

Gateway Determination

Planning proposal (Department Ref: PP-2022-1748): to facilitate the development of part of the Cooks Cove precinct by removing the subject land from the operation of Chapter 6 of State Environmental Planning Policy (precincts – Eastern Harbour City) 2021 and insert new planning provisions into Bayside Local Environmental Plan 2021.

I, the Executive Director, Metro East and South at the Department of Planning and Environment, as delegate of the Minister for Planning and Homes, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the Bayside Local Environmental Plan 2021 to introduce new planning provisions to part of the Cooks Cove precinct for the sites at 13-19A Marsh Street, Arncliffe 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 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 demonstrate the suitability of the planning proposal including (but not limited to) the following matters:
 - (i) testing of the desired built form outcome against the proposed maximum GFA to ensure it is 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 include proposed 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. Public exhibition is required under section 3.34(2)(c) and clause 4 of Schedule 1 to the Act as follows:
 - (a) the planning proposal is categorised as complex as described in the *Local Environmental Plan Making Guidelines* (Department of Planning and Environment, 2021) and must be made publicly available for a minimum of 30 days; and
 - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in *Local Environmental Plan Making Guidelines* (Department of Planning and Environment, 2021).

Exhibition must commence within 8 months following the date of the gateway determination.

5. Consultation is required with the following public authorities and government agencies under section 3.34(2)(d) of the Act and/or to comply with the requirements of applicable directions of the Minister under section 9 of the EP&A Act:
 - Transport for NSW (TfNSW);
 - Bayside Council;
 - Department of Planning and Environment's Environment, Energy and Science Team;
 - 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;

- Jemena.

Each authority and agency is to be provided with a copy of the planning proposal and any relevant supporting material via the NSW Planning Portal and given at least 40 days to comment on the proposal.

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. 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.
8. The Panel as planning proposal authority is not authorised to be the local plan-making authority under section 3.36(2) of the EP&A Act.
9. The LEP should be completed on or before 5 May 2024.

Dated 5th day of August 2022.



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Delegate of the Minister for Planning and
Homes