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Plan finalisation report – PP-2022-1748

Bayside Local Environmental Plan 2021 – Cooks Cove

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Acknowledgment of Country

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

Contents

1	Introduction.....	2
1.1	Overview	2
1.1.1	Name of draft LEP	2
1.1.2	Site description	2
1.1.3	Purpose of plan	4
1.1.4	State electorate and local member	5
2	Gateway determination and alterations	5
3	Public exhibition and post-exhibition changes	5
3.1	Submissions during exhibition	6
3.1.1	Submissions from the community	6
3.1.2	Submissions from agencies and Council	6
3.1.3	Public Hearing	7
3.2	Post-exhibition changes.....	7
3.2.1	Sydney Eastern City Planning Panel recommended changes.....	7
3.2.2	The Department's recommended changes	8
3.2.3	Justification for post-exhibition changes.....	11
4	Department's assessment.....	11
4.1	Detailed assessment	12
4.1.1	Section 9.1 Ministerial Directions	12
4.1.2	Environmental Impacts	15
4.1.3	Infrastructure Impacts	17
5	Post-assessment consultation	17
6	Recommendation.....	18

1 Introduction

1.1 Overview

1.1.1 Name of draft LEP

Bayside Local Environmental Plan 2021 (Amendment No. 6).

The planning proposal seeks to facilitate the redevelopment of part of the Cooks Cove Precinct as a logistics and warehousing precinct, and to enhance freight and tourism opportunities adjacent to the Sydney International Airport. The planning proposal will facilitate around 3,300 jobs.

The proposal will also support the delivery of public open space, including the future Pemulwuy Park and a walking and cycling path along the Cooks River.

The planning proposal transfers the intent of the *State Environmental Planning Policy (Precincts – Eastern Harbour City) 2021* (formerly State Regional Environmental Plan No. 33 – Cooks Cove) for the site into Bayside LEP 2021.

1.1.2 Site description

Table 1 Site description

Site Description	The planning proposal applies to land at 13 – 19A Marsh Street, Arncliffe which comprises Lot 100 in DP 1231954, Lot 1 DP 108492, Lot 1 DP 329283, Lot 31 DP 1231486 and Lot 14 DP 213314.
Type	Site
Council / LGA	Bayside

The site has an area of approximately 36.2ha and is directly north of the M5 Motorway, west of the Cooks River and Sydney Kingsford Smith Airport, approximately 10km south of the Sydney Central Business District (CBD), 6km west of Port Botany and 1.5km north-east of the Rockdale local town centre (**Figure 1**).

The site is currently in both public and private ownership (**Figure 2**) and is used for a valve station, golf course, road and construction compound for WestConnex.

An easement for a high pressure gas pipeline traverses the site, north-south. The Southern and Western Suburbs Ocean Outfall Sewer (SWSOOS) runs along the M5 Motorway.



Figure 1 Subject site (Source: Gateway assessment report, August 2022)

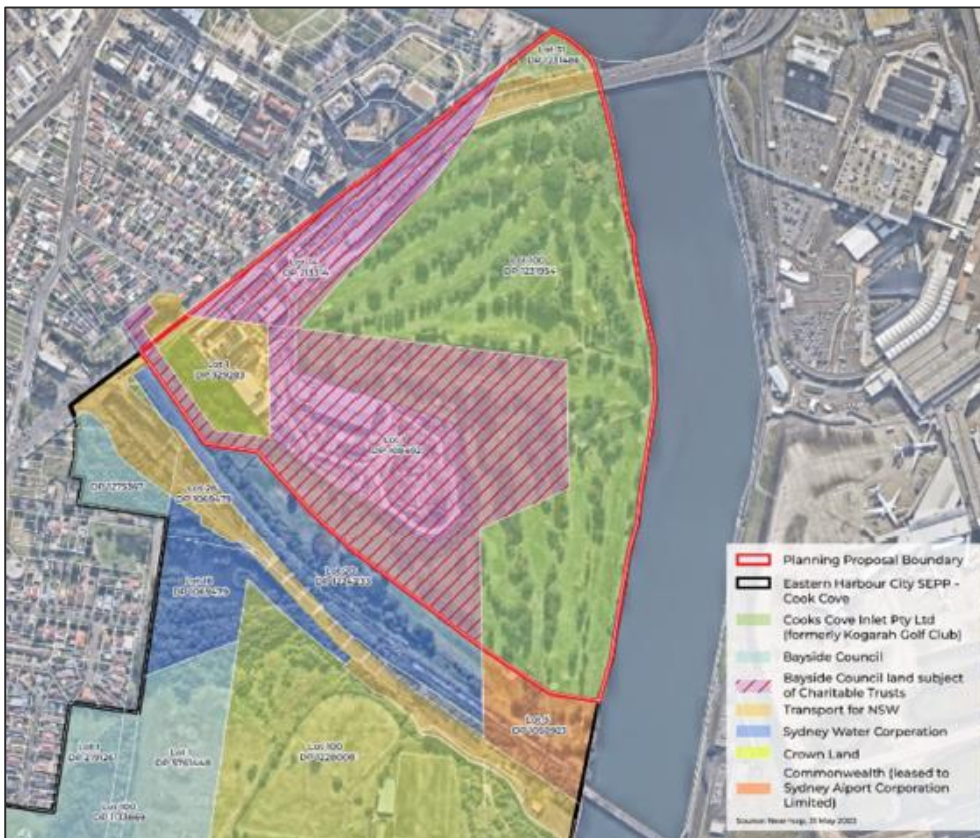


Figure 2 Subject site landowners (Source: Gateway assessment report, August 2022)

1.1.3 Purpose of plan

The planning proposal seeks to amend the Bayside LEP 2021 and remove the subject site from the application of Chapter 6 of *State Environmental Planning Policy (Precincts – Eastern Harbour City) 2021* (EHC SEPP).

The table below outlines the current and proposed controls for the LEP.

Table 2 Current and proposed controls

Control	Current	Proposed
Zone	Trade and Technology Zone Special Uses Zone Open Space Zone.	SP2 Infrastructure SP4 Enterprise* RE1 Public Recreation C2 Environmental Conservation* * The amendment will introduce the SP4 and C2 zones into the Bayside LEP 2021, including land use tables for these zones.
Height	1) A building within the Cooks Cove site must not exceed 6 storeys. (2) However— (a) a building within 120 metres of the Cooks River must not exceed 5 storeys, and (b) subject to paragraph (a), one building on land within the Trade and Technology Zone that is situated no closer than 10 metres from the zone boundary may have a height that does not exceed 11 storeys.	24m RL51 RL48 RL44 RL40
FSR	Maximum GFAs for uses within the Trade and Technology Zone.	1.25:1 New local provision will set a GFA cap. See below.
Additional local provisions	n/a	New additional local provisions will require the following: <ul style="list-style-type: none"> • preparation of a site-specific DCP • development applications must consider societal risk in relation to a high-pressure gas pipeline and referral to the Planning Secretary for comment. • Maximum GFAs for certain development at 19A Marsh Street Arncliffe • Permit with consent development for Trade Related enterprises at 19A Marsh Street Arncliffe.

Control	Current	Proposed
Additional Permitted use (APU)	n/a	'Advertising structures' at 19 Marsh Street, Arncliffe (Lot 31 DP 1231486)
Acid sulfate soils	n/a	Identify Lot 31 DP 1231486 and Lot 100 DP 1231954 as potentially affected by class 3 acid sulphate soils.
Biodiversity	n/a	Identify parts of the site on the Terrestrial Biodiversity Map.
Design Excellence	n/a	Identify part of site on Design Excellence Map (Lot 31 DP 1231486 and Lot 100 DP 1231954)
Reclassification of public land	Lot 1 DP 108492 and Lot 14 DP 213314 are classified as 'community land' for the purposes of the <i>Local Government Act 1993</i> .	Reclassify Lot 1 DP 108492 and Lot 14 DP 213314 to operational land and extinguish trust.

1.1.4 State electorate and local member

The site falls within the Rockdale state electorate. Stephen Kamper MP is the State Member. The site falls within the Barton federal electorate. Linda Burney MP is the Federal Member.

To the team's knowledge, neither MP has made any written representations regarding the proposal. There are no donations or gifts to disclose, and a political donation disclosure is not required. There have been no meetings or communications with registered lobbyists with respect to this proposal.

2 Gateway determination and alterations

The Gateway determination issued on 5 August 2022 determined that the proposal should proceed subject to conditions. The Gateway determination was altered on 12 April 2023 to reflect the updated planning proposal. The Department is satisfied that the conditions of the Gateway determination have been met, as detailed in the Post Exhibition Report to the Panel.

In accordance with the Gateway determination (as altered) the planning proposal was due to be finalised before 5 May 2024. Whilst the LEP completion date has passed, this condition is administrative, and the inconsistency is considered minor as the intent of the planning proposal is clear and it was exhibited in accordance with the Act.

The Department is satisfied that there are no outstanding issues relating to Gateway conditions which would prevent finalisation.

3 Public exhibition and post-exhibition changes

In accordance with the Gateway determination, the proposal was publicly exhibited from 24 April 2023 to 6 June 2023.

A total of 164 submissions were received, including 145 community submissions from individuals and organisations and 19 Government agency submissions, including Bayside Council. The post-exhibition report to the Sydney Eastern City Planning Panel provides responses to submissions.

On 30 June 2023, a public hearing into the public land reclassification was independently chaired by Christopher Shaw, of Shaw Reynolds Lawyers.

3.1 Submissions during exhibition

3.1.1 Submissions from the community

A total of 122 community submissions objected to the proposal (84%), 4 supported the proposal (3%) and 19 provided comments or raised concerns (13%).

In summary, the matters raised in submissions supporting the proposal include:

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

The matters raised in submissions either objecting to, or raising concerns with, the proposal include:

- 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
- Lack of recreation/ open space for public use.

The post-exhibition report to the Sydney Eastern City Planning Panel provides responses to the matters raised in submissions.

Post exhibition changes are discussed in Section 3.2 of this report.

3.1.2 Submissions from agencies and Council

In accordance with the Gateway determination, the following agencies were consulted:

- Greater Cities Commission
- Sydney Airport Corporation
- Heritage NSW
- State Emergency Services
- Environmental Protection Authority
- Civil Aviation Safety Authority
- Department of Climate Change, Energy, the Environment and Water
- Sydney Water
- Department of Infrastructure, Regional Development and Cities
- APA Group
- NSW Ports
- NBN Co.
- Air Services Australia
- Ausgrid
- DPE Water
- Sydney Desalination Plant
- Jemena

- DPE – Environment and Heritage Group (now part of Department of Climate Change, Energy, the Environment and Water)
- Transport for NSW (TfNSW)
- Department of Primary Industries (Fisheries)
- Bayside Council.

19 submissions were received, which provided advice and feedback on matters including:

- Environment and Biodiversity
- Flooding
- Overland flow and public land
- Traffic and Transport
- Built Form and land Use.

The post-exhibition report to the Sydney Eastern City Planning Panel provides responses to submissions.

Post exhibition changes are discussed in Section 3.2 of this report.

3.1.3 Public Hearing

On 30 June 2023, a public hearing into the proposed reclassification of public land from 'community' to 'operational' was independently chaired by Christopher Shaw, of Shaw Reynolds Lawyers.

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. At the meeting 11 verbal submissions were heard, 4 of which were accompanied by written submissions.

Most of the objections raised concerns with the merits of the planning proposal, rather than the reclassification specifically. In 2 cases, submissions on behalf of an organisation supported the reclassification of land.

A report was prepared by the Chairperson (23 August 2023) which recommended that the reclassification proceed. It was published on the NSW Planning Portal and considered in the post exhibition report to the PPA.

3.2 Post-exhibition changes

3.2.1 Sydney Eastern City Planning Panel recommended changes

On 26 March 2024, the Sydney Eastern City Planning Panel, having considered the post-exhibition report, determined that the planning proposal should proceed.

The Panel recommended the following post-exhibition changes:

Panel's recommended change	Panel's justification	Department comment
Rezone the land adjacent to Cooks River to C2 Environmental Conservation.	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 DCCEEW.	The Department supports this change, the amendment has been made to the LEP maps.

Panel's recommended change	Panel's justification	Department comment
Insert an additional permitted use of 'road' for the northern part of the site, where the existing road intersects with the C2 land	To reflect the existing road network.	The Department made post exhibition changes during legal drafting to identify 'roads' as permissible with consent in the C2 zone. Accordingly, the proposed APU is no longer required to active this outcome. See section 3.2.2 for discussion of the Department's post exhibition changes.
Apply Clause 6.10 (Design Excellence) to the site be increased to include the land north of Marsh Street.	To address concerns raised in submissions made by Council and agencies.	The Department supports this change, the amendment has been made to the LEP maps.
Exclude the application of LEP Clause 1.9A to enable the existing Sydney airport covenant to apply.	To address concerns raised in submission made by Sydney Airport Corporation.	The Department does not support this change. See section 3.2.2 for discussion of the Department's post exhibition changes.

The Panel also requested that:

- The LEP not be made until after the execution of the three planning agreements affecting the site, being:
 - Local VPA between Council and the proponent
 - State VPA between Transport for NSW and the proponent
 - Agreement under Section 29 of the *Land Acquisition (Just Terms Compensation) Act 1991* between Transport for NSW and Council to enable the transfer of trust lands required for the M6 and M8 projects.
- During finalisation of the LEP, consideration be given to transferring the intent of the following controls in Chapter 6 of the SEPP (Precincts - Eastern Harbour City) 2021 into the Bayside LEP 2021 as site specific local provisions:
 - 6.16 Environmental management – management plans
 - 6.17 Environmental management – special requirements
 - 6.18 Development of flood prone land.

Planning agreements

At the time of this report was written, the status of the planning agreements was as follows:

- The State VPA between the proponent and Transport for NSW was executed on 7 January 2025.
- In accordance with the Section 29 Agreement between TfNSW and Bayside Council, the land required for the M6 and M8 motorway projects was compulsory acquired in Government Gazette No.1 of 10 January 2025.
- The Local VPA between Council and the Proponent was publicly exhibited from 4 November 2024 to 2 December 2024 and was endorsed for execution by Council on 11 December 2024. The Local VPA was executed on 17 March 2025.

Transfer of environmental management and flooding provisions

The legislative landscape has evolved since the SEPP provisions were established. Modernised clauses relating to environmental management are applied through the Bayside LEP, the *Biodiversity Conservation Management Act 2016* and NSW Government Flood Risk Management policies introduced in 2023. The existing legislation will ensure adequate protection of threatened species on the site.

See assessment of Chapter 6 of SEPP (Precincts - Eastern Harbour City) 2021 in section 4.1 of this report.

3.2.2 The Department's recommended changes

The Department's finalisation assessment considers the recommendations of the Planning Proposal Authority, any post exhibition changes and submissions, as well as s.9.1 Directions, drafting standards, mapping conventions, LEP Practice Notes and other guidelines relevant to the Standard Instrument LEP (SILEP).

Following the receipt of the revised planning proposal and having considered the Panel's post-exhibition recommendations, the Department has made the following further post exhibition changes to the proposal.

3.2.2.1 Permit 'Roads' in the C2 Environmental Conservation zone land use table

Following exhibition, the PPA supported a change to the planning proposal to extend the application of the C2 zone to the length of the Cooks River on the eastern boundary of the site which was proposed to be zoned RE1 Public Open Space at exhibition. Whilst this change addresses matters raised during exhibition it also changes the permissible uses. This part of the site is currently zoned Open Space and roads are permitted with consent.

As a consequence of this post exhibition change, proposed roads under the development concept would be located on C2 zoned land. Accordingly, the PPA also made post exhibition change to permit these proposed roads as additional permitted uses.

LEP Practice Note 11-001 states that land uses should be governed by the Land Use Table wherever possible. Additional permitted uses should be minimised and only be used where it is demonstrated why this cannot be achieved after considering existing uses, appropriate zones and potential future land uses.

'Roads' are permissible uses within the C2 zones in many LEPs and the zone objectives within the C2 zone will ensure any proposal that includes the construction of roads will consider the potential ecological impacts.

The planning proposal also ensures that a DCP is prepared for the site, including consideration of vehicular access through the site and environmental conservation. This will provide added protection and certainty consistent with the intended outcome of the planning proposal.

The Department is of the view that the proposed change achieves the intended outcome for the site as set out in the planning proposal.

3.2.2.2 Retain clause 1.9A Suspension of covenants, agreements and instruments

Clause 1.9A was established to ensure private covenants do not impact private property rights by limiting development that was otherwise permissible under the local plan.

Part of the site (Lot 31 DP 1231486 and Lot 100 DP 1231954) is subject to a Covenant (M592019) in favour of the Commonwealth. The Covenant was applied when the land was sold to Kogarah Golf Club in January 1972 and requires any building or structure to be approved by the (then) Department of Civil Aviation. It was imposed to ensure the Commonwealth was satisfied that future built form would result in an acceptable civil aviation safety outcome.

It is understood that the Panel's recommendation sought to address concerns raised by Sydney Airport Corporation.

The covenant predates the current NSW planning system, including the EP&A Act 1979. There are existing statutory provisions, including clause 6.7 *Airspace operations* of the Bayside LEP 2021, to ensure air safety is considered in development assessment processes and that the airport is consulted. The additional protection is not considered necessary in the modern planning system and has not been carried over in the LEP drafting.

This covenant is not proposed to be extinguished as part of this planning proposal and remains on the title.

3.2.2.3 Other LEP drafting refinements

a) Land use tables

The proposed C2 Environmental Conservation and SP4 Enterprise land use tables were refined to ensure consistency with the SILEP. Drafting changes were made to ensure consistency with mandated objectives, permissibility and to remove duplication e.g. where the group term was already listed. The Department is satisfied that the land use tables are consistent with the intent of the planning proposal.

b) Considerations for development in areas of activity hazard risk

Refinements have been made to the proposed local provision for land use safety requirements to align with modern drafting conventions and the clauses introduced to other LEPs since the Gateway was issued.

The proposed local provision will ensure a future DA will consider societal risk associated with the high-pressure gas pipeline and requires any DA be referred to the planning secretary and given 28 days to provide comment.

The Department is satisfied that the drafting is consistent with the intent of the planning proposal.

c) Additional permitted uses

The planning proposal sought to introduce an additional permitted use (APU) to facilitate a future direct connection to Sydney Airport that was envisioned under the original 2004 masterplan. The APU would permit 'Trade related enterprises', 'Warehouse and distribution centres' and 'Roads' across a portion of C2 zoned land at the south of the site only for the purposes of supporting freight linkages whilst ensuring that the bridge does not adversely impact pedestrian access along the foreshore.

There is insufficient information in the proposal to support this change and demonstrate the compatibility with the zone objectives. Accordingly, the proposal to permit 'Trade related enterprises' and 'Warehouse and distribution centres' in the C2 zone is not supported. As discussed above, the Department has made post exhibition changes to permit roads in the C2 zone and accordingly an APU is not required for this land use.

It is noted that a bridge may fit within the definition of a road. The objectives of the C2 zone will ensure that any future bridge will be designed in a way that would provide for passive recreational activities that are compatible with the land's environmental constraints.

Additionally, the planning proposal will introduce a clause that requires the preparation of a DCP, that will require pedestrian and vehicular access to be addressed.

The Department is satisfied that the proposed changes do not adversely impact the overall objectives of the planning proposal.

3.2.2.4 Amend SEPP (Precincts – Eastern Harbour City) 2021 maps

Amendments to the SEPP maps are proposed to remove the site. The site will be removed from the SEPP Land Use Zone Map (**Figure 3**) and SEPP Additional Permitted Uses Map. A new Land Application Map will be introduced consistent with modern map requirements.



Figure 3 Existing and Proposed Land Use Zone Maps

3.2.3 Justification for post-exhibition changes

Since the planning proposal was issued a Gateway determination, changes in drafting and mapping conventions have occurred. These changes have been reflected in the proposed post-exhibition changes detailed above and achieve the intended effect of the planning proposal as exhibited.

The recommended post-exhibition changes are justified and do not require re-exhibition. The changes provide a reasonable response to matters raised in submissions, do not alter the objectives of the planning proposal and are relatively minor amendments to the planning proposal.

4 Department's assessment

The planning proposal has been subject to detailed review and assessment through the Department's Gateway determination and subsequent planning proposal processes. It has also been subject to a high level of public consultation and engagement.

The following reassesses the proposal against relevant Section 9.1 Directions, SEPPs, Regional and District Plans and Council's Local Strategic Planning Statement. It also reassesses any potential key impacts associated with the proposal (as modified).

The following tables identify whether the proposal is consistent with the assessment undertaken at the Gateway determination stage. Where the proposal is inconsistent with this assessment, requires further analysis or requires reconsideration of any unresolved matters these are addressed in Section 4.1.

Table 3 Summary of strategic assessment

	Consistent with Gateway determination report Assessment	
Regional Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
District Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Local Strategic Planning Statement	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Local Planning Panel (LPP) recommendation	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Section 9.1 Ministerial Directions	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 4.1
State Environmental Planning Policies (SEPPs)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

Table 4 Summary of site-specific assessment

Site-specific assessment	Consistent with Gateway determination report Assessment	
Social and economic impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Environmental impacts	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 4.1
Infrastructure	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 4.1

4.1 Detailed assessment

The following section provides details of the Department's assessment of key matters and any recommended revisions to the planning proposal to make it suitable.

4.1.1 SEPP (Precincts – Eastern Harbour City) 2021

The Panel requested that the intent of EHC SEPP Clauses 6.16 Environmental Management – Management Plans, 6.17 Environmental Management – special requirements and 6.18 Development of flood prone land be considered as part of the final assessment of the planning proposal, including whether to transfer controls to the Bayside LEP as site specific local provisions.

It is noted that this recommendation was, in part, in response to DCCEEW's submission which requested that controls currently within SEPP relating to biodiversity and ecology be moved across to Bayside LEP 2021.

The legislative landscape has evolved since the SEPP provisions were established and there are now a range of statutory provisions for biodiversity, flooding and environmental. This includes the *Biodiversity Conservation Management Act 2016*, provisions in the SILEP, and the NSW Government Flood Risk Management framework (2023). Duplication of these provisions and processes is not supported.

The Bayside LEP 2021 includes the following clauses which address environmental matters currently included in clauses 6.17 and 6.18 of the SEPP:

- Clause 6.1 Acid sulfate soils

- Clause 6.3 Stormwater and water sensitive urban design
- Clause 6.4 Terrestrial biodiversity
- Clause 6.5 Riparian land, wetlands and waterway
- Clause 5.21 Flood planning.

The Bayside Development Control Plan (DCP) 2022 also includes detailed objectives and controls to help guide development, including environmental matters.

The draft LEP also requires preparation of a DCP for the site. A site-specific DCP can address matters in further detail, including:

- vegetation management, tree retention and landscaping
- interface conditions between open space and development areas;
- principles of ecologically sustainable development;
- environmental management, including acid sulfate soils, flooding, groundwater, stormwater, aircraft movement and noise, contamination and remediation,
- biodiversity.

A draft DCP has been prepared for the site. Council is the relevant planning authority for amending the DCP.

The Department is satisfied that the intent of the SEPP will continue to be applied to future development on the site through the proposed zoning, local provisions and additional permitted use, as well as existing provisions within the LEP and DCP. Consistency with the SEPP has been adequately addressed.

4.1.2 Section 9.1 Ministerial Directions

Direction	Consistent/ Inconsistent	Department assessment
1.12 Implementation of Planning Principles for the Cooks Cove Precinct	Consistent	Consistency with this direction was unresolved until consultation with Environment, Energy and Science Group (now DCCEE) and any comments be considered prior to finalisation. Consultation has occurred and the agency comments were considered in the post exhibition report to the Panel. The inconsistency with this Direction has been resolved.
3.1 Conservation zones	Consistent	This Direction seeks to protect and conserve environmentally sensitive areas and requires a planning proposal include provisions that facilitate the protection and conservation of environmentally sensitive areas and must not reduce the conservation standards that apply to the land. Post-exhibition changes to the planning proposal apply the C2 zone to land along the Cooks Cove foreshore. The zone will enable the protection and enhancement of the riparian corridor and its ongoing use for walking, cycling, environmental protection and passive recreation. The planning proposal is consistent with the terms of this Direction.
3.2 Heritage Conservation	Consistent	The Gateway determination required further consultation with Heritage NSW on local and Aboriginal heritage matters as well as

Direction	Consistent/ Inconsistent	Department assessment
		<p>consultation with Sydney Water in relation to the Southern and Western Suburbs Ocean Outfall Sewer.</p> <p>Consultation with Heritage NSW and Sydney Water was undertaken and feedback was addressed in the post exhibition report to the Panel. The consistency with this Direction has been resolved.</p>
4.1 Flooding	Consistent	<p>This Direction seeks to ensure development of flood prone land is consistent with the Flood Risk Management Manual and ensure LEP provisions are commensurate with the flood behaviour and consider the potential impacts on and off the land.</p> <p>The site is mapped as being affected in the 1% AEP and PMF flood events.</p> <p>The Gateway assessment found that consistency with this direction was unresolved because further information was required in relation to flow paths over the adjoining council land. The Gateway determination also required consultation with relevant agencies.</p> <p>The planning proposal submitted for finalisation is supported by additional information to address flood risk and consultation with the State Emergency Services (SES) and DCCEEW was undertaken. Agency comments were summarised and addressed in a post-exhibition report to the Panel.</p> <p>Comprehensive updates to the flood modelling and Flood Impact Risk Assessment (FIRA) were made to address agency concerns and demonstrate consistency with the Direction and Council's required WSUD elements.</p> <p>SES's submission raised concerns regarding the risk assessment and evacuation strategy. Having reviewed the updated information, SES no longer objects to the planning proposal. The Planning Proposal Authority is satisfied that further risk management measures can be undertaken at a development stage with flood risk management plans and no further action is required to address the submission.</p> <p>DCCEEW raised concerns with the flood modelling, including the methodology used, climate change assumptions and emergency management. Further consultation with DCCEEW was undertaken to work through the technical information. Having considered the additional information DCCEEW did not withdrawn their objection to the proposal. The Planning Proposal Authority is satisfied that the planning proposal and updated FIRA have adequately addressed the agency's concerns suitable for the planning proposal stage and that more detailed management places and detailed design can be undertaken at DA stage.</p>

Direction	Consistent/ Inconsistent	Department assessment
		The Department is satisfied that their comments have been adequately considered in the by the Planning Proposal Authority and the consistency with this Direction has been resolved.
5.2 Reserving Land for Public Purposes	Consistent	<p>The Gateway assessment report found that consistency with this direction was unresolved until the planning proposal was updated to clarify the acquisition authority for any land proposed to be zoned RE1 that is not currently owned by a public authority and to obtain approval from TfNSW that the land currently zoned Special uses is no longer needed for public purposes.</p> <p>Transport for NSW was consulted with and has provided the approval required to address this Direction.</p> <p>Additionally, as detailed in section 3.2.2.1 of this report, post-exhibition amendments are proposed to replace the proposed RE1 zoned portion of land that not currently owned by Council or a public authority with a C2 zoning which does not require a nominated acquisition authority.</p> <p>Consistency with this Direction has been resolved.</p>
5.5 High Pressure Dangerous Goods Pipeline	Consistent	<p>This Direction seeks to reduce the risk of harm to human health and the environment by ensuring high pressure dangerous goods pipelines are considered.</p> <p>The Moomba-Sydney Pipeline traverses the eastern part of the site adjacent to the Cooks River. Whilst this Direction came into effect on 1 August 2024, proximity to the pipeline and potential risk of harm to human health and the environment were considered in the Gateway assessment.</p> <p>The planning proposal is supported by a land use safety study risk assessment and consultation was undertaken with APA Group, the owner and operator of the pipeline, who did not raise any objections to the planning proposal.</p> <p>The planning proposal will introduce a new local provision requiring development applications to be referred to the Planning Secretary for consultation on the hazard risk associated with the High-Pressure Gas Pipeline.</p> <p>The planning proposal is consistent with the terms of this Direction.</p>

4.1.3 Reclassification of public land

The planning proposal seeks to reclassify two lots within the site (Lot 1 DP 108492 and Lot 14 DP 213314) to facilitate road access and flood mitigation works on the site. These lots are currently affected by 'Charitable Trusts' (the Trusts) which requires Bayside Council (the landowner) to hold the Trust Lands as trustee, with TfNSW the beneficiary.

The intended future uses and works in the Trust Lands are not in accordance with the terms of the Trusts (not for a County Road purpose). As such, the Charitable Trusts are proposed to be

extinguished through reclassification of the affected land from 'Community' to 'Operational' pursuant to Section 30 of the *Local Government Act 1993*.

Extensive consultation has occurred with TfNSW and Council and, as discussed in section 3.1.3 of this report, a public hearing was held and it was recommended that the reclassification proceed.

Since this time, in accordance with the Section 29 Agreement between TfNSW and Bayside Council, the land required for the M6 and M8 motorway projects was compulsory acquired in Government Gazette No.1 of 10 January 2025. The Department understands that there are ongoing, and potentially extended, lease arrangements between TfNSW and Bayside Council to facilitate the construction of the M6/ M8 Motorway projects. The extinguishment of the Trust does not prevent the continuation of these lease arrangements.

4.1.4 Environmental Impacts

4.1.4.1 Flora and Fauna

In recognition of the potential ecological impacts, the Gateway determination required further consultation with the (former) EES and for any comments be considered prior to the finalisation of the planning proposal. Consultation with DCCEEW was undertaken, and the comments provided have been summarised and addressed in a post-exhibition report to the Panel.

A number of updates have been made to the planning proposal to address environmental and biodiversity matters, including widening the southern part of the foreshore from 20m to 40m and applying the C2 Environmental Conservation zone on the eastern boundary along the Cooks River and on the western side of the site. This will help to ensure the ongoing protection of Green and Golden Bell Frog breeding ponds.

Additional information has also been provided 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.

The proposed additional local provision requires preparation of DCP which should require that future development on the site consider environmental matters including:

- vegetation management, tree retention and landscaping
- interface conditions between open space and development areas
- principles of ecologically sustainable development
- environmental management, including acid sulfate soils, flooding, groundwater, stormwater, aircraft movement and noise, contamination and remediation
- biodiversity.

Any future development application would be required to comply with the requirements under the *Biodiversity Conservation Management Act 2016*, including preparation of Biodiversity Development Assessment Report which sets out how it avoids, minimises and offsets impacts of proposed development upon native vegetation or biodiversity, including the Green and Golden Bell Frog.

DCCEEW maintains its objection to the proposal based on environment and biodiversity concerns.

The Department is satisfied that the Planning Proposal Authority has adequately considered ecological impacts relating to the proposal and that further measures can be implemented at later stages of design and development.

4.1.4.2 Built form and density

The Gateway assessment report detailed the need for further analysis and information to understand the intended built form outcome.

The planning proposal and Urban Design Report were updated to address the issues raised in the Gateway assessment report. The report includes a master plan as an indicative reference scheme which provides support for land use planning controls sought under this Planning Proposal. How these changes address the Gateway determination is summarised in the PPA's Assessment Against Gateway Determination, attached to the post-exhibition report.

The planning proposal will apply the existing LEP design excellence provision to the development site and introduce a local provision which includes requirements to guide a future development control plan on the site to require that future development consider:

- access, parking and circulation,
- interface conditions between open space and development areas,
- built form including massing and modulation of buildings, and façade treatment.

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.

The Department is satisfied that the matters raised in the Gateway assessment report have been adequately addressed in the updated planning proposal, as summarised in the post-exhibition report.

4.1.4.3 Air quality

A Gateway condition required consultation with TfNSW and the Environmental Protection Authority (EPA) on air quality impacts of the nearby Arncliffe Motorway Operations Complex ventilation outlets. Consultation with these agencies was undertaken and no objections or comments were raised in relation to air quality.

4.1.5 Infrastructure Impacts

Utility providers Ausgrid, NBN Co. and Jemena were consulted in accordance with the Gateway determination. No objections were raised in relation to the planning proposal.

The planning proposal has adequately addressed infrastructure impacts.

5 Post-assessment consultation

The Department consulted with the following stakeholders after the assessment.

Table 5 Consultation following the Department's assessment

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Mapping	Maps have been prepared by the Department's ePlanning team and meet the technical requirements.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Panel	<p>On 10 February 2025, the Panel, as Planning Proposal Authority, was consulted on the terms of the draft instrument under clause 3.36(1) of the <i>Environmental Planning and Assessment Act 1979</i>.</p> <p>The Panel supported the making of the LEP pending the finalisation of Local VPA between Council and the proponent.</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Parliamentary Counsel Opinion	On 25/03/2025 , Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details

6 Recommendation

It is recommended that the Minister's delegate as the local plan-making authority determine to make the draft LEP under clause 3.36(2)(a) of the Act because:

- The proposal demonstrates strategic and site-specific merit.
- It is consistent with the strategic planning framework including the Eastern City District Plan, Section 9.1 Ministerial Directions and State Environmental Planning Policies.
- Is consistent with the Gateway determination.
- The outstanding agency objections have been adequately addressed.
- A Public Hearing into the classification of public land has been undertaken and an independent report recommends that land reclassification proceed.
- It is not expected to generate adverse social, environmental or economic impacts.

Kelly McKellar

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17 April 2025

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