



IRF24/1724

Plan finalisation report – PP-2023-1805

Bayside Local Environmental Plan 2021 – 776 & 792-
794 Botany Road and 33-37 Henry Kendall Crescent,
Mascot

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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 and present and future.

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1 Introduction

1.1 Overview

1.1.1 Name of draft LEP

Bayside Local Environmental Plan 2021 (Map Amendment No. 5).

The planning proposal seeks to rezone the land to R4 High Density Residential, amend the maximum height of buildings and remove active street frontage requirements to facilitate redevelopment of a Land and Housing Corporation (LAHC) site for residential flat buildings.

1.1.2 Site description

Table 1 Site description

Site Description	<p>The planning proposal applies to 776 & 792-794 Botany Road and 33-37 Henry Kendall Crescent, Mascot:</p> <ul style="list-style-type: none"> • 776 Botany Road, Mascot (Lot 1 DP 36486) • 792 Botany Road, Mascot (Lot E DP 36472) • 794 Botany Road, Mascot (Lot D DP 36472) • 33 Henry Kendall Crescent, Mascot (Lot A DP36472) • 35 Henry Kendall Crescent, Mascot (Lot B DP36472) • 37 Henry Kendall Crescent, Mascot (Lot C DP36472).
Type	Site
Council / LGA	Bayside

The site has an area of approximately 5,771m² and street frontages to Botany Road to the east, Coward Street to the south and Henry Kendall Crescent to the west (**Figure 1**).

Existing development comprises 25 social housing dwellings owned by LAHC across five two storey brick buildings including three walk up flat buildings and 2 town house buildings which were constructed in the 1950s. The site also contains an Ambulance Station at the north of the site fronting Botany Road.



Figure 1 Aerial view of the site and local context (Source: NearMap 2024)

1.1.3 Purpose of plan

The planning proposal seeks to amend the land zone, maximum height of building and active street frontages maps to facilitate redevelopment of a Land and Housing Corporation (LAHC) site for residential flat buildings.

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

Table 2 Current and proposed controls

Control	Current	Proposed
Zone	E1 Local Centre	R4 High Density Residential
Maximum height of the building	14m	28m
Floor space ratio	2:1	2:1 (no change)
Active Street Frontages	Applies to Botany Road frontage and Coward Street intersection.	Remove requirement

1.1.4 State electorate and local member

The site falls within the Heffron State electorate. Ron Hoenig MP is the State Member.

The site falls within the Kingsford Smith Federal electorate. Matt Thistlethwaite MP is the Federal Member.

To the team's knowledge, the MPs have not 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.

A submission was received from Councillor Greta Werner of Bayside Council objecting to the planning proposal. Her objections include the amount of affordable housing proposed and the policy settings for providing affordable housing in NSW.

2 Gateway determination

The Gateway determination issued on 15 November 2023 determined that the proposal should proceed subject to conditions. The Department is satisfied that the conditions of the Gateway determination have been addressed.

In accordance with the Gateway determination (as altered) the proposal is due to be finalised on or before 15 August 2024.

3 Public exhibition and post-exhibition changes

In accordance with the Gateway determination, the planning proposal was publicly exhibited from 14 December 2023 to 8 February 2024.

A total of 29 submissions were received, including:

- 25 community submissions (however 3 of these submissions were duplicates)
- 3 Government agency submissions
- 1 submission from Bayside Council.

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

3.1 Submissions during exhibition

3.1.1 Submissions from the community

Of the community submissions received:

- 21 community submissions objected to the planning proposal (however 3 of these submissions were duplicates)
- 2 submissions were in support
- 2 submissions raised concerns but were neither in support nor objected.

In summary, the matters raised in submissions include:

- Built form and design (71%)
- Traffic and parking (48%)
- R4 zoning and active street frontage (48%)
- Retention of ambulance site (19%)
- Flooding, stormwater and draining (19%)

- Environmental and biodiversity (19%)
- Provision of social and affordable housing (14%)
- Geotechnical conditions (14%).

The Department is satisfied that the post-exhibition report to the Panel has responded to 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:

- NSW Health
- Transport for NSW (TfNSW)
- State Emergency Services (SES).

None of the agencies raised objections with the planning proposal but provided feedback and advice on matters including:

- Traffic, parking and access
- Flooding
- Retention of ambulance site.

The Department is satisfied that the post-exhibition report to the Panel has responded to submissions. Post-exhibition changes are discussed in Section 3.2 of this report.

3.1.3 Submission from Bayside Council

A submission was received from Bayside Council which raised concerns, including:

- Change of zoning, density and removal of active street frontages
- Heritage conservation
- Traffic and access
- Flooding
- Proposal is out of sequence with Council's master planning for the precinct
- Tree management
- Requests site-specific DCP be required
- Encourages exceeding social and affordable dwelling minimum requirements.

The Department is satisfied that the post-exhibition report to the Panel has responded to the matters raised in Council's submission.

3.2 Post-exhibition changes

3.2.1 Sydney Eastern City Planning Panel recommended changes

On 19 June 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:

- remove the ambulance site (776 Botany Road, Mascot) from the planning proposal
- amend the maximum height of building map to provide a transition between the low density residential along Henry Kendall Street (3 storeys/ 11m) and Coward Street in the west (4 storeys/ 14m) to Botany Road in the east (8 storeys/ 28m) (see **Figure 2**).

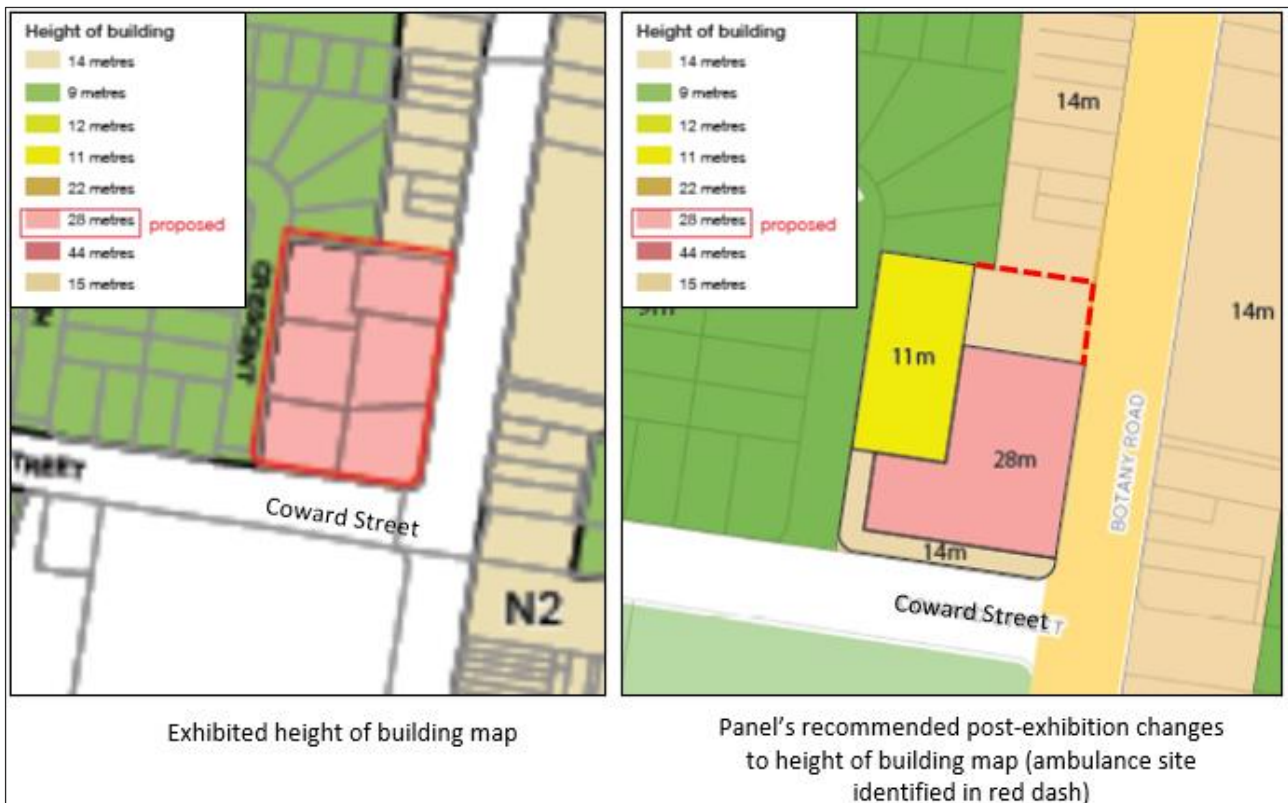


Figure 2 Exhibited and revised maximum height of buildings map (source: planning proposal 2024)

3.2.2 The Department's recommended changes

Following the receipt of the revised planning proposal and having considered the Panels post-exhibition recommendations, the Department has made further changes to the proposal to:

- a) Apply a maximum height of buildings of 28m across site consistent with the exhibited planning proposal but excluding the ambulance site (**Figure 3**).

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).

The conventions for SILEP maps are to apply consistent development standards across single sites. However, applying multiple standards to one site may be accommodated in certain exceptional circumstances, usually on highly constrained sites, in centres or in large redevelopments. Applying more than one height standard to a site of this size is generally considered overly prescriptive and inconsistent with s.9.1 Direction 1.4 Site Specific Provisions, where there are not exceptional circumstances.

The intended outcome for the site has been very clearly articulated in the planning proposal by the PPA. In this instance, the Department is of the view that the SILEP, the Apartment Design Guide and development assessment processes can achieve the intended outcome. Accordingly, the Department is satisfied that existing controls and development assessment processes will mitigate potential height impacts of future development on the site.

- b) Extend the R4 High Density Residential zone boundary south over the Coward Street road reserve (see **Figure 4**). This is a minor, administrative change to reflect mapping conventions. This is not a substantive change from the exhibited planning proposal.

3.2.3 Justification for post-exhibition changes

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.

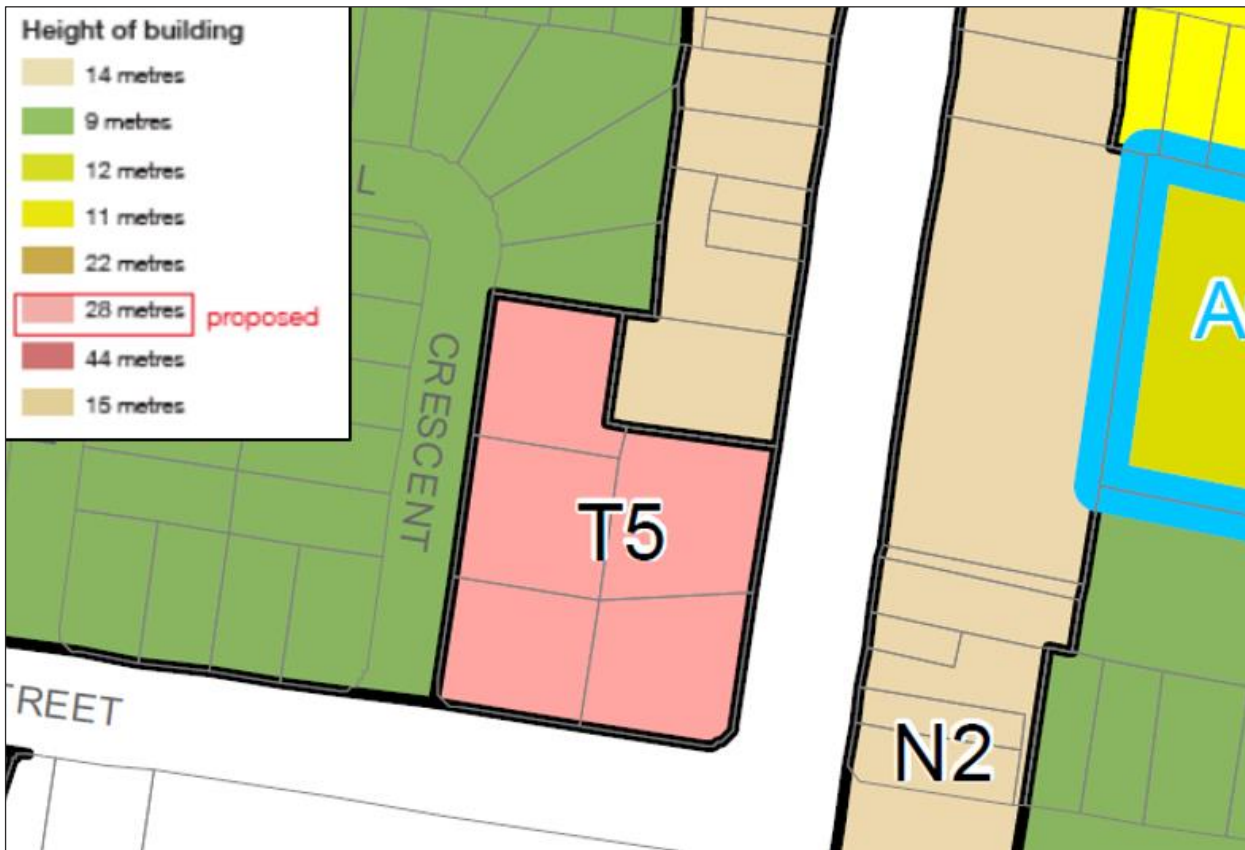


Figure 3 Recommended post-exhibition change to height of building map

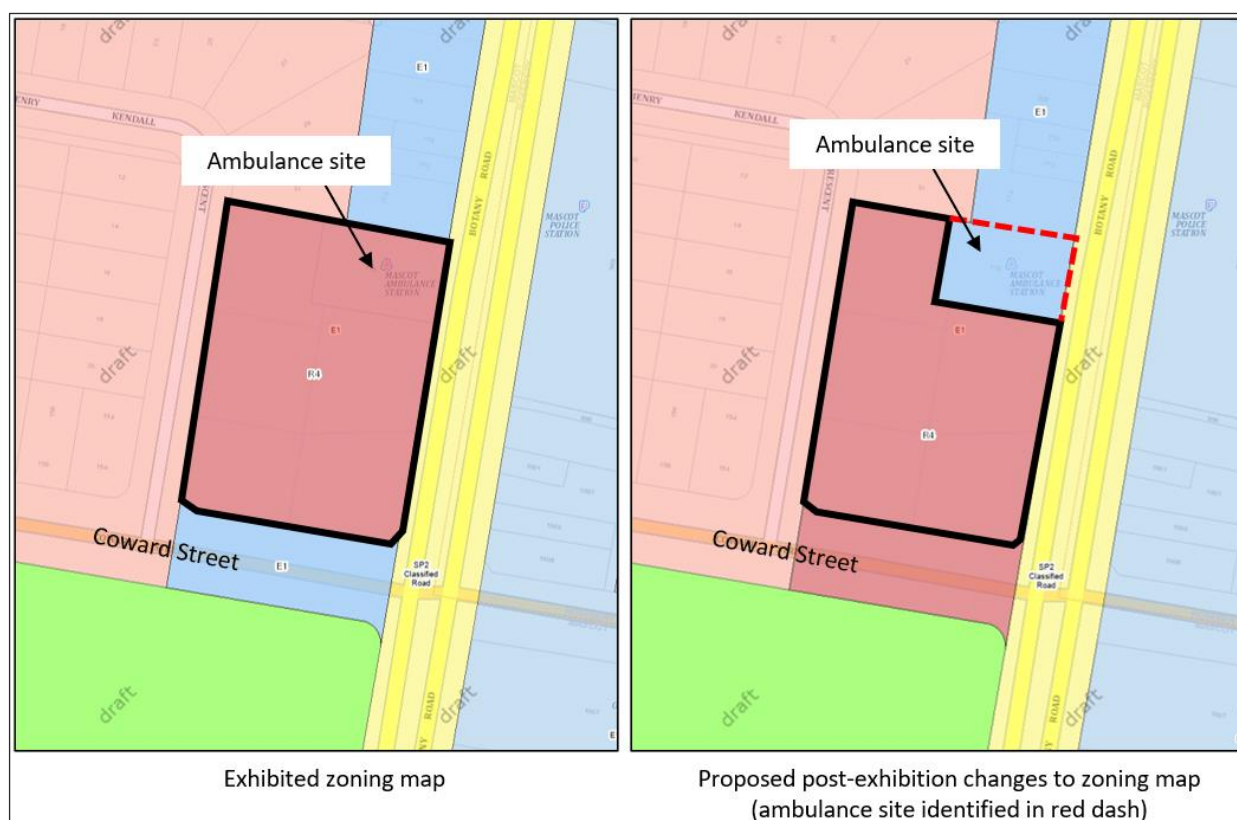


Figure 4 Exhibited and recommended post-exhibition changes to zoning map

4 Department's assessment

The 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 as submitted for finalisation is consistent with the assessment undertaken at the Gateway determination stage. Where the proposal is inconsistent with this assessment or requires reconsideration of any unresolved matters these are addressed in Section 4.1.

Table 4 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

	Consistent with Gateway determination report assessment	
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 5 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 checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Infrastructure	<input checked="" type="checkbox"/> Yes	<input 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 Section 9.1 Direction 4.1 Flooding

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.

The Gateway assessment report found that consistency with this Direction remained unresolved until the planning proposal was updated to address the terms of the Direction.

The planning proposal was updated prior to consultation to address the requirements of this direction.

The site has an existing long-standing residential apartment use and the proposal does not propose to increase the permissible FSR and therefore does not intensify the permissible density on the site. The planning proposal states that during the 1% AEP flood event, the site and surrounding roads are hazard category 'H1 - no constraints' and during a PMF event, the site remains hazard category H1, although some parts of the adjacent road reserve increasing to category H2 'Unsafe for Small Vehicles'. The proposal is not expected to adversely impact flood behaviour.

The planning proposal is consistent with the terms of the direction.

4.1.2 Section 9.1 Direction 4.4 Remediation of contaminated land

The Direction seeks to reduce the risk of harm to human health and the environment by ensuring contamination and remediation are considered by planning proposal authorities.

The Gateway assessment report determined that, as that the proposal would permit a change of use for the land occupied by the ambulance station, a preliminary site investigation of the land should be carried out in accordance with the contaminated land planning guidelines.

A preliminary site investigation was submitted with the planning proposal for finalisation. It found that:

- The potential for land contamination to be present at the site as a result of current and previous land use activities is considered to be low to moderate.
- The site could be made suitable for the proposed rezoning to R4 High Density Residential subject to undertaking a detailed site investigation and further acid sulfate soils assessment and any subsequent management or remediation required.

Notwithstanding this, the recommended post exhibition changes have excluded the ambulance site from the planning proposal. The land to be rezoned is currently occupied by residential flat buildings, this use is permissible in the existing and proposed zones.

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.

The planning proposal is consistent with the terms of the Direction.

4.1.3 Section 9.1 Direction 5.1 Integrating Land Use and Transport

The Direction seeks to ensure that land use and development improve access to housing, jobs and services by means of public transport and improved walkability.

The Gateway assessment report determined that the planning proposal is broadly consistent with the aims of this Direction but was considered unresolved as consultation with Transport for NSW (TfNSW) was still ongoing at the time regarding suitable access arrangements.

TfNSW's submission raised no objections to the planning proposal.

The planning proposal is consistent with terms of the direction.

5 Post-assessment consultation

The Department consulted with the following stakeholders after the assessment.

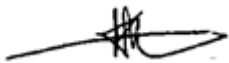
Table 6 Consultation following the Department's assessment

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
Panel	<p>On 29 July 2024, 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 reiterated their original recommended changes to the height of building map detailed in section 3.2.1.</p>	<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, with amendments, under clause 3.36(2)(a) of the *Environmental Planning and Assessment Act 1979* because:

- It is consistent with the strategic planning framework including the Eastern City District Plan, Bayside Local Housing Strategy and Local Strategic Planning Statement and State Environmental Planning Policies.
- It is generally consistent with the relevant Section 9.1 Directions and inconsistencies have been adequately justified.
- It is consistent with the Gateway determination.
- There are no outstanding agency objections.
- It is not expected to generate any adverse social, environmental or economic impacts.
- It facilitates the delivery of affordable and social housing in the Bayside LGA.



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