

DATE OF DECISION	31 March 2023
DATE OF BRIEFING	28 March 2023
PANEL MEMBERS	Carl Scully (Chair), Glennis James, David Ryan, Paul Pappas & Michael Sheils
APOLOGIES	None
DECLARATIONS OF INTEREST	None

PLANNING PROPOSAL

PP-2022-1748 – Bayside Council - at Kogarah Golf Club - 13-19A Marsh St, Arncliffe

The Cooks Cove Planning Proposal dated 10 March 2023, seeks to facilitate the development of a logistics and warehousing precinct with supporting shops/food & drink and hotel/motel and serviced apartments on land currently used as Kogarah Golf Club within 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.

In February 2021, the Sydney Eastern City Planning Panel was appointed the Planning Proposal Authority (PPA) for the Cooks Cove Planning Proposal in accordance with the Environmental Planning and Assessment Act 1979.

On 17 May 2022, the Panel considered the planning proposal in accordance with the Act and determined that it should be referred to the Secretary of the Department of Planning for a Gateway determination.

On 5 August 2022, the Department issued a Gateway determination for the planning proposal.

The planning proposal has been updated to address the conditions of the Gateway determination.


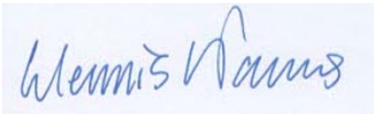



PANEL DECISION AS PLANNING PROPOSAL AUTHORITY – REQUEST ALTERATION OF GATEWAY DETERMINATION & PROCEED TO EXHIBITION OF PLANNING PROPOSAL

The Department of Planning and Environment has advised that all relevant Gateway determination conditions can be met subject to the issuing of a Gateway alteration.

As the planning proposal authority, the Panel determined that:

- The planning proposal as revised and submitted is suitable for public exhibition.
- A request for an alteration of the Gateway determination be submitted to the Department of Planning and Environment in accordance with the wording in Attachment G of the Panel Gateway Alteration and Exhibition Report.
- Should any altered Gateway determination require no additional updates to the planning proposal, the Panel requests the planning proposal be placed on public exhibition. The Panel delegates authority to the Department's Agile Planning team to make minor administrative changes as required prior to consultation commencing; and
- Should any altered Gateway determination require additional updates to the planning proposal, the Panel requests the planning proposal be updated and submitted to the Panel for review prior to it being placed on public exhibition.
- Public exhibition should commence no earlier than 11 April 2023.

The decision was unanimous.

PANEL MEMBERS	
 Carl Scully (Chair)	 Glennis James
 David Ryan	 Paul Pappas
 Michael Sheils	

SCHEDULE 1		
1	PANEL REF – LGA – DEPARTMENT REF - ADDRESS	PP-2022-1748 – Bayside LGA - Kogarah Golf Club (13-19A Marsh St, Arncliffe)
2	LEP TO BE AMENDED	Bayside Local Environmental Plan 2021
3	PROPOSED INSTRUMENT	The Cooks Cove Planning Proposal dated 10 March 2023, seeks to facilitate the development of a logistics and warehousing precinct with supporting shops/food & drink and hotel/motel and serviced apartments on land currently used as Kogarah Golf Club within 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.
4	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> Panel Gateway Alteration and Exhibition Report from Department of Planning and Environment
5	SITE INSPECTION AND BRIEFINGS BY THE PANEL	<ul style="list-style-type: none"> Site inspection with Department of Planning and Environment (DPE): 10:30am – 11.35am, 28 March 2023 <ul style="list-style-type: none"> Panel members in attendance: Carl Scully (Chair), Glennis James, David Ryan, Paul Pappas & Michael Sheils DPE staff in attendance: Louise McMahon, Alexander Galea, Claire Mirow, Lisa Kennedy & Kate Bartlett (DPE Agile Planning Consultant) Key issues viewed: Proposed – parkland & wetlands; roads to the adjoining road network; commercial/retail area; public foreshore & its retention in private ownership Briefing with Department of Planning and Environment (DPE): 2:30pm – 3.05pm, 28 March 2023 <ul style="list-style-type: none"> Panel members in attendance: Carl Scully (Chair), Glennis James, David Ryan, Paul Pappas & Michael Sheils DPE staff in attendance: Louise McMahon, Alexander Galea, Claire Mirow, Kendall Clydsdale, Lisa Kennedy, Mary Francis & Kate Bartlett (DPE Agile Planning Consultant) Key issues discussed: site location/context; proposed design photomontage; summary of proposal changes to zones, HOB, FSR, APU & land classification; Gateway determination alteration request; processes for public exhibition Briefing with Bayside City Council and Cook Cove Inlet PTY LTD (Proponent): 3.05pm – 3.30pm, 28 March 2023 <ul style="list-style-type: none"> Panel members in attendance: Carl Scully (Chair), Glennis James, David Ryan, Paul Pappas & Michael Sheils DPE staff in attendance: Louise McMahon, Alexander Galea, Claire Mirow, Kendall Clydsdale, Lisa Kennedy, Mary Francis, Elise Crameri & Kate Bartlett (DPE Agile Planning Consultant) Council representatives in attendance: Peter Barber, Ana Trifunovska & David Smith Proponent representatives in attendance: Peter Bettridge, Bernard Gallagher & Daniel Howard

		<ul style="list-style-type: none">○ Key issues discussed: summary of proposal changes to zones, HOB, FSR, APU & land classification; service apartments and potential for longer term residences● Panel Discussion: 3:30pm – 4pm, 28 March 2023<ul style="list-style-type: none">○ Panel members in attendance: Carl Scully (Chair), Glennis James, David Ryan, Paul Pappas & Michael Sheils○ DPE staff in attendance: Louise McMahon, Alexander Galea, Claire Mirow, Kendall Clydsdale, Lisa Kennedy, Mary Francis & Kate Bartlett (DPE Agile Planning Consultant)
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[deletions in ~~strike through~~, new additions in ***bold/italics***]

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 for:

- ***Land to be zoned a combination of SP4 (Enterprise), RE1 (Public Recreation) and SP2 (Infrastructure);***
- ***Maximum building height of RL51 for the majority of the land zoned SP4 (Enterprise) (Blocks 2 and 3), stepping down to RL48, RL44 and RL40 at the southern portion of this zone, and maximum building height of 24m for Block 1 at the north of the site;***
- ***Maximum Gross Floor Area across the site of:***
 - ***Block 1: maximum FSR of 1.25:1 (P2);***
 - ***Blocks 2 and 3 (Area 16) Development is not to exceed:***
 - ***a total of 340,000sqm GFA,***
 - ***20,000sqm GFA of office premises,***
 - ***20,000sqm GFA of hotel or motel accommodation, and***
 - ***10,000sqm GFA of shops and food and drink premises.***
- ***Additional permitted uses:***
 - ***'Advertising Structures' permitted in Block 1;***
 - ***'Trade Related Enterprises' permitted in SP4 land; and***
 - ***'Hotel and Motel Accommodation'.***

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;

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- (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~~ **SP4 Enterprise** and encompassing the proposed ~~retail~~ **food and drink premises, shops**, office, hotel **and motel accommodation**, 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.

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- (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;

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- 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.