



IRF23/2187

# Gateway determination report – PP-2023-1276

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Bayside LEP 2021 – Medium Density Residential Uses

November 23



Published by NSW Department of Planning and Environment

[dpie.nsw.gov.au](http://dpie.nsw.gov.au)

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# Acknowledgment of Country

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

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**Table 1 Reports and plans supporting the proposal**

Relevant reports and plans
Feasibility study prepared by SGS Economics and Planning (17 March 2023)
Medium Density review
Council City Planning & Environmental Committee Agenda (12 April 2023)
Council Minutes (26 April 2023)

# 1 Planning proposal

## 1.1 Overview

**Table 2 Planning proposal details**

<b>LGA</b>	Bayside
<b>Planning Proposal Authority (PPA)</b>	Bayside Council
<b>NAME</b>	Medium Density Residential Uses
<b>PP NUMBER</b>	PP-2023-1276
<b>LEP TO BE AMENDED</b>	Bayside Local Environmental Plan (LEP) 2021
<b>ADDRESS / DESCRIPTION</b>	Land zoned R3 Medium Density Residential within Bayside local government area (LGA) <b>(Figure 1)</b>
<b>RECEIVED</b>	28/06/2023
<b>FILE NO.</b>	EF23/6971
<b>POLITICAL DONATIONS</b>	There are no donations or gifts to disclose and a political donation disclosure is not required
<b>LOBBYIST CODE OF CONDUCT</b>	There have been no meetings or communications with registered lobbyists with respect to this proposal

## 1.2 Objectives of planning proposal

The objective of this planning proposal is to:

- encourage housing diversity through the facilitation of increased take-up of medium-density housing in Bayside Council's R3 Medium Density Residential Zone, which adheres with the residential amenity and character of the area and is designed appropriately to respond to that amenity and character.

The objective of this planning proposal is clear and adequate.

## 1.3 Explanation of provisions

The planning proposal seeks to introduce new development standards for medium density housing and applies to all land zoned R3 Medium Density Residential under the Bayside LEP 2021 (see **Figure 1**).

The proposed amendments to Bayside LEP 2021 are outlined in **Table 3** below.

**Table 3 Current and proposed controls**

Control	Current	Proposed
Floor space ratio (FSR)	<p><u>Land previously in Botany Bay LEP (repealed)</u></p> <ul style="list-style-type: none"> <li>Generally 0.85:1 to 1:1 for R3 zone</li> <li>Some site-specific exceptions<sup>1</sup>.</li> </ul> <p><u>Land previously in Rockdale LEP (repealed)</u></p> <ul style="list-style-type: none"> <li>Generally 0.6:1 for R3 zone (see <b>Figure 2</b>).</li> </ul>	<p><u>Land previously in Botany Bay LEP (repealed)</u></p> <ul style="list-style-type: none"> <li>No change.</li> </ul> <p><u>Land previously in Rockdale LEP (repealed)</u></p> <ul style="list-style-type: none"> <li>0.7:1 for R3 zoned (see <b>Figure 2</b>).</li> </ul>
Minimum lot size	<p><u>Land previously in Botany Bay LEP (repealed)</u></p> <ul style="list-style-type: none"> <li>No minimum lot size provision applies to R3 zone.</li> </ul> <p><u>Land previously in Rockdale LEP (repealed)</u></p> <ul style="list-style-type: none"> <li>Clause 4.1 applies a minimum lot size of 450m<sup>2</sup> for the general subdivision of R3 zone.</li> </ul>	<p><u>Land previously in Botany Bay LEP (repealed)</u></p> <ul style="list-style-type: none"> <li>No change.</li> </ul> <p><u>Land previously in Rockdale LEP (repealed)</u></p> <ul style="list-style-type: none"> <li>No minimum lot size provision to apply to R3 zoned land.</li> </ul>
Minimum lot width	<ul style="list-style-type: none"> <li>N/A<sup>2</sup></li> </ul>	A minimum of 18m wide for multi-dwelling housing

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

<sup>1</sup> For example, certain small areas of R3 land in the former Botany LGA located within areas dominated by R2 zoned land have an FSR of 0.55:1 consistent with the local area, including sites in Gardeners Road, Mascot and Banks Avenue, Pagewood.

<sup>2</sup> Section 5.3.1.2, Control C1 of the Bayside DCP 2022 requires a minimum site frontage width of 18m for attached dwellings and multi-dwelling housing.

### Bayside Development Control Plan 2022

Bayside Council adopted the Bayside Development Control Plan (DCP) 2022 came into effect on 10 April 2023. It repealed and replaced the Botany Bay DCP 2013 and Rockdale DCP 2011.

Section 5.2.3 Medium density residential (attached dwelling and multi-dwelling housing) of Bayside DCP 2022 contains development controls including building setbacks. Section 5.2.3.2(C1) requires a minimum site frontage width of 18m for these forms of dwelling developments.

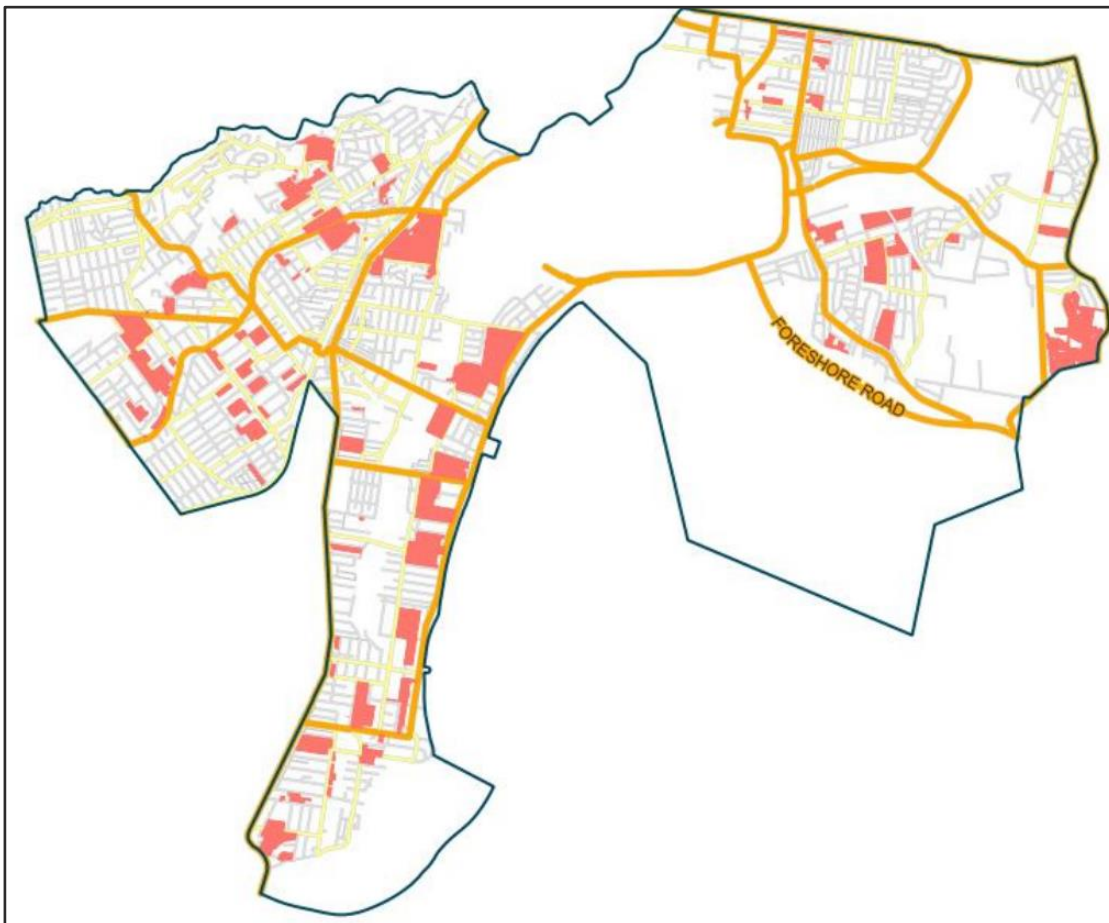
The planning proposal seeks to elevate the existing DCP minimum site frontage width control into the Bayside LEP 2021.

Council also proposes to further amend its medium density residential development DCP controls for:

- Minimum side and secondary street setbacks
- Minimum articulation zone
- Minimum private open space and landscaped area
- Tree requirements.

## 1.4 Site description and surrounding area

The planning proposal applies to all land zoned R3 Medium Density Residential within the Bayside LGA (see Figure 1).



**Figure 1 Sites zoned R3 Medium Density Residential under Bayside LEP 2021 (highlighted in red) (Source: planning proposal, June 2023).**

## 1.5 Mapping

The planning proposal seeks to amend Floor Space Ratio map of the Bayside LEP 2021.

The planning proposal includes a map of the existing R3 Medium Density Residential zoned land (within the former Rockdale LGA), which is currently subject to a maximum FSR of 0.6:1 and will be amended by this proposal to apply a maximum FSR of 0.7:1 (**see Figure 2**).

Council submitted proposed FSR maps via the NSW Planning Portal on 13 July 2023. A Gateway condition requires the planning proposal is updated to include suitable mapping prior to exhibition.



**Figure 2 Map of Bayside LGA R3 Medium Density Residential Zone subject to FSR of 0.6:1 under Bayside LEP 2021 (Source: planning proposal, June 2023)**

## 1.6 Background

At its meeting of 12 April 2023, Council's City Planning & Environment Committee (CP&EC) considered the advice of the Local Planning Panel (LPP) and recommended that Council support the planning proposal proceeding to Gateway and that an amendment to the DCP be undertaken.

At its meeting of 26 April 2023, Council resolved:

1. *That, pursuant to s3.34 of the Environmental Planning and Assessment Act 1979 (EP&A Act), the draft planning proposal – Medium Density Residential Uses be submitted to the Department of Planning and Environment for a Gateway Determination.*
2. *That, should a Gateway Determination be issued to proceed to public exhibition, a further report be presented to Council following the exhibition period addressing of any submissions received throughout that process.*



3. *That Bayside DCP 2022 be reviewed concurrently with the draft planning proposal to ensure consistency between controls contained in these documents and the draft planning proposal.*

The planning proposal was submitted for Gateway on 28 June 2023.

## 2 Need for the planning proposal

The planning proposal has been prepared in response to Action 7.1 of the Bayside Local Strategic Planning Statement (LSPS), Action 6.1 of the Bayside Local Housing Strategy (LHS), and requirement 4 of the Department's letter of approval Council's LHS, as outlined below.

- *Action 7.1 of LSPS:* Review planning controls to deliver a range of dwelling types, size and standards
- *Action 6.1 of LHS:* Review development controls including the use of minimum lot size and frontages controls to ensure that effective design can be achieved in infill development situations
- *Requirement 4 of the Department's letter of approval for the LHS:* To ensure housing diversity is achieved by 2026, Council is to expedite the following investigations and obtain Gateway for planning proposals by December 2022:
  - a) the introduction of dwelling size and mix controls;
  - b) the review and update medium density residential controls; and
  - c) the review and update of dual occupancy controls. Council should concurrently review development controls including the use of controls to ensure effective design for infill development as outlined in the LHS.

The overall intent of the proposal is generally consistent with the LHS and Department approval of the LHS as it seeks to facilitate increased supply and diversity in the R3 Medium Density Residential zone and was informed by a feasibility study, a review of historic supply, and a built form review. The proposed modest increased FSR will expand the development potential of sites in the former Rockdale area and the deletion of the 450m<sup>2</sup> minimum lot size will remove an impediment to the subdivision of multi dwelling housing.

The Medium Density Review considered opportunity for high quality medium density development in the former Rockdale LGA. The review recommended applying consolidated controls, both in the LEP and DCP, across the Bayside LGA including a 0.7:1 FSR for the R3 Medium Density zone.

The Review also found that a minimum site width of 18m would achieve the maximum proposed FSR and Council's amenity aims. It noted that sites with lot widths smaller than 18m may not be able to achieve the full FSR proposed but that applications would be considered on a site-specific merit basis. However, the Review did not specify a mechanism for applying this planning control.

The planning proposal includes a table comparing the proposal provision to provisions in the LEPs of other councils in the Eastern and South districts in the Greater Sydney region (**Figure 3**). In summary it shows that:

- The proposed FSR and removal of the minimum lot size are consistent with the former Botany Bay area of the Bayside LGA and broadly consistent with other Council LEPs in the Eastern and South Districts.
- Whilst there are some precedents for lot width controls this is not a dominant approach in the districts nor was the proposed provision included in the LEPs for the former Rockdale or Botany Bay areas.

LEP	FSR controls for R3-zoned land	Lot width control (for multi dwelling housing)	Subdivision lot size control (for multi dwelling housing)
<i>Eastern District</i>			
Burwood LEP 2012	0.55:1	28m	No
Canada Bay LEP 2013	0.7:1 1:1	20m	Terraces: 225 sqm
Inner West LEP 2022	0.6:1 0.7:1 1.1:1	Nil	Nil
Randwick LEP 2012	0.75:1 0.9:1	Nil	Nil
Strathfield LEP 2012	0.65:1 1.2:1 1.45:1	Nil	1,000 sqm
Waverley LEP 2012	0.6:1 0.9:1	Nil	232 sqm 325 sqm
Woollahra LEP 2014	1:1 1.3:1 1.42:1	Nil	230 sqm
<i>South District</i>			
Bankstown LEP 2015	0.75:1	20m	Nil
Canterbury LEP 2012	0.5:1	Nil	Nil
Georges River LEP 2021	0.7:1	Terraces: 21m Other multi-dwelling housing: 18m	800 sqm
Sutherland LEP 2015	0.7:1	Nil	550 sqm

Figure 3: Comparison of surrounding council LEPs (Source: planning proposal, June 2023)

Year	Zone R3 Approvals	Number of dwellings approved	Average lot size (sqm)	Average lot width (sqm)
May 2017-May 2018	3	18	1,103.8	25.88
May 2018-May 2019	7	45	1,299.51	20.62
May 2019-May 2020	5	23	909	19.57
May 2020-May 2021	3	16	1,088.91	20.3
May 2021-May 2022	2	11	1,186.53	34.23
<b>TOTAL</b>	<b>20</b>	<b>113</b>	<b>1,117.55</b>	<b>24.12</b>

Figure 4: Summary of approvals between 2017 and 2022 of multi-dwelling housing and attached dwellings in Bayside LGAs R3 zone (Source: planning proposal, 2023)

Council has reviewed approvals for multi dwelling housing and attached dwellings over the past 5 years (**Figure 4**) and undertaken a high-level analysis of land zoned R3 Medium Density Residential to identify a theoretical capacity for future supply of medium density typologies.

Sites that are Strata subdivided or developed for the highest and best use were exclude from this analysis. Most of the areas identified as having theoretical capacity for additional dwellings are in the former Rockdale LGA, this is also the area where the DCP minimum lot width currently applies.

Council's review found that there is sufficient unutilised capacity in the existing R3 zone for increased take-up of medium-density housing typologies under the proposed planning controls. This review included the proposed 18m site width provision.

Council's review of theoretical capacity considered 3,005 lots and the opportunity sites were reduced to 1,400 after the 18m lot width provision was applied. Whilst the urban design review identified that an 18m site width would achieve the desired amenity and design outcomes at the proposed maximum FSR it stated that sites with a smaller width could be considered on a site-specific merit basis.

The planning proposal is supported by a feasibility analysis prepared by SGS Economics & Planning (2023) which considered the potential impact of the proposed FSR amendments. In summary, the analysis found that the proposed increased FSRs were feasible and would result in an increase in yield for the developments sites subject to uplift. It was estimated that the proposal would result in increased capacity for an additional 1,200 dwellings above the estimated yields from the current FSR provisions.

The overall intent of the planning proposal of the planning proposal is supported as it will support development for medium density housing in the R3 zone of the Bayside LGA. The proposed harmonisation of FSR and minimum lot size standards for medium density housing in the R3 zone will support development for permissible uses within the zone. A planning proposal is the best means of achieving this amendment to the LEP.

However, the planning proposal does not demonstrate a need for an 18m minimum lot width provision to be introduced into the LEP. Although the actions of the Bayside LHS include minimum site frontage provisions to be set out in the LEP, this type of control is more appropriately contained within the DCP – which is currently the case for the current DCP. Hence, the additional control in the LEP is duplicating any existing requirement.

The proposal to include this as a development standard also, therefore requires detailed justification for any variation to this minimum requirement as part of a separation Clause 4.6 variation report for a DA. Further the control doesn't allow for flexibility in design outcomes or allow for irregular shaped allotments to be considered for these forms of development. Other development standards for medium density development in the LEP alongside the DCP controls are considered adequate to facilitate this form of development while still also ensuring good design outcomes.

The Gateway includes a condition that this proposed minimum width lot provision is removed from the planning proposal prior to exhibition. This approach will still ensure that Council can achieve its objectives for the R3 zone and support delivery of a diverse range of housing.

The planning proposal as amended, is the best means the intended outcomes.

## 3 Strategic assessment

### 3.1 Regional Plan

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

Under section 3.8 of the *Environmental Planning and Assessment Act 1979* a planning proposal is to give effect to the relevant District Plan. By giving effect to the District Plan, the proposal is also consistent with the Regional Plan. Consistency with the District Plan is assessed in **Section 3.2** below.

## 3.2 District Plan

The site is within the Eastern City District and the Greater Sydney Commission released the Eastern City District Plan on 18 March 2018. The plan contains planning priorities and actions to guide the growth of the district while improving its social, economic and environmental assets.

The planning proposal is consistent with the priorities for infrastructure and collaboration, liveability, productivity, and sustainability in the plan as outlined below.

The Department is satisfied the planning proposal gives to the District Plan in accordance with section 3.8 of the *Environmental Planning and Assessment Act 1979*. The planning proposal is assessed against relevant District Plan Planning Priorities in **Table 4**.

**Table 4 District Plan assessment**

District Plan Priorities	Justification
Planning Priority E1: Planning for a city supported by infrastructure	<p>This priority aims to ensure land use planning aligns with existing and future infrastructure.</p> <p>The planning proposal seeks to introduce new development standards for medium density housing in the R3 Medium Density Residential zone. It does not seek to increase the area of R3 zoned land but supports take-up of permissible housing types within the existing zone boundaries.</p> <p>The R3 Medium Density zones across the Bayside LGA are generally located in proximity to centres and public transport. It is not expected that the proposal will create infrastructure demand for out of sequence infrastructure.</p> <p>The proposal is consistent with this priority.</p>
Planning Priority E5: Providing housing supply, choice and affordability, with access to jobs, services and public transport	<p>This priority aims to support the delivery of a diverse range of housing in the right locations to improve affordability and help meet the community needs.</p> <p>The planning proposal supports development for multi-dwelling housing and attached dwellings in the R3 Medium Density Residential zone of the LGA. It improves consistency of development standards across the LGA and increases the maximum FSR for sites in the former Rockdale area. The planning proposal states that it could create additional capacity for 1,200 dwellings.</p> <p>The proposal is consistent with this priority.</p>
Planning Priority E6: Creating and renewing great places and local centres, and respecting the District's heritage	<p>This priority seeks to create great places, by providing a fine grain urban form, diverse land use mix, high amenity and walkability, in and within a 10-minute walk of centres.</p> <p>The R3 Medium Density Residential zones across the Bayside LGA are generally located in proximity to centres and public transport. The planning proposal supports development for multi-dwelling housing and attached dwellings. The proposed development standards are broadly consistent with the zone objectives. The LEP is supported by built form controls in the Bayside DCP 2022.</p> <p>The proposal is consistent with this priority.</p>

### 3.3 Local

The proposal states that it is consistent with the following local plans and endorsed strategies. It is also consistent with the strategic direction and objectives, as stated in the table below:

**Table 5 Local strategic planning assessment**

Local Strategies	Justification
Local Strategic Planning Statement (LSPS)	<p>The Bayside LSPS 2020 provides a strategic land use vision for Bayside and aligns local planning and services delivery with the Regional and District Plans.</p> <p>Action 7.1 of the LSPS is to review planning controls to deliver a range of dwelling types, size and standards. The planning proposal is the result of a review by Council of its medium density controls in the LEP and DCP.</p> <p>The planning proposal seeks to apply consistent development standards to the R3 Medium Density Residential zone across the Bayside LGA. The potential increase density is consistent with the zone objectives and is considered reasonable. It is noted that the R3 zoned land is generally located in proximity to centres and public transport. It supports the supply of medium density housing types within the existing zone</p> <p>The planning proposal is consistent with the LSPS.</p>
Local Housing Strategy (LHS)	<p>The Bayside LHS was adopted by Council in March 2021 and approved by the Department in June 2021. The planning proposal has been prepared in response to Action 6.1 of the LHS.</p> <p><i>Action 6.1: Review development controls including the use of minimum lot size and frontages controls to ensure that effective design can be achieved in infill development situations</i></p> <p>In its letter approving the LHS, the Department required Council to expedite planning proposals relating to housing diversity and medium density housing provide an analysis of the historical and forecast supply of medium density housing within Bayside LGA.</p> <p>As discussed in <b>Section 2</b> of this report, the planning proposal was informed by a feasibility study, a review of historic supply, and a built form review. These studies identified that there is currently theoretical total capacity in the R3 zone for high quality medium density development under the proposed controls in order of 4,700 dwellings. The introduction of the proposed controls sought by this proposal is estimated to increase this this capacity by an estimated 1,200 dwellings (SGS 2023).</p> <p>More specifically the proposed amendments to increase FSR and remove existing minimum lot size provisions in the former Rockdale portion of the LGA are consistent with the LHS as they collectively support the supply of increased opportunities for and more diverse housing choices in the Bayside LGA.</p> <p>However, the need for an 18m minimum lot width is expected to unreasonably restrict future housing capacity in future. This additional requirement duplicates the requirement of the DCP and doesn't allow for flexibility in design outcomes or allow for irregular shaped allotments to be considered for these forms of development; thereby is likely to reduce the number of capable sites for medium density development.</p> <p>Although the actions of the Bayside LHS seek to investigate the inclusion of minimum site frontage provisions in the Bayside LEP 2021, it is the Department's view that this control be more appropriately be retained and contained within the Bayside DCP.</p>

### 3.4 Local planning panel (LPP) recommendation

The planning proposal was considered by the Bayside Local Planning Panel (LPP) on 13 December 2023. The LPP provided the following advice to Council:

1. *That, pursuant to s3.34 of the Environmental Planning and Assessment Act 1979 (EP&A Act), the draft planning proposal – Medium Density Residential Uses be submitted to the Department of Planning and Environment for a Gateway Determination;*
2. *That Rockdale Development Control Plan (DCP) 2011, Botany Bay DCP 2013 and draft Bayside DCP 2022 be reviewed concurrently with the draft PP, to ensure consistency between controls contained in the documents; and*
3. *That, should a Gateway Determination be issued to proceed to public exhibition, a further report be presented to Council following the exhibition period to demonstrate compliance with the Gateway Determination and to provide details of any submissions received throughout that process;*
4. *The Panel is strongly of the view that the planning proposal should be supported by a comprehensive development control plan to protect resident amenity, streetscape and local character. The development control plan should address a full range of urban design elements including setbacks, landscaping, permeable planting, private open space, solar access and sustainability initiatives. The development control plan should be exhibited with the planning proposal and come into effect on the same date as any planning proposal amendments that are ultimately made.*

### 3.5 Section 9.1 Ministerial Directions

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

**Table 6 9.1 Ministerial Direction assessment**

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.1 Implementation of Regional Plans	Consistent	<p>The objective of this direction is to give legal effect to the vision, land use strategy, goals, directions and actions contained in Regional Plans.</p> <p>The planning proposal is broadly consistent with the Region Plan, Eastern City District Plan and LSPS. Refer to section 3.2 and 3.3 for further assessment.</p>
1.11 Implementation of Bayside West Precincts Bayside West 2036 Plan	Consistent	<p>This direction applies to land within the Bayside West Precincts in the Arncliffe, Banksia and Cooks Cove.</p> <p>The planning proposal applies to all R3 zoned land in Bayside and will harmonise LEP provisions to support medium density housing typologies in the existing zones. The planning proposal does not adversely impact the implementation of this Plan.</p> <p>The planning proposal is consistent with this Direction.</p>

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
3.2 Heritage Conservation	Consistent	<p>Direction 3.2 requires that a planning proposal contain provisions which facilitate the conservation of items, places, buildings, works, relics, moveable objects or precincts of environmental heritage of the area.</p> <p>All heritage items, heritage conservation areas and archaeological sites that are listed in the LEP will be retained.</p> <p>Whilst the planning proposal does not specifically seek to amend heritage provisions within the Bayside LEP, as it applies to all R3 zoned land within the former Rockdale portion of the LGA, it will apply to heritage items, HCAs and land adjoining heritage.</p> <p>Multi-dwelling housing is a permitted land use in the R3 zone, the proposed provisions intend to guide development outcomes consistent with Council's desired future character for the Bayside R3 zone.</p> <p>Any inconsistency with this Direction is of minor significance as the provisions of Clause 5.10 of the Bayside LEP 2021 will continue to ensure protection of heritage across the LGA.</p>
4.1 Flooding	Consistent	<p>The objectives of this direction are to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy, and to ensure that provisions of an LEP are commensurate with flood hazard and considers flood impacts on and off the land.</p> <p>Although the proposed provisions will not introduce new permissible uses within the zone, the proposed increase FSR for R3 land in the former Rockdale portion of the LGA will increase the permissible density of some flood prone land. The extent of flood prone land to be affected by the proposal and potential impacts is not considered by the proposal.</p> <p>The planning proposal identifies that the intended outcome is to facilitate an increased take-up in uses that are already permissible, and that the provisions do not represent a significant increase in density above the outcomes already envisioned in the zone. The proposal does not rezone land or contain any provisions contrary to the direction.</p> <p>Any future development application on flood prone land in the R3 zone will continue to be assessed against Council's LEP and DCP flooding controls.</p> <p>Given that the increase in floor space proposed from 0.6:1 to 0.7:1 is modest and other built form controls are generally the same, it is not considered necessary to forward the proposal to the Department's Environment and Heritage Group for consultation during public exhibition.</p>

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
4.2 Coastal Management	Consistent	<p>The objective of this direction is to protect and manage coastal areas of NSW.</p> <p>The planning proposal does not seek to rezone land or increase permissible uses. The proposed amendments will facilitate uptake of permissible land uses, consistent with the objectives of the zone. Any inconsistency with this Direction is of minor significance</p> <p>The planning proposal is not inconsistent with this direction.</p>
4.4 Remediation of Contaminated Land	Consistent	<p>This Direction aims to reduce the risk of harm to human health and the environment by ensuring that contamination and remediation are considered at the planning proposal stage.</p> <p>The planning proposal applies to exiting R3 zoned land in an existing urban area. It does not seek to rezone land or increase permissible uses.</p> <p>Chapter 4 of SEPP (Resilience and Hazards) 2021 contains suitable provisions to ensure consideration of whether land is contaminated to be adequately assessed as part of a future development application.</p>
4.5 Acid sulfate soils	Inconsistent	<p>The objective of this direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils.</p> <p>The LGA is affected by acid sulfate soils. An acid sulfate soils study has not been provided.</p> <p>The planning proposal identifies that the intended outcome is to facilitate an increased take-up in uses that are already permissible, and that the provisions do not represent a significant increase in density above the outcomes already envisioned in the zone.</p> <p>This inconsistency is of minor significance as the planning proposal applies to an existing zone and the Bayside LEP 2021 contains suitable provisions to ensure that this matter can be appropriately considered and addressed as part of any future development application involving any excavation.</p> <p>The proposal is therefore justifiably inconsistent with this direction.</p>
5.1 Integrated Land Use and Transport	Consistent	<p>This Direction requires a planning proposal to consider improving access to housing, jobs and services by walking, cycling and public transport and reducing reliance on cars.</p> <p>The planning proposal does not seek to rezone the land or increase permissible land uses. The R3 zone throughout Bayside LGA is generally located within proximity to jobs, services and public transport.</p> <p>The proposal is broadly consistent with this Direction.</p>



Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
6.1 Residential zones	Consistent	<p>This Direction aims to encourage housing choice, make efficient use of infrastructure and services and minimise the impact of residential development on environment and resource lands.</p> <p>The planning proposal outlines that the amendments will encourage the increased uptake of medium density housing typologies in the R3 zone that are currently permitted with consent in the R3 zone of the Bayside LEP 2021 and will continue to contribute towards Bayside LGA's overall housing supply and diversity.</p> <p>As discussed in section 2 above, while the proposed FSR and removal of the minim lot size standards are support, the proposed minimum lot width provision is not. The planning proposal has not satisfactorily demonstrated the need for a lot width to be include in the LEP and that it would not unreasonably restrict housing opportunities.</p> <p>The Department is satisfied that the proposal is consistent with the Direction subject to the recommended changes.</p>

### 3.6 State environmental planning policies (SEPPs)

The planning proposal is consistent with all relevant SEPPs as discussed in the table below.

**Table 7 Assessment of planning proposal against relevant SEPPs**

SEPPs	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
SEPP (Exempt and Complying Development Codes) 2008	Consistent	<p><b>Low Rise Housing Diversity Code (LRHD Code)</b></p> <p>The LRHD Code encourages delivery of low-medium-density housing types by allowing fast tracked approvals via a complying development pathway.</p> <p>Multi-dwelling housing is permissible as complying development in R3 zoned land, under the LRHD Code. Specifically, it allows multi-dwelling housing (terraces) as complying development on R3 zoned land across the LGA unless certain exemptions apply.</p> <p>The LRHD Code contains a range of controls development must adhere to in order to qualify as complying development. These relate to:</p> <ul style="list-style-type: none"> <li>• lot size</li> <li>• lot width</li> <li>• building height</li> <li>• gross floor area (GFA) of buildings</li> <li>• setbacks (primary road, secondary road and side)</li> </ul>

SEPPs	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
		<ul style="list-style-type: none"> <li>• landscaped area</li> <li>• articulation zones, screening and balconies</li> <li>• parking and vehicle access.</li> </ul> <p>These controls largely prevail where there is an inconsistency with LEP and DCP provisions for multi-dwelling housing. The exception is lot size (Clause 3B.33(1)(a) of the Code), where the Code allows an LEP minimum lot area provision for multi-dwelling housing to apply in place of the default control of 600 sqm specified in the Code. Under the proposed changes the minimum lot size prescribed by the Code would apply to complying development.</p> <p>The proposal does not adversely impact on the operation of the Code.</p> <p><b>Subdivision Code</b></p> <p>The Subdivision Code allows, as complying development, the subdivision of land on which a Complying Development Certificate (CDC) has been issued for terrace-style multi-dwelling housing, provided certain requirements are met.</p> <p>Clause 6.4(1)(e) allows for the Torrens title subdivision of terrace-style multi-dwelling housing (creating attached dwellings that each face a public road), for which a CDC has been issued under the LRHD Code, provided the area of each resulting lot is at least 200 sqm.</p> <p>The Subdivision Code prevails over any LEP provision for minimum lot size in relation to terrace-style multi-dwelling housing. Accordingly, this planning proposal will not adversely affect the operation of the Subdivision Code.</p>
SEPP (Housing) 2021	Consistent	<p>The Housing SEPP seeks to deliver a sufficient supply of safe, diverse and affordable housing.</p> <p>The planning proposal will not impact the operation of the SEPP. The planning proposal will improve design outcomes for uses already permitted in the LEP to ensure consistency with the desired character of the R3 zone.</p>

## 4 Site-specific assessment

### 4.1 Environmental

The following table provides an assessment of the potential environmental impacts associated with the proposal.

**Table 8 Environmental impact assessment**

Environmental Impact	Assessment
Built environment	<p>As previously discussed, development for the purposes of ‘multi dwelling housing’ and ‘attached dwellings’ are permitted with consent in the R3 Medium Density Residential zone under the Bayside LEP 2021.</p> <p>The proposal notes that a review of urban design considerations was conducted, to determine the planning controls required to facilitate greater housing diversity in Bayside. This review was focused on increasing the take up of multi dwelling housing and attached dwellings in the R3 medium density zone across the Bayside LGA.</p> <p>In summary, the review stated that:</p> <ul style="list-style-type: none"> <li>• an increase in take-up of multi dwelling housing and attached dwellings can be driven primarily by an increased FSR control and introduction of a minimum lot width control;</li> <li>• the R3 zoned land within the former Rockdale LGA (with a current FSR control of 0.6:1) is generally capable of accommodating an FSR control of 0.7:1, provided it is accompanied by a well-considered set of detailed planning controls to mitigate any potential amenity issues;</li> <li>• the maximum FSR controls applying to the remaining R3 zoned land within the Bayside LGA are already generous, at 0.85:1 or greater, and should not be revisited.</li> <li>• the existing height of building controls for R3 zoned land be retained</li> <li>• the provisions of the DCP relating to medium density residential typologies be revisited.</li> </ul> <p>As outlined the proposal, the proposed LEP amendments have the potential to yield an estimated 1,200 more dwellings over current FSR controls and are intended to be supported by amendments to the relevant DCP, addressing elements such as setbacks, landscaping, private open space, solar access and sustainability initiatives, to ensure residential amenity, streetscape and local character.</p> <p>The Department considers the proposal will have a negligible impact upon the built environment within Bayside LGAs existing R3 zones. However, as discussed previously, in the current context of the national housing crisis, it is considered that the proposed minimum lot width control should remain within the DCP to ensure flexibility can be achieved at the development application stage.</p>

Environmental Impact	Assessment
Natural environment	<p>The proposal is not expected to impact on critical habitat or threatened species, populations or ecological communities or habitat.</p> <p>The R3 zoned land within the Bayside LGA is predominantly characterised by developed, urban land. Multi-dwelling housing developments are already permitted land uses in the R3 zone and impacts on the natural environment will be considered at any future development application stages.</p> <p>No adverse environmental impact is anticipated as a result of the proposal.</p>
Natural hazards	An assessment against the provisions of Section 9.1 Directions 4.1 Flooding and 4.5 Acid Sulphate soils is included in Section 3.5 of this report.

## 4.2 Social and economic

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

**Table 9 Social and economic impact assessment**

Social and Economic Impact	Assessment
Social	The planning proposal will ensure multi-dwelling housing in the R3 zone occurs in a manner consistent with Council's desired future character and objectives of the R3 zone. This is envisaged to have a positive social impact on the Bayside LGA.
Economic	<p>The planning proposal will not result in any significant adverse economic impacts with the LGA or more broadly across metropolitan Sydney.</p> <p>The planning proposal is anticipated to encourage the provision of increased medium density housing supply by unlocking the capacity for 1200 dwellings additional dwellings.</p> <p>The planning proposal is supported by a feasibility analysis prepared by SGS Economics &amp; Planning (2023) which considered the potential impact of the proposed amendments to the FSR controls in Bayside LGA's R3 zones. In summary, the analysis found that:</p> <ul style="list-style-type: none"> <li>the proposed increase in FSR controls is feasible</li> <li>the overall increase in FSR for the sites would result in an increase in yield for the developments sites</li> <li>the proposed FSR controls produce additional development capacity that could yield a net-new 5,900 dwellings (over existing improvements) to the supply of housing. It also represents an incremental increase of 1,200 more dwellings over current FSR controls</li> <li>the proposed FSR increase would result in an even higher yield across all R3 zoned sites, or an estimated 1200 new dwellings.</li> </ul>

## 4.3 Infrastructure

The Bayside LGA is an established urban area which is serviced by water, sewer services, electricity, gas and telecommunications.

Whilst the planning proposal will not rezone land it will result in some intensification of development with the R3 Medium Density zone. The Department recommends that the relevant utility providers, including Sydney Water and Ausgrid be consulted. This forms a condition of the Gateway.

## 5 Consultation

### 5.1 Community

The planning proposal is categorised as standard under the LEP Making Guidelines (August 2023). Accordingly, a community consultation period of 20 working days is recommended and this forms part of the conditions to the Gateway determination.

### 5.2 Agencies

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

- Land and Housing Corporation
- APA Group - operator of the Moomba Sydney High Pressure Ethane Pipeline
- Transport for NSW
- Relevant utility providers, including Ausgrid and Sydney Water.

## 6 Timeframe

The LEP Plan Making Guidelines (August 2023) establishes maximum benchmark timeframes for planning proposal by category. This planning proposal is categorised as a standard

The Department recommends an LEP completion date of 26 July 2024 in line with its commitment to reducing processing times and with regard to the benchmark timeframes. A condition to the above effect is recommended in the Gateway determination.

It is recommended that if the gateway is supported it is accompanied by guidance for Council in relation to meeting key milestone dates to ensure the LEP is completed within the benchmark timeframes.

## 7 Local plan-making authority

Given the scale and LGA wide nature of the planning proposal, the Department does not support Council being authorised as the local plan-making authority for this proposal.

## 8 Assessment summary

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

- it demonstrates strategic merit in being consistent with the District Plan, the LSPS and Bayside LHS
- the proposed amendments will encourage the increased delivery of medium density housing in the LGA and will provide capacity for approximately 1,200 additional dwellings
- It is supported by an economic assessment that concludes that the proposal will unlock additional housing capacity and will not have adverse impacts on feasibility.

## 9 Recommendation

It is recommended the delegate of the Secretary:

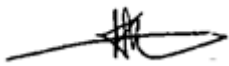
- Agree that any inconsistencies with section 9.1 Directions are minor or justified.

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

The following conditions are recommended to be included on the Gateway determination:

1. The planning proposal is to be updated prior to exhibition to:
  - a) Remove references to the proposed provision which seeks to introduce a minimum lot width requirement
  - b) Include proposed LEP maps suitable for consultation.
2. Consultation is required with the following public authorities:
  - Land and Housing Corporation
  - APA Group - operator of the Moomba Sydney High Pressure Ethane Pipeline
  - Transport for NSW
  - Relevant utility providers, including Ausgrid and Sydney Water.
3. The planning proposal should be made available for community consultation for a minimum of 20 working days

Given the nature of the planning proposal, it is recommended that the Gateway not authorise council to be the local plan-making authority and that an LEP completion date of 26 July 2024 be included on the Gateway.



Kelly McKellar

Manager, Eastern and South Districts

9 November 2023



Laura Locke

Director, Eastern and South Districts

10 November 2023

Assessment officer

<p>Bailey Williams Planning Officer, Eastern and South Districts (02) 8275 1306</p>	
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