

Post-Exhibition Report – PP-2022-1748

The planning proposal seeks to include the ‘Cooks Cove’ site within the Bayside Local Environmental Plan 2021 and rezone the land for the purpose of commercial and trade related enterprises, hotel or motel accommodation, serviced apartments and public open space.

1 Introduction

The planning proposal is at the post-exhibition stage, which is the last stage before a local environmental plan (LEP) may be finalised and made. The Sydney Eastern City Planning Panel (Panel) determined at Rezoning Review that the proposal had strategic and site-specific merit (17 May 2022). The Secretary of Department of Planning and Environment, at the time, appointed the panel as the Planning Proposal Authority (PPA) due Bayside Council's role as Trustee of some of the land contained within the planning proposal.

A Gateway determination was issued on 5 August 2022 for the proposal to proceed, subject to conditions. Consultation with State Government Agencies and the community required by the Gateway determination has now been completed.

The purpose of this report is to provide a summary of the key matters raised by members of the public, government agencies and Bayside Council (Council) during the public exhibition and further supplementary submissions by the proponent for the Planning Proposal (**Attachment A**) for Cooks Cove – 13-19 and 19A Marsh Street, Arncliffe (the site).

The report includes a recommendation made by the Agile Planning team, in its role supporting the Panel, that the proposal is submitted to the Department of Planning, Housing and Infrastructure (The Department) for finalisation subject to it being updated to reflect proponent-led changes and Agile team recommendations outlined in Section 6 of this report.

Following a decision of the Panel, the planning proposal will be sent to the Department as the Local Plan Making Authority (LPMA) to determine whether to finalise the proposal.

Table 1 – Planning proposal details and timeline

Element	Description
Date of panel determination on rezoning review	17 May 2022
Planning Proposal no.	PP-2022-1748
LGA	Bayside
LEP to be amended	Bayside Local Environment Plan 2021
Address	19 Marsh Street, Arncliffe (Lot 14 DP 213314) 19A Marsh Street, Arncliffe (Lot 31 DP 1231486) 15 Marsh Street, Arncliffe (Lot 1 DP 329283)

Element	Description
	13 Marsh Street, Arncliffe (Lot 1 DP 108492)
Brief overview of the timeframe/progress of the planning proposal	<p>November 2020 - Council determined that it cannot act as PPA due to their role as Trustee of some of the land contained within the planning proposal.</p> <p>25 February 2021 - Deputy Secretary of the Department appoints the Sydney Eastern City Planning Panel (the Panel) as PPA.</p> <p>February 2021 - The proponent amended the proposal to include additional lots and applicable zoning of RE1 Public Recreation and SP2 Infrastructure.</p> <p>October 2021 - Proposal refined to reduce size and remove residential land uses.</p> <p>17 May 2022 - Panel supports proposal to progress to Gateway Determination.</p> <p>5 August 2022 - Gateway Determination issued with conditions by the Department.</p> <p>10 March 2023- Amended proposal prepared by landowner to address Gateway conditions.</p> <p>28 March 2023 – Panel briefing for Gateway Alteration request and approval to exhibit package.</p> <p>31 March 2023 - Panel determines the proposal is suitable for public exhibition, and a request for a Gateway Alteration can be submitted to the Department.</p> <p>6 April 2023 – Amended proposal in line with Gateway Alteration request submitted by proponent, for exhibition.</p> <p>12 April 2023 – Gateway Alteration issued by the Department.</p> <p>24 April 2023 to 6 June 2023 - Public exhibition of planning proposal and supporting documents.</p> <p>30 June 2023 – public hearing held regarding the portion of the planning proposal that seeks to reclassify land from ‘community’ to ‘operational’.</p> <p>17 August 2023 – The Department issues a Request for Information (RFI) requiring additional information from the proponent responding to community and agency submissions.</p> <p>20 September 2023 – Proponent submits Response to Submissions (RtS) package responding to the Department’s RFI.</p> <p>28 September 2023 – 14 November 2023 – Agencies provide comments on RtS.</p> <p>27 November 2023 – Workshop held with proponent, Council officers, DPE officers and TfNSW officers to resolve overland flow matters relevant to future Pemulwuy Park.</p> <p>6-8 December 2023 – Proponent submits second Response to Submissions package.</p> <p>8-21 December 2023 – Further TfNSW consultation regarding overland flow.</p> <p>8-31 January 2024 – Further liaison with Council and CCI regarding overland flow matters.</p> <p>February 2024 – Local and State VPAs reported to Bayside Council.</p>

Element	Description
Finalisation date required by Gateway Determination	5 May 2024
Department contact:	Louise McMahon, Director, Agile Planning

1.1 The Site and local context

The site (**Figure 1**) is located in the Bayside LGA and the suburb of Arncliffe. Surrounding the site is the M5 Motorway (directly south), Cooks River and Sydney Kingsford Smith Airport (east), Sydney Central Business District (CBD) (approximately 10km north), Port Botany (6km east) and Rockdale local town centre (1.5km south-west), as highlighted in the image below (**Figure 1**).

Portions of the site are owned by various landowners and have differing uses (**Figure 2**). 19-19A Marsh Street are owned by Kogarah Golf Club Freehold as a valve station and golf course (respectively). 13 and 19 Marsh Street are owned by Bayside Council as part golf course, part construction compound for WestConnex (13 Marsh Street), and construction compound for WestConnex (19 Marsh Street), and 15 Marsh Street is owned by Transport for New South Wales (TfNSW) as a construction compound for WestConnex.

Existing residential development is located on the opposite side of Marsh Street to the west and is generally characterised by one-storey detached dwellings but has recently been rezoned to R4 High Density Residential as part of the Bayside West Precincts 2036 and some residential flat buildings have been recently built. To the north of the subject site 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.

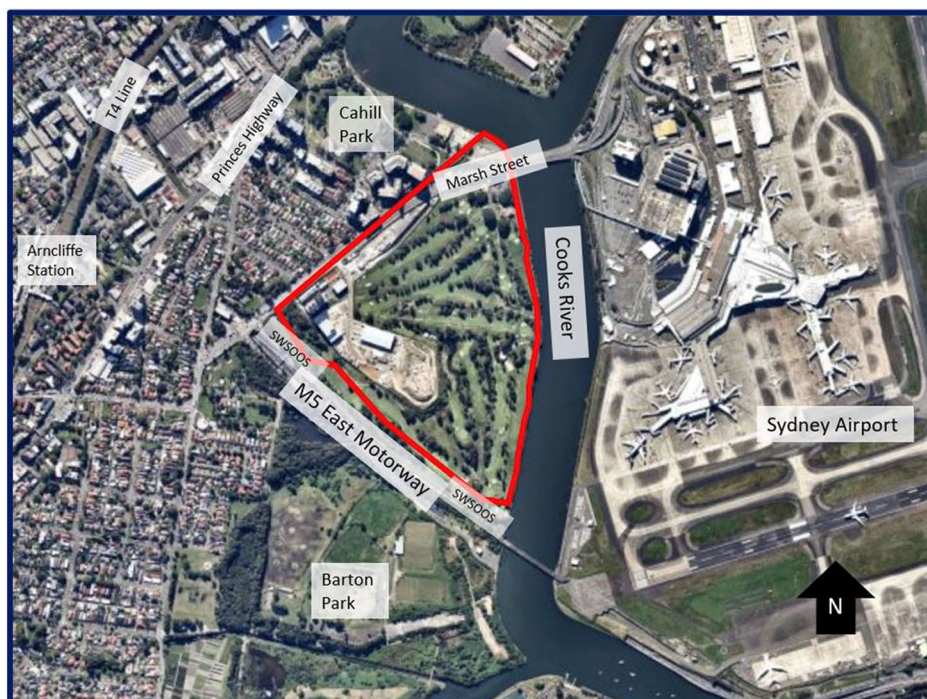


Figure 1 – Subject site outlined in red (source: Gateway Determination Report – August 2022)

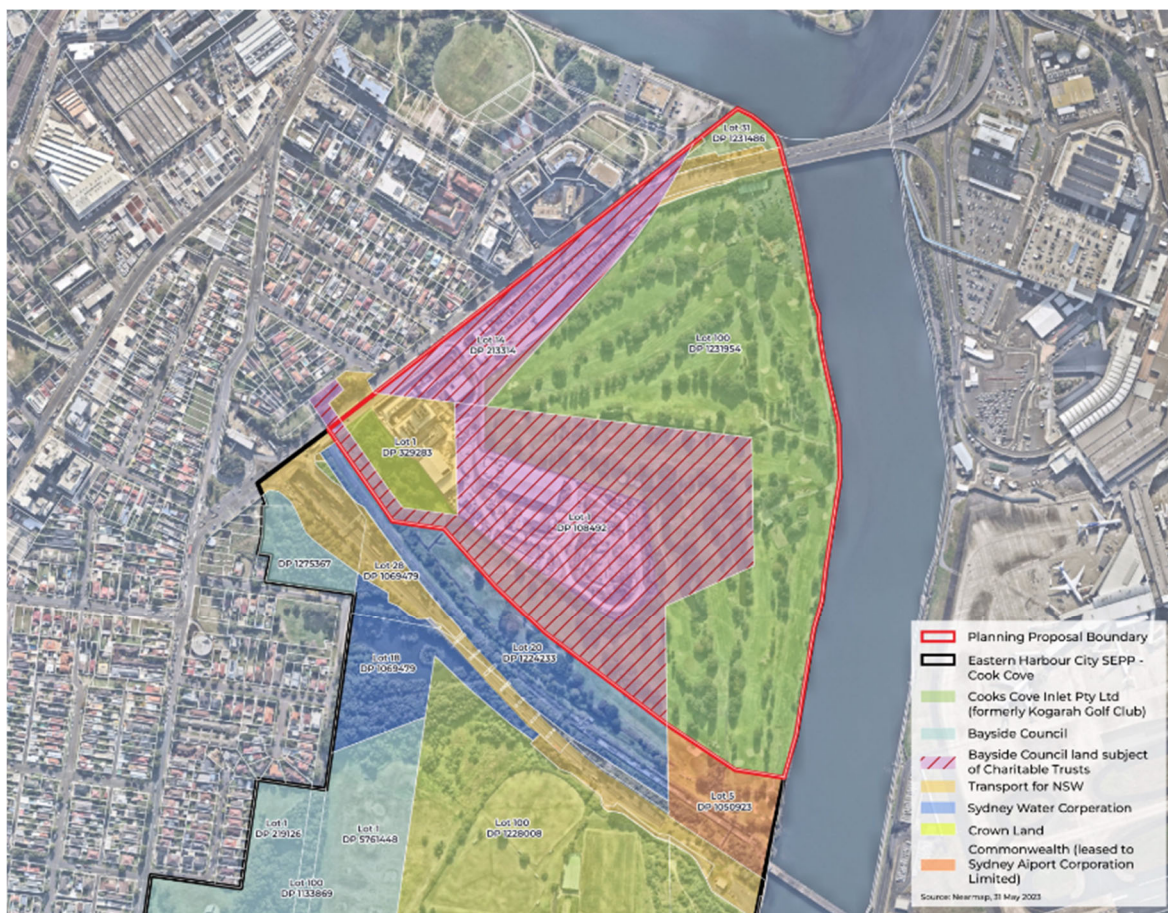


Figure 2 – Subject site landowners (source: Gateway Determination Report – August 2022)

1.2 Planning Proposal

Table 2 – Overview of planning proposal

Element	Description
Site Area	36.2ha
Proposal summary	<p>The planning proposal seeks to facilitate the development of part of the Cooks Cove Precinct as a logistics and warehousing precinct, to enhance freight and tourism opportunities adjacent to the Sydney International Airport. The remainder of the site will deliver significant new public open space in Bayside including the future Pemulwuy Park and a publicly accessible walking and cycling path along the length of the Cooks River.</p> <p>Further changes were made to the Planning Proposal as a consequence of public exhibition and agency and public submissions, including an amended zoning framework, changes to resolve flooding impacts and changes to protect vulnerable Green and Golden Bell Frog (GGBF) habitat.</p> <p>See Table 3 below for a summary of current, exhibited, and post-exhibition planning controls.</p>

Element	Description
Relevant State and Local Planning Policies, Instruments	<ul style="list-style-type: none"> The Greater Sydney Region Plan – A Metropolis of Three Cities (Region Plan) Eastern Harbour City District Plan (2018) Bayside West Precincts Plan 2036 Housing Productivity Infrastructure Contributions 2023 South-East Sydney Transport Strategy (the SESTS) Sydney Airport Master Plan 2036 Bayside Local Strategic Planning Statement (LSPS) Section 9.1 Ministerial Directions State Environmental Planning Policy (SEPP) – Eastern Harbour City (2021) SEPP – Biodiversity and Conservation (2021) SEPP – Industry and Employment (2021) SEPP – Transport and Infrastructure (2021) SEPP – Resilience and Hazards (2021)

The planning proposal (**Attachment A**) seeks to amend the Bayside LEP 2021 as per the changes in **Table 2** below.

Table 3 – Current and proposed controls

Control	Current – EHC SEPP – Chapter 6 Cooks Cove	Exhibited Planning Proposal – Bayside LEP 2021	Post-Exhibition Proponent Proposed – Bayside LEP 2021
Zone	<p>Special Uses</p> <p>Trade and Technology</p> <p>Open Space</p>	<p>SP2 Infrastructure</p> <p>SP4 Enterprise*</p> <p>RE1 Public Recreation (Pemulwuy Park and Public walk and cycle path adjacent cooks Cove)</p> <p><i>*The SP4 Zone is a new addition to the Bayside LEP 2021. Land uses including hotels and motels, serviced apartments, food and drink premises, and shops are also proposed as permitted uses within the SP4 Enterprise zone.</i></p>	<p>SP2 Infrastructure</p> <p>SP4 Enterprise</p> <p>RE1 Public Recreation (Pemulwuy Park)</p> <p>RE2 Private Recreation (Northern part of cycleway and public path along Cooks River)</p> <p>C2 Environmental Conservation* (Southern portion of walking and cycling track along Cooks River and in locations where GGBF ponds)</p> <p><i>*The C2 Environmental Conservation Zone is a new addition to the Bayside LEP 2021. Land uses including</i></p>

Control	Current – EHC SEPP – Chapter 6 Cooks Cove	Exhibited Planning Proposal – Bayside LEP 2021	Post-Exhibition Proponent Proposed – Bayside LEP 2021
			<i>environmental facilities, environmental protection works, flood mitigation works, information and education facilities are also proposed as permitted uses within the Zone.</i>
Maximum height of the building	<p>(3) A building within the Cooks Cove site must not exceed 6 storeys.</p> <p>(4) However –</p> <p>(a) A building within 120m of the Cooks River must not exceed 5 storeys, and</p> <p>(b) Subject to paragraph (a), one building on land within the Trade and Technology Zone that is situated no closer than 10m from the zone boundary may have a height that does not exceed 11 storeys.</p>	<p>Maximum height of either:</p> <ul style="list-style-type: none"> • RL24m (Block 1) • RL51m graduating down to RL40 (Blocks 2 and 3) 	Same as exhibited
Floor space ratio	<p>GFA caps including:</p> <ul style="list-style-type: none"> • 270,000m² total GFA; • 5,000 m² for commercial support premises, shops and restaurants; • 15,000 m² for hotels or serviced apartments; and • 5,000 m² for serviced offices. 	<ul style="list-style-type: none"> • Maximum FSR of 1.25:1 (Block 1) (equating to 3,250m²) • GFA caps (Blocks 2 and 3/Area 16): <ul style="list-style-type: none"> ○ A maximum 20,000m² GFA for 'office premises'; ○ A maximum 20,000m² GFA for 'hotel or motel accommodation' and 'serviced apartments'; and ○ A maximum 10,000m² GFA for 'shops' and 'food 	Same as exhibited

Control	Current – EHC SEPP – Chapter 6 Cooks Cove	Exhibited Planning Proposal – Bayside LEP 2021	Post-Exhibition Proponent Proposed – Bayside LEP 2021
		and drink premises.'	
Additional Permitted Uses	Recreation Facility on land identified as 'Area 1'	<ul style="list-style-type: none"> Block 1 – 'Advertising structures'; and Blocks 2 and 3 – 'Trade-related enterprises.' 	<ul style="list-style-type: none"> Block 1 – 'Advertising structures'; and Blocks 2 and 3 – 'Trade-related enterprises.' Use of certain land at 19A Marsh St to permit 'trade related enterprises; warehouse or distribution centres; and roads, but only where in conjunction with Sydney Airport.
Dictionary	N/A	"Trade related enterprises": <i>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>	Same as exhibited
Reclassify land	Part operational and part community	Reclassify community land at (Lot 1 in DP 108492 and Lot 14 in DP 213314).to Operational Land.	Same as exhibited
Design Excellence (Clause 6.10 of LEP)	N/A	N/A	Clause is applicable to portion of the site

Control	Current – EHC SEPP – Chapter 6 Cooks Cove	Exhibited Planning Proposal – Bayside LEP 2021	Post-Exhibition Proponent Proposed – Bayside LEP 2021
			identified as ‘Cooks Cove Precinct’.

The proposal discussed in this report was submitted by the Proponent on 20 September 2023 and further updated in December 2023. It is noted that further changes to the proposal may take place prior to submitting the planning proposal to the LPMA for finalisation, subject to the recommendation of Panel as PPA.

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved.

1.3 Mapping

The below maps show the current EHCSEPP planning controls on the left, and the post-exhibition proponent proposed controls on the right. The proposal, as amended by the proponent post-exhibition, includes the following maps:

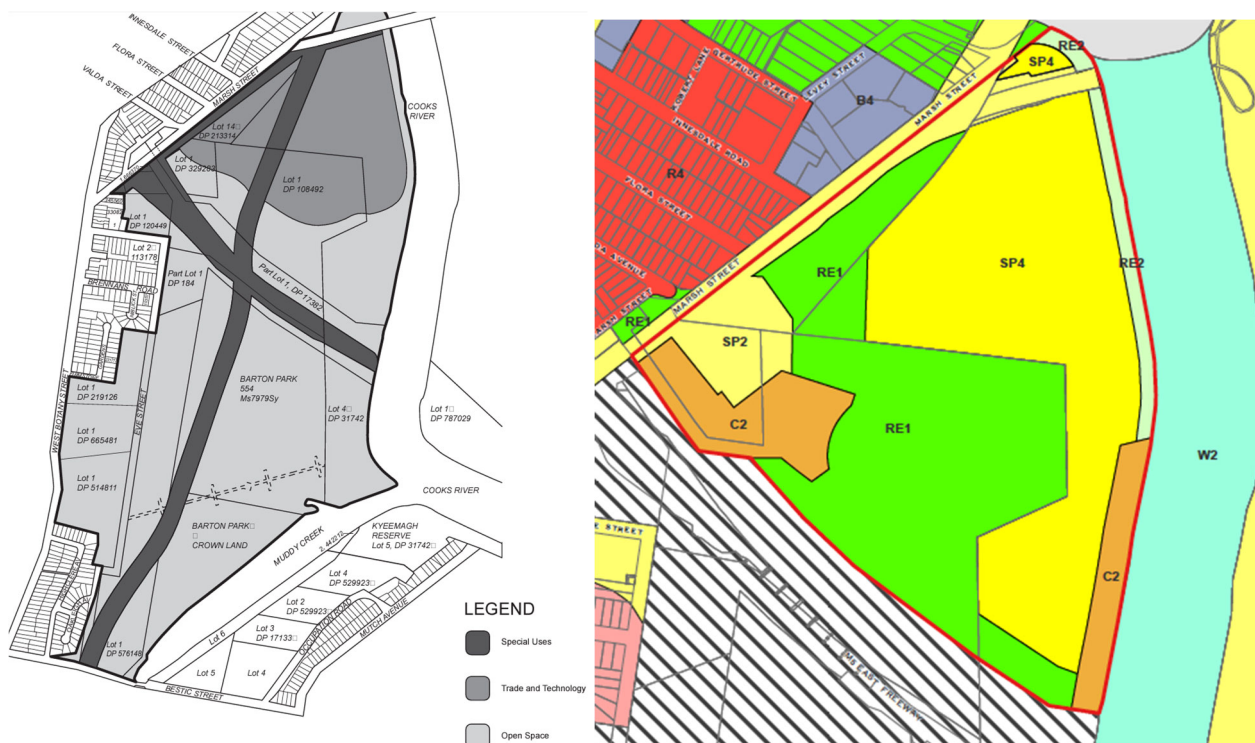


Figure 3. Existing zoning on the left (source: EHC SEPP, Chapter 6 Cooks Cove) and proponent proposed zoning (right) (March 2024)

DPHI's zoning recommendation is to retain the C2 the full length of the site's interface with Cooks River as per the figure below. This is to ensure that the intended conservation use of the land occurs the full length of the Cooks River, consistent with the requests from Council and the NSW Department of Climate Change, Energy and the Environment (DCCEEW). The use of the C2 zone the full length will ensure enable the protection and enhancement of the riparian corridor and its ongoing use for walking, cycling, environmental protection and passive recreation.

Additionally, the RE2 zone in the Bayside LEP 2021 permits uses including entertainment facilities, information and education facilities, kiosks, places of public workshop, recreation facilities (indoor, and major) registered clubs and respite day centres, which are not appropriate for the subject land.

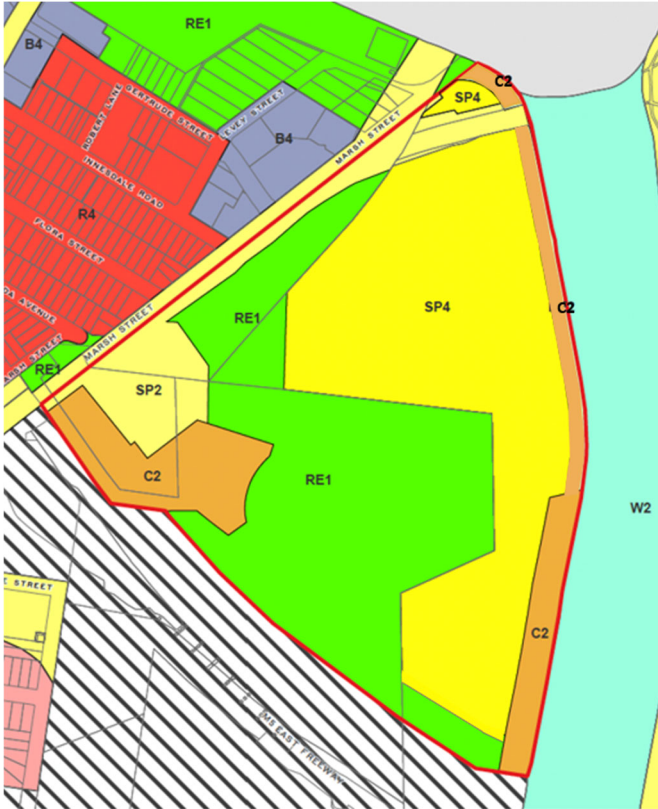


Figure 4: Proposed Agile Planning recommended land use zoning for site (March 2024)



Figure 5: Existing additional permitted uses (left) (source: EHC SEPP, Chapter 6 Cooks Cove) and Agile Planning recommended APU mapping (right) (March 2023)

It is noted the additional 'area 38' at the top north point of the site will still permit 'roads' as an additional permitted use in the area zoned C2. This has been done as the existing road utilises as small part of the proposed C2 zoned land and needs to be retained.

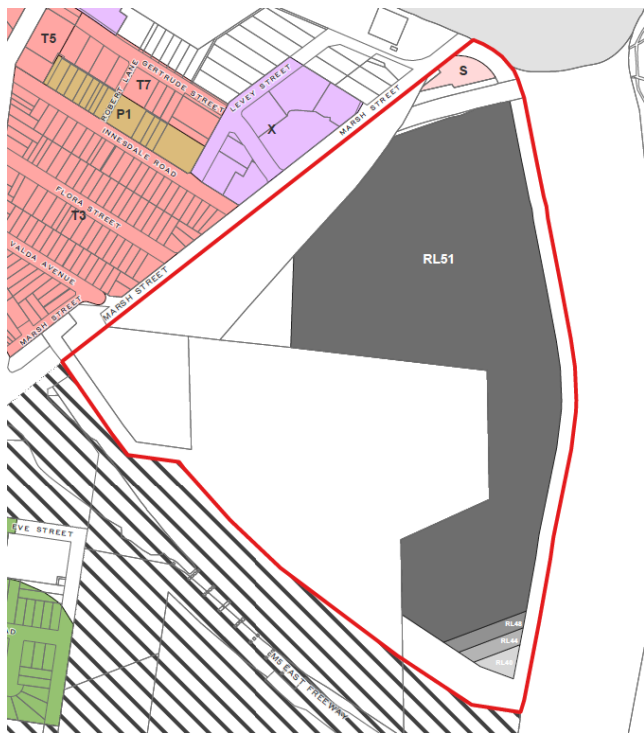
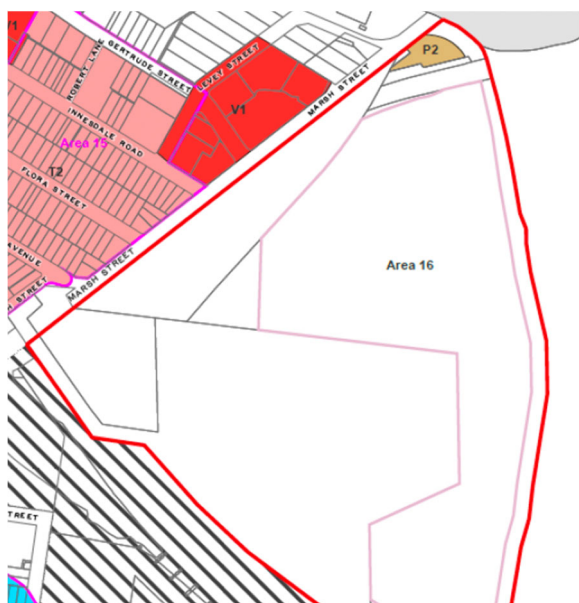


Figure 6: Proposed height of building map (No changes since exhibition and no prior map) (source: Planning Proposal, September 2023)



- (6) The consent authority must not grant consent to development on land identified as Area 16 on the Floor Space Ratio Map unless it is satisfied the development does not exceed:
- (a) a total of 340,000sqm GFA,
 - (b) 20,000sqm GFA of office premises,
 - (c) 20,000sqm GFA of hotel or motel accommodation, and
 - (d) 10,000sqm GFA of shops and food and drink premises.

Figure 7: Proposed Floor Space Ratio Map (No changes since exhibition and no prior map) (source: Planning Proposal, September 2023)

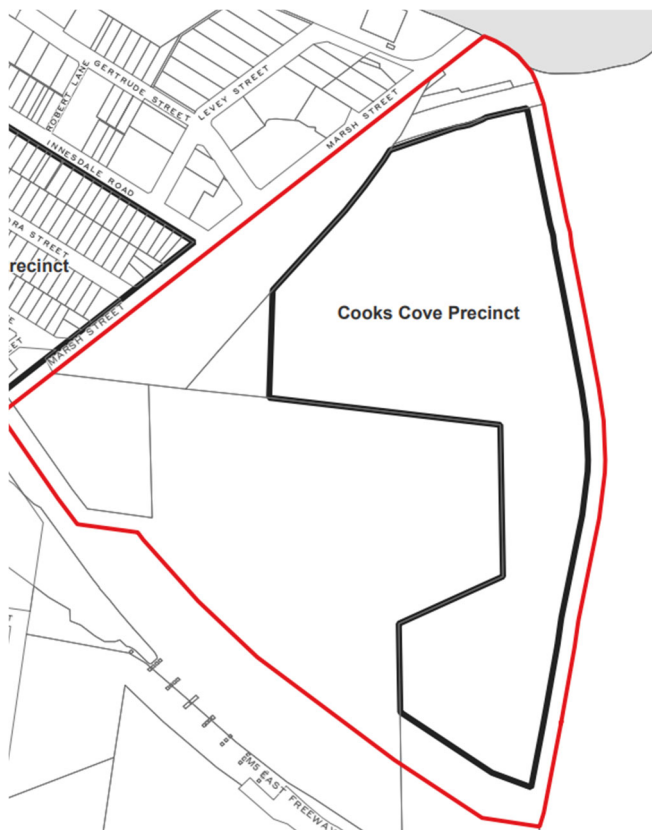


Figure 8: Proposed Design Excellence Map (post-exhibition change) (source: Planning Proposal, September 2023)

Agile Planning is also recommending extending the application of Design Excellence (Clause 6.10 in the Bayside LEP 2021) to include the smaller portion of land to the north of Marsh Street. This land is proposed to have a building height of 24 metres, and the application of the Clause would only require consideration of a future development application by a Design Review Panel. No competition would be required.

Maps have also been prepared to include consideration of the site within a number of other relevant Clauses in the Bayside LEP 2021, including:

- Acid Sulfate Soils (Class 3);
- Flood Planning Area Map;
- Heritage Map; and
- Terrestrial Biodiversity Map.

1.4 Appointment of Alternate Planning Proposal Authority

Following the receipt of an updated planning proposal in March 2020, Bayside Council advised the Department that its role as Trustee over a portion of land included in the planning proposal prevented it from performing the role of the Planning Proposal Authority (PPA) in November 2020.

The Deputy Secretary of the Department (under delegation of the Minister) nominated the Sydney Eastern Planning Panel as an alternate PPA in February 2021.

1.5 Gateway determination

The Gateway determination issued on 5 August 2022 (**Attachment C1**) determined that the 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.*

The Gateway determination was altered on 12/04/2023 (**Attachment C2**) to ensure the amended proposal that went on exhibition, and is the subject of this report, was consistent with the conditions of the Gateway determination. Alterations included:

- Amendment to the explanation to include a more detailed description of the proposal

- Amendment of condition 1(i)(i) refer to SP4 Enterprise and amend the description of associated land uses to remove retail and but include food and drink premises, shops, and motels as land uses.
- Removal conditions 1(j)(ii), (iii) and 1(k) that referred to 'retail uses', 'tourist and visitor accommodation' and 'industrial training facilities'
- Removed the requirement in condition 4 for the exhibition to commence within 8 months; and
- Amendment to condition 6 to specifically refer to the Sydney East Planning Panel

The Gateway determination (as altered) identifies that the proposal is to be finalised before 5 May 2024.

All conditions of the Gateway determination (as altered) have been met (see **Attachment D**).

2 Submissions

On 31 March 2023 the Panel authorised the exhibition of the planning proposal (**Attachment E**).

In accordance with the Gateway determination, the planning proposal and supporting material were publicly exhibited on the NSW Planning Portal for 32 working days, from 24 April 2023 to 6 June 2023.

2.1 Submissions

There were 145 submissions received in response to the proposal, from both individuals and organisations, including Bicycle NSW, Cooks River Valley Association (CRVA), and Peaceful Bayside Action Group.

Of the individual submissions, 122 objected to the proposal (84%), 4 supported the proposal (3%) and 19 provided comments or raised concerns (13%).

The submissions are provided in full at **Attachment F1**. The Proponent's response to community submissions is provided as **Attachment F2**. A table outlining Agile planning's response to community submissions is provided as **Attachment F3**.

2.1.1 Community submissions

4 submissions were received from individuals from the community, supporting the proposal during exhibition. Reasons for support included:

- The new cycleway along the Cooks River, with suggestions for further new paths,
- The creation of new jobs, and;
- Accessible parkland and walkways for all residents.

122 submissions either objected or raised concerns regarding the proposal. Key reasons included:

- Biodiversity concerns including preservation of habitat for threatened species and reduction of green space,
- Flooding and rise in sea level,
- Warehouses blocking views for residents,
- Traffic and congestion due to intensification of development, and;
- Lack of recreation/open spaces for public use.

Suggestions were also provided with regards to the cycleways, with requests for new links to cycleways located north of the site at Cahill Park, and south at Muddy Creek.

2.1.2 Submissions from Agencies

In accordance with the Gateway Determination, the following agencies were consulted during exhibition:

- Greater Cities Commission (GCC)
- Sydney Airport Corporation
- Heritage NSW
- State Emergency Service (SES)
- Environment Protection Authority (EPA)
- Civil Aviation Safety Authority (CASA)
- Dept. Climate Change, Energy, the Environment and Water (DCCEEW)
- Sydney Water
- Dept. Infrastructure, Regional Development and Cities (DITRDCA)
- APA Group
- NSW Ports
- NBN Co.
- Air Services Australia
- Ausgrid
- DPE Water (National Resource Access Regulators)
- Sydney Desalination Plant (SDP)
- Jemena
- DPE – Environment and Heritage Group (EHG)
- Transport for NSW (TfNSW)
- Department of Primary Industries (Fisheries)

19 agency submissions were received and are provided in full at **Attachment G1**.

2.1.3 Submission from Council

A submission was received from Bayside Council, the submission is provided in full at **Attachment G2**. Council's submission raised multiple concerns with the proposal including:

- Council does not support the zoning of land adjacent the Cooks River as RE1 as Council does not accept responsibility to own and manage the land. Council initially recommended the land be zoned RE2 with rights of way and easements to protect public access. The conversion to C2 with the same easements and rights of way was also supported by Council.
- Implications of amended flood path and overland flow through future Pemulwuy Park and damage to the park on a regular basis as a consequence of most overland flow from flood events going through the park, rather than being shared with Cooks Cove Inlet. Additional flood modelling was also requested to ensure consistency with the Section 9.1 Direction for flooding.

- Council supports the introduction of the SP4 Enterprise zone to replace the prior B7 Business Park zone.
- A number of parking and traffic issues related to the treatment of Gertrude Street and Flora Street and approach to future parking rates to be included in Bayside DCP.
- Treatments should be made to designs to maximise activation and design excellence in delivery.
- Further resolution is required with TfNSW and the State Government to ensure that the design of Pemulwuy Park achieves the needs of existing and future users.
- Council requires further evidence to demonstrate the protection of vulnerable flora and fauna, including the GGBF and Fig trees. A clear tree replacement strategy should be provided to respond to loss of Fig Trees. A 40 metre riparian zone should also be retained along the Cooks River frontage.
- Council does not support signage to be permitted as an 'additional permitted use' and does not think that 'trade related enterprises' should be an additional permitted use as the types of uses within the definition can be found in other permitted uses in the SP4 Enterprise zone.

The Proponent's response to agency and Council submissions is provided as **Attachment G3**. A table outlining Agile planning's response to agency and Council submissions is provided as **Attachment G4**.

2.1.4 Representation from Parliamentary Members

To the team's knowledge, neither MP has made any written representations regarding the proposal.

There have been no meetings or communications with registered lobbyists with respect to this proposal.

2.2 Public Hearing

A public hearing for the land reclassification, associated with the Planning Proposal, occurred on 30 June 2023, hosted by an independent chair (Christopher Shaw, of Shaw Reynolds Lawyers) on behalf of the Sydney Eastern Planning Panel.

The public hearing was a forum to consider the classification and for the attendees (including the public) to express their views and concerns regarding the proposal. 11 verbal submissions were heard, 4 of which were accompanied by written submissions. Objectors expressed concern with the reclassification due to it progressing the overall proposal. In 2 cases, submissions on behalf of a corporation or entity supported the reclassification of land.

A report was prepared by the Chairperson (23 August, 2023) (**Attachment J**) which recommended that the reclassification proceed.

2.3 Key Issues from submissions

In summary, the concerns raised in the community and agency submissions include:

- Environment and Biodiversity
- Flooding
- Overland flow and public land
- Traffic and Transport

- Built Form and Land Use

Issue No.1 – Environment and Biodiversity

Community submissions

- More space should be provided with habitat for threatened species such as Green and Golden Bell Frog and birds.
- The proposal provides an opportunity to restore coastal mangrove habitat, naturalising the riverbank and providing connectivity to wetlands.
- Concerns that warehouses are not setback far enough from the river, particularly 3B and 3C.
- Proposed 20m zone along the foreshore is inadequate, and should be wider.
- Comments suggesting that mangroves, saltmarsh and riparian native vegetation would all add to a more liveable urban environment.
- Clarification regarding how statutory requirements for Coastal Management (under the Coastal Management Act 2016 and Resilience and Hazards SEPP 2021) have been met.
- Loss of trees, alongside more concrete structures and climate change will lead to heat island effect. Sydney Airport already a big heat sink.
- More green spaces would help combat heat island.
- The proposal will increase levels of pollution, including air, water and waste.

Council submission

- The Planning Proposal has not adequately considered retention of existing significant vegetation or provision of landscaping to offset loss to be consistent with Regional and District Plans or the Bayside LSPS.
- The protection of the Green and Golden Bell Frog is a key concern.
- Concerns with the amount of tree loss and detrimental impact of relocating trees, and requests for native trees to be planted.
- The Planning Proposal should align with the current Cooks River Catchment Coastal Management Program, which brings together stakeholders from across the catchment to develop a long-term strategy with actions to improve the health of the Cooks River.

DCCEE/DPI Fisheries/TfNSW submissions

- DCCEE does not support the proposal proceeding to finalisation based on environment and biodiversity concerns.
- Revised ecological advice is needed to justify how the proposal will mitigate the impacts for threatened species such as Green and Golden Bell Frog (GGBF), irrespective of the existing actions required under conditions of approval for the new M5 (now called M8) and M6 Stage 1.
- Further, the proposal should be revised to demonstrate how it allows for enough resources, including space, to enable the approval conditions of the M8 and M6 Stage 1 to be fulfilled, and to enable the provision of a range of GGBF habitats to mitigate impacts.
- Controls currently within SEPP (EHC) related to biodiversity and ecology for the site should be moved across to Bayside LEP 2021.

- The ecological and habitat implications for GGBF require resolution within the draft DCP and final Urban Design and Landscape Plan (UDLP) associated with the future Pemulwuy Park design, through collaboration with Council and TfNSW,
- The bulk and scale of blocks 3b and 3c, as well as further overshadowing analysis, need to be provided to demonstrate consistency with the Coastal Management Guidelines,
- Block 3b will be a minimum of 27m from the mean high-water mark, which is generally narrower than the required 40m under the 'Guidelines for riparian corridors on waterfront land', and;
- Community submissions express a desire for more sustainable green spaces, including concerns that the warehouses will degrade the existing green space and encroach on the outer 50% of the vegetated riparian zone.

Proponent Response:

- A connected tree canopy along the length of the foreshore provides habitat and fauna connections. Habitat creation will consider the requirements of adjacent aeronautical sensitivities as defined by the National Airports Safety Framework (NASF).
- The updated Flora and Fauna Assessment (FFA) considers in full detail, all matters relevant to the GGBF habitat and proposed mitigation and habitat augmentation matters. The exact specifications of the habitat creation will be developed in the DA stage, with the location to be set out in a revised Local VPA letter of offer.
- In response to submissions, it is proposed to widen the 20m riparian zone within the southern section of the site to 40m and will be achieved through the newly introduced C2 Environmental Conservation zone. The foreshore length has been divided into key zones including semi aquatic and aquatic planting zones.
- A larger extent of the site has been zoned for Trade and Technology purposes for nearly two decades. The proposal refines the development zone to a smaller extent, which has allowed for a greater retention of vegetation across the whole of the Planning Proposal site. This includes significant Moreton Bay Figs in the north and Paper Barks in the south.
- The draft site-specific DCP requires a detailed vegetation management strategy (refer Appendix K). Notwithstanding, the proponent is committed to be consistent with the vegetation requirements of the existing Bayside DCP Section 3.8.2.

Agile Planning Response

A number of updates have been made to the proposal to address environmental and biodiversity concerns.

The proposal has been updated to widen the southern portion of the foreshore from 20m to 40m and apply the C2 Environmental Conservation zone along the southern length of the foreshore. CCI have also submitted supporting information from Cumberland Ecology (December 2023) (**Attachment A19**) that the proposed foreshore treatment will result in a variety of improvements, including improved bank stability, reduced erosion, increased native vegetation and biodiversity and will provide riparian and terrestrial habitats.

Additional areas of C2 Environmental Conservation zoning to the west of the site have been proposed following exhibition. This area is to ensure the ongoing protection of Green and Golden Bell Frog breeding ponds.

The proposal also includes draft DCP controls, which will be further progressed and finalised with Bayside Council. Draft controls include requirements for:

- the preparation of plans of management, including a Green and Golden Bell Frog Management Plan; Biodiversity Management Plan; Rehabilitation Strategy and Landscape Management Plan.

Supporting Information has also been provided by the proponent (Cumberland Ecology) (**Attachment A19**) to demonstrate the proposal's high level of consistency with relevant guidelines, including both the Coastal Management Guidelines and Guidelines for Riparian corridors on waterfront land.

While some overshadowing impacts to the foreshore remain, and the setback in some parts remains at 27m, the following considerations are noted:

- maximum overshadowing impacts will occur in the afternoon at midwinter;
- the impacts of overshadowing on riparian biodiversity are unclear, and advice supporting the proposal considers that there is evidence from a similar context in Sydney to demonstrate that impacts will be minimal;
- The areas of significant offsetting for a riparian corridor over 40 metres along the southern portion are able to compensate or 'average' with the more urban northern interface that reduces to 27m at some points; and
- Appropriate management plans can be developed to manage any degradation of the foreshore.

Appropriate compensatory measures are also proposed to mitigate the impacts of the proposal including payment into the Biodiversity Offsets Scheme.

The Agile Planning Team is generally satisfied that the proposal has adequately considered and addressed the impacts of pollution, with further measures to be implemented at later stages of design and development. However, Agile Planning is recommending a single further modification to the zoning map so that the C2 Conservation zone be applied the full length of the Cooks River, not just the south. This will ensure that the same level of conservation protection applies the full length of the river interface, and will reduce the number of zones on site.

Agile Planning also raises no objection to the transfer of the following Clauses in SEPP (EHC) across to the Bayside LEP 2021 as they apply to the site, and will recommend this to the LPMA subject to Panel endorsement:

- Clause 6.16 Environmental Management – management plans
- Clause 6.17 Environmental Management – special requirements

It is noted that the proponent response, and Agile Planning recommendations generally resolved the agency concerns. However, DCCEEW still retained their objection to the proposal based on environment and biodiversity concerns.

Issue No.2 – Flooding (Pemulwuy Park overland flow addressed separately)

Community submissions

- Concerns that the site is already flood prone.
- Concerns about the impact of climate change and sea level rise (SLR) on the proposal.
- Concern about future impact of flooding from the proposal on Levey Street, Gertrude Street, and Rockwell Avenue.

Council submission

- The Planning Proposal fails to meet Ministerial Direction 4.3 – Flood Prone Land and *Planning Priority E20 – Adapting to the impacts of urban and natural hazards and climate change* of the *Eastern City District Plan*, which seeks to avoid locating new urban development in areas exposed to natural and urban hazards.
- Additional assessment of tidal flooding and Sea Level Rise (SLR) Vulnerability Assessment must be undertaken to confirm potential impacts.
- Option 4 of the flood mitigation options is considered technically adequate.
- Emergency vehicle access must be available in the 1% AEP flood event and the Flora Street extension must be designed to avoid floodwaters in a 1% AEP flood event to ensure emergency vehicles access. A flood warning system should also be considered.
- Sufficient riparian zones must be provided along any proposed waterway, with access for maintenance vehicles.

Use of infiltration system nodes in the MUSIC model is problematic and should be replaced with raingardens or bioswale, and a water balance model should be provided to determine the rainwater tank volume with 80% reuse across the site to be implemented.

- The above requirements must be reflected in the draft DCP controls.

SES/DCCEEW/TfNSW submissions

- FIRA flood models may not be adequate to assess flood risk for the site. The FIRA provided is to be updated and assessed against all of the 2023 Flood Risk Management Guideline requirements, as well as the Flood Risk Management Manual 2023.
- FIRA must provide flood behaviour maps for the 5%, 1%, 0.2% 0.5% and PMF. It must also be updated to provide sufficient details relating the flood hazard maps, hydraulic categorisation and duration of inundation/ isolation of the proposed lots as well as the duration of key access routes for events up to the PMF, as Planning for PMF is of particular importance for SES.
- Appropriate Clauses currently sitting within SEPP EHC as the relate to flooding should be moved to Bayside LEP 2021.
- Shelter in Place (SIP) is not supported by SES or DCCEEW as a flood mitigation measure for the subject site due to its isolation in a High Flood Island, with high risk to life during flood events.
- SLR should be tested at both Council policy requirements (0.9m) as well as 1.3m and 2.4m, along with what the impacts of rainfall at these scenarios.
- TfNSW primary flood concerns related to the future Pemulwuy Park and its current land holdings. First, that future long term assets are not to be affected by flood. Second, that flood management design would not create impacts on the design of Pemulwuy Park that would affect TfNSW asset delivery and budget.

Proponent Response:

- Comprehensive updates were made to the flood modelling and the FIRA in both September and December 2023 (**Appendix A13**) providing significant additional detail demonstrating the flood impact mitigation measures to comply with all necessary requirements and results in an acceptable offsite flood afflux.
- Revised FIRA has specifically addressed Sea Level Rise in analysis scenarios which demonstrates an acceptable outcome based on further input and guidance from NSW SES

and DCCEEW. Although DCCEEW requested that SLR be measured at a higher levels than Council's own policy level of 0.9m, it was agreed that Council's 0.9m requirement was the obligation, not any greater number.

- The proponent made key changes to its flood management controls throughout August to December 2023, including:
 - Re-design of the evacuation methods and associated changes to Flora Street (including a new underground 30m culvert) means that evacuation for light vehicles (H1 Hazard) will be available up to the 0.2% (1:500 AEP). At a 1:2000 AEP flood, H2 Hazard (light vehicles) should be able to utilise Marsh and Flora (except for short durations up to 35 minutes at a time), with emergency vehicles able to utilise both intersections.
 - Shelter in Place will only be necessary for small periods of time (up to 6 hours) for floods worse than 0.2% AEP, with facilities such as power able to be retained safely in retail and food outlets.
 - Further changes in December included the provision of a flood 'undercroft' under building 3C to better equalise the impact of overland flow between future Pemulwuy Park and private landholders (see discussion below).
- A detailed Sea Level Rise Vulnerability Assessment is recommended as a site-specific DCP provision, which will be completed with consideration to the detailed design of the local stormwater network at the DA stage.
- Refer to the FIRA (**Attachment A04**) which addresses the concerns regarding flood models,
- The Planning Proposal meets all of the requirements of the draft Shelter-in-place Guideline (2023). Refer to the comprehensive FIRA prepared by ARUP which responds to this matter, and;
- The full range of flooding events are now considered, 1:100, 1:200, 1:500, 1:2000 and PMF. Concurrent critical storm durations are also considered in terms of relative impacts.

Agile Planning Response

The subject site is located adjacent to the Cooks River and is on a floodplain. It is currently impacted by flooding at the 1% AEP (Annual Exceedance Probability) and Probable Maximum Flood (PMF).

The exhibited proposal was supported with a Flooding, Stormwater and WSUD report (Arup 16 March, 2023).

Following exhibition and in response to issues raised by agencies and the community, a Flood Risk Impact Assessment (FIRA) was prepared (Arup, September 2023) (**Attachment A04**). The FIRA was prepared with consideration to the Department of Planning and Environment's *Flood Risk Management Manual* and *Flood Impact and Risk Assessment: Flood Risk Management Guide* (June 2023) and modelled flood behaviour for a range of flood events including 5%, 1%, 0.2%, and 0.5% Annual Exceedance Probabilities (AEP) and the Probable Maximum Flood (PMF).

In addition to the FIRA, additional information provided by the proponent has confirmed that:

- the proposal will not increase external flood levels in events up to and including the 0.2% AEP (1 in 500-year), and that even in a 1:2000 AEP event, both light and emergency vehicles could access the site (albeit managed) and that shelter in place would be short (6 hours or less) consistent with the Department's draft policy.

- Sea Level Rise has been appropriately considered and can be addressed in detail with DCP provisions.
- the proposal meets the requirements of Ministerial 9.1 Direction 4.1 Flooding and will not result in any adverse impacts to properties external to the site – subject to resolution of overland flow paths in the future Pemulwuy Park (see discussion below).

The Agile Planning Team is satisfied with the response to submissions and that community and agency concerns have been adequately addressed.

However, subject to Panel consideration, Agile Planning would support the LPMA transferring Clause 6.18 (Development of flood prone land) from the current SEPP EHC to the Bayside LEP 2021.

It is noted that after the changes made to the flood analysis and design in September and December 2023, SES no longer formally objected to the proposal, However, DCCEEW still formally objects.

Issue No 3 – Overland Flow and Public Land (Pemulwuy Park and TfNSW Operations Centre)

Community submissions

N/A

Council submission

- The proposed flood mitigation strategy burdens adjoining public land by diverting overland flow onto it. This will result in a reduction in value to the community by limiting functionality and potential public uses of public land and a better compromise would be to direct the overland flow to the foreshore between Block 3B and Block 3C.

TfNSW submission

- The proposed flood mitigation strategy diverts overland flow around the development site, resulting in a reduction in value to the community by limiting functionality and potential public uses of public land. Recommended to direct the overland flow to the foreshore between Block 3B and Block 3C, rather than it following a longer route through public open space to the south of Block 3C.
- TfNSW state that modifications to the M6 landform proposed by Cooks Cove Option 4 reinstates water flow to the area that it occurred at prior to the M6 construction, reinstating the original baseline water levels that the M6 project sought to reduce.
- No detailed figures of the required modifications to the M6 sports fields, frog pond area, general park area, or the associated cut volumes required to implement the preferred Option 4 have been provided.
- Appropriate measures and mechanisms need to be outlined for how the final Pemulwuy Park Design will respond to requirements relevant to the Section 9.1 Directions for flooding, conservation, and coastal management.

Proponent Response

- The proposal will result in a comparable amount of floodwater flowing across the collective Council Trust lands, compared to the present situation. This is because the water overtops the Cooks River at Cahill Park, flows through the site and re-enters the Cooks River south of the site. The Proposal includes the shaping of Pemulwuy Park that will improve the overall flood impact that has been adversely augmented by the Arncliffe MOC. The

potential flow path through between Buildings 3B and 3C was considered by Arup, however, it is not technically possible. Refer to the detailed flood modelling provided in the Flood Impact Risk Assessment (Appendix E) and Section 4.1 of the Response to Submissions Report.

- The final design over the necessary overland flow path is capable of being resolved at the detailed design phase. CCI maintains their agreement to reduce impact to the UDLP works as far as practical. Appropriate offset is documented in the Local VPA letter of offer.
- The revised Local VPA letter of offer addresses the proposed embellishment and dedication of the two parcels of land which provide for a suitable overland flow path and superior connectivity between Pemulwuy Park and public accessibility to the foreshore.

Agile Planning Response

Following the receipt of the FIRA in September 2023, both TfNSW (30 October, 2023) and Bayside Council (3 November, 2023) (**Attachment I**) reiterated their concerns with the resultant overland flow path that would take flood waters over Pemulwuy Park.

To resolve these concerns, Agile Planning facilitated a workshop with the proponent, TfNSW and Bayside Council on 27 November 2023 to discuss available options to minimise overland flow across the park and resolve this outstanding concern.

Representatives from Arup (consultants for the proponent) outlined a range of potential scenarios that could better share overland flow between CCI land and Pemulwuy Park, with delivery of a flood storage 'under croft' under building 3C representing the most viable solution that could assist all.

Both Bayside Council and TfNSW confirmed that the option had potential to resolve the overland flow issues. Additional work will be required to prepare and finalise appropriate DCP controls and other design related considerations at subsequent planning stages, including development applications and land owners consent.

The Agile Planning Team is satisfied that the proponent has adequately addressed concerns regarding overland flow and that appropriate provisions are available to ensure the proposal will not over burden Pemulwuy Park with flooding impacts once built.

Issue No.4 – Traffic and Transport

Community submissions

- Concerns that intensified development of warehouses and logistics buildings will lead to an increase in traffic and congestion from trucks and heavy vehicles, in particular onto Gertrude Street and worsen existing conditions.
- The extension of Levey Street/Rockwell Avenue to allow access result in busy thoroughfares that are unsafe for pedestrians/residents and exacerbate traffic issues.
- Traffic will lead to other negative effects such as pollution, safety concerns, and decreased liveability.
- Area between Marsh Street and Princes Highway already at peak capacity.
- Broader road and public transport upgrades required to facilitate anticipated traffic increases.
- Request to provide a 2-storey green car park to alleviate clogged parking.
- Existing street parking is limited and used by Uber drivers, trades people, park visitors and tennis court users. The proposal needs to account for the additional parking required.

- Request to reduce car parking spaces to discourage private car use and instead provide bicycle parking.

Council submission

- Updates are required to proposed parking rates in the DCP.
- Concern with the significant loss of approximately 70 on-street parking spaces on Gertrude Street and Levey Street which will intensify existing parking pressure, and result in an unacceptable impact on residents and businesses around Cahill Park.
- The impact on the safety and amenity of residential properties on Gertrude Street and the users of popular Cahill Park also needs to be considered to determine if the street is suitable for AVs.
- The traffic generation assessment should be revised to analyse traffic generation from the high-density residential area surrounding the T4 railway line, Wickham Street, West Botany Street, Marsh Street and Innesdale Road assuming the entire area has been built to the maximum potential permitted by the Bayside LEP 2021.
- The traffic report indicates that \$1.5 million is proposed to be contributed towards the upgrade of the Forest Road and Eden Street intersection. Note that the State Significant Land and Housing Corporation development site in Eden Street is already conditioned to construct this upgrade.

TfNSW submission

- Concerns that intensified development of warehouses and logistics buildings will lead to an increase in traffic from heavy vehicles, in particular onto Gertrude Street.
- Area between Marsh Street and Princes Highway already at peak capacity.
- Council state traffic generation assessment should be revised to analyse traffic generation from the high-density residential area.
- Indicative CCI masterplan design is in direct conflict with the current M6 Stage 1 Urban design elements.
- TfNSW also continues to raise concerns with the proposed reclassification of the Trust lands occurring prior to the transfer of land essential to the M6 and M8 projects to TfNSW at no cost.

Proponent Response:

- Detailed consultation with TfNSW and Bayside Council, and traffic modelling, has been undertaken regarding traffic flows through Gertrude Street and Levey Street, which has confirmed that the surrounding road network has sufficient capacity to accommodate the proposal. This is confirmed by TfNSW at (**Appendix A01**).
- The proposal also seeks to implement a long-standing Council-led infrastructure enhancement including widening of Gertrude Street.
- Detailed traffic model using a refined VISSM existing and future year model has been accepted by TfNSW on 4/9/23.
- Council has been formally requested to be party to the Stage VPA to facilitate completion of the M6 Stage 1 and M8 final works associated with the Arncliffe MOC, and supported this VPA at its meeting in February 2024.
- All traffic circulation proposed by CCI will be designed in consultation with TfNSW and its concessionaire in a manner that does not impact access to, or operation of, the M8 or M6.

Agile Planning Response

Prior to public exhibition, the proponent worked closely with TfNSW on the preparation of a Traffic Impact Assessment (TIA) and exhibited an endorsed TIA (JMT Consulting, 2 March 2023) (**Attachment A06**). Additional information was provided TfNSW for consideration on 29 May 2023 (during the exhibition period).

On 4 September 2023, TfNSW provided comments to confirm it was satisfied with the traffic modelling for the purposes of a planning proposal, and outlined further considerations to be taken into account at the DA stage. A post-exhibition response from Bayside Council (3 November 2023) (**Attachment I**) also indicated that traffic concerns raised during exhibition had been largely resolved.

Additionally, the proponent is seeking to enter into State and local VPA that will deliver a wide range of upgrades in the Bayside area to roads and road infrastructure. SPA Letters of offer to TfNSW were exhibited with the planning proposal.

Council has also accepted the parking rates requested by TfNSW to manage traffic impacts and these agreed rates will be provided in the DCP. The Agile Planning Team considers that appropriate modelling and assessment of traffic impacts has been undertaken, noting that additional work will be completed during the detailed design phase.

Council endorsed both the local VPA and its role in the State VPA at its meeting in February 2024. It is understood that the inclusion of Council in the State VPA may no longer be necessary due to further negotiations between TfNSW and Council. However, to ensure resolution of the transfer of Trust lands, Agile Planning recommends that the LEP amendments not be made until either the State VPA is executed or a separate agreement reached between TfNSW and Council.

Issue No.5 – Built Form and Land Use

Community submissions

- Warehouse development will be visually dominant and unappealing and impede on views from public recreation and residential areas.
- Concern regarding the Logistic Hubs lighting impact on the surrounding residential areas, with particular emphasis on Marsh Street west and adjacent apartment blocks.
- The scale of the warehouses are too tall, too big and out of place with the area, including surrounding residential neighbourhood. The proposal will not integrate with surrounding local character and result in overshadowing impacts.
- The proposed height control also poses a safety risk for planes arriving and departing from Sydney Airport.
- Lack of justification for warehousing/ logistics but support for more retail uses.

Council submission

- The site's location is visually prominent and will impact Sydney Airport.
- Detailed consideration is required to ensure visual interest, activation of the public domain, fine gran articulation and landscaping, especially when interfacing parks and foreshore public domain.
- The scale of the proposal is not in keeping with surrounding development.

- Clause 6.10 Design Excellence of the Bayside LEP2021, which requires that buildings within the Design Excellence area that propose a height of 40 metres or 12 storeys or higher must undertake an architectural design competition.

Other agency submissions

- CASA's main aim is to avoid bright lights spilling upwards, and large bright advertising signs facing pilots, and Council do not support the additional permitted use to allow large advertising signs.
- Clause 6.10 Design Excellence of the Bayside LEP2021, requires that buildings within the Design Excellence area that propose a height of 40 metres or 12 storeys or higher must undertake an architectural design competition.
- Confirmation of no infringement of the protected airspace required during construction or that any such infringement will be supported by the relevant approval body to demonstrate consistency with Local Planning Direction 5.3 – Development Near Regulated Airports and Defence Airfields.
- Council has suggested controls to include, such as active ground level uses to interface public domain, a fine grain articulation of materials, Office orientation, façade treatment, and aspects to consider to ensure visual interest is supported and bulk is minimised. These can be managed through DCP controls.
- The shadow modelling must accurately confirm that the proposed maximum building heights are acceptable and will not unreasonably impact the quality and useability of publicly accessible places by way of overshadowing.
- Visual Impact Assessment that assesses the impact on character and views from residences, workplaces and public places should be provided and recommendations incorporated into DCP controls.
- An Economic Impact Assessment should be provided showing the evidence that has informed the quantum of each land use.

Proponent Response:

- The detailed design phase will consider a lighting assessment aligned with the proposed built form including Consultation with CASA. Proposed draft DCP has been further amended to include additional provisions for temporary and permanent advertising signs to minimise any potential impacts on residential receivers nearby.
- The proponent has sought an amendment to the mapping associated with Clause 6.10 to apply to the Cooks Cove precinct for office, hotel/motel and serviced apartment uses. Due to their scale, it is likely that a State Design Review Panel will be involved in the future development assessment pathways for the warehousing and logistics buildings.
- A detailed assessment of all aeronautical matters is provided at Section 6.2.5 of the Planning Proposal Justification Report.
- The Proponent commits to resolving Council's built form concerns through further development of site-specific DCP controls. Revised provisions include controls for finer-grain facades, activation, public art and First Nation collaboration and the orientation of ancillary offices toward public domain areas, amongst other matters. Further provisions will be addressed in consultation with Council as the DCP progresses.
- Further refinements to overshadowing diagrams to the future publicly accessible open space has been undertaken by Hassell and is included.

- A review of views has been undertaken to understand the comparison between the existing controls (2006 approved DA) and the proposed controls (2023 reference scheme). Refer to Section 4.3 of the Planning Proposal Report and supporting visual material prepared by Virtual Ideas.
- The Guidelines for Controlled Activities have been considered in further detail in Section 4.2 of the Planning Proposal report.
- Additional economic commentary discussing the quantum of land uses sought is provided within the Response to Submissions Report.

Agile Planning Response

Aviation safety concerns have been addressed through referral to agencies including the Civil Aviation Safety Authority (CASA), Air Services and Sydney Airport, none of which objected to the proposed maximum height. The proposed RL51 maximum building height control does not intrude into the Obstacle Limitation Surface, and post- exhibition information has been prepared confirm that windshear can be appropriately addressed at the detailed design phase (Arup, September 2023) (**Attachment A15**).

The proposed height and scale for the site have been determined through a detailed assessment of site-specific opportunities and limitations. The resulting built form is reflective of the scale of other surrounding uses, enables the feasible delivery of a warehousing and logistics function while also enabling the dedication of significant area of space for public recreation and environmental conservation purposes.

Future development will also be guided by a site-specific DCP, which is being prepared in collaboration with Bayside Council. Additionally, the proponent has amended the proposal to map the site under the Design Excellence Clause of the Bayside LEP, which will require an architectural design competition process for northern areas of the site that will accommodate offices, hotel/motels and serviced apartments.

The exploration of appropriate building form and heights was explored in the exhibited Urban Design and Landscape Plan (Hassell, April 2023) (**Attachment A03**). With specific regard to overshadowing, the revised Urban Design and Landscape Plan addendum (Hassell, September 2023) (**Attachment A14 - Part 2**) demonstrates that portions of the foreshore will be overshadowed from 12pm onwards in midwinter. While the proposal has not met Outcome C3 (Protect Public Amenity) of the NSW Coastal Design Guidelines (October 2023), an updated Flora and Fauna Assessment (Cumberland Ecology, 15 December 2023) (**Attachment A19**) argues that the overshadowing impacts are unlikely to impact riparian vegetation and that any risks of degradation can be mitigated through appropriate DCP controls and/or management plans.

The proposed mix of land uses are considered appropriate for the site, given the long-term vision for the area as a 'trade gateway'. There is strong strategic merit for the proposed warehousing and logistics function of the site, which will be complemented with a variety of other land uses including retail and commercial.

The Agile Planning Team is satisfied that considerations regarding built form and land use have been adequately addressed. While it is acknowledged that some overshadowing impacts are likely to result from the proposal, these impacts are balanced against the benefits of additional open space, walking and cycling links and conservation areas. Additionally, the impacts have not been found to impact significantly on the health or functioning of the foreshore area as a whole.

3 Post-exhibition changes

Proponent led post-exhibition changes

In response to Agency and community submissions the proponent has proposed the following post exhibition changes to the proposal:

- Apply C2 Conservation Zone for the southern section interface to the Cooks River and land within Pemulwuy Park containing Green and Golden Bell Frog (GGBF) habitat, and RE2 Private Recreation within the northern section/ development zone interface between Marsh and Levey Streets.
- Amend Clause 6.10 Design Excellence provisions to apply to the Cooks Cove Precinct as mapped and that the design excellence provisions apply only to the lands use definitions of 'office premises', 'hotel or motel accommodation' and 'serviced apartments'.
- Amend Part 6 Additional Local Provisions to clarify that 'office premises' are ancillary to the warehouse/logistics and/or the trade and technology land uses are also capped to 1 car parking space per 80m² GFA.
- Increase the foreshore building setback land zoned C2 Environmental Conservation from 20m to 40m at the southern end of the site.
- Increase the land zoned SP4 at the south end below Block C3 by 7m.
- Amend Part 6 additional local provisions to permit roads along a portion of the site mapped as 'Area 38' to enable a future connection point between the subject site and the Airport.

Changes were also made as a consequence of further flood analysis, including:

- Amended design for Flora Street intersection to enable flood free access for vehicles up to the 1:2000 AEP, and 'shelter in place' when needed to only be for 6 hours or less, consistent with the Department's draft Policy;
- Introduction of building under croft for Block 3C to reduce overland flow across the future Pemulwuy Park; and
- Further detailed flood mapping and scenario testing.

Agile Planning Team proposed post-exhibition changes

As noted above the Agile Planning Team supports the proponent led changes however further changes are recommended by the team.

The only substantive recommendation from Agile Planning that is not strictly consistent with the post-exhibition proponent proposal relates to the extent of the C2 Conservation zone. Agile Planning is of the view that appropriate protection and rehabilitation of the riparian corridor adjacent to Cooks River will occur best through the C2 zoning, which will ensure the full river corridor benefits. It is acknowledged that in the northern portion of the site adjacent the river, part of the existing road network is located with the C2 zone sits. Agile Planning's recommendation to resolve this matter, is to simply extend the 'Area 38' additional permitted use of 'roads' to also apply to this area.

The Figures below show the appropriate maps that would be proposed addressing these two controls.

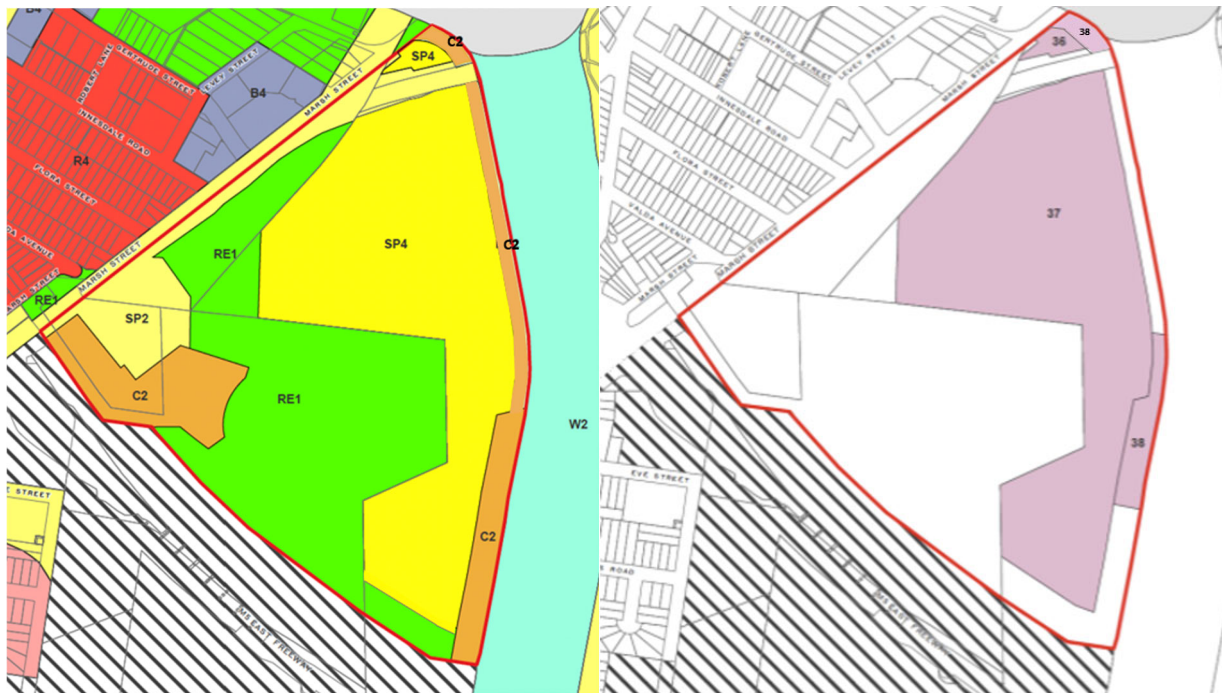


Figure 9: Proposed Zoning and Additional Permitted Uses maps (post-exhibition change) (source: Agile Planning, DPHI, February 2024)

Additionally, Agile Planning raises no objection to both Council and DCCEEW requests that the following SEPP EHC (Chapter 6) controls be transferred to Bayside LEP 2021 as site specific local provisions:

- 6.16 Environmental Management – management plans;
- 6.17 Environmental Management – special requirements; and
- 6.18 Development of flood prone land.

Subject to Panel support, Agile recommends the above changes be considered by the Local Plan Making Authority (LPMA) during the finalisation process.

4 Next Steps

The Department is the Local Plan-Making Authority (LPMA) for this planning proposal.

The Panel's decision and the final planning proposal will be submitted to the Department through the NSW Planning Portal for finalisation.

The Department will prepare a finalisation report in accordance with the LEP Making Guidelines (Dec 2021) and will determine whether to make the LEP, with or without variation. The Department may defer the inclusion of a matter in the proposed LEP or not make the LEP.

In accordance with section 3.36(1) of the EP&A Act, the Department will organise drafting of the LEP and finalisation of maps and will consult the panel on any draft instrument.

5 Recommendation

Based on this post-exhibition report, it is recommended that the Sydney Eastern City Planning Panel determine that the planning proposal should be updated as follows, then submitted to the Department for finalisation:

- The land adjacent to Cooks River is to be zoned C2 Conservation for the full length of the site adjacent the river.
- The northern part of the site, where the existing road intersects with the C2 land is to have an additional permitted use of 'road' and mapped 'Area 38'.
- The application of Clause 6.10 (Design Excellence) to the site be increased to include the land north of Marsh Street.
- That the LEP not be finalised until either the State VPA (or another agreement) is executed between TfNSW and Council to enable the transfer of Trust lands required for the M6 and M8 projects at no cost to government.

The planning proposal (as amended above) is considered suitable for finalisation because:

- The proposal demonstrates strategic and site specific merit;
- The conditions of the Gateway have been met;
- A Public Hearing has been undertaken and an independent report recommends that land reclassification be proceeded with;
- Agency and community consultation has occurred in accordance with the Gateway determination;
- The post-exhibition changes do not alter the intent of the planning proposal and the proposal meets the requirements of the Section 9.1 Directions and other requirements under the Environmental Planning and Assessment Act.

5.1 Attachments

Attachment A – Planning Proposal Justification report

Attachment A01 – Updated Draft Bayside LEP Maps

Attachment A02 – Revised Urban Design and Landscape Report

Attachment A03 – Urban design and landscape report

Attachment A04 – Flood risk and Impact Assessment

Attachment A05 – Flooding, Stormwater and WSUD report

Attachment A06 – Transport Impact Assessment (as submitted to TfNSW March 2023)

Attachment A07 – Cooks Cove Survey Plan

Attachment A08 – Draft Concept Plan of subdivision - Aerial

Attachment A09 – Draft Concept Plan of subdivision - Plan

Attachment A10 – Draft Concept Plan of subdivision - Report

Attachment A11 – Gertrude and Levy Street Contour and Details Survey

Attachment A12 – Gertrude and Levey Street Utilities Survey

Attachment A13 – Aeronautical Impact and Airport Safeguarding

Attachment A14 – Wind Shear and Turbulence

Attachment A15 – Wind Shear Memo

Attachment A16 – Acoustic Assessment Report

Attachment A17 – Servicing and Utilities Infrastructure Strategy

Attachment A18 – Ethane Pipeline Preliminary Hazard Analysis

Attachment A19 – Flora and Fauna Assessment

Attachment A20 – Archaeological Report

Attachment A21 – Environmental Site Assessment

Attachment A22 – Geotechnical Assessment

Attachment A23 – Draft Bayside DCP

Attachment A24 – Current State and Local VPA Status

Attachment A25 – Commonwealth Letter

Attachment A26 – Sydney Airport Corporation Limited Letter

Attachment A27 – Visual Impact Comparison

Attachment A28 – Clarification of Planning Provisions

Attachment A29 – Response to Flooding Matters

Attachment A30 – Response to Coastal Management Matters

Attachment A31 – Response to Biodiversity Matters

Attachment A32 – Clarification on SACL Bridge Intent

Attachment B – Rezoning Review Record of Decision (17 May 2022)

Attachment C1 – Gateway Determination (5 August 2022)

Attachment C2 – Gateway Alteration (12 April 2023)

Attachment D – Assessment Against Gateway Determination

Attachment E – Authorisation of proposal for exhibition (31 March 2023)

Attachment F1 – Community exhibition submissions (redacted)

Attachment F2 – Proponent response to community submissions (September 2023)

Attachment F3 – Agile Planning response to community submissions

Attachment G1 – Agency exhibition submissions (combined)

Attachment G2 – Bayside Council exhibition submission

Attachment G3 – Proponent response to agency submissions (September 2023)

Attachment G4 – Agile Planning response to agency submissions

Attachment H – Proponent Response to Submissions report (September 2023)

Attachment I – Additional agency responses (combined) (October – November 2023)

Attachment J – Public Hearing Independent Chairperson Report (23 August 2023)



(Signature)

____18/3/24_____
(Date)

Louise McMahon

Director, Agile Planning