

City Planning & Environment Committee

5/02/2025

Item No	CPE25.004
Subject	Planning Proposal Request - 204 Rocky Point Road, Kogarah
Report by	Robert McKinlay, Senior Urban Planner
File	SF24/8015

Summary

On 19 August 2024, a Planning Proposal Request (PP) was submitted to Council for land at 204 Rocky Point Road, Kogarah ('the site'). The site is currently zoned E3 Productivity Support under the *Bayside Local Environmental Plan 2021* (BLEP 2021). The site is part of the former Darryl Lea factory property.

The current version of the PP (refer **Attachment 1**) seeks the following amendments to the BLEP 2021:

- Amend the height of buildings map to exclude the site from Area 15. This has the effect of replacing the building height plane that presently applies to the site with the currently mapped building height limits of 8.5m and 18m; and
- Amend the mapping for Clause 6.10 Design Excellence so that it applies to the site. This will require future development on the site to exhibit design excellence.

The PP has been the subject of a detailed strategic and site specific merit assessment against the strategic planning framework and it is recommended that the PP be supported for the reasons outlined in this report.

A previous version of the PP was considered by the Bayside Local Planning Panel (BLPP) on 10 December, 2024. The Panel unanimously agreed that the Planning Proposal Request should be amended to apply the Design Excellence clause to the subject site, and with that change, Council should support the Planning Proposal Request.

The current version of the Planning Proposal is included as **Attachment 1**, the Assessment Report prepared for the BLPP is included as **Attachment 2**, a Memo from the Manager Strategic Planning recommending inclusion of clause 6.10 Design Excellence is included as **Attachment 3**, the recommendation of the BLPP is included as **Attachment 4**, and appendices from the BLPP report (historical information) are included as **Attachment 5**.

Officer Recommendation

That Council

- 1 Notes the advice of the Bayside Local Planning Panel
- 2 Endorses the draft Planning Proposal for amendments to the Bayside LEP 2021 mapping at 204 Rocky Point Road, Kogarah as follows:
 - a) The Height of Buildings Map (HOB) to exclude the site from Area 15.

- b) The Design Excellence Map (DEX) to identify the site as subject to Clause 6.10 Design Excellence.
- 3 Forwards the draft Planning Proposal and supporting documents to the Department of Planning, Housing and Infrastructure for a Gateway Determination with a request that Council be authorised as the Local Plan Making Authority (LPMA);
- 4 Delegate authority to the General Manager to make any amendments to the Planning Proposal and supporting documents required prior to public exhibition;
- 5 Subject to receiving a Gateway determination from the Department of Planning, Housing and Infrastructure, and satisfying any conditions, proceed to public exhibition for community and stakeholder input; and
- 6 Consider a further report following the results of public exhibition to consider any submissions received, and any changes to the draft Planning Proposal arising from the exhibition process.

Background

Owner: Perpetual Trustee Company Limited

Applicant: Patch Planning on behalf of Abacus Storage Funds Limited

SUBJECT SITE AND SURROUNDING AREA

The site is known as 204 Rocky Point Road, Kogarah, legally described as Lot 11 DP1289336. The site is shown in **Figure 1**.

The site, part of the former Darryl Lea factory complex, is located on the eastern side of Rocky Point Road between Garrigarrang Avenue to the north and low density residential development along Rocky Point Road and Margate Street to the south and southeast. Land west of the site beyond Rocky Point Road is situated within the Georges River LGA, and is occupied predominantly by a low-rise aged care facility. The site is 3107m² in area.

Further details about the site are contained within the Planning Proposal (**Attachment 1**) and the Assessment Report (**Attachment 2**). Those appendices to the Planning Proposal that were included under separate cover in the BLPP report have been included as **Attachment**

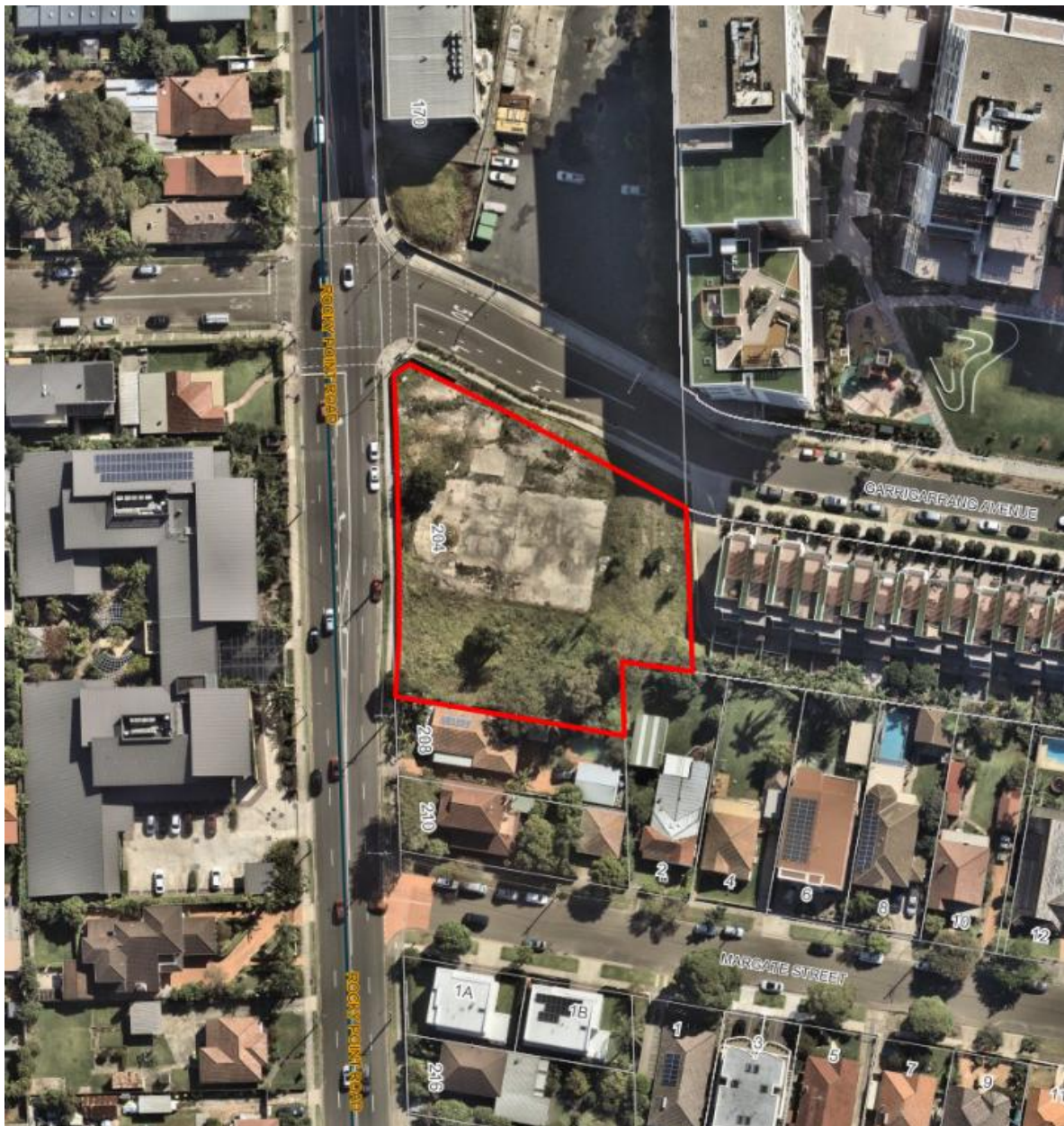


Figure 1: Aerial photograph of the site

The site is presently cleared of all structures, but does retain concrete slabs that formed the foundations of the industrial buildings previously occupying the site. A dwelling house was formerly located on the southern portion of the lot adjacent to 208 Rocky Point Road, but this was demolished in late 2022. There are several trees on the site as well as other vegetation that has either survived the demolition of the previous buildings, or regrown subsequently.

Photos of the site are provided in **Figure 2**, below.



Looking North up Rocky Point Rd from the site



Figure 2: Photos of the site and existing development surrounding the site.
(Views of the site frontages – site marked with arrows), and development opposite)

SITE CONTEXT & HISTORY

The site is part of the former Darrell Lea Factory site which was redeveloped between 2016 and 2020.

From 1962 until 2014 the Australian confectionary maker, Darrell Lea, operated a factory on land at 152-206 Rocky Point Road, Kogarah (the Darrell Lea Site). In August 2013 a Planning Proposal Request was lodged with the then Rockdale City Council to rezone the site from IN2 Light Industrial (now E4 General Industrial) to a mix of R4 High Density Residential and B6 Enterprise Corridor (now E3 Productivity Support) zones, with increases to building height and floor space ratio development standards. The Planning Proposal Request was accompanied by a master plan, which set out how the mix of uses and buildings would integrate with the local area.

The Planning Proposal Request was controversial, with the proponent seeking a Pre-Gateway Review and Council resolving in February 2014 to amend it to reduce building heights and floor space ratios. During the assessment process, excessive building height was identified as an issue of key importance.

The Pre-Gateway Review was granted and custody of the Planning Proposal was handed to the then Sydney East Joint Regional Planning Panel (JRPP). Following submissions by Council, the Planning Proposal was amended to include a building height plane provision to mitigate impacts on existing low-density dwellings to the immediate south of the site. The Planning Proposal was subsequently submitted by the JRPP for a Gateway Determination in October 2014, which was granted, and the Planning Proposal was publicly exhibited.

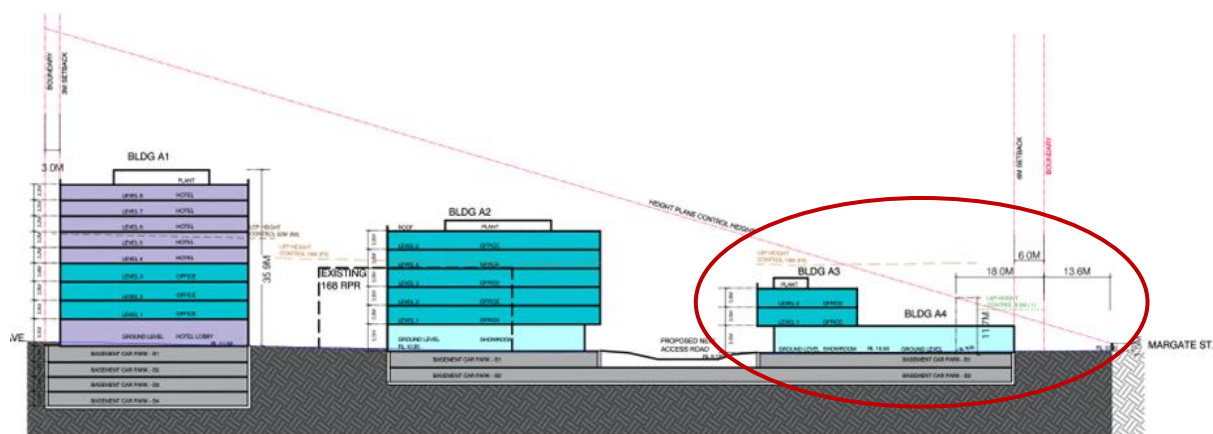
Following exhibition, the then Department of Planning and Environment (now DPHI) finalised the Planning Proposal. This portion of the process included responsibility for the drafting and implementation of changes to the Rockdale LEP 2011 (RLEP 2011). The Planning Proposal was gazetted as *Rockdale Local Environmental Plan 2011 (Amendment No. 11)* on 15 April 2016. The effect of this was to amend the RLEP 2011 mapping, effecting changes to zones, building height and floor space ratio, and introducing Clause 4.3A which implemented the building height plane provision applying to the site.

On 14 June 2016, JBA requested a formal Pre-DA meeting for the Darrell Lea site following finalisation of Amendment 11 to the RLEP 2011. This request included Pre-DA development plans for the entire Darrell Lea site, including proposed buildings and uses within the B6 zoned land showing compliance with the building height plane. Excerpts from these plans are included below as Figure 3 and Figure 4 to illustrate the intent of the building height plane.

Consent was subsequently granted to DA-2017/224 across the Darrell Lea site for:

Integrated Development and Staged Development – Stage 1 includes:

- construction of four (4) residential flat buildings comprising 513 units and twenty (20) townhouses;
 - basement car parking;
 - construction of a new access road connecting Rocky Point Road and Production Avenue, including the construction of a new signalised intersection at Rocky Point Road and road upgrade works to Production Avenue;
 - landscape works, including ground level landscaping for communal open space and communal terraces to some rooftops of the residential flat buildings;
 - land subdivision, land dedication and building envelope for a child care centre;
 - retention of the existing commercial building at 168 Rocky Point Road;
 - and tree removal and bulk earthworks.
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SECTION F - COMMERCIAL

Figure 3: Building height plane indicated by red diagonal line, noting the portion of the site subject to the current PP is on the right of image
(Source: PTW Pre DA Architectural Documents dated 14 June 2016)



Figure 4: Masterplan overview showing location of Section F as described in Figure 3 above
(Source: PTW Pre DA Architectural Documents Dated 14 June 2016)

DA-2017/224 did not include construction of the commercial buildings and shared underground parking areas indicated in the pre-lodgement plans. The Darrell Lea site was cleared of most structures in 2017, allowing completion of the residential portion in 2019. In November 2019, the subdivision component of the development was completed, creating Lot 1 DP1240546 as the parcel for land zoned B6 Enterprise Corridor.

On 27 August 2021, the Bayside LEP 2021 (BLEP 2021) replaced the Rockdale LEP 2011 and Botany Bay LEP 2013. Clause 4.3A of the RLEP 2011 became Clause 4.3A of the BLEP 2021. The translation preserved the function of the clause but updated the area to which the clause applies from a list of former land parcels to a mapped "Area 15" on the Height of Buildings Map.

In February 2023, the B6 land was further subdivided, creating separate lots for 170 Rocky Point Road & 204 Rocky Point Road as Lots 10 & 11 in DP1289336 respectively. Lot 11 is the allotment of land subject to this current Planning Proposal Request.

On 26 April 2023, the State Environmental Planning Policy Amendment (Land Use Zones) (No 3) 2022 and related instruments amended the BLEP 2021 to replace existing commercial and industrial zones with new employment zones. The zoning of the subject site changed from B6 Enterprise Corridor zone to E3 Productivity Support zone.

On 5 July 2023, Ethos Urban, on behalf of Abacus Storage Funds Management Limited, lodged DA-2023/186 on the subject site for Construction and Use of a Six (6) Storey Building for Use as a Storage Premises (self-storage units). A key image from the DA plans is shown below to illustrate the proposal (**Figure 5**).



Figure 5: DA-2023/186 BN Group perspective rendering of storage building proposed at 204 Rocky Point Road, Kogarah.

This DA was publicly exhibited and received 56 submissions objecting to the proposal. The building required a Clause 4.6 variation of 30.5% to the 1.8:1 floor space ratio allowed on the site, for an FSR of 2.4:1 with a total GFA of 7,529m². Council identified that the proposal was also not compliant with the building height plane imposed by Clause 4.3A. The applicant formally requested the DA be withdrawn on 23 January 2024.

Subsequently, Patch Planning requested information from Council and held meetings with staff to discuss the intent of the building height plane in Clause 4.3A. The current Planning Proposal Request was formally lodged on 19 August 2024.

PLANNING PROPOSAL HISTORY

A history of the Planning Proposal Request is included in Table 1 below:

Table 1: History and Context of the draft Planning Proposal

Date	Summary of Event
11 June 2024	Meeting to Discuss the Planning Proposal between Applicant and Council
14 June 2024	Pre-Lodgement Advice issued to Proponent
30 July 2024	Planning Proposal Request submitted (PP Version 3)
23 August 2024	Planning Proposal Stage 1 Fees paid, considered formally lodged
19 September 2024	Request for Further Information Issued
20 October 2024	Further Information Received (PP Version 4)
28 November 2024	Applicant Advised of Officer Recommendation
06 December 2024	Applicant proposes amendment of the Planning Proposal
10 December 2024	Planning Proposal considered by the Bayside Local Planning Panel with supplementary advice supporting the applicant's amendment
17 December 2024	BLPP Advice Issued
20 December 2024	Updated PP received from the proponent (PP Version 5).
08 January 2025	Present version of the PP received from the proponent (PP Version 6)

Details of the Planning Proposal

The Planning Proposal (see **Attachment 1**) seeks amendments to the BLEP 2021 as detailed in **Table 2** below.

Table 2: Proposed Amendments to the BLEP 2021

Control	BLEP 2021	Planning Proposal Request
Zone	E3 Productivity Support	No change.
Height of Buildings (HOB) Clauses 4.3 and 4.3A	<p>Building height is defined by the Height of Buildings Map:</p> <ul style="list-style-type: none"> 8.5m on areas adjacent to the southern and eastern lot boundaries as mapped. 18m across the rest of the site. <p>and</p> <p>Defined by a building height plane (Clause 4.3A) which in practice is approximately:</p> <ul style="list-style-type: none"> 1.5m height at the southern lot boundary 11m height at 31.6m from the southern lot boundary (near the middle of the site) 15m or higher at the northern lot boundary (Garrigarang Avenue) 	<p>Building height is defined by the Height of Buildings Map:</p> <ul style="list-style-type: none"> 8.5m on areas adjacent to the southern and eastern lot boundaries as mapped. 18m across the rest of the site.
Floor Space Ratio (FSR) Clause 4.4	1.8:1	No change.
Design excellence Clause 6.10	Does not apply to the site.	Requires development on the site to exhibit design excellence.

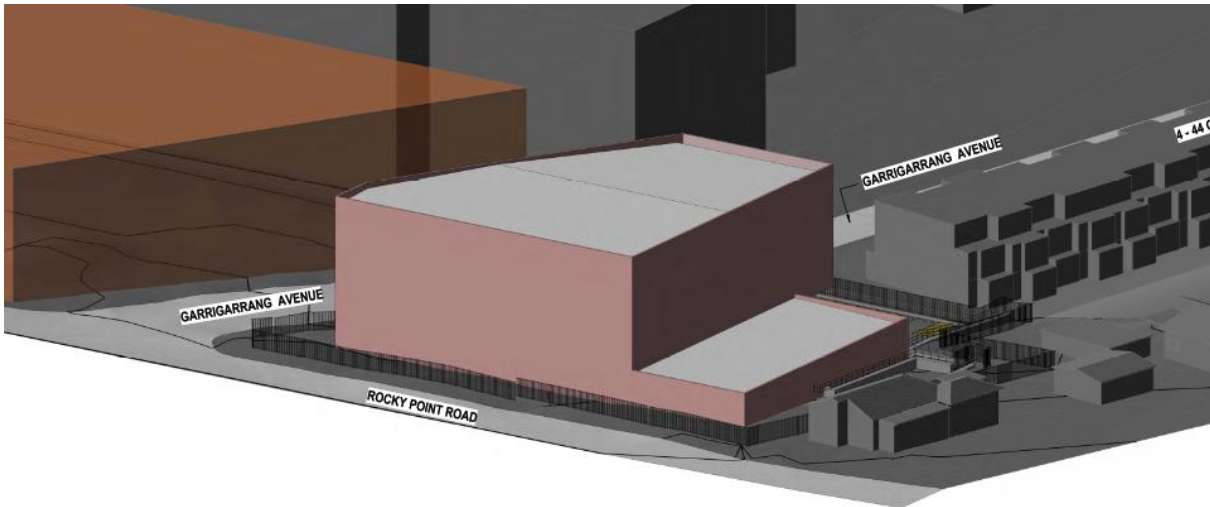


Figure 6: Concept Building Envelope Render (Source: BN Group)

Assessment of the Planning Proposal Request

A detailed assessment of the PP's strategic and site-specific merit in accordance with DPHI's LEP Making Guidelines is included in the Planning Assessment Report to the BLPP in **Attachment 2**. This report did not support Version 4 of the PP proceeding, as it identified that the proposal did not fully demonstrate both strategic and site-specific merit.

Prior to the BLPP meeting, the applicant requested that the PP be amended to apply BLEP 2021's Clause 6.10 Design Excellence to the site. This amendment was supported by Council staff, as it addressed the concerns raised in the Assessment Report. Consequently, staff provided a supplementary Memo (**Attachment 3**) to the BLPP with a replacement recommendation to support the PP.

The amended PP is now supported as it provides the Design Excellence clause as a mechanism to replace the building height plane, ensuring that development on the site will respect the solar access of adjoining properties. The Design Excellence clause will also ensure a better design outcome, addressing requirements of the strategic planning framework. It essentially replaces the numerical height plane control with a qualitative control that will be administered by a Design Excellence Panel.

The amended PP is now also consistent with the directions outlined in the Greater Sydney Regional Plan (GSRP), the planning priorities in the Eastern City District Plan (ECDP) and Bayside Local Strategic Planning Statement (LSPS), and the Section 9.1 Ministerial Directions, demonstrating both strategic and site-specific merit.

Bayside Local Planning Panel Advice

The Planning Proposal Request was considered by the Bayside Local Planning Panel at its meeting on 10 December 2024. The Panel advised Council that the draft Planning Proposal should be supported, and their advice is outlined below, and included in **Attachment 4**:

The Bayside Local Planning Panel recommend to the City Planning and Environment Committee and Council that pursuant to s3.34 of the Environmental Planning and

Assessment Act 1979, the Planning Proposal Request for 204 Rocky Point Road, Kogarah should:

1. *Be amended to apply Bayside Local Environmental Plan 2021 Clause 6.10 Design Excellence to the subject site; and*
2. *Subject to the above amendment, the Planning Proposal should be supported and should be submitted to the Department of Planning, Housing and Infrastructure for a Gateway determination.*

The BLPP agreed with Council's supplemental recommendation in relation to the PP, noting that the proposed solution would address the concerns raised in the first report.

Conclusion

The draft PP has been subject to a detailed merit-based assessment against the strategic and statutory planning framework as required by the *Environmental Planning and Assessment Act 1979*, relevant guidelines, Planning Circulars and Practice Notes.

In considering whether to progress a draft Planning Proposal to a Gateway determination, Council is required to consider if the proposed changes to the BLEP 2021 have both strategic and site-specific merit. Following amendments, the proposal has been found to be consistent with the strategic planning framework applying to the site.

Regarding site-specific merit, the assessment undertaken has identified impacts on the locality that would likely arise if the draft Planning Proposal proceeds. The height plane control was originally included with the objective of ensuring there would be a transition in building height from the new development down to the existing low density residential to the south. This was considered necessary to protect solar access and the visual impact experienced from those residential properties and their backyards.

The Draft Planning Proposal now includes application of the BLEP2021 Design Excellence clause, which is intended to achieve the same outcome, but allows greater flexibility and an assessment of any proposal on merit. Clause 6.10 includes the following list of considerations that will be relevant in this instance, especially (iv), (v) and (vii):

(e) how the development addresses the following matters—

- (i) the suitability of the land for development,
- (ii) existing and proposed uses and use mix,
- (iii) heritage issues and streetscape constraints,
- (iv) the relationship of the development with other development (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,
- (v) bulk, massing and modulation of buildings,
- (vi) street frontage heights,
- (vii) environmental impacts such as sustainable design, overshadowing, wind and reflectivity,
- (viii) the achievement of the principles of ecologically sustainable development,
- (ix) pedestrian, cycle, vehicular and service access, circulation and requirements,
- (x) the impact on, and any proposed improvements to, the public domain,
- (xi) achieving appropriate interfaces at ground level between the building and the public domain,
- (xii) excellence and integration of landscape design.

Giving consideration to the above, the draft PP has demonstrated both strategic and site-specific merit, and is recommended to be submitted to DPHI for a Gateway determination.

Financial Implications

Not applicable	<input type="checkbox"/>	
Included in existing approved budget	<input checked="" type="checkbox"/>	A fee has been paid by the Proponent for the assessment of this draft Planning Proposal.
Additional funds required	<input type="checkbox"/>	

Community Strategic Plan

Theme One	– In 2032 Bayside will be a vibrant place	<input checked="" type="checkbox"/>
Theme Two	– In 2032 Our people will be connected in a creative City	<input type="checkbox"/>
Theme Three	– In 2032 Bayside will be green, resilient and sustainable	<input type="checkbox"/>
Theme Four	– In 2032 Bayside will be a prosperous community	<input checked="" type="checkbox"/>

Risk Management – Risk Level Rating

No risk	<input type="checkbox"/>
Low risk	<input checked="" type="checkbox"/>
Medium risk	<input type="checkbox"/>
High risk	<input type="checkbox"/>
Very High risk	<input type="checkbox"/>
Extreme risk	<input type="checkbox"/>

Community Engagement

Should Council support the draft PP, it will be drafted and submitted to the Department of Planning, Housing and Infrastructure seeking a Gateway determination. If a Gateway determination is issued, the draft PP will be subject to community consultation in accordance with Section 3.34(2)(c) of the *Environmental Planning and Assessment Act 1979* and Council's Community Participation Plan. The specific requirements for community consultation will be listed in the Gateway determination.

Attachments

- 1 Updated Planning Proposal - Version 6 January 2025 (Under separate cover Attachments Part One)
- 2 BLPP Report 10 December 2024 (Under separate cover Attachments Part One) (Under separate cover Attachments Part One)
- 3 Memo to BLPP 10 December 2024 - Changes to Planning Proposal and Amended Recommendation (Under separate cover Attachments Part One)

- 4 BLPP Recommendations 10 December 2024 (Under separate cover Attachments Part One)
- 5 PP Attachments from BLPP Report 10 December 2024 (Under separate cover Attachments Part One) (Under separate cover Attachments Part One)