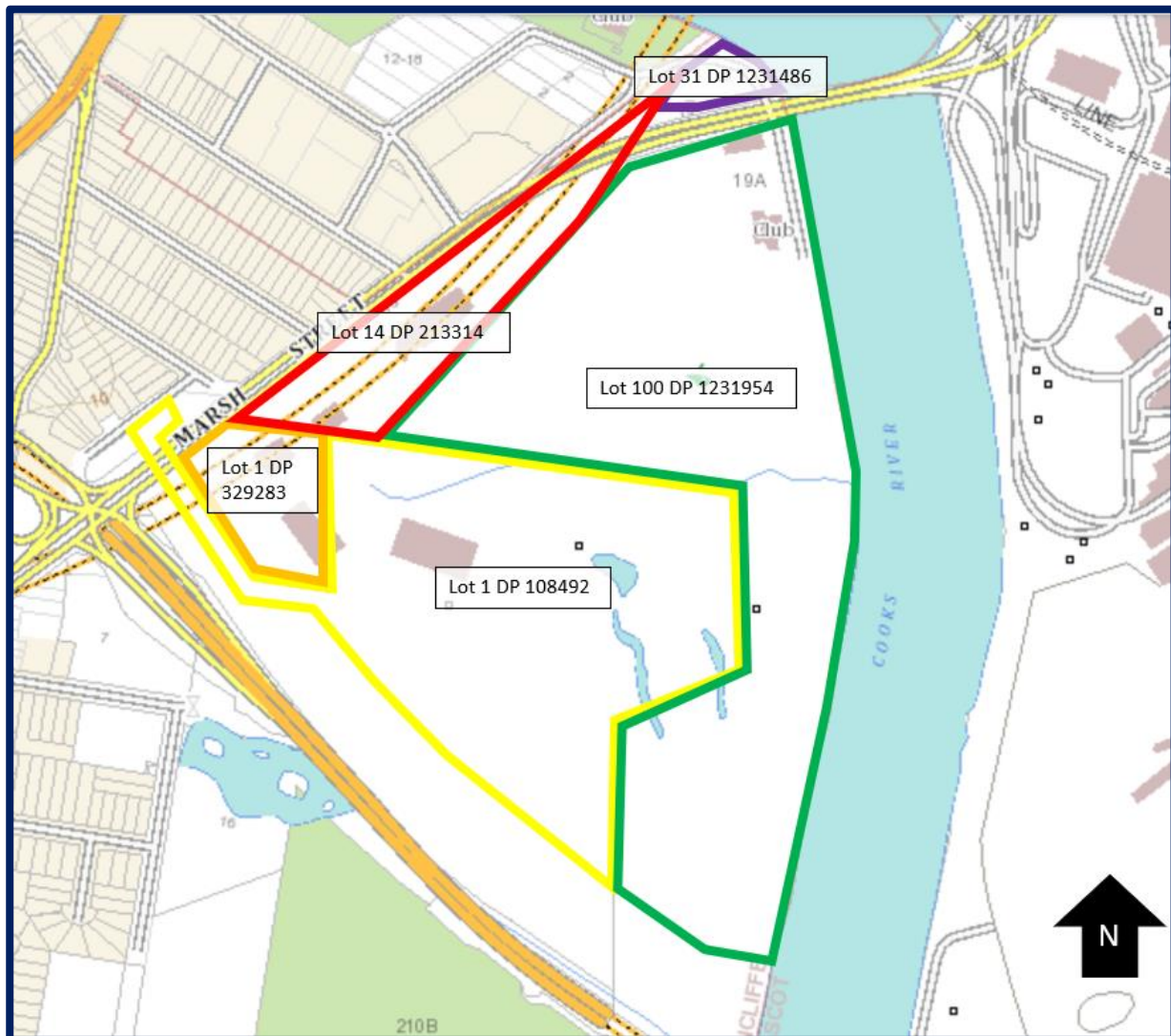


Figure 2: Site Map

The subject site includes both public and privately owned land as described below.

Kogarah Golf Course (Lot 100 and Lot 31)

The Kogarah Golf Course currently operates within freehold privately owned land and land under the ownership of Bayside Council.

Kogarah Golf Course is generally low lying and flood affected being identified on the 1 in 100 year flood mapping. Vegetation is generally not naturally occurring due the site being used as a golf course and it is mostly covered in lawns and exotic grassland. Surrounding the club house in the northern portion of the site are several Moreton Bay Fig Trees and there are some examples of recolonised communities of mangroves and saltmarsh along the adjacent Cooks River foreshore.

Access to this part of the site is provided via Levey Street from the north underneath the Giovanni Brunetti Bridge. There is currently no public access to this land including the foreshore and it is currently restricted to persons utilising the golf course facilities.

Kogarah Golf Club freehold land also incorporates a portion of land north of Marsh Street (Lot 31 in DP 123486), adjacent to the Cooks River and physically separated from the remainder of the golf course by the Giovanni Brunetti Bridge. This land currently contains a valve station which comprises a small brick building.

Bayside Council and Transport for NSW land (remaining Lots)

The planning proposal also applies to two lots under the ownership of Bayside Council that are currently used as both a construction compound for WestConnex M8 tunnelling works and part of the Kogarah Golf Course. Road access to this land is provided from Marsh Street but it is not publicly accessible.

The temporary construction compound occupies approximately 7.5ha and is expected to remain until the new M6 Stage 1 is completed in approximately 2025. Following completion of the works, the temporary construction compound will be replaced with a permanent Arncliffe Motorway Operations Complex on approximately 1.5ha of land.

The permanent complex will house plant and maintenance equipment, ventilation and water treatment facilities for the M6 and M8 motorways. It consists of eight ventilation outlets in total, four of the outlets are associated with the M8 tunnel (currently operating) and the other four outlets are associated with the M6 tunnel (under construction). Each of the eight outlets are 35m high and a diameter of 4.51m.

1.3 Surrounding area

The site is separated from adjoining development by Marsh Street to the west and north, the M5 Motorway to the south and Cooks River to the east. The location of the site is approximately:

- 800m south east of Wolli Creek Station;
- 1.1km east of Arncliffe Station;
- 700m west of Sydney International Airport; and
- 6km west of Port Botany.

Existing residential development is located on the opposite side of Marsh Street to the west and is generally characterised by one-storey detached residential dwellings but has recently been rezoned to R4 High Density Residential as part of Bayside West Precincts 2036. To the north of this is a high rise hotel development and Cahill Park, which forms part of the Cooks River foreshore.

A range of sporting fields and recreation facilities are located to the south of the site on the opposite side of the M5 Motorway tunnel corridor including Barton and Riverine Parks. Adjoining the site to the east is the Cooks River which generally runs along a north-south alignment along

the eastern edge of the site. The entrance to the river is at Botany Bay approximately 1km to the south-east of the site with the river extending in a north-west direction. Public Open Space adjoins the river with recreation paths providing public connections. On the opposite side of the Cooks River to the east is Sydney Airport's International Terminal.

Some other key elements of the surrounding area are described in greater detail below.

Southern and Western Suburbs Ocean Outfall Sewer (SWSOOS)

Directly to the south of the site is a trunk sewer main constructed above ground from 1909 to 1916. It is state heritage listed and runs in an east-west direction and across the Cooks River.

M5 Motorway

The M5 Motorway runs in parallel to the SWSOOS and was completed in 2001. The M5 is generally constructed in a concrete viaduct to the south of the site and dives into tunnel portals under Marsh Street and Cooks River.

There are two small, fenced areas known as the 'RTA Frog Ponds' located south-west of the Kogarah Golf Course, adjacent to the SWSOOS and Marsh Street. These ponds were constructed as part of the M5 Motorway construction project completed in 2002 as compensatory breeding habitat for the Green and Golden Bell Frog and continue to be managed by Transport for NSW (TfNSW).

Lot 5 in DP 1050923 (SACL Land)

Located immediately to the south of the site is Lot 5 in DP 1050923. This land is owned by the Commonwealth of Australia and is under a long-term lease to Sydney Airport Corporation Limited (SACL). This land currently contains part of the current Kogarah Gold Course, the SWSOOS and the Sydney Desalination Pipeline.

1.4 Site History

A brief overview of the recent history of the wider Cooks Cove precinct and key events as described below:

- 1880's – the site served as an element of the Arncliffe Sewerage Farm (night soil depot). Original termination of Southern and Western Ocean Outfall Sewer (SWSOOS);
- Early 1900's – Agriculture and market gardens established, continued use for night soil depot;
- 1930's – Bonnie Doon Golf Course established, night soil depot significantly reduced in area, extension of SWSOOS towards the east;
- 1940's – Army and Air Force radio school occupied Bonnie Doon Golf Course site. Once the school vacated, the site was left derelict until Kogarah Golf Course occupied in the mid 1950's;
- Post war Sydney Airport expansion led to significant modifications to Cooks River and Muddy Creek, further reshaping through the 1960's with the current alignment formed in the early 1970's;
- 1970's – the golf course underwent landscaping and earthworks. In January 1972, Kogarah Golf Club Limited purchased freehold element of Kogarah Golf Course from Commonwealth of Australia;
- 1990's – minor rearrangements and commencement of construction of the M5 East Motorway through the site;

- 2000's – completion of the M5 East Motorway, establishment of the RTA Frog Ponds adjacent to Marsh Street and construction of the Desalination Pipeline in the mid 2000's; and
- 2016 – widening of Marsh Street and commencement of the WestConnex works, including temporary construction facility and M6 and M8 permanent infrastructure facilities.

The land that is the subject of the planning proposal has been zoned predominantly for an employment precinct since 2004 under the former Sydney Regional Environmental Plan No. 33 – Cooks Cove (SREP 33) and current State Environmental Planning Policy (Precincts – Eastern Harbour City) 2021 – Chapter 6 Cooks Cove.

1.5 Easements and Affectations

The site has three easements and affectations running through it. These are outlined below and displayed in **Figure 3**.

F6 Transport Corridor

The F6 corridor reservation is shown in lavender in **Figure 3** and located on the western portion of the site. The EHC SEPP Special Use Zone broadly corresponds to this corridor reservation that runs the length of the site in a north-south direction.

The planning proposal states that there is no current easement on the title of the Kogarah Golf Club Freehold land. The existence of this affectation can be traced back to the 1951 County of Cumberland Planning Scheme, which identified a proposal for the Southern Motorway in this area.

Moomba-Sydney Pipeline

The site accommodates the Moomba-Sydney Pipeline along the eastern part of the site adjacent to the Cooks River (see yellow line in **Figure 3**). The pipeline contains ethane gas and is contained within an easement that is approximately 5 metres wide with the pipe located at a depth of 1.2m-2.3m, with a diameter of approximately 225mm.

Sydney Desalination Plant Pipeline

The Sydney Desalination Plant Pipeline also runs through the eastern part of the site, in a north-south direction adjacent to the Cooks River from Kurnell (see purple line in **Figure 3**). The pipe has a 1.8m diameter and sits within an easement that is approximately 6m wide.

1.6 Significant Road Infrastructure

WestConnex

In 2013, the NSW Government confirmed its intention to proceed with the WestConnex Motorway project. It is a 33 kilometre tolled motorway linking Sydney's west and south west with Sydney Airport and Port Botany via the St Peters interchange. Stage 2 of WestConnex, being the new M5 (Kingsgrove to St Peters) and known as the new M8 Motorway, opened to traffic in July 2020. It aims to provide increased capacity along the south-west corridor and improve connectivity to places such as Sydney Airport and Port Botany.

In October 2017, the NSW Government announced that Stage 1 of the F6 extension, now known as the M6 Motorway, would be constructed. It has since been confirmed that Stage 1 will be built underground from existing stub tunnels linked to the new M8 Motorway, located approximately 70 metres beneath Marsh Street and Lot 14 213314. The proposed M6 Stage 1 is currently under construction and does not utilise the historically reserved F6 transport corridor extending through the site (as shown in the wide corridor in lavender in **Figure 3**).

Sydney Gateway

In September 2018, the Sydney Gateway project was announced to provide an alternate route to the domestic and international terminals from the Sydney motorway network via the St Peters Interchange. Vehicles arriving from the west will be able to access the airport directly from Sydney Gateway, rather than Marsh Street as is currently the case. Construction is currently due to be complete in 2024.



Figure 1: Easements and Affectations Map

1.7 Charitable Trusts

Part of Cooks Cove Precinct is affected by 'Charitable Trusts' (the Trusts). This affects two lots of land (Trust Lands) being Lot 1 DP 108492 and Lot 14 DP 213314 within the proposal sites as shown in **Figure 4**.

The obligations of the Trusts require Bayside Council (the landowner) to hold these lands as trustee, with Transport for NSW as the beneficiary, for the following purposes:

- a County road,
- pending use for County road purposes, only for a public park, public reserve or public recreation area.

The planning proposal seeks to obtain road access that crosses over the Trust Lands through proposed extensions to Gertrude Street and Flora Street (**Figure 4**)

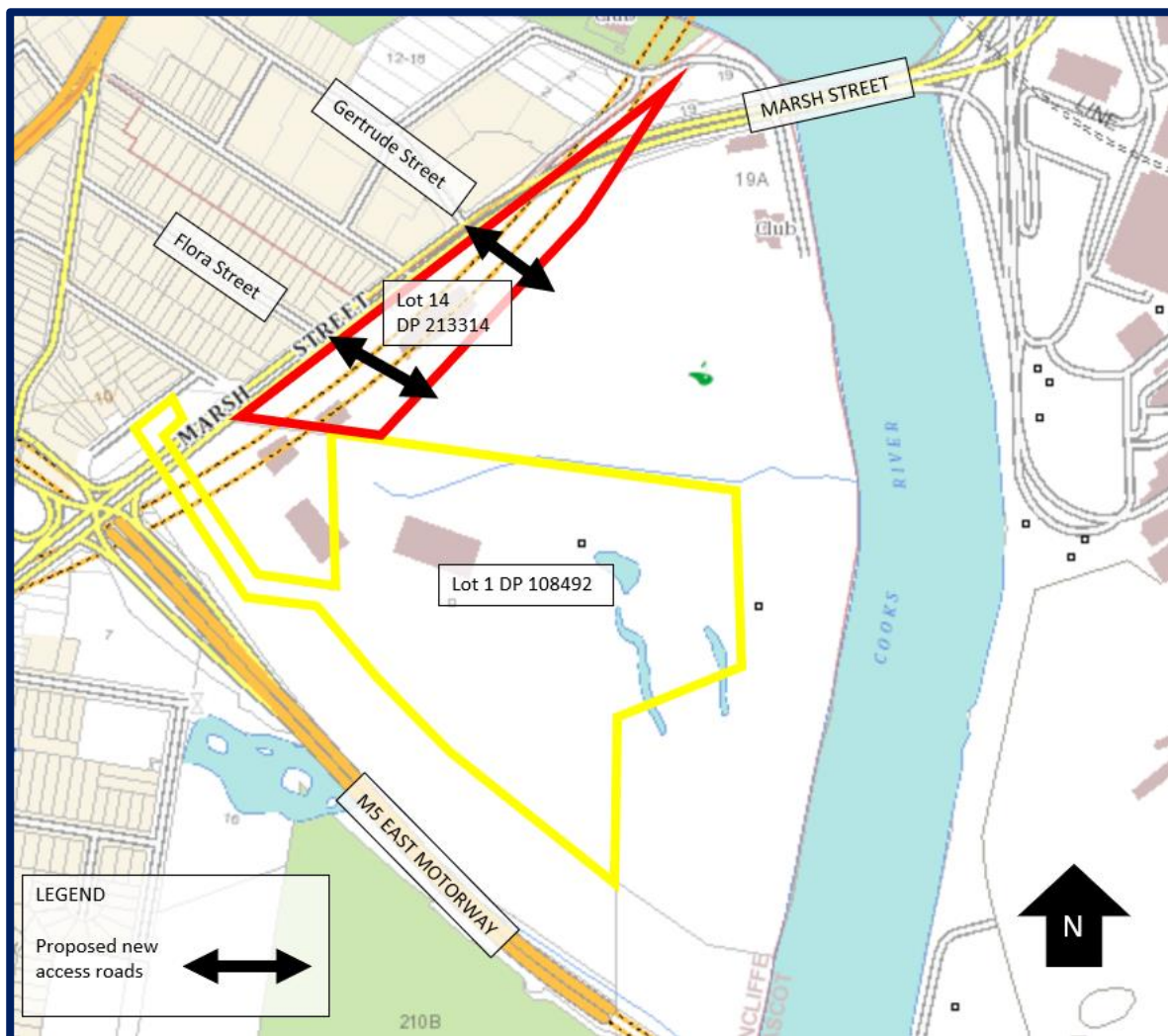


Figure 2: Proposed access across land affected by Charitable Trusts

1.8 Existing Planning Controls

The site is currently subject to the planning controls identified within Chapter 6 of *State Environmental Planning Policy (Precincts – Eastern Harbour City) 2021* (formerly Sydney Regional Environmental Plan No. 33) and herein known as the EHC SEPP. The site is zoned Trade and Technology, Special Uses and Open Space under the EHC SEPP (**Figure 5**) These zones and permissible land uses predate the Standard Instrument LEP under which most LEPs now operate.

Under the EHC SEPP the proposed 270,000m² Trade and Technology complex accommodating advanced technology and trade related enterprises, services offices, hotels and serviced apartments and commercial support premises including restaurant, retail and childcare facilities with 4,700 car spaces is permissible with development consent.

However, the EHC SEPP specifies that a building within the site must not exceed 6 storeys, and any building within 120 metres of the Cooks River must not exceed 5 storeys. Subject to compliance with this, one building on land within the Trade and Technology zone that is situated no closer than 10 metres from the zone boundary may have a height that does not exceed 11 storeys. The EHC SEPP defines that a storey that exceeds 4 metres in height (otherwise than in an entry foyer or a part of the building used for exhibition space) is counted as two storeys, except in the case of a warehouse.

It is important to note that the zoning configuration of the EHC SEPP does not reflect the existing ownership lot pattern of Cooks Cove. As shown in **Figure 5**, land zoned Trade and Technology spans both the Kogarah Golf Club owned land and Council owned land which provides a land connection to Marsh Street.

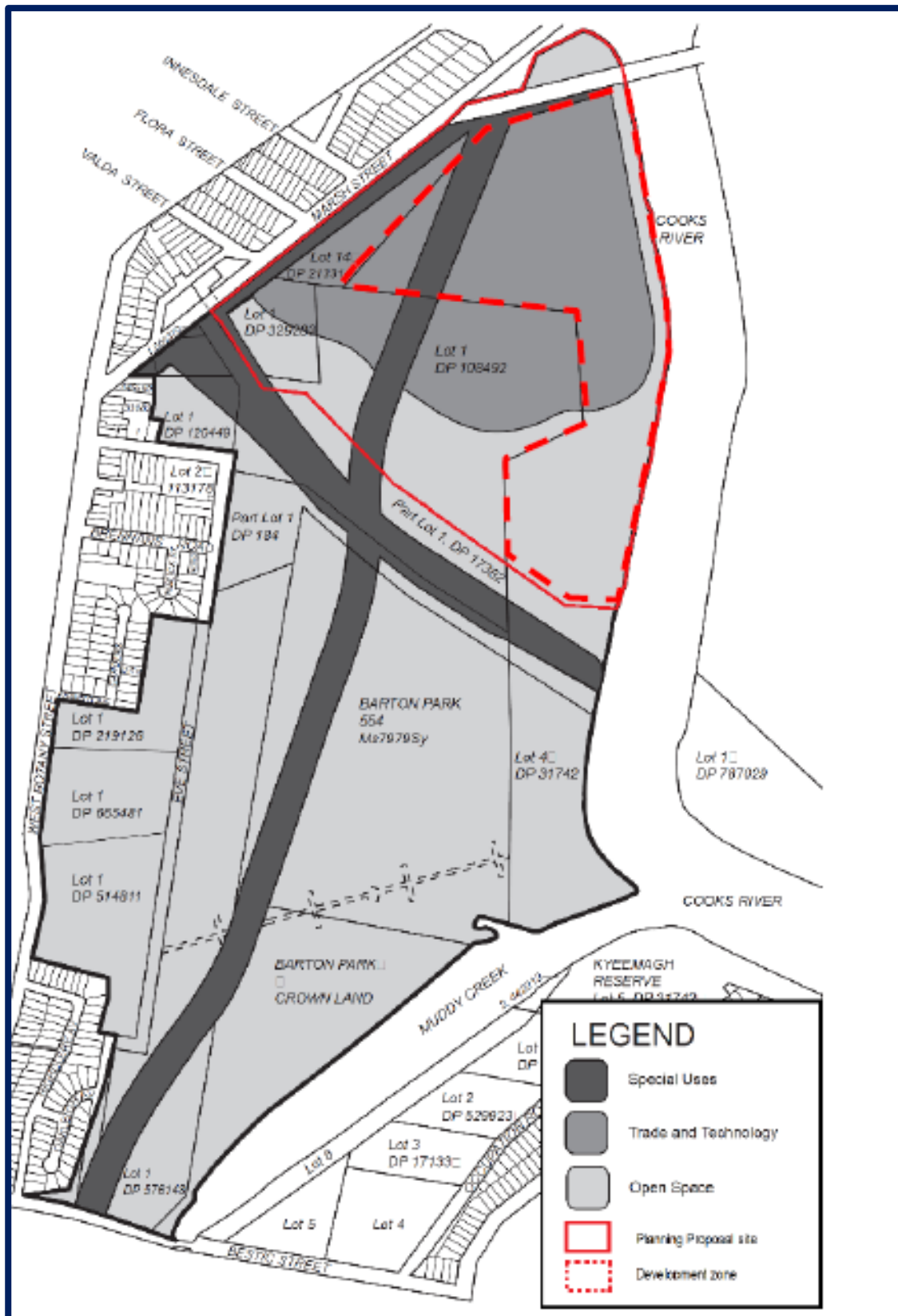


Figure 3: Current zoning map (source: NSW Legislation Website)

1.9 Previous Development Consent

Following the commencement of the former SREP 33 (now EHC SEPP), development approval was previously granted for a Stage 1 Master Plan DA (**Figure 6**) by the former Rockdale Council in 2006 for the subject site. The approval granted consent for a concept masterplan including:

- a new Kogarah Golf Course and Clubhouse, generally located within the area of Cooks Cove to the south of the M5 Motorway;
- a 270,000m² business park within the Trade and Technology Zone, primarily within an area now known as the Cooks Cove development zone, including approval for serviced apartments, hotel and retail uses and parking for approximately 4,700 vehicles; and
- associated public domain and environmental management works throughout the site.

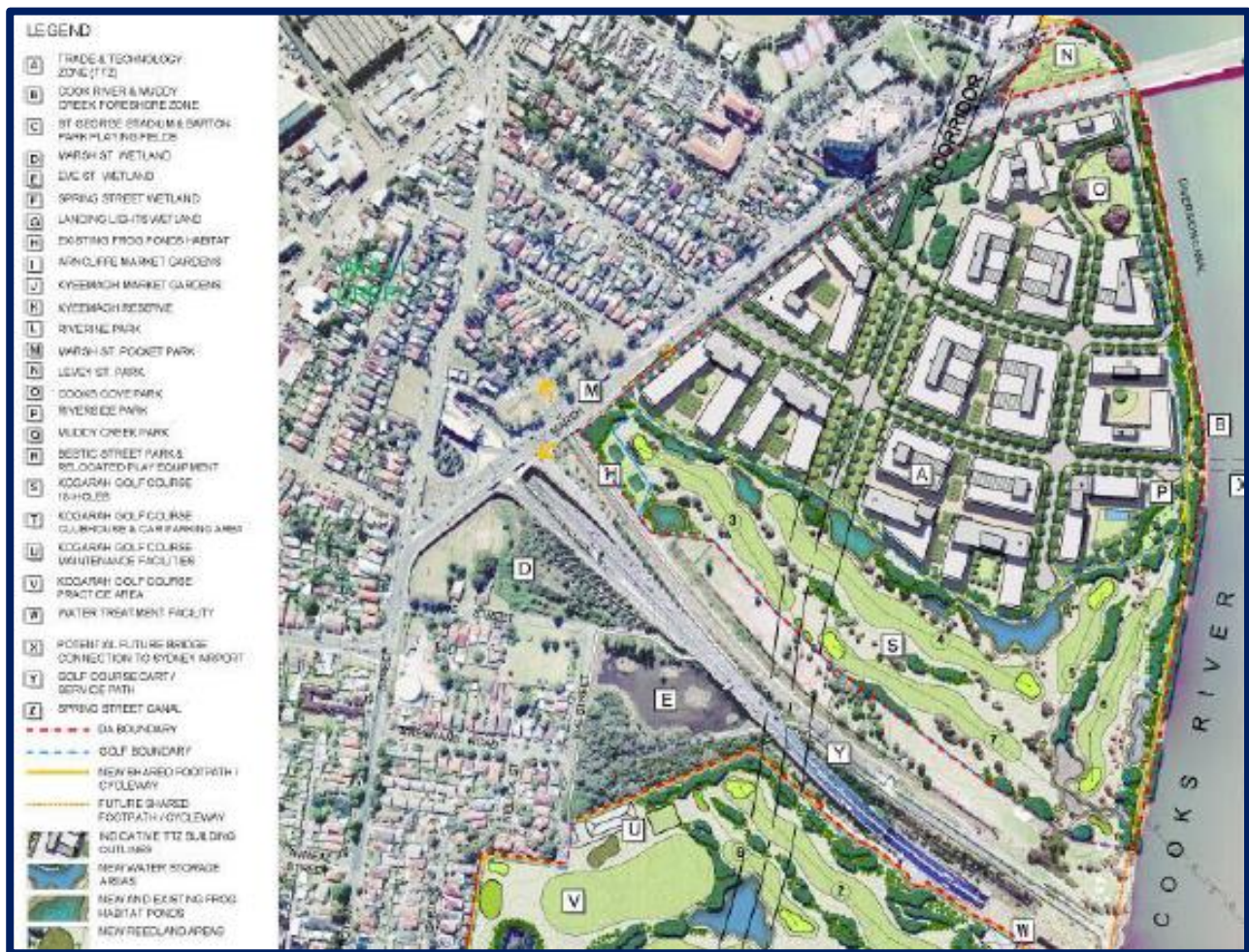


Figure 4: Previous DA Consent Approval Plan

1.10 Background of Strategic Planning Framework

In 2015 the Cooks Cove Precincts was nominated by the NSW Government as a Planned Precinct alongside Arncliffe and Banksia.

Following this, the *Bayside West Precinct 2036 Plan* (the Plan) was released by the NSW Government in August 2018 and provided the local strategic framework to facilitate the urban renewal and guide development within the Bayside West Precincts, including Cooks Cove. In relation to Cooks Cove, the plan states that

“a number of submissions commented on the future redevelopment of Cooks Cove, including concerns that existing areas of open space, wetlands and the heritage listed market gardens would be impacted by any future development of the Cooks Cove Precinct.”

The plan also states *“that these matters were not part of the Department’s precinct planning. While the draft Plan included Cooks Cove, the future of Cooks Cove will be subject to further planning investigations and approvals.”*

To inform this future work, the Plan included planning principles that were subsequently incorporated into Ministerial Direction 1.12 Implementation of Planning Principles for the Cooks Cove Precinct. The report assesses this proposal against this plan (see Section 4.3).

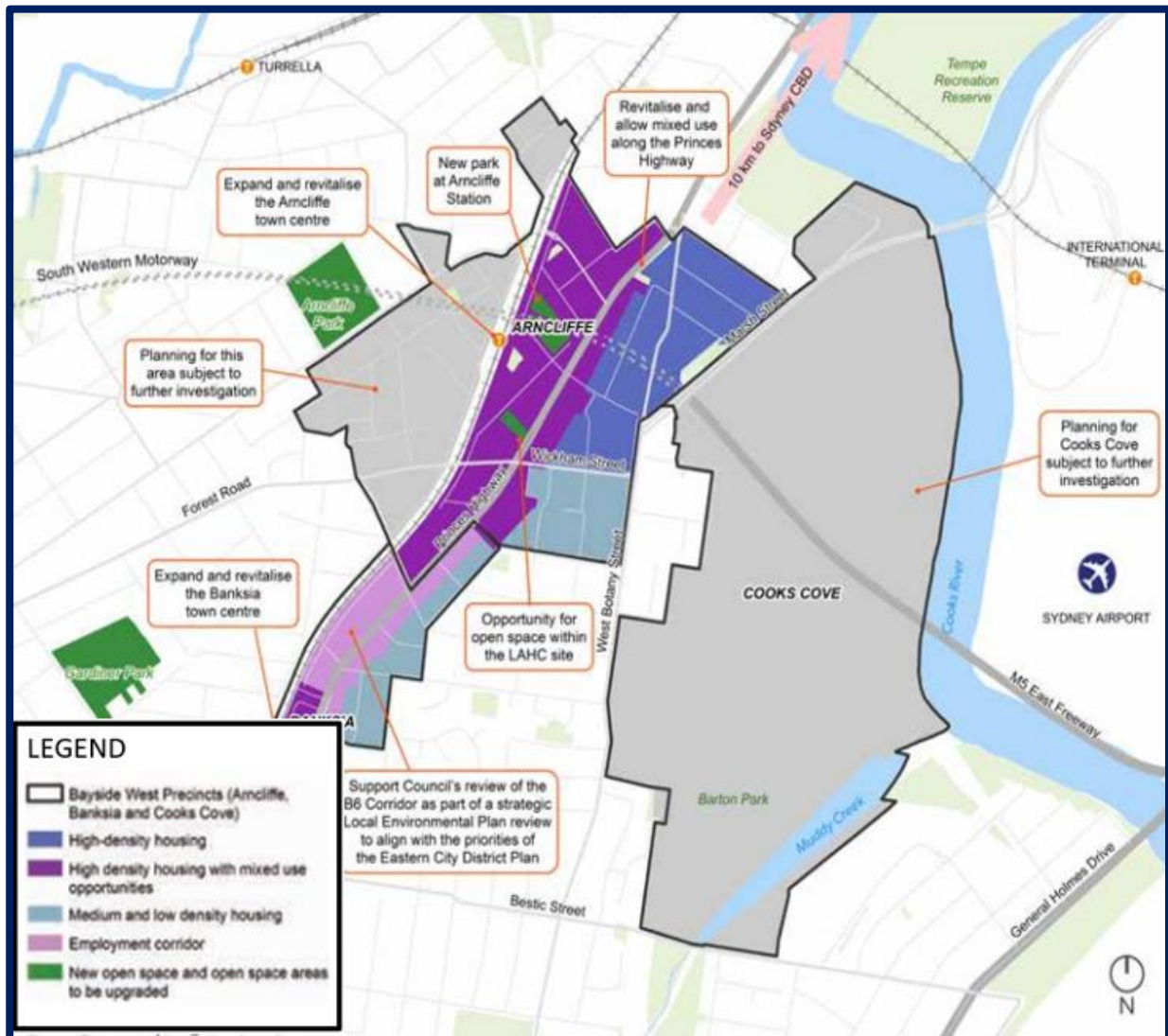


Figure 5: Bayside West Precincts 2036 Map

2 Proposal

2.1 Objectives and intended outcomes

The objectives for implementing these the proposal amendments sought by the planning proposal are to:

- strengthen the economy within Bayside with the provision of new and expanded employment opportunities through new commercial offices and logistics land uses;
- provide for an enriched community, through the delivery of supporting retail and open space that will benefit not only the future workers and visitors of Cooks Cove but also the wider community and Bayside municipality as a whole;
- create an attractive and highly liveable community which delivers best practice design in order to meet the needs of workers and visitors of Cooks Cove and the wider community;
- protect the economic growth and safeguards the ongoing operations of Sydney Airport;
- provide a safe and efficient road network that balances movement and place, provides connections to the immediate and surrounding areas and results in appropriate traffic impacts on the wider network;
- improve mobility and accessibility to and from the precinct, providing substantial active pedestrian/cycling and public transport linkages, support a healthy and diverse community and helping to deliver a 30-minute city;
- protects and supports the provision of future transport linkages, both planned and under construction;
- delivery of an enhanced, attractive, connected and publicly accessible foreshore;
- contribute to the delivery of the Green Grid project through the provision of open space areas and the revitalisation of the Cooks River foreshore; and
- enable the protection and enhancement of the on-site biodiversity and environmental attributes.

2.2 Cooks Cove Master Plan

The planning proposal is supported by a Master Plan that has been prepared to provide an indicative reference scheme for the subject land. The key features of the Master Plan are:

- a development zone of approximately 15.8ha with up to 342,000m² GFA comprising 290,000m² of multi-level logistics and warehousing, 20,000m² for hotel and visitor accommodation uses, 21,250m² for commercial office uses and 10,750m² of retail uses;
- multi-level logistics building heights generally up to 5 storeys (approximately 46 metres) and 12 storeys (48 metres) for the hotel building above retail podium;
- road access to the development zone from Marsh Street with new intersections intended to be delivered at Gertrude and Flora Streets and road access retained from Levey Street;
- an embellished public foreshore riparian area along the Cooks River that includes a regional pedestrian and cycle path, landscaping and environmental restorative works; and
- flood management works.

The Master Plan identifies different blocks (**Figures 8-10**) across the Kogarah Golf Course freehold land comprising the following:

Block 1 – Levey Street

The portion of the site north of Marsh Street (Block 1) is accessed from Levey Street and is intended to accommodate two separate building footprints with a combined area of 2,000m² GFA. The Master Plan anticipates these buildings will be used for ground level food and beverage with two levels of small-scale office above.

The planning proposal states that it seeks a maximum provision of 750m² retail and 1,250m² of office space and the buildings will be up to 3 storeys in height, being 16 metres overall.

Block 2 – Fig Tree Village

The land located immediately south of Marsh Street (Block 2) is intended to provide:

- up to 2,000m² GFA for hotel and visitor accommodation;
- up to 20,000m² GFA of commercial office space;
- up to 10,000m² GFA of retail uses.

It is intended that this will be incorporated into:

- a single storey retail podium;
- an outdoor retail plaza that incorporates six existing Moreton Bay Fig Trees;
- a commercial office building up to eight storeys;
- a mixed-use hotel and retail development up to 12 storeys; and
- parking accommodated within a basement or semi-elevated basement with access from Levey Street and the intended extension to Gertrude Street.

Overall, the buildings within Block 2 are intended to be up to 48 metres in height.

Block 3 - Logistics Precinct

The majority of the development zone (Block 3) is intended to be developed for multi-level buildings accommodating up to 290,000m² of warehousing and logistics uses. This is intended to be delivered as:

- four-six storey large floorplate buildings comprising a single or multiple warehouse tenancies, ancillary office and staff amenity space, circulation and parking;
- spiral ramps are to provide truck access to the upper levels of the building with access via the intended extensions to Flora and Gertrude Streets;
- roof space will be used for plant, parking and/or photovoltaic panels;
- external areas are intended to be used for circulation, storage and loading, parking and water detention and treatment facilities; and
- each building is intended to be up to 5 storeys in height with a typical floor to floor height of 7.6 metres and an overall height of approximately 46 metres (inclusive of an allowance for roof structures).

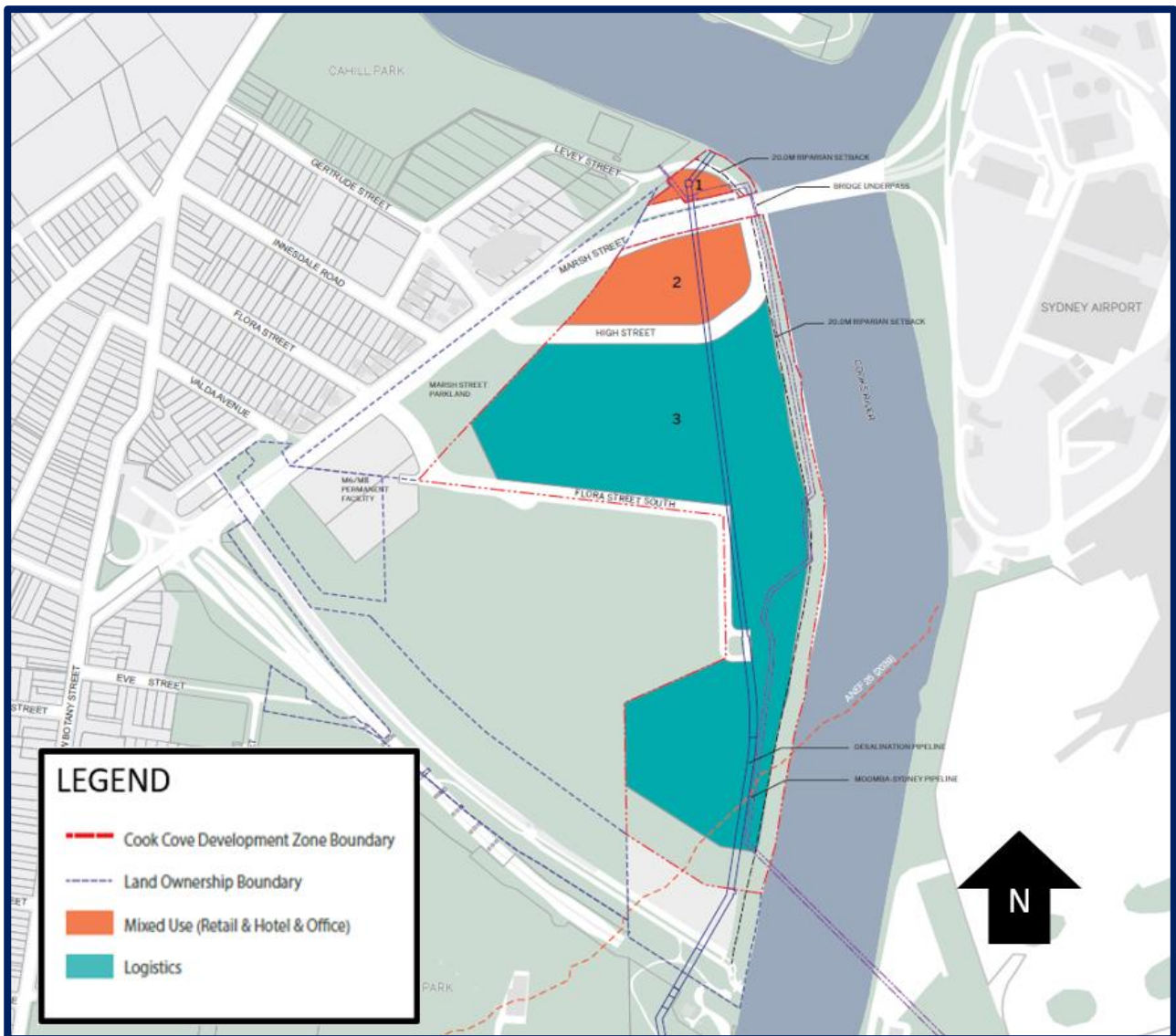


Figure 6: Masterplan blocks

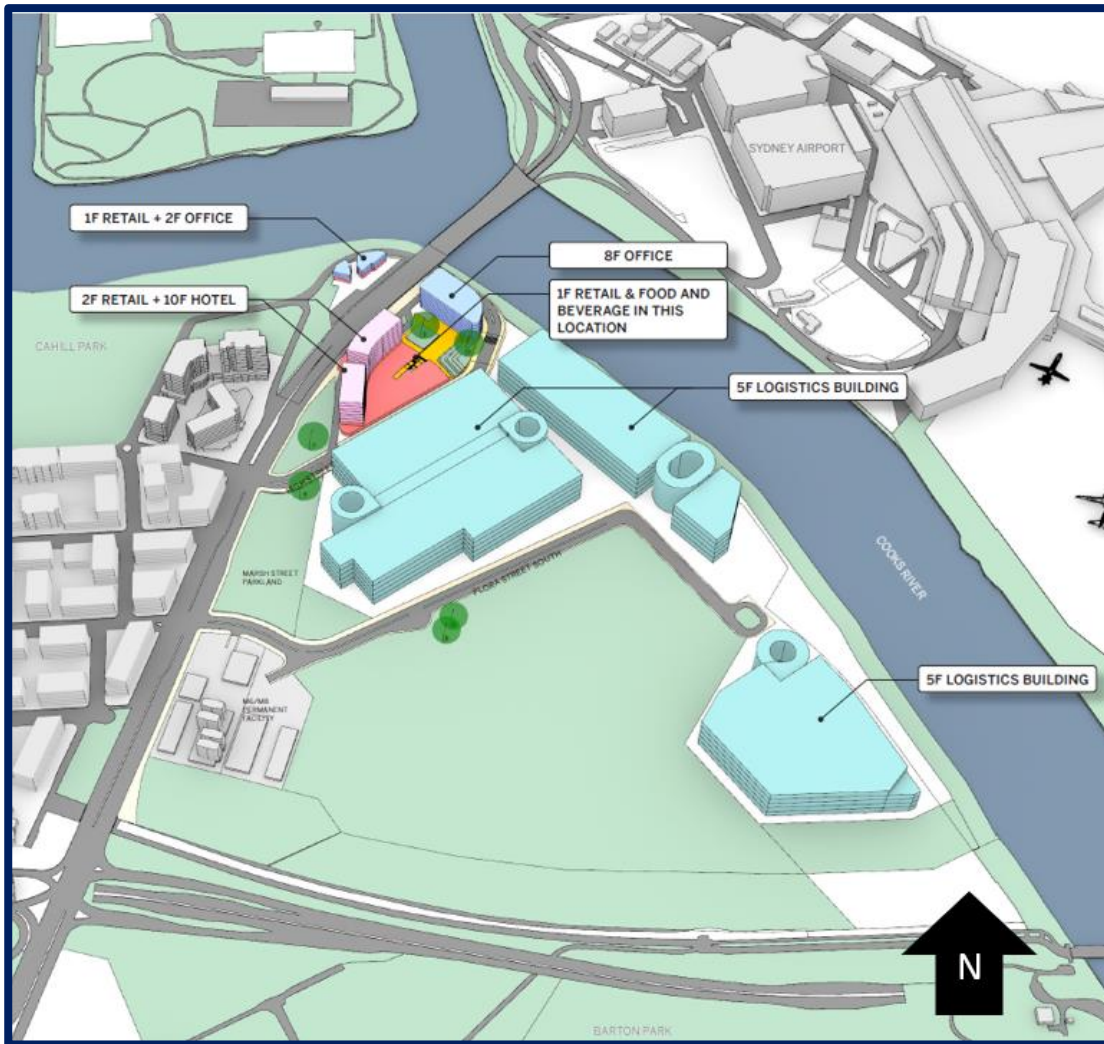


Figure 7: Masterplan Massing Diagram

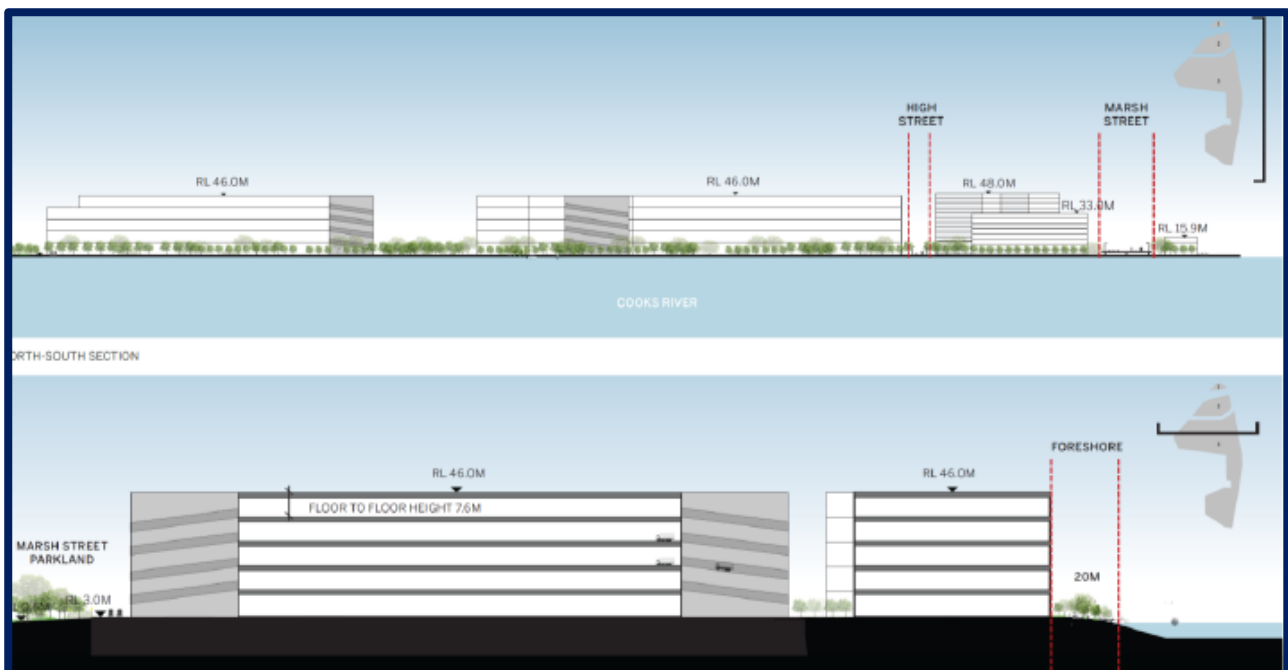


Figure 8: Masterplan Section Drawings

Public Open Space and Connectivity

The Master Plan identifies a new publicly accessible foreshore in the form of a 20-metre riparian setback adjacent to the Cooks River within the Kogarah Golf Course freehold land. It is intended that this will include a shared pathway, seawall and landscape embellishment works (**Figure 11**).

Public Open Space is also envisaged to be delivered upon the majority of land owned by Bayside Council. The design and configuration of this public open space is not part of this planning proposal with it being subject to the future design of Council. However, the planning proposal does seek to ensure supporting infrastructure is delivered on this land including stormwater/overland flowpaths and road connections to Gertude and Flora Streets.

Street Network and Access

The Master Plan outlines an indicative street network and circulation that incorporates both the Kogarah Golf Course freehold land and the land owned by Bayside Council. The key elements are as follows:

Levey Street

The existing Levey Street which provides existing access under the Giovanni Brunetti Bridge is intended to be retained for access into the precinct. Due to the road passing under the Giovanni Brunetti Bridge, it is restricted in vehicular access height to approximately 3.1 metres.

Gertrude Street

A new signalised (four way) intersection at Marsh Street/Gertrude Street is intended to form a key access point into the site. The planning proposal states that to accommodate the intended dual right turn bays from Gertrude Street into the site, the Marsh Street/Innesdale Road intersection will revert to a left in – left out arrangement.

Flora Street

The existing signalised intersection at Marsh Street/Flora Street is intended to be modified to provide access into the site. The planning proposal states that the final layout of the intersection will be subject to further discussion with TfNSW, however the preliminary layout does not provide for right turns from Marsh Street into the site.

The planning proposal also states that Flora Street is also intended to provide access to the M8/M6 permanent facility and will include a turning bay mid-way along Flora Street to enable turning into the M6/M8 facility to restrict queuing onto Marsh Street subject to further assessment. The planning proposal also states that subject to future negotiation with Council, the road can provide access to parking areas associated with the intended future public open space on Lot 1 108492.

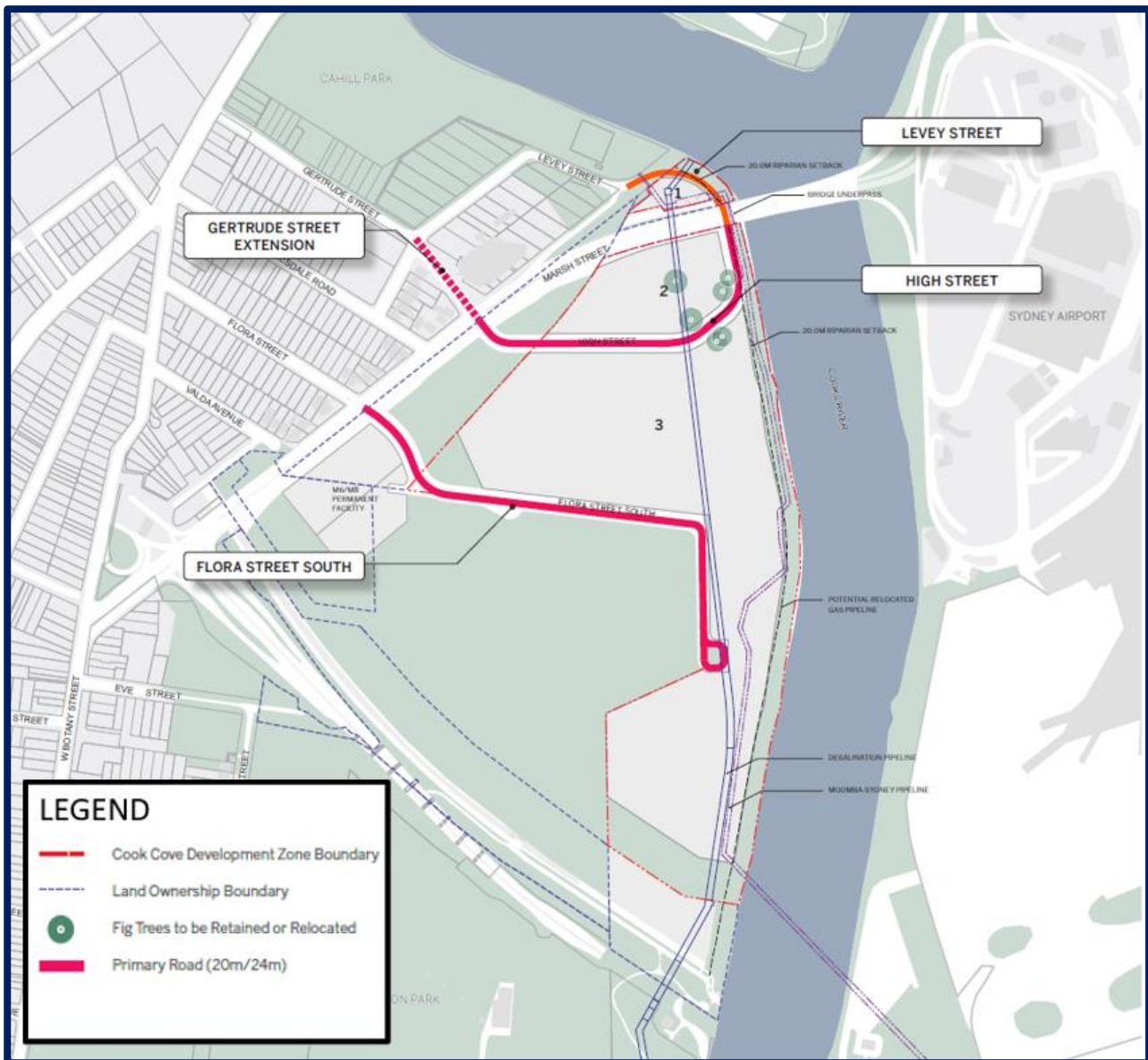


Figure 9: Street Network Plan

Landform and Flood Management

The Master Plan intended to provide a development zone (within the Kogarah Freehold land) to achieve a minimum finished floor level of RL 3.2 metres. The planning proposal is supported by a flood management strategy which includes the following key measures:

- Convey extreme floor waters overtopping Marsh Street outside the intended development footprint (within both Bayside Council owned land and Kogarah Golf Course freehold land) to discharge to the Cooks River in the south via the following:
 - a flowpath along the western boundary of the site and parallel to Marsh Street. The path is intended to have a base width of 10 metres and typically 4% graded slopes contained within an 18 metres reserve. This path is intended to convey floodwater to the basin at the western tip of the development;
 - a flowpath extended from the basin to the southern tip of the site, conveying flows towards the Cooks River;
 - flowpaths are intended to be delivered as vegetated swales

- raise the intended extended access roads for Gertude Street and Flora Street to meet the development area level of 3.2m AHD;
- inclusion of culverts within the site beneath Gertude Street and Flora Street access roads, spanning the western overland flow path and conveying 1% AEP flows without being overtopped and being overtopped during the PMF event;
- inclusion of a shallow north-south bund alignment adjacent to the SWSOOS to prevent back-flooding of the site from the Cooks River;
- intended finished floor levels will be constructed above the 1% AEP flood levels, plus an additional 0.5m freeboard requirement and a further 0.9m allowance to accommodate predicted increased rainfall intensities and sea level rise attributed to climate change impacts; and
- inclusion of flood refuge areas designated within all lots.

The planning proposal states that the design of the intended flood channels and additional water management features will be refined during later planning and design phases. The alignment of dedicated overland flowpaths as shown in the planning proposal are advised as being not fixed in location and can be tailored to optimise the utility of Council land for recreation purposes.

2.3 Explanation of provisions

The planning proposal seeks to introduce the site to the provisions of Bayside LEP 2021 as a consequence of amending Chapter 6 Cooks Cove of State Environmental Planning Policy (Precincts – Eastern Harbour City) 2021 as it applies to the subject land. The table below provides a snapshot of key LEP amendments with further details of the proposed provisions provided beneath.

Table 4: Current and proposed controls

Control	Current – EHC SEPP - Chapter 6 Cooks Cove	Proposed – Bayside LEP 2021
Zone	Special Uses Trade and Technology Open Space	SP2 Infrastructure B7 Business Park RE1 Public Recreation
Maximum height of the building	(1) A building within the Cooks Cove site must not exceed 6 storeys. (2) However— (a) a building within 120 metres of the Cooks River must not exceed 5 storeys, and (b) subject to paragraph (a), one building on land within the Trade and Technology Zone that is situated no closer than 10 metres from the zone boundary may have a height that does not exceed 11 storeys.	Maximum height of both: RL30m RL51m
Floor space controls	See - floor area controls discussion below	See - floor area controls discussion below

Control	Current – EHC SEPP - Chapter 6 Cooks Cove	Proposed – Bayside LEP 2021
Additional Permitted Uses	Recreation Facility on land identified as 'Area 1'	Advertising structures, retail premises, tourist and visitor accommodation, trade related enterprises, environmental facilities, environmental protection works, freight transport facilities, industrial training facilities, light industries
Dictionary	N/A	Introduce "Trade related enterprises" to LEP - <i>means a business or government activity directly related to the carrying out of air, land or sea commerce, air passenger services or other trade, including the import or export of advanced technology goods or services, trade-related warehousing, customs agencies, freight forwarding, trade logistics and distribution, and time-sensitive goods processing.</i>

Land Use Zoning

The planning proposal intends to rezone the site under Bayside LEP as follows and show in **Figure 12:**

- B7 Business Park zoning within the Kogarah Golf Club Freehold land, being Lot 100 in DP 1231954 and Lot 31 in DP 1231486;
- RE1 Public Recreation zoning to the residual of Lot 100 in DP 1231954 and Lot 31 in DP 1231486 with the intention of defining a foreshore recreation zone with a minimum width of 20 metres and internal passive open space and overland flow areas within the southern and western edges of Lot 100 in DP 1231954;
- RE1 Public Recreation zoning to land owned by Bayside Council affected by Charitable Trusts, which are proposed to be removed via reclassification, as discussed separately; and
- SP2 Infrastructure (Classified Roads) to residual portions of Lot 14 in DP 213314, Lot 1 in DP329283 and Lot 1 in DP 108492.

Floor Space Ratio

The planning proposal seeks to restrict floor space on the site through restricting floor space area (GFA) rather than floor space ratio (FSR). The intention of this approach is to ensure a cap to floor area by land use type while providing a level of flexibility in how future floor space is distributed throughout the site.

The net development footprint of the intended B7 Business Park zone land is approximately 15.1 hectares (Lot 100 in DP 1231954) and 2,425m² (Lot 31 in DP 1231486). A maximum of 342,000m² is proposed which would approximately equate to an indicative net FSR of approximately 2.5:1.

The planning proposal intends to amend Clause 4.4 of Bayside LEP to specify these as caps for overall GFA and selected individual land uses within various parts of the site.

The proposed floor area controls to be included in Bayside LEP are broken into areas (as referenced under **Figure 13**) and are outlined below:

- **Area 16**
 - Maximum 2,000m² for mixed food and drink premises, office premises and retail premises.
- **Area 17**
 - Maximum of 340,000m² for all development – Areas 18, 19 and 20 all sit within area 17 and make up part of the maximum 340,000m².
- **Area 18**
 - Maximum 20,000m² for office premises.
- **Area 19**
 - Maximum 20,000m² for tourist and visitor accommodation; and
 - Maximum 10,000m² for retail premises.
- **Area 20**
 - Maximum 290,000m² for all permitted development inclusive of
 - Maximum 4,000m² for hardware and building supplies; and
 - Maximum 1,000m² for office premises.

Building Height

The planning proposal states that the proximity of the site to Sydney Airport means that appropriate built form heights within the precinct are heavily influenced by the Obstacle Limitation Surface (OLS). It also states that detailed flood modelling will be conducted as part of any future development assessment which will establish the appropriate street levels within the development zone.

Having regard to its context, the planning proposal seeks to introduce Reduced Levels (RL's) rather than defining maximum buildings heights in metres (as shown in **Figure 14**).

Additional Permitted Uses

The planning proposal seeks to introduce some Additional Permitted Uses (APU's) under Schedule 1 of the Bayside LEP 2021. The intention of this is to facilitate the delivery of a logistics and warehousing precinct with flexibility to accommodate a suitable mix of complementary land uses which also provide support to the surrounding area.

The planning proposal intends for the APU's to be introduced to specified Areas of the site as shown on an accompanying map (**Figure 15**) and shown in Table 5.

Table 5: Proposed Additional Permitted Uses

Proposed APU	Nominated Area	Purpose
Advertising Structures	Block 1 and Block 2 identified as "Block 36", "37" and "38" on the APU Map	Advertising structures such as billboards may be proposed within Blocks 1 and 2
Retail Premises	Block 1 and Block 2 identified as "36", "37"	Proposed to support and serve the workers and visitors within Cooks Cove. Retail premises are intended to have a secondary intention of serving

Proposed APU	Nominated Area	Purpose
	and “38” on the APU Map	residents who live within the immediate surrounding area and Airport precinct. It is intended that retail premises will be a complementary use to the more dominant logistics and warehousing uses and will contribute to the viability and flexibility of the site.
Tourist and Visitor Accommodation	Block 2 identified as “37” on the APU Map.	The provision of tourist and visitor accommodation intends to service the Airport and other demands of the area. The use is proposed to be permissible in the western component of Block 2 only, with the intention of responding to spatial requirements resulting from a preliminary hazard analysis undertaken in relation to the ethane pipeline.
Trade-related enterprise	Block 2 and Block 3 identified as “37”, “38” and “39” on the APU Map	<p>This is proposed to allow the Cooks Cove precinct to serve any combination of air, land or sea commerce and trade purposes. The planning proposal states that the incorporation of this within Blocks 2 and 3 will ensure the intent of the Eastern Harbour SEPP, to support trade uses to be able to locate within the site is maintained.</p> <p><u>Note</u> – This is not currently a standard instrument definition and is proposed to be introduced as part of this planning proposal and defined as:</p> <p><i>means a business or government activity directly related to the carrying out of air, land or sea commerce, air passenger services or other trade, including the import or export of advanced technology goods or services, trade-related warehousing, customs agencies, freight forwarding, trade logistics and distribution, and time-sensitive good processing.</i></p>
Environmental facilities	Block 3 identified as “39” on the APU Map	Environmental facilities such as walking tracks, seating, shelters, boardwalks and observation decks may be proposed in the future to improve public domain infrastructure.
Environmental protection works	Block 3 identified as “39” on the APU Map	Due to the location of the site near adjoining waterways and parklands, certain environmental works may be required in the future.
Freight transport facilities	Block 3 identified as “39” on the APU Map	The provision of Freight transport facilities seeks to supplement the intended future character of Block 3 as a contemporary logistics and warehousing precinct. It intends to broaden the ability of the site to service the needs arising from the nearby location of Sydney Airport.
Light industries	Block 3 identified as “39” on the APU Map.	Light industries are sought to supplement the dominant logistics and warehousing land use within the site. It intends to broaden the ability of the site to service the

Proposed APU	Nominated Area	Purpose
		needs arising from the nearby location of Sydney Airport.

Land Reclassification

The planning proposal intends to rely on Lot 1 in DP 108492 and Lot 14 in DP 213314 to provide road access into the intended development site and to also undertake flood mitigation works. As discussed earlier, this land is currently affected by a 'Charitable Trust' (the Trust) which requires Bayside Council (the land owner) to hold the Trust Lands as trustee, with TfNSW the beneficiary, for the following purposes:

- a County road,
- pending use for County road purposes, only for a public park, public reserve or public recreation area.

The intended works as part of this planning proposal are not in accordance with the terms of the Trust. As such, the planning proposal in conjunction with the proposed rezoning of Lot 1 in DP 108492 and Lot 14 in DP 213314, also seeks the reclassification of these lots from 'community' to 'operational' under section 30 of the *Local Government Act 1993* the extinguishment of the Charitable Trusts which currently affects the land.

This is proposed to be achieved by amending Schedule 4 of the Bayside LEP 2021 which is divided into three parts as follows:

- Part 1: identifies land being classified or reclassified as 'operational' where the trusts, estates, interest, dedications, conditions, restrictions and covenants will remain on title after classification/reclassification – i.e. where no interests will change.
- Part 2: identifies land being classified or reclassified as 'operational' where some of the trusts, estates, interests, dedications, conditions, restrictions, or covenants over the land will remain after classification/reclassification. The interests remain (if any) are identified in column 3 of this part of the schedule.
- Part 3: identifies land being classified or reclassified as 'community' land.

Table 6 outlines interests sought to remain and be removed from each title.

Table 6: Description of Interests proposed to remain and be removed

Site	Interests to remain (to list in Part 2 of Schedule 4)	Interests to be removed
Lot 1 DP 108492	Lot 1 DP 108492	The Charitable Trust affectation over Lot 1 DP 108492
Lot 14 DP 213314	Lot 14 DP 213314	The Charitable Trust affectation over Lot 14 DP 213314

Other provisions

The planning proposal seeks to amend numerous Bayside LEP maps to bring the site under the control of numerous LEP clauses, specifically:

- Clause 6.1 Acid Sulfate Soils and Acid Sulfate Soils Map; and
- Clause 6.6 Flood Planning and the Flood Planning Map.

Draft Development Control Plan

The planning proposal states that a draft site-specific development control plan (draft DCP) will be prepared to guide the future development of the precinct based on key elements of the supporting masterplan. The draft DCP will be developed to:

- identify the key elements and indicative structure for the future development of the precinct consistent with the Planning Principles for the Cooks Cove precinct detailed in Local Planning Direction 7.10;
- communicate the planning, design and environmental objectives and controls against which the consent authority will assess future development applications;
- ensure the orderly, efficient and environmentally sensitive development of the precinct; and
- promote a high-quality urban design outcome.

The draft DCP will also include controls for the following:

- movement network;
- open space network;
- land use principles;
- building form and design;
- setbacks and public domain interface;
- wind effects;
- vehicular access and car parking;
- aircraft operations;
- noise and vibration;
- stormwater and flood management; and
- biodiversity.

Planning Agreement

At the time of preparing this Gateway assessment, a draft Public Benefit Offer has been submitted to Bayside Council. It states that a draft Planning Agreement is proposed to be exhibited concurrently with the planning proposal and a Planning Agreement is to be executed concurrently with the finalisation of the planning proposal. The proposed draft schedule of works includes:

- road improvement and intersections works;
- pedestrian and cycling infrastructure;
- dedication of land and public accessibility of Cooks River foreshore; and
- embellishment to future public open space.

Employment Zones Reform

The Department exhibited a proposal Employment Zones Reform from 20 May to 30 June 2021 to simplify the employment zones framework. The Explanation of Intended Effect (EIE) titled Employment Zones Reform Implementation and implementation detail which shows the proposed amendment to individual LEP's was exhibited from 31 May to 12 July 2022. At the time of writing, the Department is reviewing the feedback which will inform policy finalisation.

2.4 Mapping

The planning proposal includes mapping showing the proposed changes to the zoning, maximum floor space, maximum height of buildings and identifying additional permitted uses maps in Bayside LEP.

Gateway conditions are also recommended to address the following matters:

- the planning proposal states that it seeks to amend numerous Bayside LEP maps to bring the site under the control of numerous LEP clauses. Further clarification is required to clearly outline all mapping amendments being sought;
- the planning proposal states that the maximum flood space ratio (FSR) is not to exceed that shown in the floor space ratio map (with exceptions listed). This does not appear to correspond with the intent of the planning proposal to specify maximum floorspace (rather than FSR). Clarification is required to provide a clearer explanation of the intended distribution of floorspace across the site.

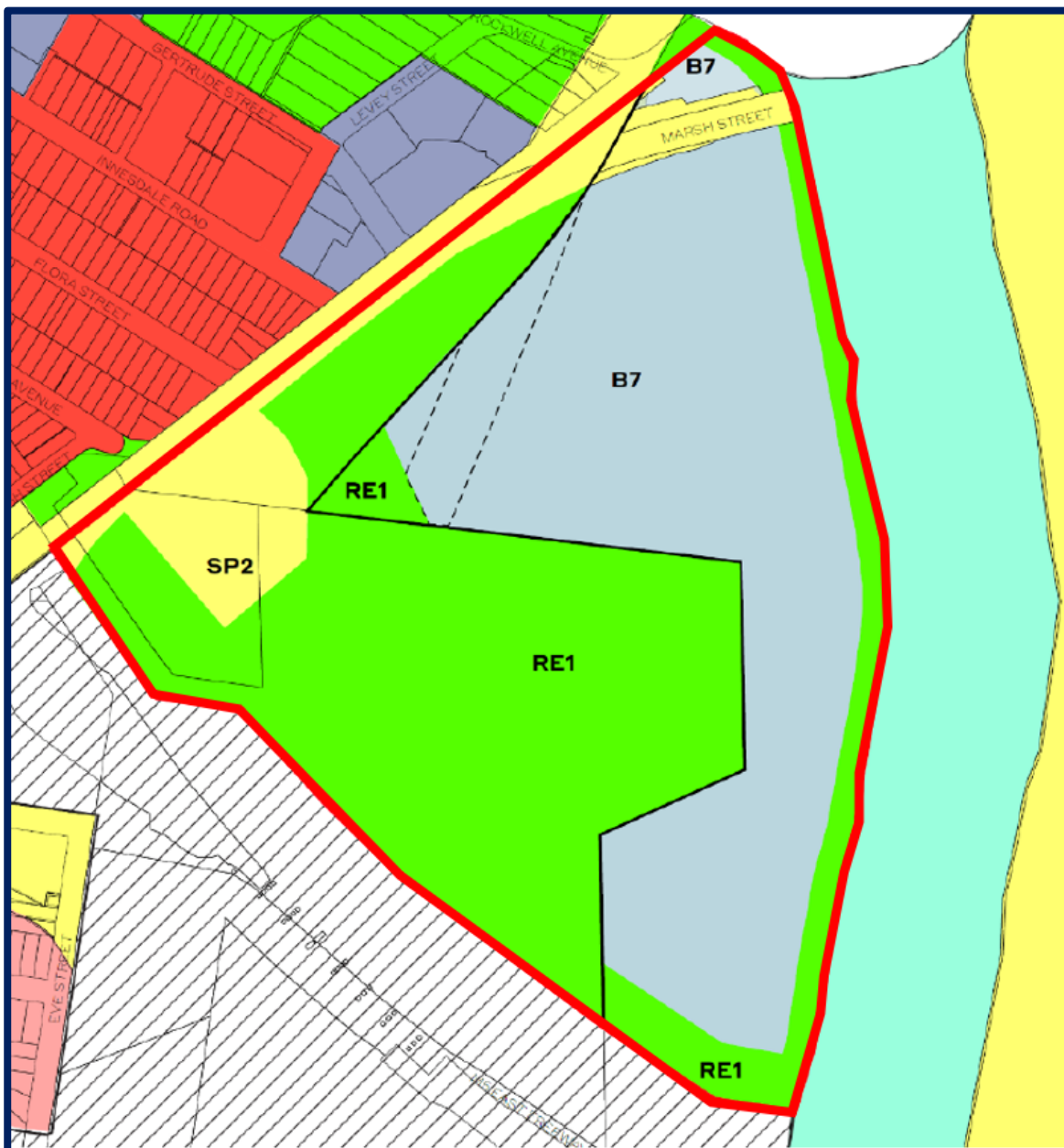


Figure 10: Proposed land zoning map (source: planning proposal)

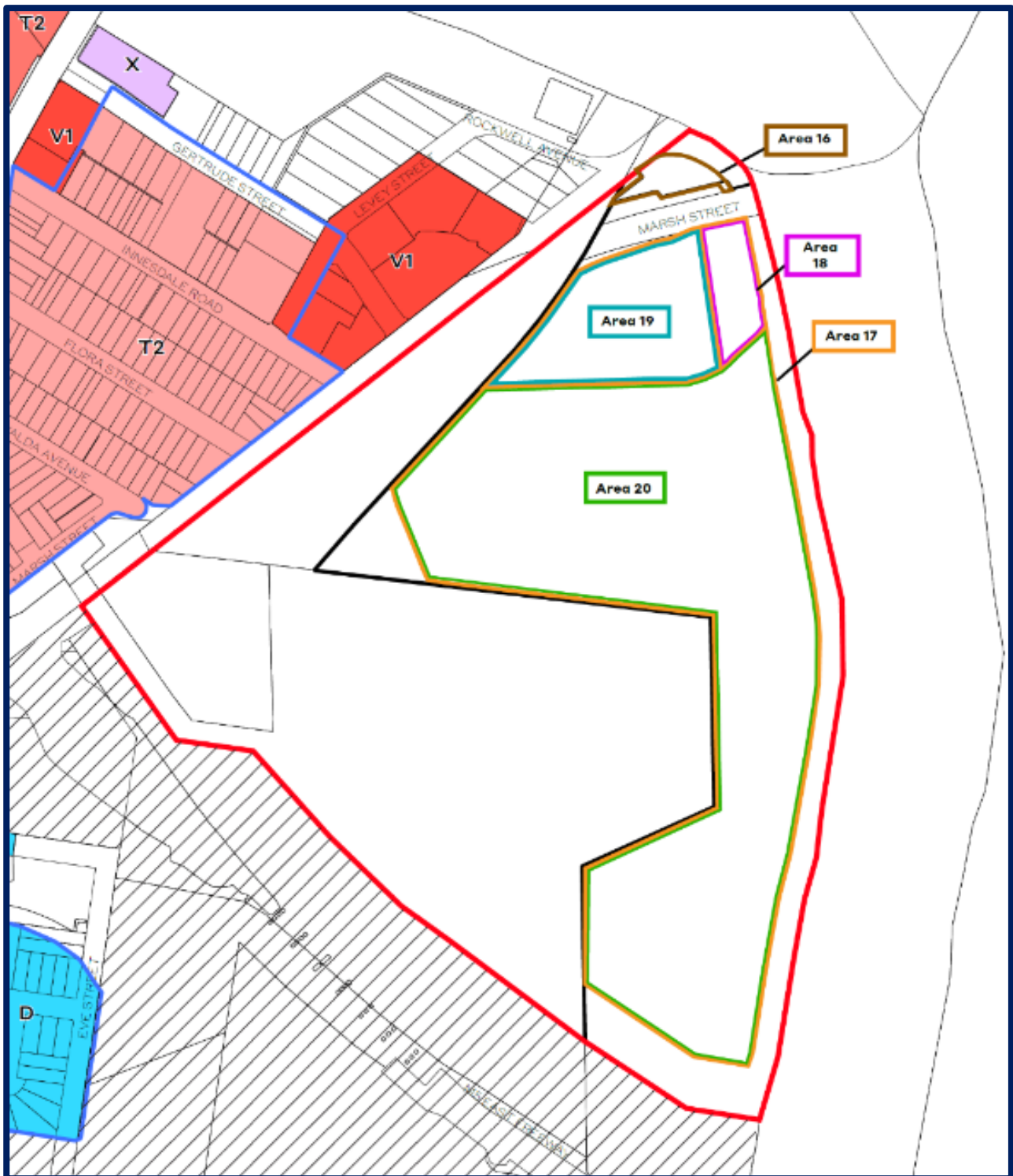


Figure 11: Proposed floor space ratio map (source: planning proposal)

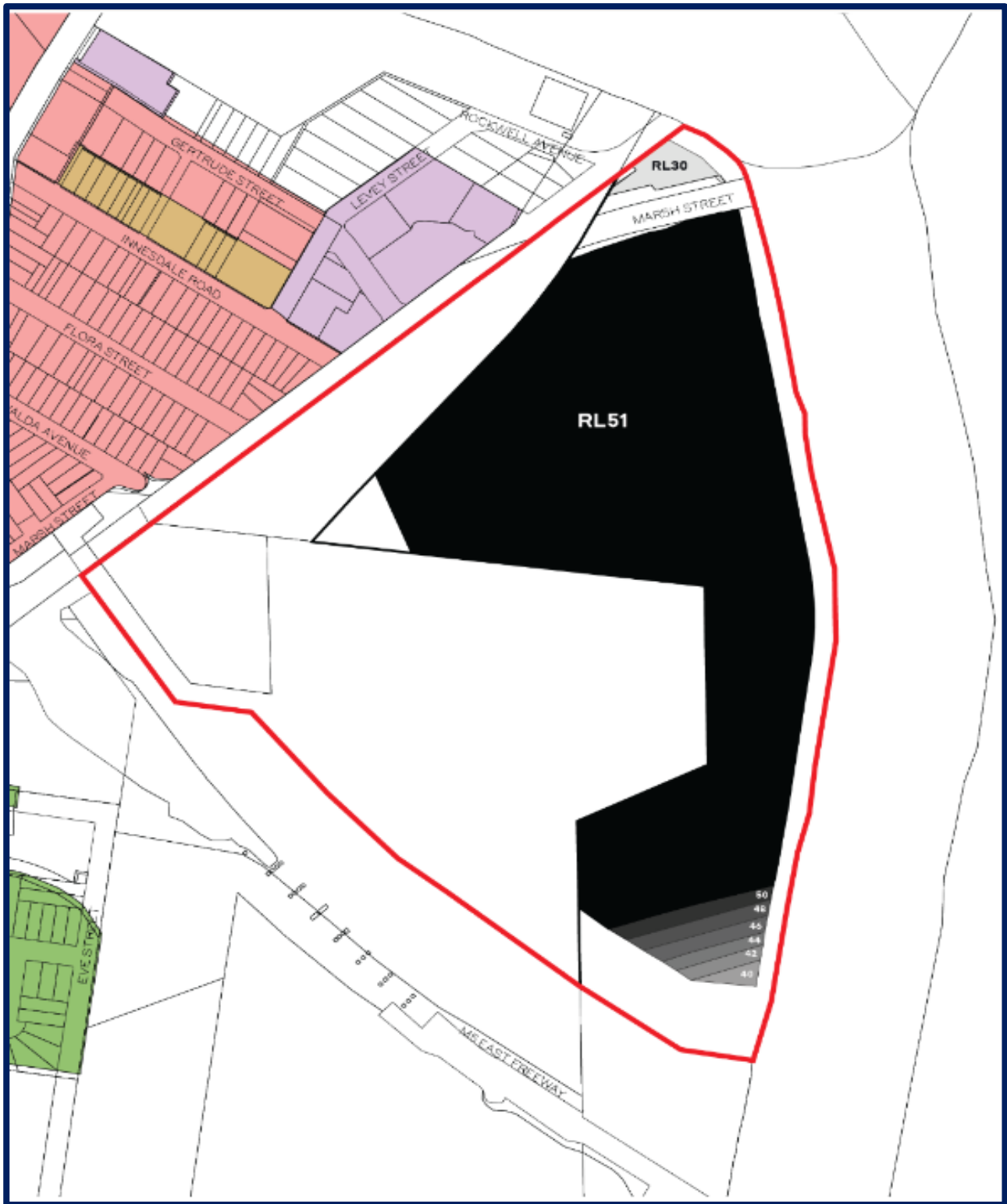


Figure 12: Proposed Height Map (source: planning proposal)

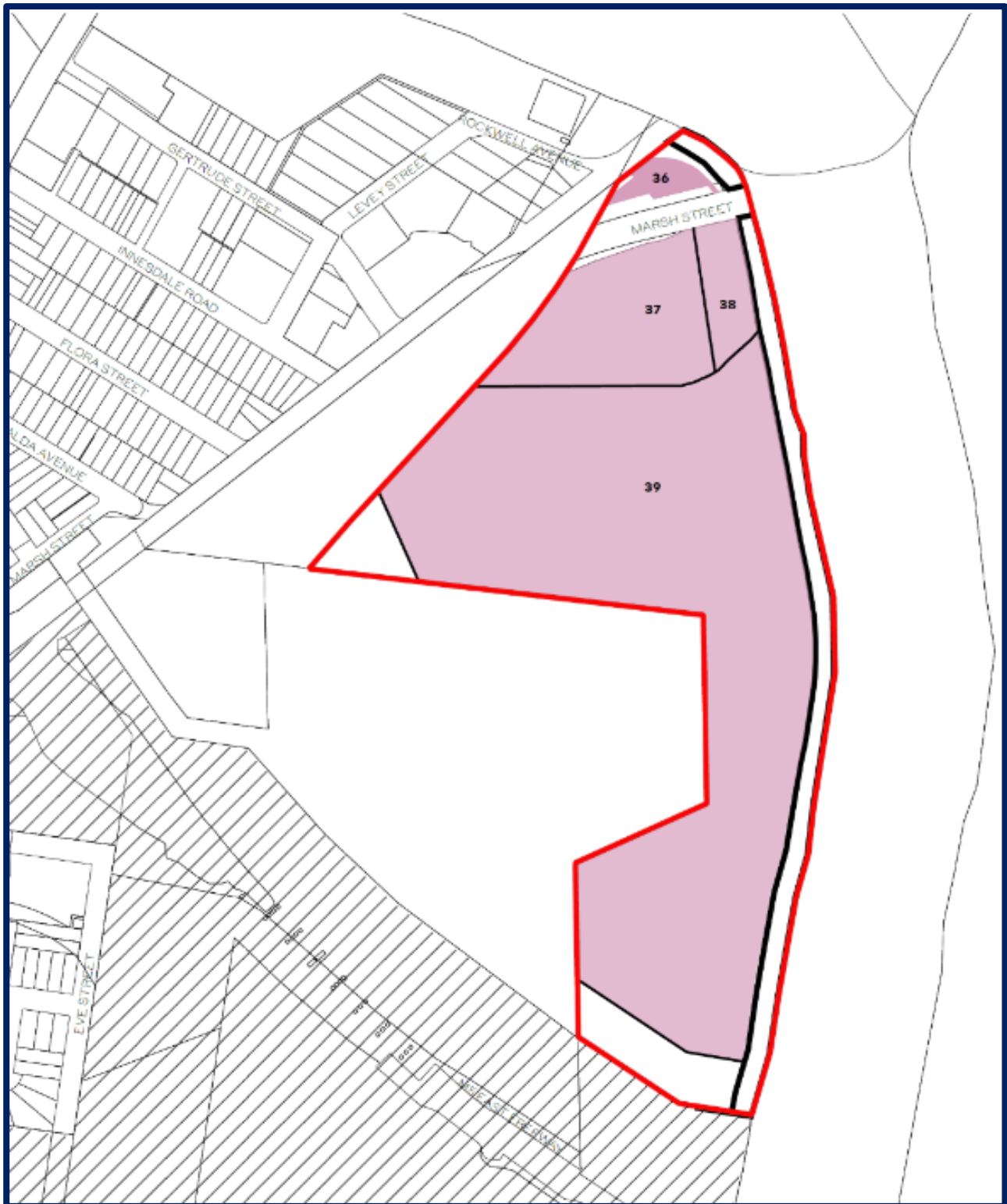


Figure 13: Proposed Additional Permitted Uses map (source: planning proposal)

2.5 Background and Planning Proposal History

The preparation of a planning proposal for the subject land has an extensive history over a number of years. The information below provides a brief summary of the progression of assessment, amendments undertaken and key matters that have been identified through this process.

Original Planning Proposal - 2017

The proponent originally lodged a planning proposal with Bayside Council in May 2017 incorporating the entirety of the site identified in the former Sydney Regional Environmental Plan 33 – Cooks Cove (being both the northern and southern Cooks Cove precincts). The planning proposal proposed to remove the site from the former SREP and bring it into the LEP and introduce the following planning controls:

- zone the site for mixed-use purposes comprising largely residential and minimal non-residential purposes;
- guide the development of the northern precinct through specific zoning provisions;
- replace the open space zoning identified in the SREP with a RE1 Public Recreation Zoning under the LEP;
- change the classification of parts of the site from community land to operational land and remove the charitable trusts to allow development to occur; and
- Kogarah golf course removed to southern section of the SREP sites.

Council engaged an independent consultant to undertake an assessment for Council and provide a recommendation to the Bayside Local Planning Panel (BLPP). On 14 August 2018, the BLPP considered a recommendation that the planning proposal be forwarded to the Department for Gateway assessment.

The BLPP recommended that the planning proposal not be forwarded for Gateway Determination Assessment. The BLPP outlined that the fundamental issue for consideration in progressing this planning proposal was a lack of strategic merit in changing the zone to allow a new suburb of some 12,000 population (estimated by proponent) by the establishment of significant residential development. The BLPP was also concerned with the loss of employment floor space on site.

Amended Planning Proposal – March 2020

In March 2020, an amended planning proposal was submitted by the proponent to Bayside Council. The key change from the original planning proposal to the March 2020 proposal was:

- reduction of land in the planning proposal from 100ha to 18 limited to the Kogarah Golf Course Freehold land;
- proposed developable floor space reduced from 571,000m² to 457,418m²;
- residential floor space reduced from 515,500m² to 237,415m²; and
- employment floor space increased from 55,500m² to 220,000m².

Appointment of alternate Planning Proposal Authority – February 2021

On 2 November 2020, Bayside Council wrote to the Department to advise that TfNSW (as beneficiary) have confirmed that it considers the intended access roads (and drainage works) across Lot 1 in DP 108492 and Lot 14 in DP 213314 are not consistent with the terms of the Charitable Trust that affects this land.

As such, Council advised that its fiduciary obligation as a Trustee of the Trust would prevent it from performing the role of the Planning Proposal Authority (PPA). Council advised that it refers the matter to the Minister (through the Department) to facilitate the appointment of an alternate

Planning Proposal Authority under s.3.32 of the *Environmental Planning and Assessment Act 1979* ('EP&A Act').

Given Council's position on the matter, in February 2021 the Deputy Secretary of the Department (under delegation of the Minister) appointed the Sydney Eastern City Planning Panel as the alternate PPA under section 3.32(2)(d) of the EP&A Act. The appointment was undertaken to allow an assessment to take place on the merits of the planning proposal. The Panel was requested to:

- consider the merits of the planning proposal;
- consider the Trust lands issue and whether the planning proposal should be amended to include the reclassification of the Trust lands from community to operational; and
- determine whether it seeks to request a Gateway approval.

Amended Planning Proposal - February 2021

In February 2021, the proponent amended the planning proposal to include:

- the addition of Lot 1 in DP 108492, Lot 14 in DP 213314 and Lot 1 DP 329283 and applicable zoning of RE1 Public Recreation and SP2 Infrastructure; and
- propose the reclassification of Lot 1 in DP 108492, Lot 14 in DP 213314 from community to operational and thereby extinguish the Charitable Trust land.

Amended Planning Proposal - October 2021 (current planning proposal)

In October 2021, the proponent sought to amend the planning proposal to reflect the current planning proposal that is the subject of this Gateway assessment. This was in response to pre-Gateway consultation undertaken on the previous version of the planning proposal.

The key objective of the amended planning proposal is to prioritise land uses which contribute to the support of the adjacent Sydney Airport. It seeks to facilitate a future logistics and warehousing precinct, with other supporting uses such as tourist and visitor accommodation, office and retail.

Table 4 provides a breakdown of the differences between the various versions of the planning proposal described above.

Table 7: Key changes in planning proposal

Key Figures	Original Planning Proposal - 2017	March 2020 Planning Proposal	February 2021	Current Planning Proposal – October 2021
Land area	100ha	18.2ha	36.2ha	36.2ha
Net developable area	13.6ha	11.9ha	18.2ha	15.8ha
Proposed developable floor space (maximum)	571,000m ²	457,418m ²	457,418m ²	342,000m ²
Proposed employment floor space (minimum)	55,500m ²	220,000m ²	220,000m ²	342,000m ²

Key Figures	Original Planning Proposal - 2017	March 2020 Planning Proposal	February 2021	Current Planning Proposal – October 2021
Proposed residential floor space	515,500m ²	237,415m ²	237,415m ²	0m ²
Proposed building heights (maximum)	Up to RL86m	Up to RL51m	Up to RL51m	Up to RL51m
Land tenure	Kogarah Golf Course, Local and State Government Agencies and the Commonwealth	Kogarah Golf Course	Kogarah Golf Course Council Land	Kogarah Golf Course Council Land

2.6 Sydney Eastern City Planning Panel

Following its appointment as the alternate Planning Proposal Authority (PPA), the Sydney Eastern City Planning Panel (the Panel) held a number of discussions with key agencies and stakeholders. This included Transport for NSW (TfNSW), Bayside Council, Sydney Airport Corporation Limited, Department staff and the proponent.

On 2 December 2021, the Panel undertook a site visit with representatives of the proponent and the Department in attendance. To assist in its assessment, the Panel also engaged an independent consultant to provide a recommendation. A report was completed by the Panel's independent consultant and ultimately recommended that the Panel endorse the planning proposal and forward to the Secretary and request a Gateway determination. Key recommendations included:

The planning proposal is to be updated to:

- *Insert an amendment to clause 4.6 of Bayside LEP 2021 that precludes the application of clause 4.6 to the height of building and GFA controls applying to the site; and*
- *Include mapping amendments for all relevant map tiles to include the site.*

Prior to public exhibition of the planning proposal and community consultation, consultation is required with the following public authorities:

- *TfNSW to address matters raised in correspondence received in relation to the planning proposal;*
- *TfNSW to resolve the terms of required works and planning agreements;*
- *TfNSW to confirm that the M6 Extension Stage 1 does not require a surface reservation through the site in either the short or long term for motorway purposes;*
- *TfNSW to confirm the quantum of land required to accommodate the facilities and access thereto long term is yet to be decided by TfNSW;*
- *Bayside Council to resolve the methodology for capture and conveyance of stormwater and floodwater through and within the site;*
- *Bayside Council to resolve the terms of a draft planning agreement; and*

- *Bayside Council to develop the consents of a draft site specific DCP to guide development of the site.*

On 17 May 2022, the Sydney Eastern City Planning Panel considered the planning proposal for determination and whether it would seek a Gateway determination. The Panel unanimously recommended to refer the planning proposal to the Secretary of the Department of Planning and Environment. The decision is set out below:

- *the planning proposal demonstrates strategic merit for the reasons set out in the report prepared by the Panel's independent consultant (the report);*
- *the planning proposal demonstrates site specific merit for the reasons set out in the report;*
- *the Panel supports the recommendations contained in the Report relating to the matters that need to be addressed prior to exhibition including consultation with relevant authorities;*
- *the Panel supports the recommendation in the Report that the planning proposal be completed within 24 months of the Gateway determination;*
- *the Panel has undertaken a site inspection, had extensive discussions with key stakeholders (including TfNSW and Sydney Airport Corporation Limited (SACL)), and is satisfied that the issues associated with TfNSW's ongoing need for land for road purposes, issues surrounding the Charitable Trust, and resolution of a VPA, have all been sufficiently canvassed to give the Panel confidence that they are capable of being resolved. Consequently, the Panel is satisfied that these matters present no obstacle to the planning proposal proceeding to Gateway determination;*
- *other than as set out above, the Panel is satisfied that all remaining issues are capable of being resolved at, or following, exhibition; and*
- *the Panel requests that prior to exhibition of the planning proposal the Department consult the Panel and provides copies of all draft documents.*

2.7 Pre-Gateway Consultation

Since the appointment of the Panel as the alternate PPA, extensive consultation has occurred with various agencies and stakeholders to obtain views on the planning proposal. This initially occurred having regard to the previous version of the planning proposal (submitted in March 2020 and amended in February 2021) and included the following:

- Bayside Council;
- Transport for NSW;
- Sydney Water;
- Sydney Airport Corporation Limited;
- NSW Port Authority;
- Heritage NSW;
- Environment Protection Authority;
- Environment, Energy and Science (EES);
- Sydney Desalination Plant;
- Energy Resource Assessment (Department of Planning and Environment);
- Department of Education;
- Department of Infrastructure, Transport, Regional Development and Communications;
- APA Group;

- State Emergency Service

Comments were considered and ultimately resulted in an amended planning proposal being submitted in October 2021. Targeted consultation has occurred with the following key agencies on the amended planning proposal including with:

- Bayside Council;
- Transport for NSW; and
- Sydney Airport Corporation Limited.

Key matters to note from correspondence that has occurred to date is:

Table 8: Summary of Pre-Gateway Consultation

Agency/Stakeholder	Key comments
Transport for NSW (TfNSW)	<p><u>Trust Lands Requirements</u></p> <p>TfNSW is currently occupying portions of the Trust Lands for construction of the M6 Stage 1. At the end of construction (expected late 2025) the areas occupied temporarily will be remediated and handed back to the respective landowner/s. A portion of the surface land will be required permanently for the expansion of the Motorway Operations Complex (MOC).</p> <p>These surface land requirements of the M8 and M6 will be confirmed once TfNSW has finalised detailed design and construction methodology for the M6 Stage 1 (estimated mid 2023). Currently there is nothing in principle preventing the planning proposal proceeding with the proposed Flora Street extension that will have a detrimental impact on the MOC expansion for M6/M8.</p> <p>TfNSW notes that any designs and construction staging of a future Flora Street extension or ancillary infrastructure including drainage works, will need to be negotiated to ensure that it does not interfere with TfNSW/Transurban's ability to operate/maintain the MOC facility and associated tunnel infrastructure.</p> <p>Other than the requirements of the M6 Stage 1 and M8, TfNSW currently has no other identified need for a County Road purpose on the trust lands.'</p> <p><u>F6 Corridor</u></p> <p>TfNSW has advised that it does not require the F6 corridor across the Kogarah Golf Course land for a transport purpose, beyond the use of the F6 corridor within the defined Project Construction Site for the M6 Project.</p> <p><u>Traffic and transport issues</u></p> <p>TfNSW has provided detailed comments on a range of traffic and transport matters. TfNSW has advised that should a Gateway approval be granted, that the comments be addressed prior to public exhibition of the planning proposal.</p>
Bayside Council	<p><u>Trust Lands</u></p> <p>Bayside Council confirmed that the use of the Trust Lands as contemplated by the planning proposal is contrary to the express terms of the Trusts. Therefore, Council advises it cannot put itself in a position of conflict, which it would be doing if it supported the planning proposal.</p>

Agency/Stakeholder	Key comments
	<p><u>Land use</u></p> <p>Council advises that the planning proposal (as amended) responds to a number of planning matters raised in its assessment of previous version(s) of the planning proposal. Specifically, Council is satisfied that the removal of residential permissibility responds to the “retain and manage” approach to employment land.</p> <p>However, Council considers that a key matter to be addressed is responding to the purpose of the existing Eastern Harbour SEPP and its primary intention to support Sydney Airport and Port Botany. Council raises concern that the proposed B7 Business Park zoning includes a number of permissible uses that are inconsistent with the existing Eastern Harbour SEPP zoning. Council considers the subject site is not representative of broader B7 Business Park zoned land within the Bayside LGA, that can accommodate uses beyond those that should be the focus in this key strategic location.</p> <p><u>Impacts to public open space</u></p> <p>Council raises the following concerns in relation to the public open space impacts from the planning proposal.</p> <ul style="list-style-type: none"> • It results in the loss of approximately 3.1 hectares of land currently zoned Open Space and makes inadequate provision for open space to serve future needs. • The area proposed to be available to the public along the river frontage is too narrow and insufficient to provide quality access and amenity. • The proposed flood mitigation strategy unreasonably burdens surrounding public land, reducing its value to the community. <p><u>Transport infrastructure</u></p> <p>Council raises concern that the planning proposal impacts future transport and infrastructure corridors required by TfNSW.</p> <p><u>Additional information</u></p> <p>Council outlines a range of information that was previously raised with the proponent that it considers needs to be addressed. This includes matters associated with:</p> <ul style="list-style-type: none"> • Traffic and transport; • Flooding and drainage; • Land use safety assessment of gas pipeline; • An infrastructure plan that is agreed to by key stakeholders; • An updated flora and fauna assessment; and • Airspace approval matters.
Sydney Airport Corporation Limited	<p>Sydney Airport states that it raises no objection to the planning proposal (as amended) proceeding to Gateway determination and formal exhibition.</p> <p>Sydney Airport advised that it welcomes the removal of the previously proposed residential permissibility within the precinct. It also welcomes the inclusion of a significant area of employment land that would complement Sydney Airport’s existing operations and, importantly, safeguard its ability to grow in the future.</p>

Agency/Stakeholder	Key comments
	<p>Sydney Airport notes there are two restrictive covenants that exist in favour of the Commonwealth over a portion of the Cooks Cove precinct including:</p> <ul style="list-style-type: none"> the first covenant prohibits the erection or placement of a building or structure on the land subject to the covenant, unless approved by the Department of Infrastructure, Transport, Regional development and Communications, acting on behalf of the Commonwealth. the second covenant prohibits the erection of fences on the land subject to the covenant, unless consent is issued by the Department. <p>Sydney Airport raised concern that the covenants would be extinguished by virtue of clause 1.9A of the Bayside LEP should the planning proposal proceed to be finalised. Sydney Airport considers that given its vital role in the national aviation network, that it should retain its existing role in the decision-making process for the Cooks Cove precinct. As such, it raises for consideration the following options to ensure the restrictive covenants are retained:</p> <ul style="list-style-type: none"> a savings clause be included in any future LEP amendment to prevent restrictive covenants from being extinguished by clause 1.9A; the NSW Government, pursuant to par. (g) in cl. 1 of the definition of “public authority” in s. 1.4(1) of the Environmental Planning & Assessment Act 1979, make a regulation that defines the Commonwealth department as a “public authority” for the purposes of the Act. Sydney Airport advises that a precedent for this has been set for the Australian Rail Track Corporation, NSW Ports, and universities for other lands.
Department of Infrastructure, Transport, Regional Development and Communications (DITRDC)	DITRDC advised that it supports the removal of residential permissibility outlined in the amended planning proposal. It states that should development proceed, it must be undertaken in accordance with all National Airports Safeguarding Framework Guidelines. In addition, it expects that all development proposals are supplied to Sydney Airport and DITRDC prior to their commencement.
NSW Ports	NSW Ports provided comments on the previous version of the planning proposal. It did not support the intended residential/mixed use outcome for the land due to inconsistent strategic alignment with Government priorities for freight and supply chain.
Environment, Energy and Science Group (EES) of Department of Planning and Environment	<p>EES provided comments in relation to the previous version of the planning proposal and its supporting information. EES highlighted that a key population of the Green and Golden Bell Frog (species), a threatened species under the <i>Biodiversity Conservation Act 2016</i>, occurs on the subject land.</p> <p>EES raised that the species foraging habitat has been temporarily disrupted by two State significant infrastructure developments:</p> <ul style="list-style-type: none"> SSI 6788 New M5 Motorway; and SSI 8931 F6 Extension Stage. <p>EES states that both developments are subject to conditions of approval that must be implemented for protection and ongoing conservation of the species. EES requested that updated information be provided to address these consents and the most up to date data.</p>

Agency/Stakeholder	Key comments
	Following review of these comments, the proponent provided an updated flora and fauna assessment which is discussed further under Section 5 of this report.
Energy Resource Assessment (Department of Planning and Environment)	<p>The Department of Planning and Environment is responsible for preparing and administering the NSW Land Use Safety Planning Framework and the associated guidelines. It has provided comments to assist in the preparation of the planning proposal.</p> <p>This matter is discussed in further detail at Section 4.2 of this report.</p>
APA Group	APA owns and operates the Moomba-Sydney Ethane Pipeline which runs through the site. This includes the associated valve station which is located on Lot 31 on DP 1231486 north of Marsh Street. APA has provided comments to assist in the consideration of land use safety matters associated with the pipeline.
Heritage NSW	<p>Heritage NSW provided comments on the previous version of the planning proposal and can be summarised as follows:</p> <p><u>State Heritage</u></p> <p>It is unclear how close the southern boundary of the intended development is to the Heritage listed Southern and Western Suburbs Ocean Outfall Sewer (SWSOOS) and the associated buried infrastructure. Heritage NSW recommended that a Heritage Impact Statement be prepared to investigate the exact location of the SWSOOS and the associated buried infrastructure and assess any potential impacts.</p> <p><u>Historic Archaeology</u></p> <p>Heritage NSW advise that should archaeological relics be identified at any stage of the site's future redevelopment, standard provisions for notification under s. 146 of the <i>Heritage Act 1977</i> would apply. In this situation, if relics cannot be avoided, additional approvals to manage disturbance to relics under the Act would be required.</p> <p><u>Maritime Archaeology</u></p> <p>Heritage NSW advise that if the planning proposal were to enable increased usage of the Cooks River, further assessment would be needed of maritime archaeological impacts.</p> <p><u>Aboriginal Cultural Heritage</u></p> <p>TfNSW advise that Heritage NSW's Aboriginal Cultural Heritage Regulation team may provide separate comments on the planning proposal for Aboriginal heritage considerations under the <i>National Parks and Wildlife Act 1974</i>.</p>
Sydney Water	No objection is raised to the planning proposal. Sydney Water states that servicing requirements are to be delivered under the Notice Requirements for the Feasibility Study that has been lodged with Sydney Water by the proponent.
NSW Environment Protection Authority (EPA)	EPA states that there are no EPA-licensed facilities in the vicinity of the development area. It recommended that the potential for land contamination be appropriately assessed.

Agency/Stakeholder	Key comments
Sydney Desalination Plant	The Sydney Desalination Plant has undertaken a review and provided a number of technical comments relating to construction and maintenance requirements for the pipeline.
State Emergency Services (SES)	SES provided a number of principles for consideration particularly in terms of flooding. No specific comment was provided on the merits of the subject planning proposal.
School Infrastructure NSW (SINSW)	SINSW provided comments on the previous version of the planning proposal. The removal of residential permissibility from the planning proposal has responded to comments on school infrastructure demand.

3 Need for the planning proposal

Q1. 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 outlines that it responds to the strategic framework developed for Cooks Cove and the broader Bayside West Precinct. Specifically, the planning proposal responds to Ministerial Directions 1.11 Implementation of Bayside West Precincts 2036 Plan and 1.12 Implementation of Planning Principles for the Cooks Cove Precinct and the Bayside West Precincts 2036 Plan. Consistency with this strategic framework is discussed further through this assessment.

Q2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The planning proposal outlines that Direction 1.12 is applicable for planning proposal for land within the Cooks Cove precinct. Accordingly, it is anticipated in the overarching strategic planning framework that a planning proposal is necessary to achieve the intended outcomes of the Ministerial Direction specific to Cooks Cove.

4 Strategic assessment

4.1 Regional Plan

The Greater Sydney Region Plan – *A Metropolis of Three Cities* (the Region Plan), released by the NSW Government in 2018, integrated land use, transport and infrastructure planning and sets a 40-year vision for Greater Sydney as a metropolis of three cities. The Plan contains objectives, strategies and actions which provide the strategic direction to manage growth and change across Greater Sydney over the next 20 years.

The subject site is identified in the Region Plan as an urban renewal area adjacent to a Trade Gateway at Sydney Airport. The planning proposal is considered to provide strategic alignment with the Region Plan by supporting the operations of Sydney Airport and facilitating the urban renewal of the site. More detailed assessment of this alignment is discussed under the assessment of the Eastern City District Plan below.

4.2 District Plan

The site is within 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 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*. The following table includes an assessment of the planning proposal against relevant directions and actions.

Table 9: District Plan assessment

District Plan Priorities	Justification
Planning Priority E1: Planning for a city supported by infrastructure	<p>This planning priority seeks to align future growth with infrastructure.</p> <p>As described under Section 4.4 of this report, the Bayside West Special Infrastructure Contribution (SIC) supports the strategic objectives of the Plan and the rezoning of Arncliffe and Banksia Precincts, implementing an infrastructure contributions framework to provide funding for state and regional infrastructure to support new residential growth. This includes delivering new open spaces, pedestrian and cycle improvements for better access, providing road and intersection upgrades and expanding educational facilities for new residents.</p> <p>The SIC and Plan identify various parties to deliver infrastructure items, including Council and the Developer of Cooks Cove. A public benefit offer to Council accompanies the proposal which identifies the contribution of several infrastructure items identified in the Plan and SIC.</p>
Planning Priority E2: Working through collaboration	<p>This planning priority seeks to realise the benefits of growth through collaboration of government, community and business. The Bayside West Precinct is identified as a Growth Area led by the Department.</p> <p>Extensive pre-Gateway consultation has occurred with a range of public agencies and stakeholders in the preparation of the planning proposal (refer to Section 2.7). This has resulted in significant amendments to the planning proposal than what was previously proposed including removal of all residential permissibility. Further collaboration will be required throughout the assessment of this planning proposal.</p>
Planning Priority E4: Fostering healthy, creative, culturally rich and socially connected communities	<p>This planning priority aims to foster healthy, resilient and socially connected communities with diverse neighbourhoods through promoting active lifestyles and the arts.</p> <p>The planning proposal provides an opportunity to improve connectivity through the site, contribute to new public open space and rejuvenate the Cooks River riparian corridor.</p>
Planning Priority E5: Providing housing supply, choice and affordability, with access to jobs, services and public transport	<p>This planning priority seeks to provide housing supply, choice and affordability, with access to jobs, services and transport.</p> <p>Having regard to public agency and stakeholder feedback, the updated planning proposal has removed all residential uses. This intends to better respond to the strategic framework for the site which seeks to support employment uses.</p>

District Plan Priorities	Justification
<p>Planning Priority E6: Creating and renewing great places and local centres and respecting the District's heritage</p>	<p>This priority seeks to ensure the delivery of high quality, community specific and place-based outcomes that bring people together. It states that the unique character and distinctive mix of land uses, activities, social connectors and functions in these places provide social and physical connectivity, local diversity and cultural richness, all of which contribute to the liveability of neighbourhoods and enhance people's quality of life.</p> <p>The planning proposal seeks to facilitate a logistics and warehouse precinct with flexibility to accommodate a suitable mix of complementary land uses which provide support to the surrounding area. The supporting Master Plan also identifies improved public connectivity through the site including provision of a publicly accessible Cooks River foreshore and public recreation facilities to complement the future growth of surrounding suburbs.</p> <p>A Gateway condition is recommended to require additional details be provided to demonstrate the suitability of the intended built form (including large warehouse buildings) and connections to public open space. This is considered important to ensure future built form and design is appropriate for its context and future function for public use.</p> <p>Pre-Gateway consultation has occurred with Heritage NSW who have provided comments for consideration as discussed under Section 2.7.</p>
<p>Planning Priority E7: Growing a stronger and more competitive Harbour CBD</p>	<p>This planning priority seeks to make the Eastern, GPOP, Harbour CBD and Western Economic Corridors better connected and more competitive.</p> <p>The site is identified in the Eastern Economic Corridor as part of the Sydney Trade Gateway and Port Botany. The planning proposal will provide the potential for additional employment generating flood space (including tourist and visitor accommodation) to positively contribute to the economic and tourism related requirements of this corridor.</p>
<p>Planning Priority E9: Growing international trade gateways</p>	<p>This planning priority seeks to protect and support the functions of Port Botany and Sydney Airport as:</p> <ul style="list-style-type: none"> • essential economic gateways; • generators of significant opportunities for employment and industry; and • places that distribute business resources and freight across Greater Sydney, regional NSW and all other states. <p>The planning proposal positively responds to this priority as it:</p> <ul style="list-style-type: none"> • seeks to introduce land uses that can support the functions of Port Botany and Sydney Airport; • has been designed to respond to airport amenity matters such as building height, wind turbulence and acoustic amenity; and • preserves land for non-residential uses that can evolve and continue to support the functions of Port Botany and Sydney Airport.

District Plan Priorities	Justification
<p>Planning Priority E10: Delivering integrated land use and transport planning and a 30-minute city</p>	<p>This planning priority seeks to integrate land use and transport to create walkable and 30-minute cities. It also seeks to investigate, plan and protect future transport and infrastructure corridors.</p> <p>The planning proposal will provide the opportunity for additional local employment opportunities for the community. This will help to improve resident worker containment and contribute to the aim of the 30-minute city.</p> <p>Further consultation is required with TfNSW to resolve a number of traffic related matters which is a condition of Gateway.</p>
<p>Planning Priority E12: Retaining and managing industrial and urban services land</p>	<p>This planning priority seeks to safeguard all existing industrial and urban services land from competing pressures, especially residential and mixed-use zones. These lands are required for economic and employment purposes. The Plan therefore states that the number of jobs is not the primary objective – rather, it should be a mix of economic outcomes that support the city and population.</p> <p>Part of the site is currently zoned 'Trade and Technology' under the Eastern Harbour SEPP. The Greater Cities Commission (GCC) has advised that neither the Greater Sydney Region Plan or Eastern City District Plan map lands in productivity/employment related SEPPs (including the Eastern Harbour SEPP), as they are mapped in the relevant SEPP. Notwithstanding this, the District Plan reinforces the importance of industrial and urban services land across the metropolis and emphasise the importance of Sydney Airport and Port Botany as key trade gateways.</p> <p>The planning proposal seeks to zone the site B7 Business Park as it considers it <i>appropriately facilitates land uses such as the logistics and warehousing with complementary uses to support the viability of the precinct</i>. Whilst the proposal does not seek to allow residential development to occur on site or convert to a mixed-use zone, it does seek to introduce some additional uses not currently permitted in the B7 Business Park zone in the Bayside LEP. In addition, it seeks to introduce a new land use definition of 'trade related enterprises'.</p> <p>The planning proposal states that the zoning of land will result in a gross development footprint (i.e. zoned for B7 Business Park) of approximately 18.3 ha. The planning proposal states that the development footprint of the Eastern Harbour SEPP is 21.3 ha (zoned Trade and Technology). This suggests there will be an overall reduction in land currently zoned for an employment purpose.</p> <p>Notwithstanding the apparent loss in land zoned for an employment purpose, the planning proposal seeks to increase the floor space allowance that current exists. Therefore, although the planning proposal may decrease the extent of land zoned for employment purposes, it provides an increase in development potential.</p> <p>The Department is satisfied that the overall development potential sought for employment purposes (through a B7 Business Park zoning) is consistent with the strategic direction for the site. However, further information is required to demonstrate the appropriateness of a number of APU's being proposed as discussed below.</p>

District Plan Priorities	Justification
	<p>Retail premises</p> <p>The planning proposal seeks to introduce Retail Premises as an Additional Permitted Use within the northern part of the site (36, 37 and 38 on the draft APU Map). In addition, it seeks to restrict floorspace for this use in Block 1 to 2,000m² and 10,000m² in Area 19 of Block 2.</p> <p>The planning proposal states that the introduction of Retail Premises is intended to be a complimentary use to the more dominant logistics and warehousing uses including:</p> <ul style="list-style-type: none"> • to support and serve the workers and visitors within Cooks Cove; and • to serve residents who live within the immediate surrounding urban renewal area and the Airport precinct. <p>The Department is satisfied that the introduction of retail uses (with restrictions on floorspace) is an appropriate supporting use for the precinct. However, these uses should remain subservient to the primary uses contained in the B7 Business Park zone.</p> <p>A Gateway condition is recommended to require further clarity to demonstrate the maximum floorspace being sought for retail uses. For instance, it appears there is no restriction on retail floorspace in Area 18 of the draft FSR map but the accompanying masterplan identifies this land to be an “8 storey” commercial office building. In addition, further clarity is required to clarify why all uses under Retail Premises’ are required in this instance.</p> <p>Tourist and Visitor Accommodation</p> <p>The planning proposal intends to introduce an APU for Tourist and Visitor Accommodation to the western component of Block 2 (Area 19 on the draft FSR map). In addition, it seeks to restrict floorspace for this use to 20,000m².</p> <p>The planning proposal states that the introduction of Tourist and Visitor Accommodation is intended to service Sydney Airport and meet the demand from the surrounding urban renewal area. It is noted that the accompanying Master Plan intends for both Hotel and Serviced Apartments uses to be introduced.</p> <p>A Gateway condition is recommended to require further justification be provided to demonstrate the need for all permissible uses under Tourist and Visitor Accommodation to be introduced. In particular the need to introduce Serviced Apartments as a permissible use and whether this APU should be restricted to Hotel and Motel Accommodation.</p> <p>Trade-related enterprise</p> <p>The introduction of a new land use term for ‘Trade-related enterprise’ is to allow the Cooks Cove precinct to serve any combination of air, land or sea commerce and trade purposes. The planning proposal states that the incorporation of this within Blocks 2 and 3 will ensure the intent of the Eastern Harbour SEPP, to support trade uses to be able to locate within the site is maintained.</p> <p>The intent of this new land use definition is considered to be in keeping with the future strategic direction for the site. However, the final wording and potential for this new land use will be subject to any future LEP drafting by NSW Parliamentary Counsel.</p>

District Plan Priorities	Justification
	<p>Environmental Facilities</p> <p>The planning proposal intends to introduce Environmental Facilities as a permissible use to provide the opportunity to improve public domain infrastructure. This is proposed to be introduced to Block 3, and is considered appropriate to support the integration of the site into the adjacent public open space areas.</p> <p>Environment Protection Works</p> <p>This APU is proposed to be restricted to Block 3 and is proposed use to the location of the site near adjoining waterways and parklands. It is considered appropriate to permit this use to support the integration of the site into the adjacent public open space areas.</p> <p>Freight Transport Facilities</p> <p>The planning proposal states that this use seeks to supplement the intended future character of Block 3 as a contemporary logistics and warehousing precinct. It intends to broaden the ability of the site to service the needs arising from the nearby location of Sydney Airport.</p> <p>The Department is satisfied that this use is in keeping with the future strategic direction for the site and responds to the context of the site. This will provide increased opportunities for the site to support the operations of Sydney Airport and the Ports.</p> <p>Light Industries</p> <p>The planning proposal states that Light Industries are sought to supplement the dominant logistics and warehousing land uses within Block 3. The definition of this use is:</p> <p><i>Means a building or place used to carry out an industrial activity that does not interfere with the amenity of the neighbourhood by reasons of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, water products, grit or oil, or otherwise, and includes any of the following –</i></p> <ul style="list-style-type: none"> <i>(a) high technology industry;</i> <i>(b) home industry;</i> <i>(c) artisan food and drink industry;</i> <i>(d) creative industry</i> <p>The Department is satisfied that this use is in keeping with the future strategic direction for the site and responds to the context of the site.</p> <p>Subject to Gateway conditions, the Department is satisfied the planning proposal adequately responds to this planning priority as it will ensure the ongoing use of Cooks Cove as an employment precinct that has the ability to support Sydney Airport and the Ports.</p> <p>It is noted that part of the planning proposal also has conflicting information in that it identifies 'industrial training facilities' as an intended APU but no accompanying justification is provided. A Gateway condition is recommended to require clarity as to whether this APU is being sought and if so, further details and justification be provided.</p>

District Plan Priorities	Justification
Planning Priority E14: Protecting and improving the health and enjoyment of Sydney Harbour and the District's waterways	<p>This planning priority seeks to protect and improve the health of Sydney's Harbour and waterways.</p> <p>The subject land adjacent to the Cooks River is proposed to be zoned RE1 and to be publicly accessible. The planning proposal and accompanying Masterplan outline the intent to create future cycleways and undertake waterway protection and upgrade works on the foreshore of the Cooks River. The accompanying Masterplan outlines the use of bio-retention swales to improve runoff and water quality on site during significant downpour events.</p>
Planning Priority E15: Protecting and enhancing bushland and biodiversity	<p>This planning priority seeks to protect biodiversity and enhance urban bushland and remnant vegetation.</p> <p>The planning proposal is supported by a Flora and Fauna Assessment outlines avoidance, mitigation and compensatory measures with the intention of achieving a net benefit to biodiversity within the site. This is discussed further under Section 5 of this report.</p>
Planning Priority E17: Increasing urban tree canopy and delivering Green Grid connections	<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 planning proposal intends to provide pedestrian/cycleways along the foreshore of the Cooks River and outlines the intention to retain existing Moreton Bay Fig Trees on site.</p>
Planning Priority E18: Delivering high quality open space	<p>This planning priority seeks to ensure that public open spaces are accessible, delivered and enhanced. The key considerations of the priority are planning for open space within the District focuses on quality, quantity and distribution.</p> <p>The planning proposal provides an opportunity to facilitate an improved publicly accessible foreshore and open space network. This includes:</p> <ul style="list-style-type: none"> • a rejuvenated river foreshore that is publicly accessible and contributes to the Green Grid. It is intended that almost all of the Cooks River foreshore will be publicly accessible, in excess of 950m; and • the delivery of part of the 'missing link' in the Bay-to-Bay Regional Cycle Link along the Cooks River from Cahill Park to the south of the site. <p>The planning proposal also indicate it will dedicate up to 2.5ha of the currently privately accessed Kogarah Golf Course for public open space use.</p>
Planning Priority E20: Adapting to the impacts of urban and natural hazards and climate change	<p>This planning priority seeks to reduce exposure to natural and urban hazards, heatwaves are managed and people and places adapt to climate change.</p> <p><u>Flooding</u></p> <p>The subject site is identified on the 1 in 100 year flood mapping. The planning proposal and Masterplan identify the need to raise all buildings on site past the 1% Annual Exceedance Probability flood level to minimise the impacts of a 1 in 100 year flood event. The planning proposal has supporting documentation detailing the flood modelling that has been undertaken for the site, the supporting documentation</p>

District Plan Priorities	Justification
	<p>also details the LEP flood mapping required to be introduced as part of this planning proposal. Refer to Section 4.8 of this report for further discussion on flooding.</p> <p><u>Moomba Sydney High Pressure Ethane Pipeline</u></p> <p>The Moomba Sydney High Pressure Ethane Pipeline, a licensed under the <i>Pipelines Act 1967</i>, is located on the site. In response a land use safety study risk assessment (LUSS), prepared by Arriscar, has been prepared to support the planning proposal.</p> <p>The Department is responsible for preparing and administering the NSW Land Use Safety Planning Framework (the Framework) and the associated guidelines. This includes NSW Hazardous Industry Planning Advisory Paper (HIPAP) No.4 and HIPAP No.6.</p> <p>On 14 March 2022, the Department's Hazards Team wrote to the Panel as the PPA, confirming the LUSS has been prepared in accordance with HIPAP No.4 and HIPAP No.6. HIPAP No.4 and HIPAP No.6, including:</p> <ul style="list-style-type: none"> • capturing site-specific information on the pipeline, including concrete slapping, operating pressure and pipe thickness; • adoption of appropriate technical assumptions; • consideration of both the individual and cumulative societal risks compared against the HIPAP No.4 risk criteria; and • that the planning proposal does not seek relocation of the Moomba-Sydney Ethane Gas Pipeline. <p>Despite the proposal being in accordance with the Framework, it is necessary to ensure future development is compatible with future hazard risks.</p> <p>As such, a Gateway condition has been included to provide a plain English explanation which allows for the consideration of the Framework and the LUSS at the development application stage. Specifically, this provision will need to:</p> <ul style="list-style-type: none"> • apply to the land proposed to be rezoned to B7 Business Park and encompassing the proposed retail, office, hotel, serviced apartment, trade-related enterprises and warehouse logistics development; and • ensure notification to and consideration of any comment from the Department prior to the issuing of any development consent for the specified developments by the consent authority. <p>A Gateway condition has also been included to require consultation with the pipeline operator, APA Group. This will ensure the pipeline operator has provided updated comment on the planning proposal and LUSS since April 2021.</p> <p>The planning proposal can then be updated as appropriate to account for the consultation outcomes with the pipeline operator.</p> <p><u>Sydney Desalination Plant Pipeline</u></p> <p>Displayed in purple on the figure below on the eastern portion of the site adjacent Cooks River. The pipeline is not proposed to be relocated.</p> <p>The planning proposal notes that no buildings will be located above the pipeline and that all built form structures are located outside the zone of influence to mitigate potential risk.</p>

4.3 Bayside West Precincts Plan 2036

In 2018, the Bayside West Precincts Plan 2036 (the Plan) was finalised and released by the Department. The Plan outlines the strategic planning framework for the Cooks Cove Precinct, including the site. The Plan is to be addressed concurrently with the Section 9.1 Directions 1.11 Implementation of Bayside West Precincts 2036 Plan and 1.12 Implementation of Planning Principles for the Cooks Cove Precinct.

The objectives of the Plan are as follows:

- create vibrant and connected town centres at Arncliffe and Banksia
- improve accessibility for pedestrians, cyclists and vehicles; and connect homes, jobs and local families across the Precincts to make it easier to get around
- provide more homes and improve and increase housing choice
- revitalise and activate the Princes Highway Corridor and make it a safe place for pedestrians
- improve existing and provide new areas of open space

The planning proposal will meet these objectives as it will:

- provide employment generating uses in proximity to existing public transport, services and residential areas
- provide publicly accessible open space and cycleways along the Cooks Cove foreshore
- provide road and infrastructure upgrades in collaboration with TfNSW to ensure the completion of the M6 / M8 works and local road improvements to Gertrude Street and Flora Street
- provide stormwater and drainage infrastructure to prevent and mitigate future flooding events on site

Further assessment is provided section 3.5 of this report – assessment against the Ministerial Directions.

4.4 Special Infrastructure Contributions

On 13 October 2020, the Minister determined to make the Bayside West Special Contributions Area (the SIC) for contributions to state infrastructure. The site is located within the SIC (**Figure 16**).

The Bayside West SIC supports the strategic objectives of the Plan and the rezoning of Arncliffe and Banksia Precincts, implementing an infrastructure contributions framework to provide funding for state and regional infrastructure to support new residential growth. This includes delivering new open spaces, pedestrian and cycle improvements for better access, providing road and intersection upgrades and expanding educational facilities for new residents.

Infrastructure items identified in the SIC and the Plan that relate to the proposal include:

- new bus stops along Marsh Street;
- improvements to Marsh Street and Airport Drive. Including improved pedestrian connections to the Giovanni Bridge and upgraded pedestrian crossing of Marsh Street (potential pedestrian over pass);
- a foreshore pedestrian and cycling path along the Cooks River; and
- provision of new active recreation facilities and community facilities at Cooks Cove.

The SIC and Plan identify various parties to deliver these infrastructure items, including Council and the Developer of Cooks Cove.

A public benefit offer to Council accompanies the proposal which identifies the contribution of several infrastructure items identified in the Plan and SIC.

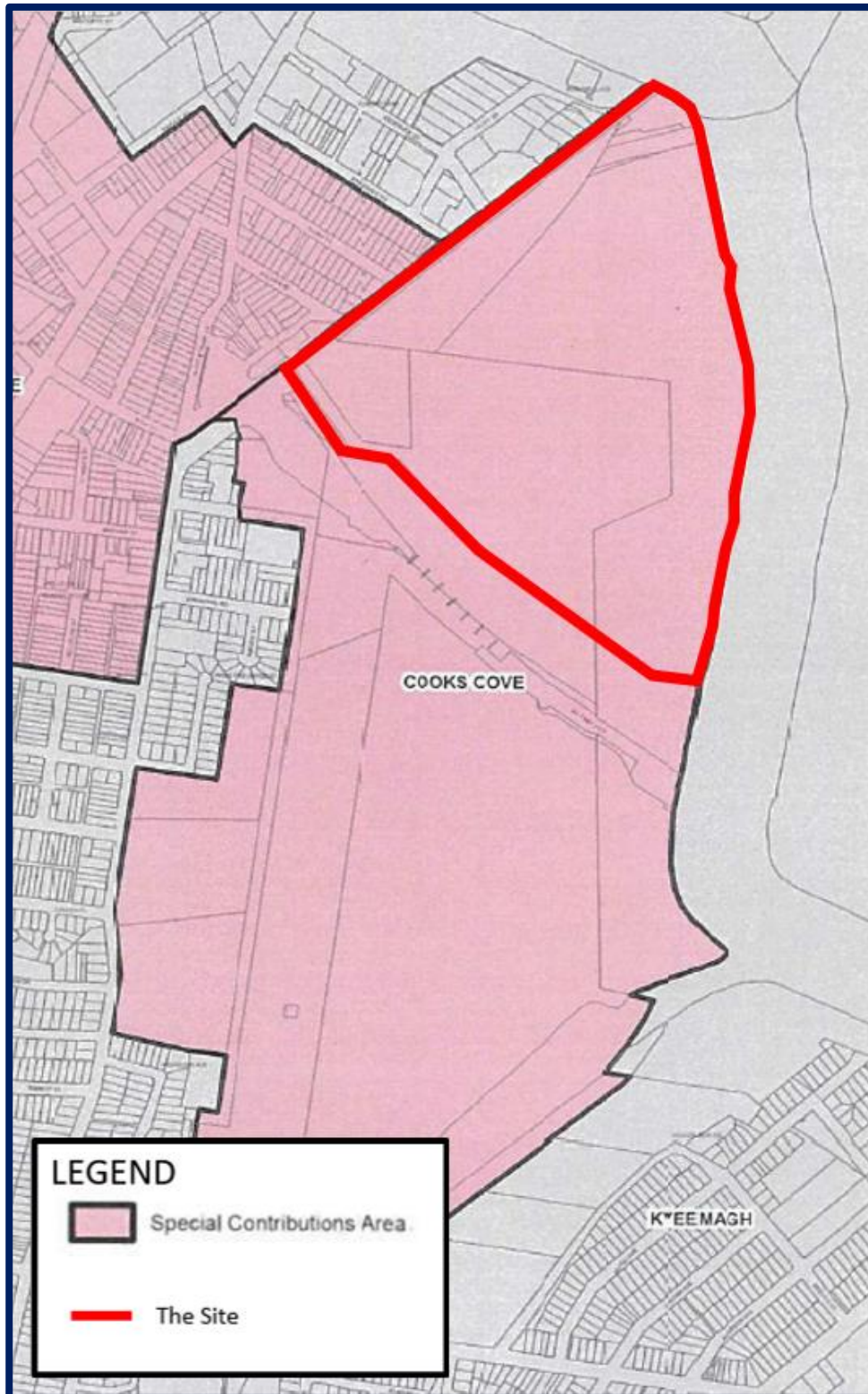


Figure 14: Bayside West Special Contributions Area Map

4.5 South East Sydney Transport Strategy

The South East Sydney Transport Strategy (the SESTS) provides a blueprint for transforming the way people travel to, within and through South East Sydney to 2056.

The SESTS sets out the medium and long term (2026-56) integrated transport and land use plan for South East Sydney. The proposed transport enhancements seek to support the redevelopment of government land, the growth of strategic centres, and the continued expansion and efficiency of Sydney Airport and Port Botany through improved and reliable access.

The SESTS explores different options to meet future demand on city-shaping, city-serving, centre-serving and dedicated freight corridors. This resulted in a preferred option for new transport infrastructure in Sydney (**Figure 17**).

The proposal is consistent with SESTS given that it:

- does not include provisions which prevent the implementation of SESTS vision, objectives or the infrastructure identified in the preferred option; and
- seeks to support the ongoing operation of Sydney Airport and Port Botany.

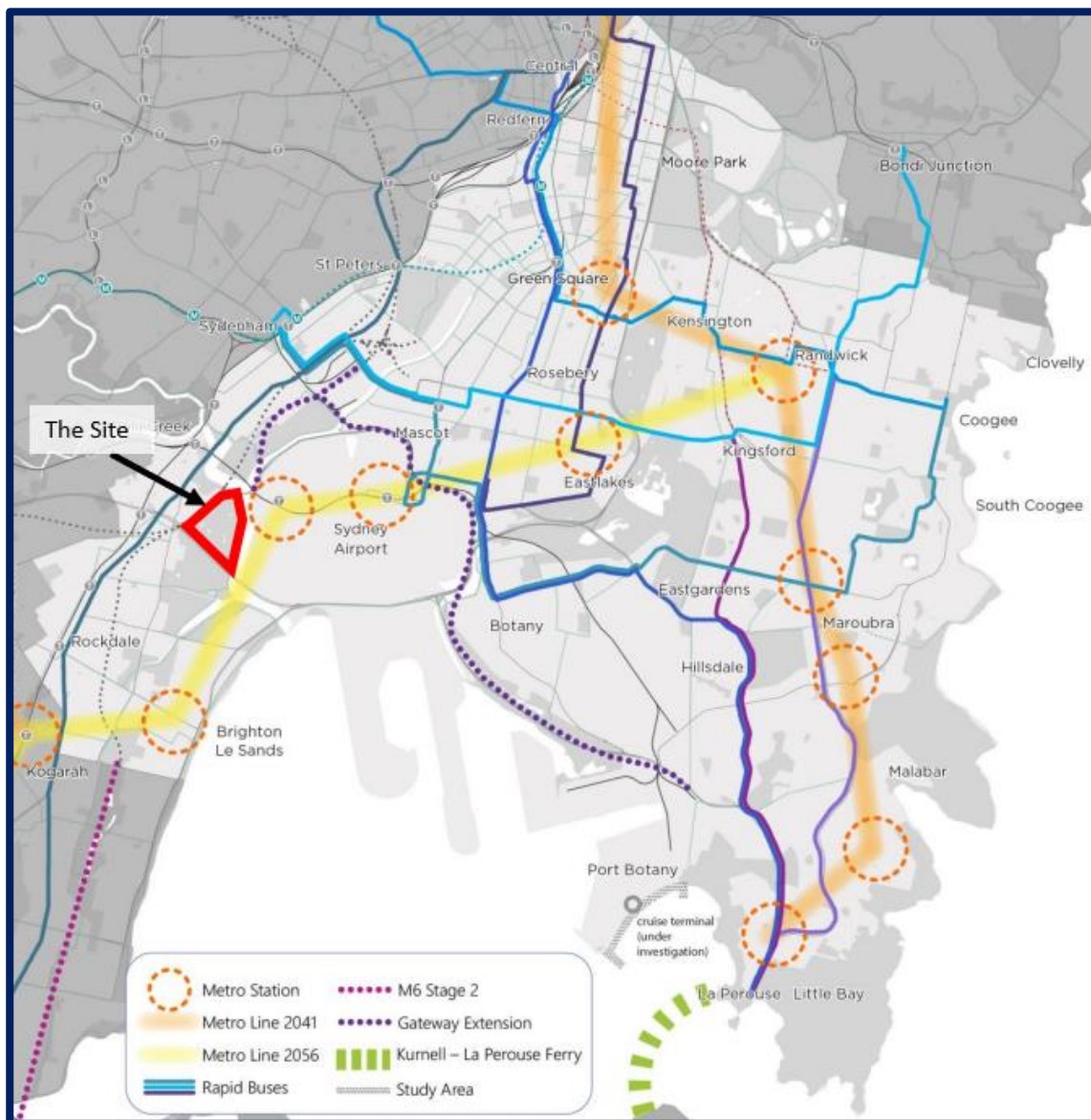


Figure 15: Preferred scenario and major initiatives (Source: South East Sydney Transport Strategy)

4.6 Sydney Airport Master Plan 2036

The Sydney Airport Master Plan 2039 sets out the strategic direction for the development of Sydney Airport over the next 20 years. It includes a Land Use Plan in Master Plan 2039 to provide the community and all levels of government with an understanding of future activities that could be located on different parts of the airport site. The Land Use Plan seeks to guide future development of Sydney Airport, but does not lock in future development outcomes.

As shown in **Figure 18**, Sydney Airport land directly opposite the Cooks River to the site is specified as BD1 Business Development and AD2 Airport Terminal and Support Services. Pre-Gateway consultation has occurred with Sydney Airport who raised no concerns with potential impacts of the planning proposal on the implementation of the Land Use Plan.

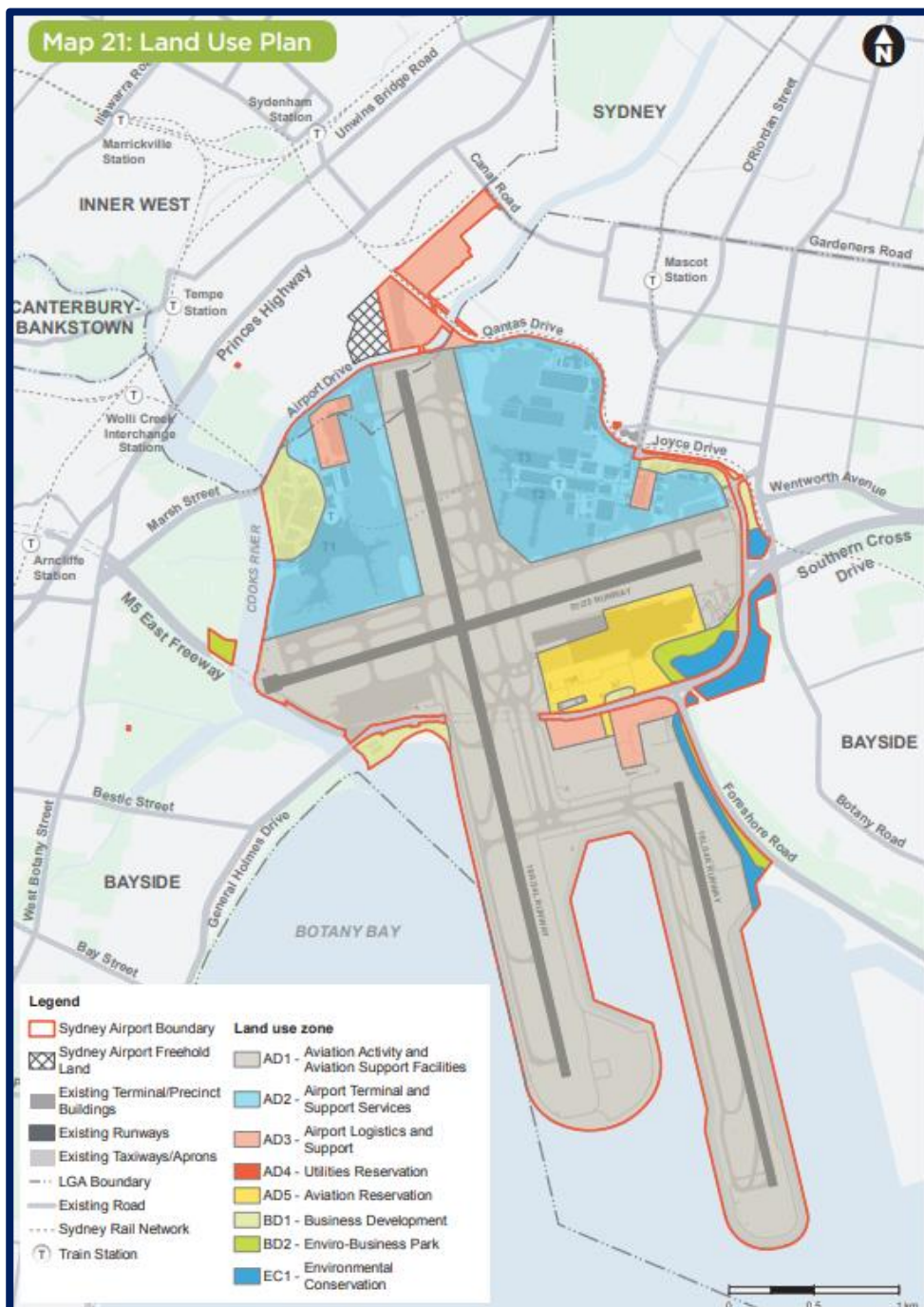


Figure 16: Sydney Airport Masterplan 2036 Land Use Plan

4.7 Local

Bayside Local Strategic Planning Statement (LSPS)

On 18 March 2020, the Bayside Local Strategic Planning Statement (LSPS) was assured by the Greater Sydney Commission (GSC, and now Greater Cities Commission). 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.

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 Bayside Local Strategic Planning Statement 2020 references the Cooks Cove site but does not set out any additional requirements to be followed. The LSPS outlines that any planning proposal relating to land identified within the Chapter 6 of the Eastern Harbour City SEPP should be consistent with the requirements of S9.1 Directions 1.11 and 1.12.

Assessment against Directions 1.11 and 1.12 is detailed below in section 3.5 of this report.

The planning proposal also gives effect to the objectives outlined in the LSPS planning priority 14 *Protect and grow the international trade gateways*. Specifically, the planning proposal is consistent with the below directions:

- *14.10 Following the adoption of the Bayside Centres and Employment Lands Strategy, review the land use planning controls for key employment and urban services lands in and near the Sydney Airport precinct, including those land use that support the role of Sydney Airport as a trade gateway, and implement any recommendations.*
- *14.11 Ensure airport and aviation-related requirements are recognised in strategic land use planning policies and processes by giving effect to the National Airports Safeguarding Framework and its guidelines.*
- *14.12 Protect Sydney Airport's function as an international gateway for passengers and freight and support airport and aviation support related land uses, including but not limited to, airfreight and logistics and warehousing, maintenance facilities, flight training centres, catering facilities and car rental facilities.*
- *14.13 Manage potential land use conflict by preventing residential and commercial encroachment on the industrial and urban services areas and along freight corridors through land use controls.*
- *14.14 Assessment of proposals for airport related uses to have regard to uses on adjoining properties, including businesses, during construction and operation.*
- *14.15 Collaborate with Sydney Airport to provide safe cycling and walking connections to the Airport, particularly to Mascot Station.*

Bayside 2030: Community Strategic Plan 2018-2030

The Bayside Community Strategic Plan sets the strategic direction for Council's Delivery Program and Operational Plans. The planning proposal responds to the Plan in that it facilitates urban renewal in the Bayside West Precinct and can help improve public connections and additional jobs.

4.8 Section 9.1 Ministerial Directions

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

Direction 1.1 Implementation of Regional Plans

The objective of this direction is to give legal effect to the vision, land use strategy, goals, directions and actions contained in Regional Plans.

This direction applies to a relevant planning authority when preparing a planning proposal for land to which a Regional Plan has been released by the Minister for Planning.

This Direction applies because the site is located on land identified under the Greater Sydney Region Plan – A Metropolis of Three Cities.

The planning proposal is consistent with this Direction - see section 4.1 of this report for further discussion.

Direction 1.3 Approval and referral requirements

The objective of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development.

This Direction includes requirements for planning proposals:

- to minimise provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority
- to not contain provisions requiring concurrence, consultation or referral of a Minister or public authority unless the relevant planning authority has obtained the approval of: i. the appropriate Minister or public authority, and ii. the Planning Secretary (or an officer of the Department nominated by the Secretary), prior to undertaking community consultation in satisfaction of Schedule 1 to the EP&A Act

In response to the Department's assessment of the LUSS, a Gateway condition has been included to require a provision which,

- applies to the land proposed to be rezoned to B7 Business Park and encompassing the proposed retail, office, hotel, serviced apartment, trade-related enterprises and warehouse logistics development; and
- ensures notification to and consideration of any comment from the Department prior to the issuing of any development consent for the specified developments by the consent authority.

The planning proposal is consistent with this Direction, because:

- the requirement to notify the Department of any specified development in the proposed provision responds to the assessment of the LUSS against the Framework; and
- the notification provision has been required by the Department, the responsible authority for Land Use Safety Planning in NSW.

Direction 1.4 Site Specific Provisions

The objective of this Direction is to discourage unnecessarily restrictive site-specific planning controls.

This Direction requires a planning proposal to:

- allow the land use to be carried out in the zone the land is situated on;

- rezone the site to an existing zone already in the environmental planning instrument that allows that land use without imposing any development standards or requirements in addition to those already contained in that zone;
- allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended; and
- not contain or refer to drawings that show details of the proposed development.

The planning proposal is supported by a Masterplan which informs the proposed planning controls for the site, including the proposed land uses, maximum building heights and gross floor areas.

The planning proposal is consistent with this Direction because:

- it gives effect to the proposed land uses by providing for appropriate permissibility mechanisms, including land uses zones and additional permitted uses; and
- does not contain or refer to drawings that show details of the proposed development.

1.11 Implementation of the Bayside West Precincts 2036 Plan

The objective of this Direction is to ensure development within the Bayside West Precincts (Arncliffe, Banksia and Cooks Cove) is consistent with the Bayside West Precinct Plan 2036.

This Direction applies when a planning proposal is located within the Bayside West Precincts of Arncliffe, Banksia and Cooks Cove. The proposal is located in a portion of the Cooks Cove Precinct.

The planning proposal must be consistent with the Bayside West Precincts 2036 Plan. The proposal is consistent with this Direction – see Section 4.3 for further discussion.

1.12 Implementation of planning principles for the Cooks Cove Precinct

This Direction applies to any planning proposal for land within the Cooks Cove Precinct (**Figure 19**).

A planning proposal must be consistent with the Direction's planning principles. The proposal's consistency against these principles remains unresolved as discussed below:

Planning Principle a) - Enable the environmental repair of the site and provide for new recreation opportunities

The planning proposal seeks to:

- provide new land for public open space by rezoning this land to RE1 Public Recreation;
- zone land fronting the Cooks Cove foreshore as RE1 to be used as cycleways, public pathways and include riparian setbacks, vegetation improvements and a new sea wall;
- retain existing significant trees on the northern portion of the site is proposed; and
- facilitate the remediation of contaminated land on the site as part of a future development application process.

Planning Principle b) - Not compromise future transport links (such as the South-East Mass Transit link identified in Future Transport 2056 and the Greater Sydney Region Plan) that will include the consideration of the preserved surface infrastructure corridor, noting constraints, including the Cooks River, geology, Sydney Airport and existing infrastructure will likely necessitate consideration of future sub-surface solutions and potential surface support uses

The planning proposal:

- is consistent with the SESTS – see Section 4.5 of this report;

- seeks to support the ongoing access and operation of the M6 / M8 Motorway Operations Complex; and
- seeks to rezone land currently zoned Special Uses in the Eastern Harbour SEPP to both B7 Business Park and RE1 Public Recreation in the Bayside LEP. The relevant public authority is TfNSW who has advised (during pre-Gateway consultation) that it does not require the F6 corridor across the Kogarah Golf Course land for a transport purpose, beyond the use of the F6 corridor within the defined Project Construction Site for the M6 Project.

The planning proposal's consistency with this principle is unresolved. This is because a Gateway condition is recommended to require information to address the unresolved requirements of Ministerial Direction 5.2 concerning approval from TfNSW that the land currently zoned Special Uses is no longer needed for public purposes. This is discussed further under Ministerial Direction 5.2 of this Section in the report.

Planning Principle c) - Create a highly liveable community that provides choice for the needs of residents, workers and visitors to Cooks Cove

The planning proposal seeks to provide:

- approximately 3,300 jobs near existing residential areas and transport in accordance with the 30-minutes city objective in the District Plan – see Section 4.2 of this report;
- during pre-Gateway agency consultation, Sydney Airport welcomed the inclusion of a significant area of employment land that would complement Sydney Airport's existing operations and safeguard its ability to grow in the future; and
- public open spaces, including on the southern portion of the site and front the Cooks River.

Planning Principle d) - Ensure best practice design and a high quality amenity with reference to the NSW design policy Better Placed

The planning proposal is supported by an urban design report which includes a structure plan to illustrate a framework for the future built form anticipated for the site (including streets, development blocks, open space and buildings). The planning proposal states that a Landscape Character and Visual Impact Assessment was prepared to accompany the previous version of the planning proposal but has not been revised in relation to the subject planning proposal.

However, consistency with this principle remains unresolved, because there is currently a lack of information to understand the appropriateness of the intended future built form outcome for the site. This is discussed in further detail in Section 5.1 of this report.

A Gateway condition has been included to ensure this additional urban design analysis addresses the NSW design policy Better Placed.

Planning Principle e) - Deliver an enhanced, attractive, connected and publicly accessible foreshore and public open space network and protect and enhance the existing market garden

The planning proposal:

- outlines its intention to facilitate public access along the Cooks River foreshore. It is noted that the supporting draft Public Benefit Offer states this is intended to include an accessible foreshore (minimum 20 metre wide), landscape embellishment works, a regional standard shared pathway and seawall works; and
- notes the design and function of public open space on Council land (currently subject to the Charitable Trusts) is subject to future design by Council.

The planning proposals consistency with this principle remains unresolved as discussed in further detail in Section 5.1 of this report.

Planning Principle f) - Safeguard the ongoing operation of Sydney Airport

The planning proposal is consistent with this principle, because:

- during pre-Gateway agency consultation, Sydney Airport welcomed the inclusion of a significant area of employment land that would complement Sydney Airport's existing operations and safeguard its ability to grow in the future;
- it does not seek to facilitate development above the Obstacle Limitation Surface for Sydney Airport and provides for consideration of future development in accordance with Bayside LEP 2021 clause 6.7 – Airspace operations;
- it has been designed to respond to airport amenity matters including wind turbulence and noise; and
- it provides for all future development to be designed and built in accordance with Australian Standard AS2021:2015 'Acoustics – Aircraft Noise Intrusion – Building Siting and Construction' through Bayside LEP 2021 clause 6.8 – Development in areas subject to aircraft noise.

Planning Principle g) - Enhance walking and cycling connectivity and the use of public transport to encourage and support a healthy and diverse community and help deliver a 30-minute city

The planning proposal:

- seeks to facilitate public open space and infrastructure identified in the Precincts 2036 Plan and the SIC that provide for enhanced walking and cycling connectivity and the use of public transport to encourage and support a healthy and diverse community; and
- provides opportunities for additional local employment opportunities for the community. This will help to improve resident worker containment and contribute to the aim of the 30-minute city.

The planning proposal's consistency with this principle remains unresolved because further consultation is required with TfNSW to resolve a number of traffic related matters which is a condition of Gateway. See Section 5.3 of this report.

Planning Principle h) - Deliver a safe road network that balances movement and place, provides connections to the immediate and surrounding areas, and is cognisant of the traffic conditions in this area

The planning proposal is supported by a Strategic Transport Plan which provides an assessment of the traffic generation, car parking, public and active transport at the site.

However, consistency with this principle remains unresolved. This is because despite extensive pre-Gateway consultation having occurred and the comments not objecting to the planning proposal proceeding to community consultation, TfNSW does require amendments to the proposal and supporting documentation before community consultation can occur. See Section 5.3 of this report for further discussion.

Planning Principle i) - Enhance the environmental attributes of the site, including protected flora and fauna, riparian areas and wetlands and heritage

The planning proposal is supported by a Flora and Fauna Assessment prepared having regard to pre-Gateway comments received from the Environment, Energy and Science Group (EES) of the Department.

The Flora and Fauna Assessment considers that:

- one Endangered Ecological Community (EEC), being Saltmarsh, which is listed under the New South Wales (NSW) *Biodiversity Conservation Act 2016* (BC Act) will be impacted by

the intended future development. The assessment considers the overall impact on the community area and the wider locality is not of major ecological significance;

- no threatened flora was recorded within the site and none are stated as likely to occur; and
- no threatened fauna species are likely to be significantly impacted by the intended future development.

The flora and fauna impacts are discussed in further detail in Section 5.1 of this report.

The heritage impacts are discussed in further detail under Ministerial Direction 5.1 of this Section in the report.

The planning proposal's consistency with this principle remains unresolved, because:

- a Gateway condition is recommended to require further consultation with the EES and any comments be considered prior to the finalisation of the planning proposal; and
- Gateway conditions are required to address consistency with Ministerial Direction 3.2.

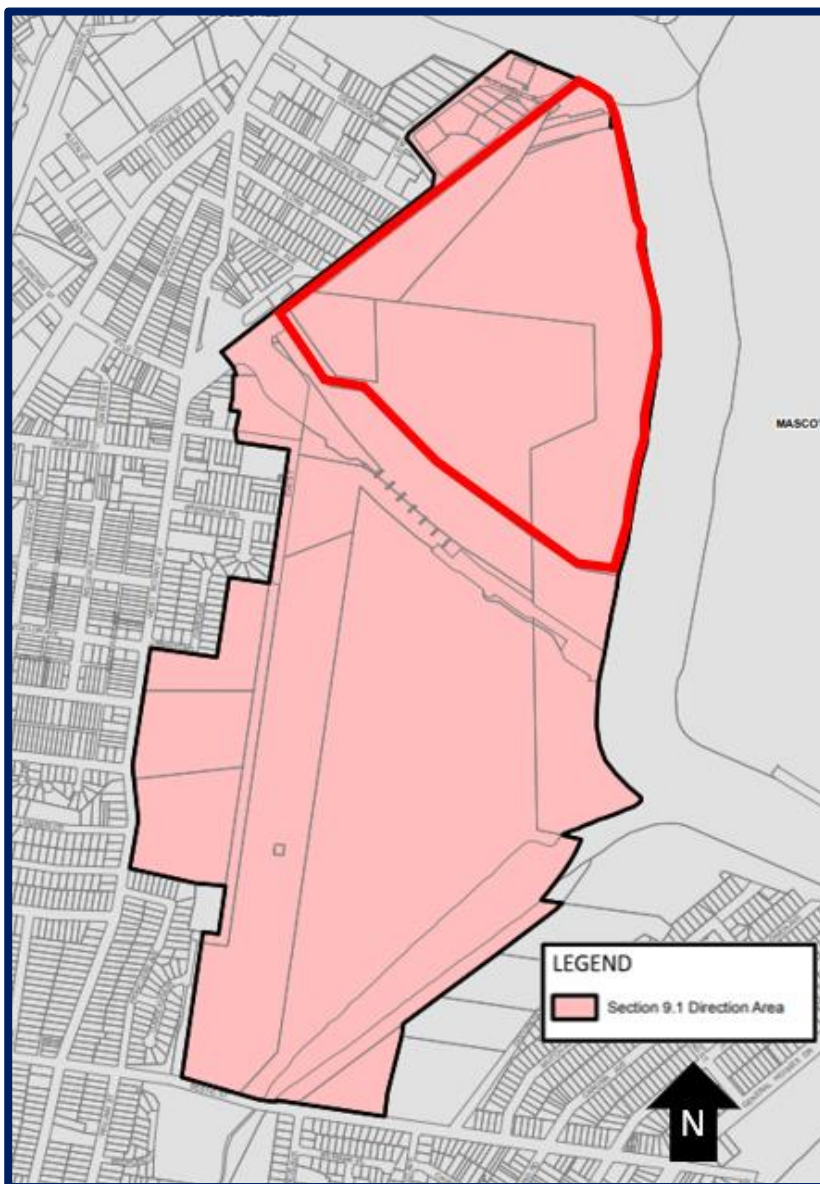


Figure 19: Map Sheet LAP_001 Cooks Cove Precinct Section 9.1 Direction – the site highlighted red (source: Department of Planning and Environment website)

3.2 Heritage Conservation

The objective of this Direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.

This Direction includes requirements that a planning proposal to contain provisions that facilitate the conservation of:

- items, places, buildings, works, relics, moveable objects or precincts of environmental heritage significance to an area, in relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item, area, object or place, identified in a study of the environmental heritage of the area;
- Aboriginal objects or Aboriginal places that are protected under the National Parks and Wildlife Act 1974; and
- Aboriginal areas, Aboriginal objects, Aboriginal places or landscapes identified by an Aboriginal heritage survey prepared by or on behalf of an Aboriginal Land Council, Aboriginal body or public authority and provided to the relevant planning authority, which identifies the area, object, place or landscape as being of heritage significance to Aboriginal culture and people.

The proposals consistency with this Direction is unresolved. This is discussed further below:

European Heritage

The site is not listed as an item of local or State European heritage significance, but it is near the State listed Southern and Western Suburbs Ocean Outfall Sewer (SWSOOS).

On 19 April 2021, Heritage NSW (HNSW) commented on a previous version of the planning proposal which applied to the land as the proposal. These comments noted recommended:

- that a Statement of Heritage Impact be prepared to investigate the exact location of the SWSOOS and the associated buried infrastructure and assess any potential impacts of the planning proposal;
- if archaeological relics are identified at any stage of the site's redevelopment, standard provisions for notification under s.146 of the Heritage Act 1977 would apply. In this situation, if the relics cannot be avoided, additional approvals to manage disturbance to relics under the Act would be required;
- as an early transport corridor, the Cooks River has maritime archaeological potential that has not been addressed. In response, HNSW recommend that a Maritime Archaeological Desktop Assessment be prepared to inform potential amendments to the planning proposal.

The maritime assessment should determine the historic changes to the alignment of the Cooks River, including land reclamation, de-siltation, channel dredging and canalisation. This should enable a clear understanding of what maritime and early historic sites are likely to survive in this area, as well as identifying appropriate management measures; and

- Sydney Water Corporation be consulted as the SWSOOS is an active sewer.

In response, the Gateway determination has been conditioned to require the proposal be updated prior to community consultation to include further consultation with Heritage NSW. The Gateway determination requires consultation with Sydney Water Corporation during community consultation.

Aboriginal Heritage

The proposal is supported by an Archaeological Assessment prepared by Biosis dated May 2017 which is informed by a search of the Aboriginal Heritage Information Management System (AHIMS) database and a survey of the site.

The AHIMS search identified 22 Aboriginal archaeological sites within a 10 kilometre search area. None of these registered sites are located within the study area.

Based on the geotechnical data gathered, the Archaeological Assessment concludes:

- that the fill which forms the current ground surface within the precinct overlies either disturbed or imported sand or clay soils; and
- that there are no known Aboriginal sites and a low potential for undiscovered Aboriginal sites to be present within the precinct.

In response to these findings, the Gateway determination has been conditioned to require consultation with Heritage NSW.

4.1 Flooding

The objectives of this Direction are to ensure:

- that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005, and
- that the provisions of an LEP that apply to flood prone land are commensurate with flood behaviour and includes consideration of the potential flood impacts both on and off the subject land.

This Direction applies because part of the site is identified as being flood prone land and alters zonings and provisions that affects flood prone land (**Figure 20**). The NSW Floodplain Development Manual 2005 defines flood prone land as land susceptible to flooding by the probable maximum flood (PMF)¹ event.

This Direction includes the following requirements that a planning proposal must include provisions that give effect to and are consistent with:

- the NSW Flood Prone Land Policy;
- the principles of the Floodplain Development Manual 2005;
- the Considering flooding in land use planning guideline 2021, and
- any adopted flood study and/or floodplain risk management plan prepared in accordance with the principles of the Floodplain Development Manual 2005 and adopted by the relevant council.

The planning proposal is supported by a flood impact assessment (FIA) prepared by Arup Australia Pty. Ltd. and dated 26 March 2020. The recommendations and conclusions of the FIA were reaffirmed on 22 October 2021.

The FIA identifies that generally during flood events, Marsh Street becomes inundated when the capacity of its subsurface drainage network is exceeded. Floodwaters generally inundate Cahill Park, Rockwell Avenue and low lying areas north of Marsh Street, resulting in an inundation of the subsurface drainage and the surcharge of pits causing floodwaters to flow towards the gold course.

¹ The NSW Floodplain Development Manual 2005 defines the probable maximum flood as the largest flood that could conceivably occur at a particular location, usually estimated from probable maximum precipitation, and where applicable, snow melt, coupled with the worst flood producing catchment conditions.

A flood mitigation strategy has been developed to respond to this outlining the following key measures:

- convey extreme floor waters overtopping Marsh Street outside the intended development footprint (within both Bayside Council owned land and Kogarah Golf Course freehold land) to discharge to the Cooks River in the south via the following:
 - a flowpath along the western boundary of the site and parallel to Marsh Street. The path is intended to have a base width of 10 metres and typically 4% graded slopes contained within an 18 metres reserve. This path is intended to convey floodwater to the basin at the western tip of the development;
 - a flowpath extended from the basin to the southern tip of the site, conveying flows towards the Cooks River;
 - flowpaths are intended to be delivered as vegetated swales
- raise the intended extended access roads for Gertude Street and Flora Street to meet the development area level of 3.2m AHD;
- inclusion of culverts within the site beneath Gertude Street and Flora Street access roads, spanning the western overland flow path and conveying 1% AEP flows without being overtopped and being overtopped during the PMF event;
- inclusion of a shallow north-south bund alignment adjacent to the SWSOOS to prevent back-flooding of the site from the Cooks River;
- intended finished floor levels will be constructed above the 1% AEP flood levels, plus an additional 0.5m freeboard requirement and a further 0.9m allowance to accommodate predicted increased rainfall intensities and sea level rise attributed to climate change impacts; and
- inclusion of flood refuge areas designated within all lots.

The planning proposal states that the design of the intended floor channels and additional water management features will be refined during later planning and design phases. The alignment of dedicated overland flowpaths as shown in the planning proposal (**Figure 21**) are advised as being not fixed in location and can be tailored to optimise the utility of Council land for recreation purposes.

Consistency with this Direction remain unresolved, because further information is required to demonstrate the appropriateness of the recommended use of Council land to convey flood waters around the intended development site. At present, the design of future public open space on Council land is unknown but should not be unreasonably impacted by flood infrastructure needs. A Gateway condition is recommended to require an options analysis be prepared to clearly outline the various flood mitigation options available with clear reasoning for the preferred option.

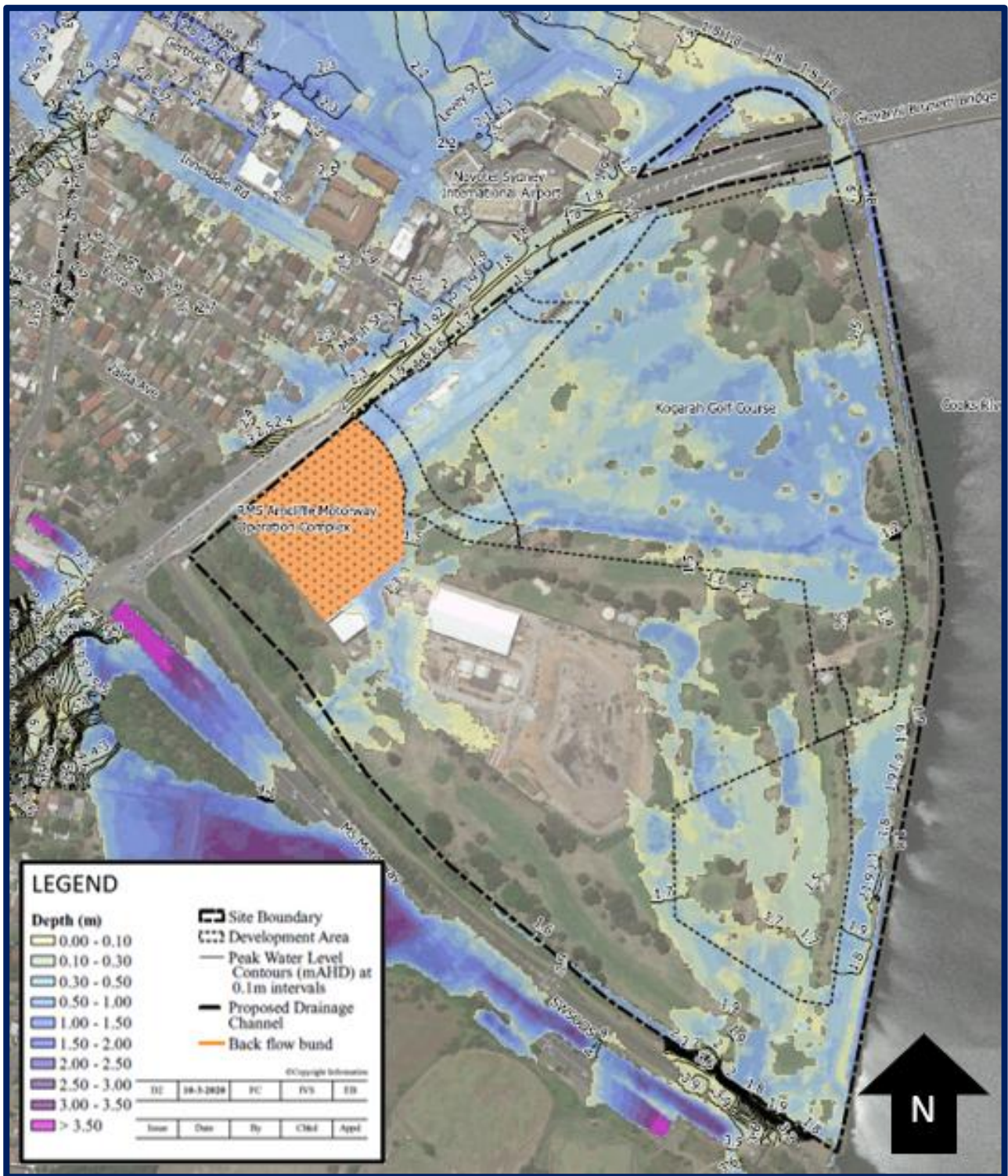


Figure 20: Peak Flood Depth – PMF Flood Event Existing Layout (source: FIA)

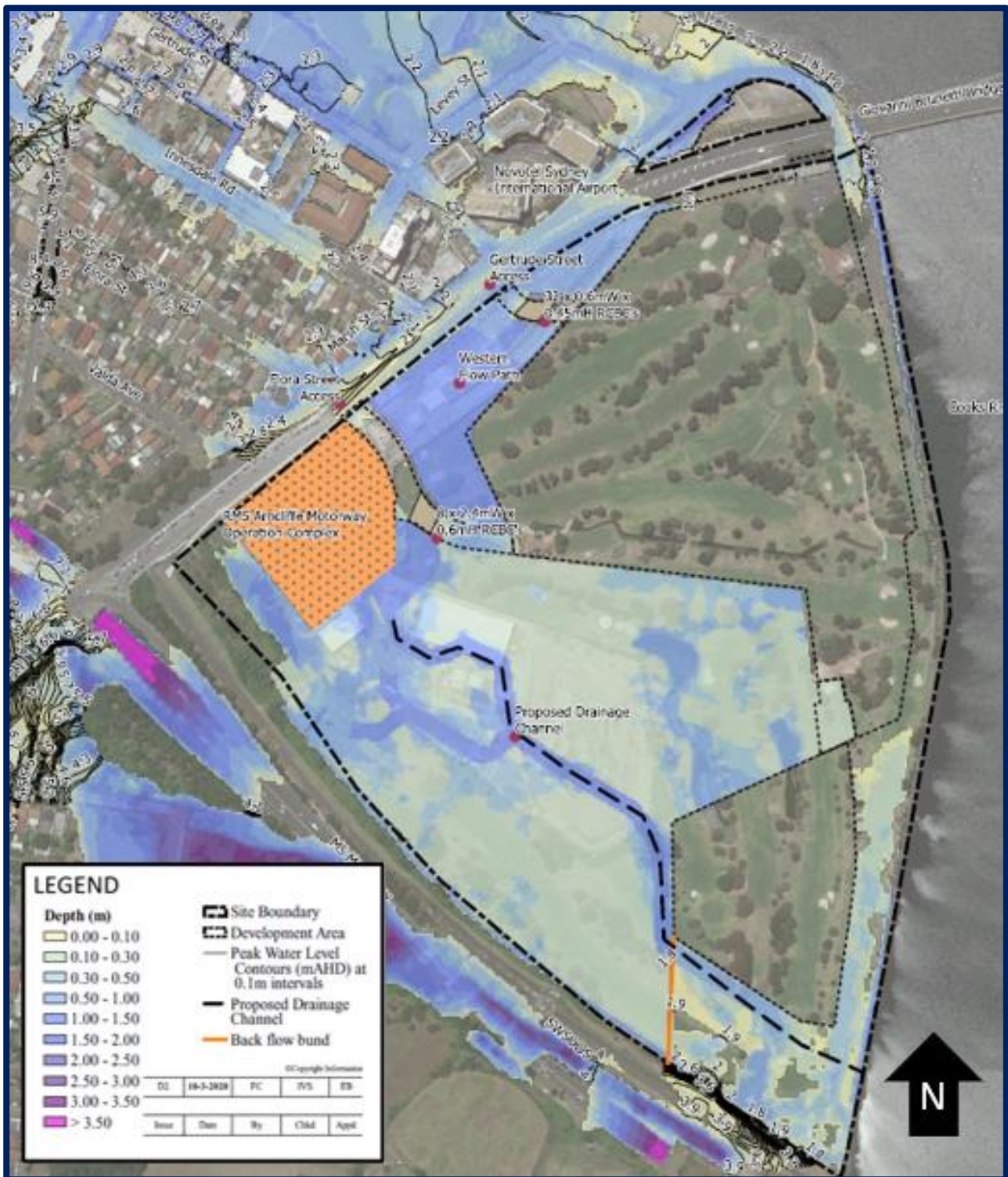


Figure 21: Peak Flood Depth – PMF Flood Event Proposed Layout (source: FIA)

4.2 Coastal Management

The objective of this direction is to protect and manage coastal areas of NSW.

This Direction applies because the site is affected by the following land as defined under the Coastal Management Act 2016 and as identified by chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021 (**Figure 22**):

- coastal wetlands;
- coastal environment area; and
- coastal use area.

This Direction includes requirements that a planning proposal must:

- include provisions that give effect to and are consistent with:
 - the objects of the Coastal Management Act 2016 and the objectives of the relevant coastal management areas;
 - the NSW Coastal Management Manual and associated Toolkit;
 - NSW Coastal Design Guidelines 2003; and
 - any relevant Coastal Management Program that has been certified by the Minister, or any Coastal Zone Management Plan under the Coastal Protection Act 1979 that continues to have effect under clause 4 of Schedule 3 to the Coastal Management Act 2016, that applies to the land.
- not rezone land which would enable increased development or more intensive land-use on land within a coastal wetlands and littoral rainforests area identified by chapter 2 of the SEPP (Resilience and Hazards) 2021.

The proposal is consistent with this Direction, because it:

- is consistent with the objects of the Coastal Management Act 2016 and the objectives of the relevant coastal management areas;
- is consistent with the NSW Coastal Management Manual and associated Toolkit;
- is consistent with the NSW Coastal Design Guidelines 2003; and
- is consistent with any relevant Coastal Management Program and/or any Coastal Zone Management Plan under the Coastal Protection Act 1979; and
- retains the existing public open space zoning on a limited portion of the site which is identified under SEPP (Resilience and Hazards) 2021 as being coastal wetlands.



Figure 22: SEPP (Resilience and Hazards) 2021 application map (source: eplanning Spatial Viewer)

4.4 Remediation of Contaminated Land

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.

This Direction applies when a planning proposal that applies to:

- land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,
- the extent to which it is proposed to carry out development on it for residential, educational, recreational or childcare purposes, or for the purposes of a hospital.

The proposal is supported by:

- an Environmental Site Assessment prepared by Consulting Earth Scientists dated 12 May 2017; and

- a Remediation Action Plan (RAP) prepared by Consulting Earth Scientists dated 12 May 2017.

These reports were prepared to support a previous version of the proposal which sought to facilitate a mixed use residential development on the site. These reports considered that the site could be made suitable for these uses subject to remediation works at the Kogarah Golf Club car park. These findings have been reaffirmed as being valid despite amendments to the proposal since in a review of these studies by Consulting Earth Scientists dated 22 October 2021.

The planning proposal is consistent with this Direction, because:

- the site can be made suitable for the proposed development; and
- the recommendations of the RAP can be implemented during the development application process.

4.5 Acid Sulfate Soils

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.

This Direction applies when a planning proposal will apply to land having a probability of containing acid sulfate soils.

This Direction includes requirements that a planning proposal:

- must address the Acid Sulfate Soils Planning Guidelines adopted by the Planning Secretary when preparing a planning proposal that applies to any land identified on the Acid Sulfate Soils Planning Maps as having a probability of acid sulfate soils being present; and
- must not propose an intensification of land uses on land identified as having a probability of containing acid sulfate soils unless an acid sulfate soils study assessing the appropriateness of the change of land use given the presence of acid sulfate soils.

The proposal is supported by an Acid Sulfate Management Plan (ASMP) prepared by Consulting Earth Scientists dated 12 May 2017. This report concluded that any excavation into natural ground on the subject site has the potential to disturb Potential Acid Sulfate Soils and expose it to the air so that it oxidises and becomes Acid Sulfate Soils. As such, several management methods were recommended.

These findings have been reaffirmed as being valid despite amendments to the proposal since in a review of these studies by Consulting Earth Scientists dated 22 October 2021. This review also considered that these impacts are likely to result in a reduced impact noting lower level of excavation compared to the formerly proposed mixed use residential development.

The planning proposal is consistent with this Direction, because:

- the site can be appropriately developed for the identified development noting the potential acid sulfate soil affectation; and
- the recommendations of the ASMP can be implemented during the development application process.

5.1 Integrating Land Use and Transport

The objective of this direction is to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve the following planning objectives:

- improving access to housing, jobs and services by walking, cycling and public transport;
- increasing the choice of available transport and reducing dependence on cars;

- reducing travel demand including the number of trips generated by development and the distances travelled, especially by car;
- supporting the efficient and viable operation of public transport services; and
- providing for the efficient movement of freight.

This Direction applies a planning proposal that will create, alter or remove a zone or a provision relating to urban land, including land zoned for residential, business, industrial, village or tourist purposes.

The proposal is consistent with this Direction because:

- the site is well located to existing public transport services and transport corridors;
- the proposal will facilitate approximately 3,300 jobs near existing public transport services, Sydney Airport and Port Botany; and
- the proposal proposes to facilitate improvements to the local and regional road and pedestrian networks.

5.2 Reserving Land for Public Purposes

This Direction requires that where land is reserved for public recreation purposes, the land is to be outlined and annotated on the Land Reservation Acquisition Map, and the relevant acquisition authority is identified.

The planning proposal seeks introduce an RE1 Public Recreation zone to land that is both currently owned by Bayside Council (being a public authority) and a private landowner as shown on the draft LEP zoning map. The private land includes parts of Lot 100 in DP 1231954 and Lot 31 in DP 1231486 with the intention of defining a foreshore recreation zone with a minimum width of 20 metres and internal passive open space and overland flow areas within the southern and western edges of Lot 100 in DP 1231954. The planning proposal does not currently identify an acquisition authority for the portions of land that are privately owned.

The planning proposal also seeks to rezone land currently zoned Special Uses in the Eastern Harbour SEPP to both B7 Business Park and RE1 Public Recreation in the Bayside LEP. The relevant public authority is TfNSW who has advised (during pre-Gateway consultation) that it does not require the F6 corridor across the Kogarah Golf Course land for a transport purpose, beyond the use of the F6 corridor within the defined Project Construction Site for the M6 Project.

A Gateway condition is recommended to require information to address the unresolved requirements of this Direction, including:

- clarification of an acquisition authority (and update to Land Acquisition Map) for any land being zoned RE1 Public Recreation that is not currently owned by a public authority; and
- approval from TfNSW that the land currently zoned Special Uses is no longer needed for public purposes.

5.3 Development Near Regulated Airports and Defence Airfields

This Direction seeks to ensure:

- the effective and safe operation of regulated airports and defence airfields;
- that their operation is not compromised by development that constitutes an obstruction, hazard or potential hazard to aircraft flying in the vicinity; and
- development, if situated on noise sensitive land, incorporates appropriate mitigation measures so that the development is not adversely affected by aircraft noise.

This Direction applies because the proposal alters zonings and provisions near Sydney Airport, a core regulated airport under the Airports Act 1996.

This Direction includes requirements that:

- consultation with the Department of the Commonwealth responsible for airports and the lessee/operator of that airport occur;
- for land affected by the prescribed airspace (as defined in clause 6(1) of the Airports (Protection of Airspace) Regulation 1996, the preparation of appropriate development standards, such as height controls;
- that development types which are incompatible with the current and future operation of that airport not be allowed;
- the obtaining of permission from that Department of the Commonwealth, or their delegate, where a planning proposal seeks to allow, as permissible with consent, development that would constitute a controlled activity as defined in section 182 of the Airports Act 1996. This permission must be obtained prior to undertaking community consultation in satisfaction of Schedule 1 to the EP&A Act; and
- include a provision to ensure that development meets Australian Standard 2021 – 2015, Acoustic- Aircraft Noise Intrusion – Building siting and construction with respect to interior noise levels, if the proposal seeks to rezone land:
 - for hotels, motels, offices or public buildings where the ANEF is between 25 and 30; and
 - for commercial or industrial purposes where the ANEF is above 30.

The proposal is consistent with this Direction, because:

- the PPA consulted with Sydney Airport Corporation Limited and Federal Department of Infrastructure, Transport, Regional Development and Communications prior to a Gateway request. Neither authority objected to the proposal;
- the proposed development standards, including the maximum building height adequately respond to Sydney Airport's aircraft operating surfaces;
- proposes land uses which are compatible with the current and future operation of Sydney Airport;
- does not propose development which would constitute a controlled activity as defined in section 182 of the Airports Act 1996; and
- can utilise existing provisions in the Bayside LEP 2021 which require development to address Australian Standard 2021 – 2015, Acoustic- Aircraft Noise Intrusion – Building.

The Gateway determination has been conditioned to requiring consultation with Sydney Airport Corporation Limited and Federal Department of Infrastructure, Transport, Regional Development and Communications during community consultation.

7.1 Business and Industrial Zones

The objectives of this Direction are to:

- encourage employment growth in suitable locations;
- protect employment land in business and industrial zones; and
- support the viability of identified centres.

This Direction applies because the proposal affects land within an existing and proposed business zone.

This Direction includes requirements that a planning proposal must:

- give effect to the objectives of this Direction;

- retain the areas and locations of existing business and industrial zones;
- not reduce the total potential floor space area for employment uses and related public services in business zones;
- not reduce the total potential floor space area for industrial uses in industrial zones; and
- ensure that proposed new employment areas are in accordance with a strategy that is approved by the Planning Secretary.

The planning proposal is consistent with this Direction because it:

- seeks to retain existing employment zonings and land uses under the Standard Instrument format on the site;
- increases the current permitted gross floor area for business and industrial uses on the site;
- does not include uses which will negatively impact the viability of existing centres; and
- gives effect to the Precincts 2036 Plan.

4.9 State environmental planning policies (SEPPs)

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	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
SEPP – Eastern Harbour City (2021)	Consistent	<p>The site is currently subject to the requirements of Chapter 6 – Cooks Cove of the Eastern Harbour City SEPP. Chapter 6 sets out the objectives for development on site, development standards on site and the planning principles for the site.</p> <p>The planning proposal intends to remove the site from the provisions of the Eastern Harbour SEPP and insert it into the Bayside LEP 2021. It intends for the Eastern Harbour SEPP to continue to apply to residual land that is not sought to be rezoned by this planning proposal including Government owned land directly adjacent to the site and land located south of the M5 Motorway.</p> <p>The Department notes that Council raises concern that the proposed B7 Business Park zoning includes a number of permissible uses that are inconsistent with the existing Eastern Harbour SEPP zoning. Council considers the subject site is not representative of broader B7 Business Park zoned land within the Bayside LGA, that can accommodate uses beyond those that should be the focus in this key strategic location.</p> <p>The Department considers the current strategic framework is the primary consideration in determining the appropriate land use permissibility. This is highlighted by Ministerial Direction 1.12 which outlines a number of principles to be addressed in considering a planning proposal for the site.</p> <p>The retention of the use of the Eastern Harbour SEPP to the remainder of the Cooks Cove precinct will not be detrimentally affected by the subject planning proposal.</p>
SEPP – Biodiversity	Consistent	The planning proposal seeks to provide riparian planting and introduce stormwater and floodwater mitigation infrastructure to ensure the Cooks

SEPPs	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
and Conservation (2021)		River is not adversely impacted by the development. The proposal incorporates infrastructure and strategies to manage water quality on site. The planning proposal is supported by a flora and fauna impact assessment report and a flood management and flood impact assessment report. This is discussed further under Section 5 of this report.
SEPP – Industry and Employment (2021)	Consistent	<p>Chapter 3 of the SEPP specifies a number of requirements that must be addressed relating to advertising and signage.</p> <p>The planning proposal seeks to introduce Advertising Structure as an APU which would be subject to the requirements of this SEPP. A Gateway condition is recommended to require additional information be provided to justify the need and appropriateness of introducing this as an APU.</p>
SEPP – Transport and Infrastructure (2021)	Consistent	<p>There are various pieces of key infrastructure that need to be considered during the development of the site. Key infrastructure considerations include:</p> <ul style="list-style-type: none"> • F6 Transport Corridor • Moomba Sydney Pipeline • Sydney Desalination Plant Pipeline • Southern and Western Ocean Outfall Sewer <p>Consideration of these matters is discussed throughout this assessment report and will be a matter of consideration for any future development assessment.</p>
SEPP – Resilience and Hazards (2021)	Consistent	<p>The subject site is identified as a Coastal Environment and Coastal Use area. Under the SEPP, any future development application will need to assess the impacts of the development on surface and groundwater, heritage, vegetation on site and demonstrate water sensitive urban design measures. The proposal is consistent with the requirements for a Coastal Use area as it will improve public access to the foreshore area and will also provide protection of the foreshore.</p> <p>The planning proposal is consistent with the requirements of the SEPP to consider issues of remediation. Further assessment is provided in the assessment of S9.1 Direction 4.4 Remediation of Contaminated Lands.</p>

4.10 Land Reclassification

The planning proposal intends to rely on Lot 1 in DP 108492 and Lot 14 in DP 213314 to provide road access into the intended development site and potentially to also undertake flood mitigation works.

This land is currently affected by 'Charitable Trusts' (the Trusts) which requires Bayside Council (the landowner) to hold the Trust Lands as trustee, with TfNSW the beneficiary (see Section 1.7).

The Trusts that affect the land are as follows:

Table 11: Charitable Trusts Details

Lot Details	Conditions
Lot 14 in DP 213314 was acquired by the Cumberland County Council from the Commonwealth to a Deed dated 30 October 1957.	<p>The Deed provided for the Commonwealth to transfer fee simple title to the Council, to hold the land 'UPON TRUST' for the following purposes subject to the following conditions:</p> <ol style="list-style-type: none"> <i>That the Council will hold the said land which is required for a County Road under the County of Cumberland Planning Scheme Ordinance (CCPSO), for that purpose, and will make the same available without cost to the Commissioner for Main Roads or any other body that may be the constructing authority for the County Road when required to do so, and pending its requirement for a County Road the Council shall not use the land or permit the land to be used other than for the purpose of a public park, public reserve or public recreation area.</i> <i>The Council will not erect or permit to be erected on the said land or any part thereof any building without first obtaining the approval of the County Council.</i>
Lot 1 in DP 108492 was acquired by the Cumberland County Council from a private individual and ownership was transferred to the Council on 5 May 1958, subject to a Declaration of Trust (14 April 1958), pursuant to the provisions of Clause 18 of the CCPSO.	<p>The Council holds the land 'UPON TRUST' for the following purposes and subject to the following conditions:</p> <ol style="list-style-type: none"> <i>As part of the said land that is as to so much thereof as is required for a County Road under the CCPSO the Council holds the same for that purpose AND will make the same available without cost to the Commissioner for of Main Roads or any other body that may be the constructing authority for the County Road when required to do so and pending its requirement for a County Road the Council shall not use or permit to be used such part of the said land for any purpose other than the purpose of a public park, public reserve or public recreation area.</i> <i>As to the residue of the said land that the Council holds the same for the purposes of a public park, public reserve or public recreation area and the Council will not use or permit to be used such residue of the land for any purposes other than the purpose of a public park, public reserve or public recreation area.</i> <i>The Council will not erect or permit to be erected on the said land or any part thereof any building without first obtaining the approval of the Cumberland County Council and will observe and comply with all conditions which the Cumberland County Council may impose in connection with any such approval.</i>

The intended future uses and works in the Trust Lands outlined in the planning proposal are not in accordance with the terms of the Trusts (not for a County Road purpose). As such, the Charitable Trusts are proposed to be extinguished through reclassification of the affected land from 'Community' to 'Operational' pursuant to Section 30 of the *Local Government Act 1993*. This is to be done as part of the planning proposal process.

Extensive pre-Gateway consultation has been undertaken with Transport for NSW (TfNSW) as the beneficiary of the Trusts described above. As discussed, other than the requirements of the M6 Stage 1 and M8, TfNSW currently has no other identified need for a County Road purpose on the Trust Lands.

Once these lands are made operational and the extent of land required to be utilised to support the proposal for roads and flood mitigation is determined, it is recommended council seeks to reclassify this residual land back to 'community land', to enable future open space uses for this land. It is expected that this will be the larger portion of the land to be reclassified by this proposal.

5 Site-specific assessment

5.1 Environmental

Flora and Fauna

The planning proposal is supported by a Flora and Fauna Assessment prepared having regard to pre-Gateway comments received from the Environment, Energy and Science Group (EES) of the Department. The purpose of this assessment is to describe the ecological values of the site and to assess the impacts of the planning proposal on flora and fauna, particularly threatened species, populations and communities listed under the New South Wales (NSW) *Biodiversity Conservation Act 2016* (BC Act) and the *Commonwealth Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

The assessment states that the intended development will involve the removal of a limited area of largely planted/exotic vegetation, dominated by planted native trees and shrubs, exotic vegetation, exotic grasslands and lawns and aquatic vegetation. Planted and exotic vegetation occupies almost 100% of the vegetated areas of the site.

One Endangered Ecological Community (EEC), being Saltmarsh, which is listed under the BC Act will be impacted by the intended future development. Future development will require the clearing of a small trace of this community being less than 0.01 ha. The occurrence of this community within the site is comprised of two patches, isolated within two open sections of an artificial drainage line which is piped underground for the rest of its extent in the site. The assessment considers the overall impact on the community area and the wider locality is not of major ecological significance.

No threatened flora was recorded within the site and none are stated as likely to occur. The assessment states that the vegetation and water bodies within the site provides habitat for a range of native species, including some threatened fauna species as listed under the BC Act and/or EPBC Act. A total of four listed fauna species have known or potential habitat within the site, including the Green and Golden Bell Frog (*Litoria aurea*), Large Bent-winged Bat (*Miniopterus schreibersii oceanensis*), Grey-headed Flying-fox (*Pteropus poliocephalus*) and Powerful Owl (*Ninox strenua*).

The assessment considers that none of the threatened fauna species are likely to be significantly impacted by the intended future development. It states that the breeding habitat for the Green and Golden Bell Frog within the site will be retained, however, a small area of foraging habitat will be cleared.

In recognition of the potential ecological impacts, avoidance, mitigation and compensatory measures have been adopted. This includes:

Table 13: Proposed Ecological Measures

Type	Measures
Avoidance	<ul style="list-style-type: none"> Positioning of development within the northern and eastern sections of the site, to avoid the primary Green and Golden Bell Frog habitat and immediate surrounding foraging and dispersal habitat areas; No road network located in the southern section of the site, to provide a buffer between infrastructure and the primary Green and Golden Bell Frog habitat to avoid impacts on the Green and Golden Bell Frog from vehicle movement; Retention and enhancement of vegetated corridor within part Lot 17, as passive recreation space, to avoid impacts to the connectivity for the Green and Golden Bell frog to the Southern Precinct; Retain the RTA ponds and surrounding vegetation, to avoid impacts to the Green and Golden Bell Frog.
Mitigation	<ul style="list-style-type: none"> Implementation of a Green and Golden Bell Frog Management Plan; Implementation of a Wetland Environmental Management Plan; Vegetation Clearance and Fauna Management Protocols; Weed Control Measures; Nest Box Installation; Plantings along Cooks river foreshore; Habitat Creation; and Preparation of a Landscape Management Plan.
Compensatory	In accordance with the offsetting rules of the Biodiversity Offset Scheme, the assessment states that any residual impact on biodiversity in general, and the Green and Golden Frog in particular will be offset through the purchase and retirement of biodiversity credits. It states that offsetting liability will be determined at the development application stage, through the preparation of a Biodiversity Development Assessment Report under the Biodiversity Assessment Method.

A Gateway condition is recommended to require further consultation with the EES and any comments be considered prior to the finalisation of the planning proposal.

Flooding

See section 4.8 of this report for discussion of the flooding impacts and the proposed response.

Flood Evacuation

The flood impact assessment includes a flood evacuation strategy which consists of:

- a vertical evacuation and shelter-in-place strategy;
- flood warning systems; and
- potential flood evacuation routes.

To facilitate the strategy, the planning of future development is intended to include a refuge area within each street block, likely at the podium level, which is above the PMF level, allowing workers to evacuate vertically within buildings. The refuges are intended to provide sufficient under cover space and be equipped with the appropriate amenities commensurate with the potential duration

that evacuation would occur (up to 3 hours). The planning proposal states that this is subject to detailed assessment post Gateway determination.

A Gateway condition is recommended requiring consultation with relevant agencies including State Emergency Services (SES) to consider any comments on this matter.

Built Form and Density

The planning proposal is supported by an urban design report which includes a structure plan to illustrate a framework for the future built form anticipated for the site (including streets, development blocks, open space and buildings). The planning proposal states that a Landscape Character and Visual Impact Assessment was prepared to accompany the previous version of the planning proposal but has not been revised in relation to the subject planning proposal.

From the information provided, it is apparent that the intended building typology reflects the intended strategic response for the site to support the operations of Sydney Airport and Port Botany. The supporting Master Plan seeks to provide 3 development blocks including:

- A mixed use precinct to the northern section of the site with direct access from Marsh Street and Levey Street. This area is proposed to include:
 - an 8 storey commercial office building to the eastern portion of Block 2 of up to RL 33m;
 - a 12 storey hotel building of up to RL 48m above a retail podium to the western portion of Block 2; and
 - a 3 storey retail and office building within Block 1.
- Multi-level logistics warehouse buildings in Block 3 with a height up to RL 46m (5 storeys with typical floor to floor height of 7.6m);
- 8 storey commercial office building to the eastern portion of Block 2 of up to RL 33m; and
- 12 storey hotel building of up to RL 48m above a retail podium to the western portion of Block 2.

The planning proposal states that a draft DCP will be prepared post Gateway determination and that new development within the site will need to have regard to it. It is stated that this will include matters such as building form and design and setbacks.

Whilst it is understood that a draft DCP will be prepared, there is currently a lack of information to understand the appropriateness of the intended future built form outcome for the site.

Table 14 discusses a range of matters which require further analysis and information to ensure an appropriate built form outcome is achieved.

Table 14: Built form Assessment Matters

Built form issue	Department comment
Density and Building Height	<p>The planning proposal states that <i>it is proposed to restrict floor space on site through restricting GFA rather than FSR. This ensures a continuation of the existing SREP 33 approach which relies upon caps to floor areas. The reason for this is to ensure a level of flexibility in how future floor space is distributed throughout the Cooks Cove precinct whilst capping the overall quantum of development.</i></p> <p>In conjunction with this, the planning proposal seeks to introduce an RL based map which matches the Sydney Airport OLS across the entire B7 zoned land. The planning proposal states that <i>whilst it is more common for the height controls in Bayside LEP 2021 to be expressed in height in metres, it is</i></p>

Built form issue	Department comment
	<p><i>sometimes more appropriate for heights to be expressed in RL's, which reduce or equate levels to a common datum, where detailed urban design work has established an appropriate built form outcome and new ground levels will arise from new infrastructure constructed.</i></p> <p>The Master Plan currently provides minimal information to understand the relationship between the proposed GFA maximum and maximum height across the site. Further testing and urban design analysis is required to demonstrate the appropriateness of the density and building height controls and the potential built form outcomes that are achievable. This includes:</p> <ul style="list-style-type: none"> • testing of the desired built form outcome against the proposed maximum GFA to ensure its coordinated with the intended building typology, height and overall built form outcomes across the site; • clear diagrams to show the intended distribution of floorspace across the site having regard to the intended future uses; • further justification for the proposed RL height that addressed urban design matters rather than focusing on the maximum height permitted under the OLS; and • clarification of the need for a GFA cap (rather than FSR) and RL height (rather than height in metres). This should include further discussion of the benefits of this approach.
Use of Clause 4.6	<p>The Department notes that a recommendation of the Panel is that the planning proposal is to include an amendment to clause 4.6 of Bayside LEP 2021 that precludes the application of clause 4.6 to the height of building and GFA controls applying to the site. It is understood the reason for this is to provide a level of certainty in the future development of the site.</p> <p>There is currently insufficient information to demonstrate the necessity of preventing the application of Clause 4.6 for the planning proposal.</p> <p>As discussed above, a Gateway condition recommends to requiring the planning proposal provide clarification of the need for a GFA cap (rather than FSR) and RL height (rather than height in metres). The Department considers this information will provide further clarity on the appropriateness of the prescribed approach to density and height across the site.</p> <p>It is also of the view that if future development seeks to exceed these finite limitations it will be subject to the rigor of the provisions of Clause 4.6 of Bayside LEP, any associated Clause 4.6 case law and would need to be founded on detailed justification.</p> <p>Moreover, the gateway assessment submitted to the Department from the panel does not provide adequate justification on why a restriction to Clause 4.6 is required. The Department considers that there are no extenuating environmental or capacity constraints that apply to this site that would justify the restriction of Clause 4.6.</p> <p>If there matters arising from agency or community consultation that may warrant reconsideration of this matter, the Department could reconsider the restriction of the application of 4.6 at finalisation.</p>

Built form issue	Department comment
Public Open Space Design	<p>As noted in the planning proposal, the design and function of public open space on Council land (currently subject to the Charitable Trusts) is subject to future design by Council. Therefore, the planning proposal should ensure the planning proposal does not unreasonably impact the future public open space design and useability.</p> <p>Particular attention is raised with the following:</p> <ul style="list-style-type: none"> • Area 3 in the supporting Master Plan suggests that warehouse type buildings will be introduced directly adjacent to future public open space. This typically involves large floorplates with minimal breaks between built form to assist with solar access and visual relief. Further visual analysis and solar access testing is required to understand the intended built form impacts on future open space; and • the intended new roads across Council land has the potential to interfere with its functionality especially if used by heavy vehicles. Further consultation is required with Council to understand their future plans for this land.
Pedestrian/cycleway design	<p>The planning proposal outlines its intention to facilitate public access along the Cooks River foreshore. The supporting draft Public Benefit Offer states this is intended to include an accessible foreshore (minimum 20 metre wide), landscape embellishment works, a regional standard shared pathway and seawall works.</p> <p>Minimal detail is currently provided to understand the appropriateness of the extent of land proposed for this purpose. In accordance with Ministerial Direction 1.12, any planning proposal must deliver <i>an enhanced, attractive, connected and publicly accessible foreshore</i>. To appropriately respond to this requirement, a Gateway condition is recommended to require additional detail be provided as part of the exhibited planning proposal to outline capacity of the intended land to respond to this requirement and should also outline the intended connections to the B7 Business Park land.</p> <p>Some concern is raised that the intended warehouse type buildings will restrict appropriate activation and connections to the foreshore. The planning proposal requires additional information to clarify how it intends to ensure an appropriate outcome is planned to be achieved.</p>
Amenity	<p>There is currently minimal information to understand potential amenity impacts from the intended built form. The updated urban design report does not include overshadowing and solar access which is recommended to be provided as a condition of Gateway.</p>

Air Quality

The Arncliffe Motorway Operations Complex consists of eight ventilation outlets in total. A previous air quality assessment was prepared to accompany a former version of the planning proposal which sought a residential and mixed use outcome for the site. However, as the planning proposal has been amended to remove all residential uses this information is not provided with the current planning proposal.

A Gateway condition is included to require consultation with TfNSW and the Environmental Protection Authority (EPA) on this matter. Should any comments or concerns be raised these will need to be addressed.

Acoustic Amenity

The planning proposal is supported by an acoustic assessment due to the proximity of the site to Sydney Airport. This has been undertaken in accordance with AS2021:2015 – ‘Acoustics – Aircraft Noise Intrusion – Building Siting and Construction’ to ensure that appropriate noise conditions can be expected for future development on the site.

The subject site is located almost entirely within the ANEF 20-25 zone (2039). **Figure 23** outlines the acceptability of each use within the ANEF 20-25 zone. This demonstrates the suitability of the intended land use for the site in terms of acoustic amenity and the future operations of Sydney Airport.

Table 11 Acceptability of land uses within Cook Cove

Proposed land use	AS2021:2015 building type	Acceptability within ANEF 20-25
Hotel, serviced apartments	Hotel, motel, hostel	Acceptable
Office, retail	Commercial building	Acceptable
Logistics	Light industrial	Acceptable

Source: Arup

Figure 23: ANEF uses table

5.2 Social and economic

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

Table 15: Social and economic impact assessment

Social and Economic Impact	Assessment
Social	<p>The planning proposal will facilitate the opportunity for an increase in the employment floor space available within the Bayside LGA and as such can contribute to an increase in jobs within the LGA. This has the potential to have a positive social impact on local residents who will have greater opportunities to work within the LGA and reduce travel times.</p> <p>There are a number of intended public domain improvements anticipated as part of the planning proposal. This will provide the opportunity to activate the foreshore and improve social interactions in the area.</p>

Social and Economic Impact	Assessment
Economic	<p>The planning proposal will assist in providing economic benefits by creating employment and economic activity from the site. The planning proposal has the potential to deliver the following economic benefits:</p> <ul style="list-style-type: none"> • facilitate the opportunity to create 342,000m² of employment generating floor space; • facilitate the opportunity for approximately 3,300 jobs; • contribute to efficient operation of the airport and surrounds as a hub for trade and freight logistics; • create additional employment opportunities in proximity to existing centres, residential areas and transport corridors; and • provides employment in proximity to existing public transport.

5.3 Infrastructure

Traffic and Transport

The planning proposal is supported by a Strategic Transport Plan which provides an assessment of the traffic generation, car parking, public and active transport at the site. It includes a model of the surrounding street network seeking to demonstrate that the planning proposal will result in acceptable traffic conditions within and surrounding the site.

Extensive pre-Gateway consultation has occurred with Transport for NSW to review this analysis and feedback has been provided. The feedback details specific technical traffic modelling issues and requirements to be updated in the planning proposal prior to and post exhibition. The comments do not object to the planning proposal proceeding to community consultation but do require amendments to the proposal and supporting documentation before community consultation can occur.

Utilities

Any future development may require utility services to be upgraded and/or augmented to enable the intended development to be accommodated. As the planning proposal would intensify development on the site, it is recommended that relevant state infrastructure service providers are consulted as part of the Gateway determination.

6 Eastern City Planning Panel Advice

As discussed under Section 2.6, the independent consultant engaged by the Eastern City Planning Panel provided a number of recommendations which were supported by the Panel. A response to each of these requirements is discussed below.

Panel advice	Department response
Update the planning proposal to insert an amendment to clause 4.6 of Bayside LEP 2021 that precludes the application of clause 4.6 to the height of building and GFA controls applying to the site	<p>It is understood the reason for this is to provide a level of certainty in the future development of the site. As outlined in Section 5.1 this is insufficient justification for this approach.</p> <p>Despite this a Gateway condition is recommended to require clarification of the need for a GFA cap (rather than FSR) and RL height (rather than height in metres). The Department considers this information will provide further clarity on the appropriateness of the approach to density and height across the site.</p>
Update the planning proposal to include mapping amendments for all relevant map tiles to include the site.	A Gateway condition is recommended to require the planning proposal to be updated to clearly describe and show all draft LEP maps proposed.
Prior to community consultation, TfNSW is to address matters raised in correspondence received in relation to the planning proposal.	<p>A Gateway condition is recommended to require further information to address consistency with 9.1 Direction 1.12 Implementation of Planning Principles for the Cooks Cove Precinct, including:</p> <ul style="list-style-type: none"> obtain approval from TfNSW that the planning proposal will <i>not compromise future transport links, deliver a safe road network and enhance walking and cycling connectivity and the use of public transport</i> in accordance with the requirements of the principles
Prior to community consultation, TfNSW is to resolve the terms of required works and planning agreements;	Conditions of Gateway are recommended that require extensive consultation to occur with TfNSW, which will provide the opportunity for to address infrastructure requirements needed to support the proposal.
Prior to community consultation, TfNSW is to confirm that the M6 Extension Stage 1 does not require a surface reservation through the site in either the short or long term for motorway purposes;	A Gateway condition is recommended to obtain approval from TfNSW that the planning proposal will <i>not compromise future transport links, deliver a safe road network and enhance walking and cycling connectivity and the use of public transport</i> in accordance with the requirements of the principles
Prior to community consultation, TfNSW is to confirm the quantum of land required to accommodate the facilities and access thereto long term is yet to be decided by TfNSW;	Conditions of Gateway are recommended for extensive consultation to occur with TfNSW.
Prior to community consultation, Bayside Council is to resolve the methodology for capture and	Bayside Council has previously advised that its fiduciary obligation as a Trustee of the Charitable Trusts would prevent it from performing the role of the Planning Proposal Authority

Panel advice	Department response
conveyance of stormwater and floodwater through and within the site.	<p>(PPA). As such, this requirement is considered inappropriate and not in accordance with the position of Council.</p> <p>Instead, a Condition of Gateway is recommended to require the planning proposal be updated to prepare an options analysis to clearly outline flood mitigation options available with clear reasoning for the preferred option.</p> <p>This is intended to provide sufficient information to understand the potential options available for flood mitigation.</p>
Prior to community consultation, Bayside Council is to resolve the terms of a draft planning agreement	Conditions of Gateway are recommended for extensive consultation to occur with Bayside Council. This will provide the opportunity for these discussions to occur.
Prior to community consultation, Bayside Council is to develop the consents of a draft site specific DCP to guide development of the site.	A Gateway condition is recommended to include a local provision to prepare a site-specific Development Control Plan (DCP) outlining heads of consideration for inclusion in the DCP. The planning proposal is to include proposed key controls applying to future development on the site.

7 Consultation

7.1 Community

The planning proposal is complex and as such the Department proposes a community consultation period of 30 days.

The exhibition period proposed is considered appropriate and forms the conditions of the Gateway determination.

7.2 Agencies

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

- Sydney Airport Corporation Limited;
- Transport for NSW (TfNSW);
- Bayside Council;
- Department of Planning and Environment's Environment, Energy and Science Team;
- APA Group;
- State Emergency Services (SES);
- Greater Cities Commission (GCC);
- Federal Department of Infrastructure, Transport, Regional Development and Communications;
- NSW Ports;
- NSW Environmental Protection Authority (EPA);
- Heritage NSW;

- Sydney Desalination Plant;
- Sydney Water;
- Natural Resource Access Regulator (NRAR);
- Ausgrid;
- Department of Energy and Environment;
- Department of Primary Industries;
- Air Services of Australia;
- NBN Co; and
- Jemena.

8 Timeframe

The Panel proposes a 24 month time frame to complete the LEP.

The Department recommends a time frame of 18 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 to ensure that the proposal is progressed and assessed in a timely way.

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

9 Local plan-making authority

The Sydney Eastern Planning Panel does not request delegation to be the Local Plan-Making authority.

The Department recommends that the Planning Panel not be authorised to be the local plan-making authority for this proposal. Due to the complexities involved with this planning proposal the Department of Planning will be the Local Plan Making Authority.

10 Assessment summary

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

- it is consistent with, and gives effect to the Greater Sydney Region Plan, Eastern City District Plan and Bayside Local Strategic Planning Statement;
- it is consistent with relevant State Environmental Planning Policies;
- any inconsistency or unresolved consistency with relevant Section 9.1 Directions, will be addressed by way of Gateway conditions before public exhibition and finalisation;
- it will facilitate the opportunity (subject to further consultation) to deliver additional employment floor space and public open space in the Bayside LGA; and
- it will facilitate the opportunity (subject to further consultation) to improve public access through the site including along the Cooks River foreshore.

11 Recommendation

It is recommended the delegate of the Secretary:

- Note that consistency with section 9.1 Directions 1.12 Implementation of Planning Principles for the Cooks Cove Precinct, 3.2 Heritage, 4.1 Flooding and 5.2 Reserving Land for a Public Purposes will require additional information and justification.

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

1. The planning proposal is to be updated prior to community consultation to:
 - (a) address consistency with 9.1 Direction 1.12 Implementation of Planning Principles for the Cooks Cove Precinct, including:
 - (i) obtain approval from TfNSW that the planning proposal will *not compromise future transport links, deliver a safe road network and enhance walking and cycling connectivity and the use of public transport* in accordance with the requirements of the principles;
 - (ii) provide additional information to demonstrate that the planning proposal will *ensure best practice design and a high-quality amenity with reference to the NSW design policy Better Placed*;
 - (iii) provide additional information to demonstrate the planning proposal *will deliver an enhanced, attractive connected and publicly accessible foreshore and public open space network*. This should include further details to justify the extent of land intended to be zoned RE1 Public Recreation adjacent to the Cooks River; and
 - (iv) provide additional information to demonstrate that the planning proposal will *enhance the environmental attributes of the site, including protected flora and fauna, riparian areas and wetlands and heritage*.
 - (b) address consistency with 9.1 Direction 3.2 Heritage through further consultation with Heritage NSW and updating the planning proposal accordingly;
 - (c) address consistency with 9.1 Direction 4.1 Flooding by preparing an options analysis to clearly outline flood mitigation options available with clear reasoning provided for the preferred option;
 - (d) address consistency with 9.1 Direction 5.2 Reserving Land for a Public Purpose by seeking approval from TfNSW that the land currently zoned Special Uses is no longer needed for public purposes.
 - (e) provide an updated Urban Design Report to address the following matters:
 - (i) testing of the desired built form outcome against the proposed maximum GFA to ensure its coordinated with the intended building typology, height and overall built form outcomes across the site;
 - (ii) clear diagrams to show the intended distribution of floorspace across the site having regard to the intended future uses;
 - (iii) further justification for the proposed RL height that addresses urban design matters rather than maximum height permitted under the OLS;
 - (iv) further clarification of the need for a GFA cap (rather than FSR) and RL height (rather than height in metres). This should include further discussion of the benefits of this approach.
 - (v) visual impacts and relationship to the context of the area including intended public open space;

- (vi) amenity impacts including overshadowing and solar access provision to intended public open space. The planning proposal must demonstrate that future built form will not unreasonably impact the useability and design of future public open space proposed to be zoned RE1 Public Recreation;
 - (vii) public domain connections through the site and to intended future public open space; and
 - (viii) intended new roads across Council land and how this will ensure an acceptable public open space outcome in terms of amenity and design.
- (f) provide a plain English explanation of the proposed new land use definition 'Trade Related Enterprises';
 - (g) ensure all documentation is updated to correctly reference the former *State Regional Environmental Plan No 33 – Cooks Cove* to its current title of the *State Environmental Planning Policy (Precincts - Eastern Harbour City) 2021*;
 - (h) include a local provision to prepare a site-specific Development Control Plan (DCP) outlining heads of consideration for inclusion in the DCP. The planning proposal is to clearly outline proposed DCP key controls applying to future development on the site.
 - (i) provide a plain English explanation of a future LEP provision that seeks to allow consideration of the NSW Land Use Safety Planning Framework and the land use safety study risk assessment (LUSS), prepared by Arriscar, at the development application stage. Specifically, this provision will need to:
 - (i) apply to the land proposed to be rezoned to B7 Business Park and encompassing the proposed retail, office, hotel, serviced apartment, trade-related enterprises and warehouse logistics development; and
 - (ii) ensure notification to and consideration of any comment from the Department prior to the issuing of any development consent for the specified developments by the consent authority.
 - (j) provide further justification and reasoning to support the following proposed Additional Permitted Uses (APU's):
 - (i) 'Advertising Structures' having regard to the context of the site, intended locations for these structures and a clear need for this to occur;
 - (ii) 'Retail Premises' including clarification of the maximum potential floor space proposed for this use and reasons for the need for the permissibility of all uses under its umbrella definition; and
 - (iii) 'Tourist and Visitor Accommodation' including further justification and reasons for the need for the permissibility of all uses under its umbrella definition.
 - (k) clarify whether 'industrial training facilities' is proposed as an APU and if so, provide further details and justification.
 - (l) Clearly describe and show all draft LEP maps proposed with this planning proposal.
2. Prior to community consultation, the planning proposal is to be revised to address Condition 1 above and forwarded to the Department for review and approval.
 3. Prior to the commencement of community consultation, the proponent must consult with Sydney Airport Corporation Limited and the Commonwealth Department of Infrastructure, Regional Development and Cities. Should the proponent be advised that permission is required in accordance with (2)(d) of s9.1 Direction 5.3 and/or the *Airports Act 1996*, this permission must be granted prior to the commencement of community consultation. The planning proposal must also be updated with the outcomes of this consultation prior to community consultation.

4. Consultation is required with the following public authorities:

- Transport for NSW (TfNSW);
- Bayside Council;
- Department of Planning and Environment's Environment, Energy and Science Team;
- APA Group;
- State Emergency Services (SES);
- Greater Cities Commission (GCC);
- Federal Department of Infrastructure, Transport, Regional Development and Communications;
- NSW Ports;
- NSW Environmental Protection Authority (EPA);
- Heritage NSW;
- Sydney Desalination Plant;
- Sydney Water;
- Natural Resource Access Regulator;
- Ausgrid;
- Department of Energy and Environment
- Department of Primary Industries;
- Air Services of Australia;
- NBN Co;
- APA Group; and
- Jemena.

5. The planning proposal should be made available for community consultation for a minimum of 30 days.
6. A public hearing is required to be held into the matter by any person or body under section 3.34 of the *Environmental Planning and Assessment Act 1979* and Section 29 of the *Local Government Act 1993*. After the community consultation period has ended, at least 21 days public notice is to be given before the hearing is held.
7. The planning proposal must be exhibited within 8 months from the date of the Gateway determination.
8. Prior to finalisation, the planning proposal must address consistency with section 9.1 Direction 5.2 Reserving Land for a Public Purpose including by clarification of an acquisition authority (and update to the Land Acquisition Map) for any land being zoned RE1 Public Recreation that is not currently owned by a public authority.
9. The planning proposal must be reported to the Planning Panel for a final recommendation 15 months from the date of the Gateway determination.
10. The timeframe for completing the LEP is to be 18 months from the date of the Gateway determination.

11. Given the nature of the proposal, the Planning Panel should not be authorised to be the local plan-making authority.



4 August 2022

(Signature)

(Date)

Alexander Galea

Manager, Eastern and South Districts



(Signature)
(Date)

4 August 2022

Kris Walsh

Manager, Eastern and South Districts



4 August 2022

(Signature)

(Date)

Laura Locke

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5 August 2022

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