

## **NOTICE**

A meeting of the  
**Bayside Local Planning Panel – Planning Proposal**  
will be held in the Committee Room, Botany Town Hall  
Corner of Edward Street and Botany Road, Botany  
on **Tuesday 10 December 2024 at 4:00 PM**

to consider items outside the public meeting  
in accordance with the Operational Procedures

**Members of the public do not have the opportunity to speak on these items**

## **ON-SITE INSPECTIONS**

On-site inspections are undertaken beforehand.

## **AGENDA**

### **1 ACKNOWLEDGEMENT OF COUNTRY**

Bayside Council acknowledges traditional custodians: the Gadigal and Bidjigal people of the Eora nation, and pays respects to Elders past, present and emerging. The people of the Eora nation, their spirits and ancestors will always remain with our waterways and the land, our Mother Earth.

### **2 APOLOGIES**

### **3 DISCLOSURES OF INTEREST**

### **4 MINUTES OF PREVIOUS MEETINGS**

Nil

### **5 REPORTS – PLANNING PROPOSALS**

5.1 Planning Proposal Request - 204 Rocky Point Road, Kogarah.....2

5.2 Planning Proposal Request: 251-253 Princes Highway & 6-10 Hattersley St, Arncliffe .....92

### **6 REPORTS – DEVELOPMENT APPLICATIONS**

Nil

Meredith Wallace  
**General Manager**

---

**Bayside Local Planning Panel - Other Applications**

**10/12/2024**

Item No	5.1
Subject	<b>Planning Proposal Request - 204 Rocky Point Road, Kogarah</b>
Report by	Robert McKinlay, Senior Urban Planner
File	SF24/6999

---

**Summary**

Patch Planning on behalf of Abacus Storage Funds Limited (Abacus) has lodged a Planning Proposal Request with Council to remove the application of a site-specific building height plane identified in *Clause 4.3A Exception to height of buildings—Rocky Point Road, Kogarah* of the *Bayside Local Environmental Plan 2021 (Bayside LEP)*. Clause 4.3A currently applies to “Area 15” on the Height of Buildings Map, which 204 Rocky Point Road, Kogarah (the subject site) is located within.

Clause 4.3A was included in the Bayside LEP by a previous Planning Proposal which facilitated a master planned redevelopment of the former Darrell Lea Chocolate factory at 152-206 Rocky Point Road, Kogarah. The proponent contends that the building height plane clause was applied to this site (which is not zoned for residential purposes) by mistake, and that it unreasonably impacts the site’s development feasibility.

In July 2023, Abacus lodged a Development Application (DA) for a 6 storey storage premises on the subject site. This DA was withdrawn in January 2024 following advice from Council that it was not compliant with Clause 4.3A of the Bayside LEP. This Planning Proposal Request was lodged on 19 August 2024.

This Planning Proposal Request seeks to amend the Bayside LEP by amending the Height of Buildings Map to remove the subject site from Area 15. This would have the effect of excluding the site from the application of Clause 4.3A, which applies the building height plane. The height limit applying to the site would then revert to the 18m and 8.5m mapped height limits applied by *Clause 4.3 Height of Buildings* in the Bayside LEP.

The form and content of the Planning Proposal Request complies with Section 3.33 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and the *Local Environmental Plan (LEP) Making Guidelines* (NSW Department of Planning, Housing and Infrastructure, August 2023). However, Council does not consider that the Planning Proposal Request has strategic and site-specific merit.

It is recommended that the Planning Proposal Request does *not* proceed to Gateway determination.

---

**Officer Recommendation**

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 not be supported and should not be submitted to the Department of Planning, Housing and Infrastructure for a Gateway determination.

---

## Background

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. Council engaged GMU Urban Design to provide a peer review of the master plan, which overall recommended that building height and floor space ratios should be reduced.

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.

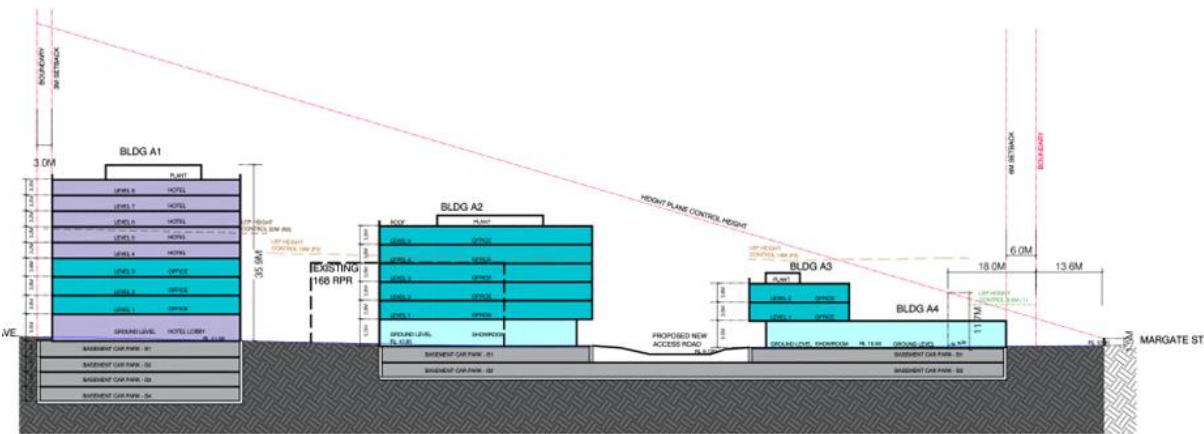
On 14 June 2016, JBA requested a formal Pre-DA meeting for the Darrell Lea site following finalisation of Amendment 11 to the RLEP 2011. This request included:

1. A Planning Report which noted that the building height plane from Clause 4.3A applies to the B6 zoned land.
2. 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 documents are included below in Figures 1-3:

<b>B6 Zoned Land</b>		
<u>Land use zoning</u>	<u>B6 Enterprise Corridor zone:</u>  Permissible uses:  Animal boarding or training establishments; Bulky goods premises; <b>Business premises;</b> Community facilities; Garden centres; Hardware and building supplies; <b>Hotel or motel accommodation;</b> Industrial training facilities; Kiosks; Landscaping material supplies; Light industries; Neighbourhood shops; Passenger transport facilities; Plant nurseries; Pubs; Storage premises; Take away food and drink premises; Timber yards; <b>Vehicle sales or hire premises;</b> Warehouse or distribution centres; <b>Any other development not specified in item 2 or 4</b>	<b>Compliant.</b>  Proposal is for commercial office space, a hotel and a vehicle sales premises.
<u>Maximum building height</u>  <u>Exception to height of buildings (Clause 4.3A)</u>	The maximum building height control under the Rockdale LEP for the B6 zoned portion of land is Part 18 metres and Part 22 metres.  Clause 4.3A applies only to the land at 152-206 Rocky Point Road, Kogarah, being the subject site, which imposes a building height plane across the site.	The development on the B6 land is proposed to go above the applicable height limits. Whilst this is the case, the proposed buildings will not protrude above the building height plane specified in Clause 4.3A.

Figure 1: Excerpt from JBA Planning Report reference CF/BC 16272 dated 14 June 2016



SECTION F - COMMERCIAL

Figure 2: 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 3:** Masterplan overview showing location of Section F as described in Figure 2 above  
(Source: PTW Pre DA Architectural Documents Dated 14 June 2016)

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.

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 replaced the Rockdale LEP 2011 and Botany Bay LEP 2013. Clause 4.3A of the RLEP 2011 became Clause 4.3A of the Bayside LEP. 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 Bayside LEP 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 4).



**Figure 4:** 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 7,529m<sup>2</sup>. Council identified that the proposal was 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.



## SUBJECT SITE

The Planning Proposal Request applies to the site known as 204 Rocky Point Road, Kogarah and is legally described as Lot 11 in Deposited Plan 1289336. The subject site is shown in Figure 5 below, outlined in red.



Figure 5: Aerial photo of the Subject Site and Adjacent Land

The subject site 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 subject site is part of the former Darrell Lea Factory site which was redeveloped between 2016 and 2020. The site is irregular in shape with an area of approximately 3,107m<sup>2</sup>. It is cleared and generally flat but has battered slopes down to its eastern and northern property boundaries.

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 which has either survived the demolition of the previous buildings or regrown subsequently.

The site is accessible via bus routes 477 connecting Rockdale to Miranda and 476 that connects Dolls Point to Rockdale. Bus stops serving both routes are located on Rocky Point Road north of the site.

## **SITE CONTEXT**

The former Darrell Lea Factory was developed into a mix of residential and employment uses. The employment land (including the subject site) is located along the Rocky Point Road frontage and has retained a four-storey commercial building that was part of the factory complex.

The residential land north of Garrigarrang Avenue has been developed as residential flat buildings up to 13 storeys high. To the south of Garrigarrang Avenue the land has been developed into 3 storey terraces (attached dwellings) with basement parking and the Garrigarrang Early Education and Care Centre, which is operated by Bayside Council.

To the east of the former Darrell Lea Factory is Scarborough Park, which is a major public open space corridor providing sports fields, two baseball diamonds and other recreation space.

North of the former Darrell Lea Factory is industrial land around Production Avenue and Phillips Road built as warehouses and other light industrial buildings.

Rocky Point Road forms the Local Government Area boundary between Bayside Council and Georges River Council in this location. On the western side of Rocky Point Road the land is occupied by a low-rise aged care facility and a mix of dwelling houses and apartment buildings at up to four storeys in height.

South of the site, Margate Street and Clarkes Road are predominantly lined with one and two storey dwelling houses. Some older dwellings have been replaced or subdivided to create dual occupancies. Further south on Rocky Point Road are four storey shop-top housing developments which characterise Ramsgate town centre.



**Figure 6:** Photo of the site from Garrigarrang Ave looking south





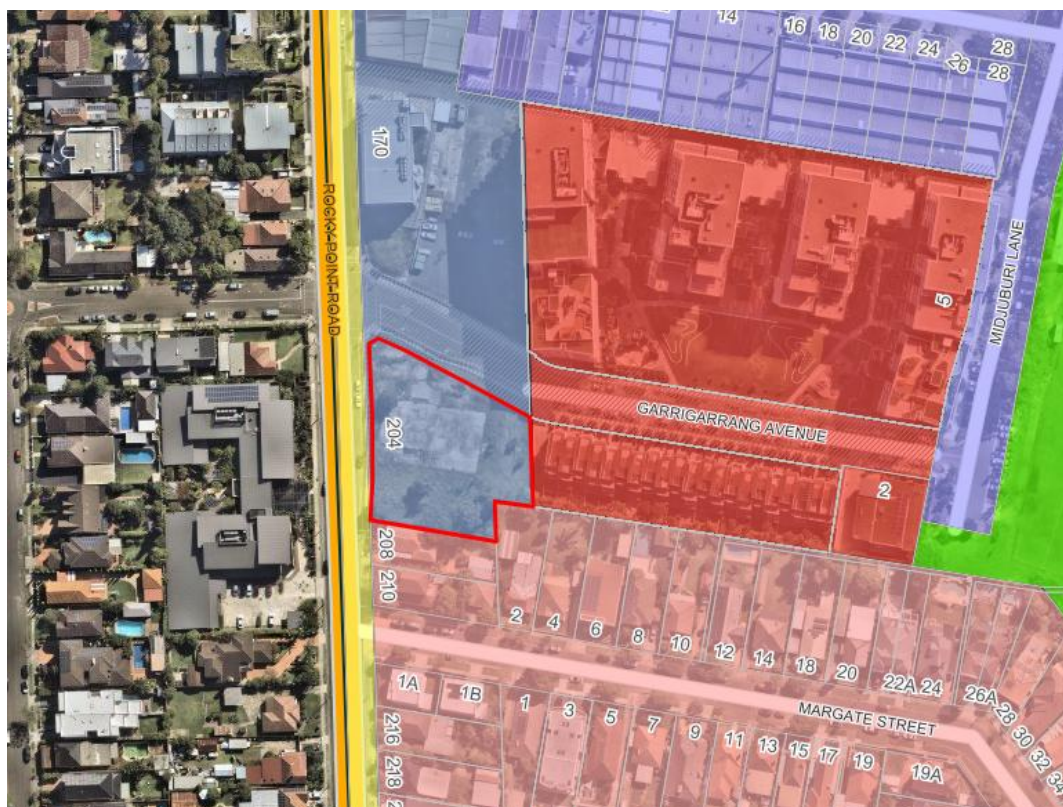
**Figure 7:** Photos of existing development surrounding the site  
(Views of the site frontages, and development opposite)



## EXISTING PLANNING CONTROLS

Under the Bayside LEP 2021, the site is zoned E3 Productivity Support (see Figure 8).  
Permissible uses in this zone include:

*Animal boarding or training establishments; Boat building and repair facilities; Business premises; Centre-based child care facilities; Community facilities; Depots; Food and drink premises; Function centres; Garden centres; Hardware and building supplies; Hotel or motel accommodation; Industrial retail outlets; Industrial training facilities; Information and education facilities; Landscaping material supplies; Light industries; Local distribution premises; Markets; Mortuaries; Neighbourhood shops; Office premises; Oyster aquaculture; Passenger transport facilities; Places of public worship; Plant nurseries; Recreation areas; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Research stations; Respite day care centres; Rural supplies; Service stations; Specialised retail premises; **Storage premises**; Take away food and drink premises; Tank-based aquaculture; Timber yards; Vehicle body repair workshops; Vehicle repair stations; Vehicle sales or hire premises; Veterinary hospitals; Warehouse or distribution centres; Wholesale supplies; Any other development not specified in item 2 or 4*



**Figure 8:** Zoning Map, BLEP 2021 - site boundary indicated in red  
(Source: Bayside Council Intramaps)

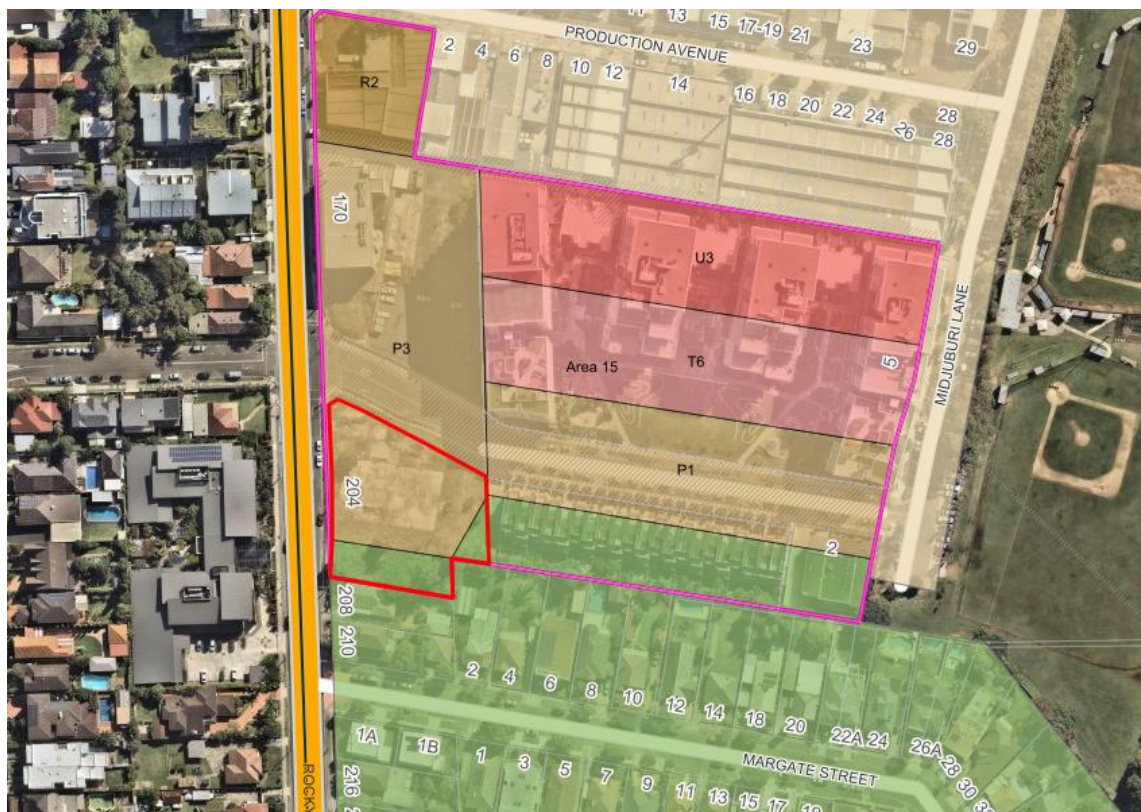
The site adjoins land zoned R2 Low Density Residential to the south and R4 High Density Residential to the east. Rocky Point Road is zoned SP2 Infrastructure (Classified Road). The land across Rocky Point Road opposite the site is zoned R2 Low Density Residential under the *Georges River Local Environmental Plan 2021*.

Further, the site is identified on the Bayside LEP 2021 Additional Permitted Uses (APU) Map as being subject to Schedule 1 Clause 44:

#### 44 Use of certain land in Zone E3

- (1) This clause applies to land in Zone E3, identified as "44" on the Additional Permitted Uses Map.
- (2) Development for the purposes of advertising structures is permitted with development consent.

The site has a complex set of provisions governing the Height of Buildings under the Bayside LEP 2021. While mapped heights are shown on the site in relation to Clause 4.3 (see Figure 9) they are overridden by Clause 4.3A, which applies a building height plane across the subject site (and the Darrell Lea site more broadly).



#### Maximum Building Height (m)

I	8.5	N3	14.5	P1	17.5	P3	18	R2	22
T6	29	U3	33	Area 15	Refer to Clause 4.3A				

Figure 9: Height of Buildings Map, BLEP 2021 - site boundary indicated in red  
(Source: Bayside Council Intramaps)

#### 4.3A Exception to height of buildings—Rocky Point Road, Kogarah

- (1) This clause applies to land in Area 15 identified on the Height of Buildings Map.
- (2) Despite clause 4.3(2), the height of a building on land to which this clause applies may exceed the maximum height shown for the land on the Height of Buildings Map, but must not exceed the building height plane for the land.
- (3) Clause 5.6 does not apply to a building on land to which this clause applies.



(4) In this clause—

**building height plane** means a continuous plane commencing at a height of 1.5 metres above ground level (existing) and at a distance of 13.6 metres south of the southern boundary of Lot 22, DP 620329 (Point A), projecting to a position at a height of 11.7 metres above ground level (existing) and at a distance of 31.6 metres north of Point A, and continuing at that projection over the land to which this clause applies.

Variations to the building height plane prescribed by Clause 4.3A cannot be considered under Clause 4.6 of the BLEP 2021, because it is listed at 4.6(8)(bc):

#### 4.6 Exceptions to development standards

...

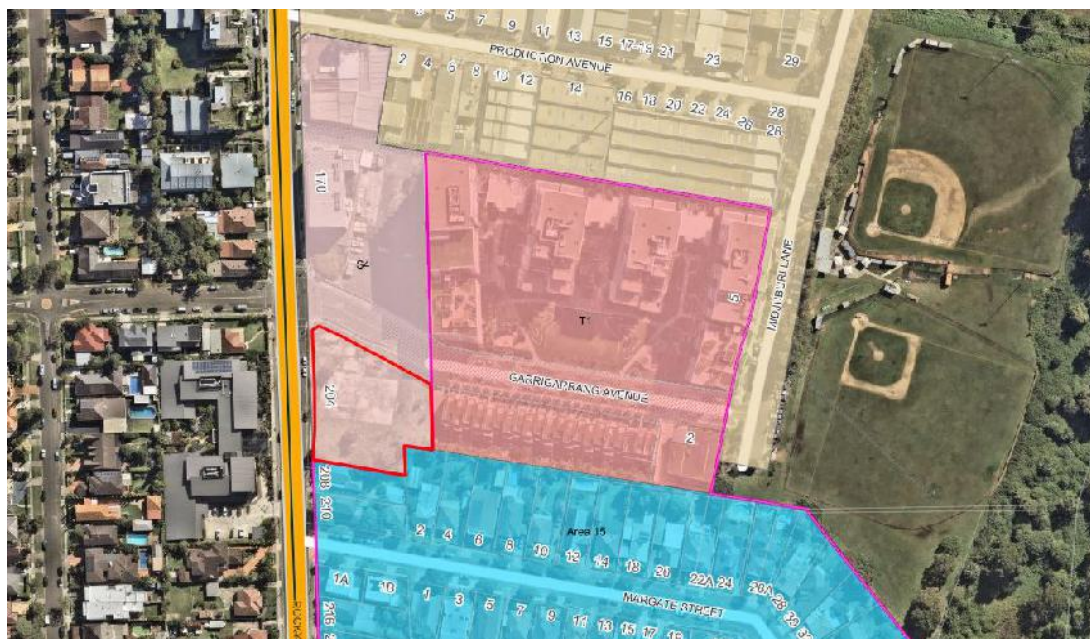
(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

...

(bc) clause 4.3A,

Disagreement over the intent and application of Clause 4.3A has led to the lodgement of this Planning Proposal Request. The applicant contends that the height plane clause was only intended to apply to the land zoned R4 High Density Residential within the former Darrell Lea site.

The site is subject to a floor space ratio of 1.8:1 under Bayside LEP 2021 clause 4.4 *Floor Space Ratio*. The site is not subject to “Area 15” on the FSR Map, which applies to residential land south and east of the subject site. This is shown below in Figure 10.



#### Maximum Floor Space Ratio (n:1)

<b>D</b>	0.5	<b>N</b>	1	<b>S4</b>	1.8	<b>T1</b>	2
----------	-----	----------	---	-----------	-----	-----------	---

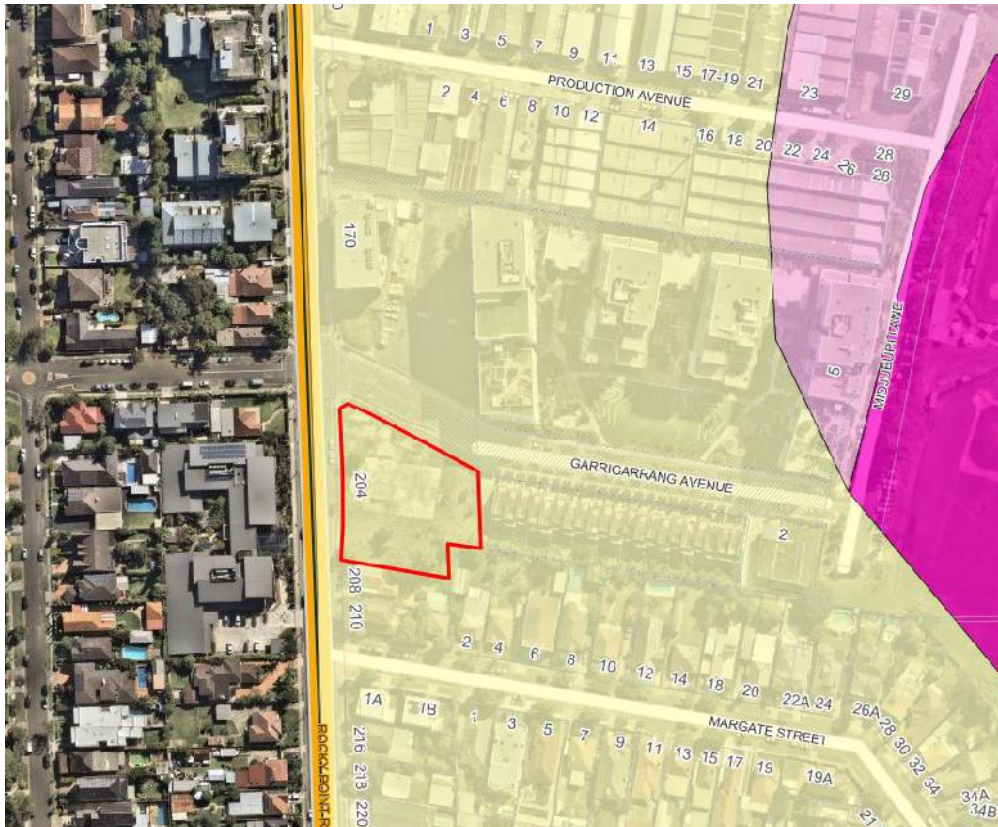
Area 15

Refer to Clause 4.4

**Figure 10:** Floor Space Ratio Map, BLEP 2021 - site boundary indicated in red  
(Source: Bayside Council Intramaps)

The subject site is not listed as an item of environmental heritage under Schedule 5 of the Bayside LEP 2021, and no items are located in close proximity. The nearest item is Georges River LEP 2021 item I4 *House and garden* which is located 170m to the south at 177 Rocky Point Road, Beverley Park.

The site is mapped as Class 5 Acid Sulphate Soils (ASS), per Figure 11 below.

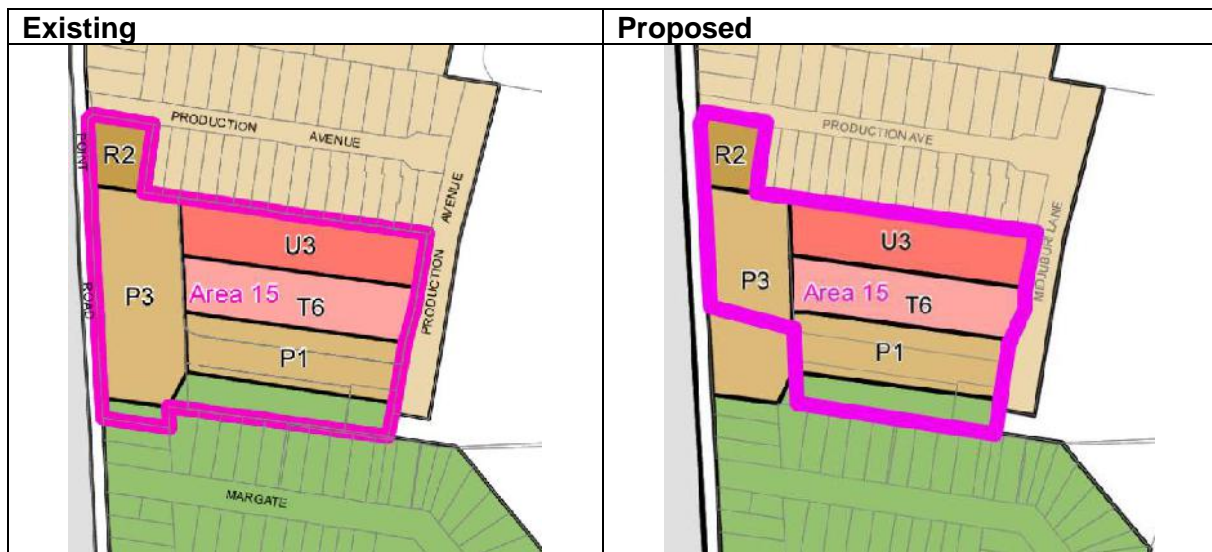


**Figure 11:** Acid Sulfate Soils Map, (light yellow denotes ASS Class 5), BLP 2021 - site boundary indicated in red (Source: Bayside Council Intramaps)

## Details of the Planning Proposal Request

The objective of the Planning Proposal Request states that it is “..to correct the application of the building height plane development standard which applies to the site under Clause 4.3A.”

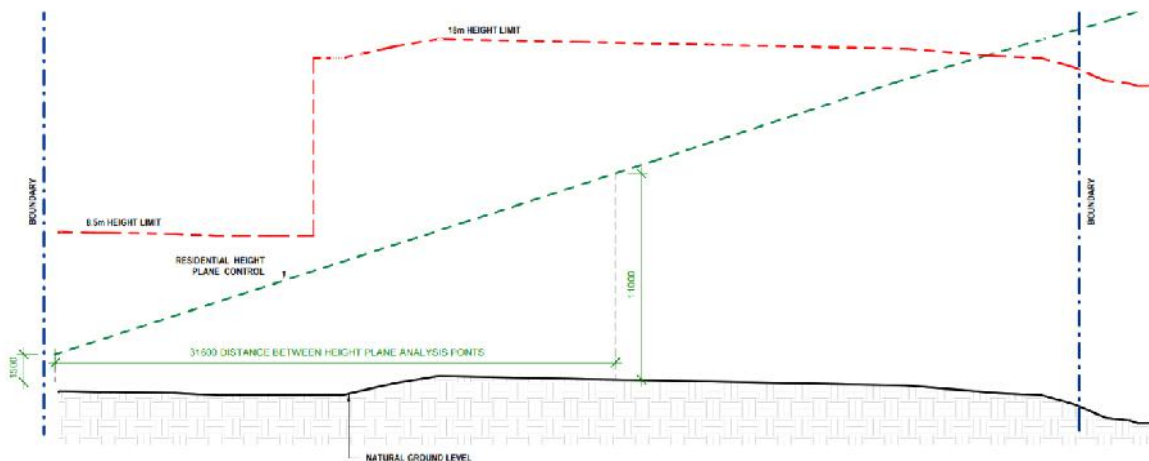
To achieve this objective, the Planning Proposal Request (**Attachment 1**) proposes an amendment to the Height of Buildings Map in the Bayside LEP 2021 to exclude Clause 4.3A from applying to the subject site. The proposed amendments are shown in Figure 12 below.



**Figure 12:** Proposed Amendments to the BLEP 2021 Height of Buildings Map.

The effect of excising the site from “Area 15” on the Height of Buildings Map is that the building height plane will no longer define the height limit for the site. Instead, Clause 4.3 would apply the mapped heights of 8.5m and 18m to the site.

The Planning Proposal Request includes a diagram from the BN Group (Figure 13 below) which compares the height limits imposed by the Clause 4.3A building height plane (green line) to the mapped height limits imposed by Clause 4.3 (red line).



**Figure 13:** Excerpt from Height Plane Analysis (Source: BN Group, refer Attachment 15)

The proponent contends that this change in height limit is needed to feasibly develop the site for use as a Storage Premises.

The Planning Proposal Report (revision 4, dated 18 October 2024), prepared by Patch Planning (**Attachment 1**) is accompanied by the technical documentation listed in Table 1 below. This documentation includes material related to the previous Planning Proposal for the former Darrell Lea site, which led to the introduction of the present LEP controls.



**Table 1:** List of supporting documentation to the draft Planning Proposal

Planning Proposal Request Supporting Documentation	Prepared By	Report Attachment
204 Rocky Point Road, Kogarah – Response to RFI Cover Letter	Patch Planning	Attachment 2
A1 – Detailed RFI Response – 204 Rocky Point Road, Kogarah	Patch Planning	Attachment 3
A3- Updated – Updated Solar Analysis (Replaces Appendix 10)	BN Group	Attachment 4
A4 – Updated Concept Building Layout (Replaces Appendix 11)	BN Group	Attachment 5
Appendix 1 - Planning Proposal, August 2013	JBA	Attachment 6
Appendix 2 - Rockdale Council Meeting, 19 February 2014	Rockdale City Council	Attachment 7
Appendix 3 - Additional Height Plane Submission to JRPP (2014)	Lippmann Partnership	Attachment 8
Appendix 4 - Architectus Analysis (2014)	Architectus	Attachment 9
Appendix 5 - Planning Proposal, February 2015	JBA	Attachment 10
Appendix 6 - Indicative Master Plan and Urban Design Report (2015)	Lippmann Partnership	Attachment 11
Appendix 7 - Gateway Report (2015)	NSW Department of Planning & Environment	Attachment 12
Appendix 8 - Gateway Determination (2015)	NSW Department of Planning & Environment	Attachment 13
Appendix 9 - Rockdale Council Meeting, 2 December 2015	Rockdale City Council	Attachment 14
Appendix 12 - Height Plane Analysis	BN Group	Attachment 15

## Planning Proposal Request

### ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (EP&A ACT)

The Department of Planning, Housing and Infrastructure (DPHI) publication 'Local Environmental Plan Making Guideline' provides guidance and information on the process for preparing Planning Proposals. The Planning Proposal Request has been prepared in accordance with the latest version of this guide (dated August 2023).

Part 3, page 72 of The Guide clearly states that:

*Strategic Merit means a proposal has alignment with the NSW strategic planning framework and government priority.*

*The Planning Proposal must demonstrate how the proposed amended or principal LEP will give effect to the strategic planning framework to then ensure that the proposal has strategic merit.*

*Any Planning Proposal that seeks to address this criteria or a government priority needs to be supported with clear and appropriate technical studies and justification.*

*It is encouraged that where a Planning Proposal fails to adequately demonstrate strategic merit the relevant PPA is unlikely to progress the proposal, despite any site-specific merit it may have.*

## Strategic Merit

### SECTION 9.1 LOCAL PLANNING DIRECTIONS ISSUED BY THE MINISTER

Section 9.1(2) Local Planning Directions issued by the Minister (s.9.1 directions) set out what a Planning Proposal Authority (PPA) must do if a s.9.1 direction applies to a Planning Proposal, and provides details on how inconsistencies with the terms of a direction may be justified.

An assessment of how the Planning Proposal Request aligns with the applicable s.9.1 directions is provided in Table 2 below:

**Table 2:** Consistency with key Section 9.1 Directions (latest version issued on 1 August 2024)

Ministerial Direction	Comment	Consistency
<b>Focus Area 1 Planning Systems</b>		
1.1 Implementation of Regional Plans	Consistency with the <i>Greater Sydney Region Plan: A Metropolis of Three Cities</i> and the <i>Eastern City District Plan</i> are addressed in detail by the Planning Proposal Request and this report.	Consistent
1.4 Site Specific Provisions	The Planning Proposal Request seeks to remove an existing site-specific LEP provision from the subject site.	Consistent
1.4A Exclusion of Development Standards from Variation	The Planning Proposal Request does not propose to exclude any development standards from variation under Clause 4.6.	Consistent
<b>Focus Area 4 Resilience and Hazards</b>		
4.1 Flooding	Council has issued a Flood Advice Letter noting that the site is above the 1% AEP flood level and not affected by the Probable Maximum Flood.	Consistent
4.4 Remediation of Contaminated Land	<p>The Planning Proposal Request refers to intrusive soil investigations undertaken as part of a previous DA on the site and provided to Council. These investigations demonstrated that the site had been filled, but found no visual indicators of asbestos containing materials, odours or stains.</p> <p>The proposal does not change the zoning of the site, so will not permit new uses that would increase the risk of harm to human health or the environment. The proposed use of the site as <i>Storage Premises</i> does not trigger elements of the direction that would require additional investigations be conducted during the Planning Proposal stage.</p> <p>The proposal does note that <i>A Detailed Site Investigation would be provided in support of any future DA, and where necessary a Remedial Action Plan (RAP) would be developed to support the future use of the site.</i></p>	Consistent
4.5 Acid Sulfate Soils	The site is mapped as Acid Sulfate Soils (ASS) Cass 5. This category indicates that ASS are known to exist within 500m of the site, but are unlikely to be present on the site itself.	Consistent

	The proposal notes that an Acid Sulfate Soils Management Plan could be provided in support of a future DA.	
<b>Focus Area 5 Transport and Infrastructure</b>		
5.1 Integrating Land Use and Transport	The site is located within walking distance of bus stops which provide public transport services to Rockdale, Kogarah and Miranda.	Consistent
5.3 Development Near Regulated Airports and Defence Airfields	<p>The Sydney Airport Obstacle Limitation Surface (OLS) sits at 70m-80m AHD above the subject site.</p> <p>Ground level on the site is approximately 11m AHD. The maximum proposed height limit for the site at 18m above ground level is still well below the lower limits of prescribed airspace.</p> <p>Sydney Airport Corporation and the Civil Aviation Safety Authority can be consulted as part of consultation on the Planning Proposal.</p>	Consistent
<b>Focus Area 7 Industry and Employment</b>		
7.1 Employment Zones	The proposal seeks to facilitate development on this employment zoned land. It does not reduce the amount of land available or reduce its development potential.	Consistent

## STATE ENVIRONMENTAL PLANNING POLICIES (SEPPS)

The proposal is consistent with all applicable SEPPs that are in force as the Planning Proposal Request does not seek to challenge or amend the application of the SEPPs or the impact of the ongoing application of the provisions of the SEPPs on the subject site. Compliance with all SEPPs will need to be demonstrated by any subsequent DAs for the future building, if the Planning Proposal Request is supported. How the proposal aligns with key SEPPs is provided in Table 3, below.

**Table 3:** Consistency with key State Environmental Planning Policies

State Environmental Planning Policy (SEPP)	Comment	Consistency
SEPP (Resilience and Hazards) 2021	<p>Chapter 4 of this SEPP requires that the consent authority must not consent to the carrying out of development unless it has considered whether the land is contaminated.</p> <p>The proposal refers to intrusive soil investigations undertaken as part of a previous DA on the site and provided to Council. These investigations demonstrated that the site had been filled, but found no visual indicators of asbestos containing materials, odours or stains.</p> <p>The proposal does note that A Detailed Site Investigation would be provided in support of any future DA, and where necessary a Remedial Action Plan (RAP) would be developed to support the future use of the site.</p>	Consistent
SEPP (Exempt and Complying Development Codes) 2008	<p>This SEPP provides a standard set of Exempt and Complying Development provisions which apply broadly across the State. This includes <i>Part 5A Industrial and Business Buildings Code</i> which allows development for the purposes of new buildings in business zones, including zone E3 Productivity Support. Given that there are dwellings on adjoining lots, the building height limit allowed on this site under this Code is 8.5m:</p> <p><b>5A.21 Maximum height</b>  <i>(1) If there is a dwelling on an adjoining lot, the maximum building height for a building is 8.5m.</i>  <i>(1A) If there is not a dwelling on an adjoining lot, the maximum building height for a building is the lesser of the following—</i></p>	Consistent

	<p>(a) the maximum building height that applies under another environmental planning instrument,</p> <p>(b) 21m.</p> <p>(2) The maximum height of any ancillary development must not be more than 5m.</p> <p>As shown in Attachment 15 the existing Bayside LEP 2021 building height plane is (in parts of the site) more restrictive than the permissible height of buildings limit under the SEPP. The Planning Proposal Request would change the Bayside LEP 2021 height limits for this site to match or exceed the limits set under the SEPP, thereby addressing this inconsistency.</p>	
--	---	--

## STRATEGIC PLANNING FRAMEWORK – REGIONAL AND DISTRICT

Regional, sub-regional and district plans and strategies include outcomes and specific actions for a range of different matters including housing and employment targets, and identify regionally important natural resources, transport networks and social infrastructure.

## GREATER SYDNEY REGIONAL PLAN (GSRP) AND THE EASTERN CITY DISTRICT PLAN (ECDP)

In March 2018, the NSW Government released the *Greater Sydney Region Plan: A Metropolis of Three Cities* (GSRP) a 20-year plan which outlines a three-city vision for metropolitan Sydney – the Western Parkland City, the Central River City and the Eastern Harbour City. The plan envisions for the people of Greater Sydney to live within 30 minutes of their jobs and have access to education and health facilities, services and high-quality places. The site is situated within the Eastern Harbour City to which the *Eastern City District Plan* (ECDP) is applicable.

The planning priorities within the ECDP are aligned to the directions of the GSRP. An assessment of the Planning Proposal Request against the planning priorities of the ECDP is undertaken to demonstrate consistency with the directions of the GSRP.

A detailed analysis against the relevant priorities is provided within the Planning Proposal report (**Attachment 1**) and consistency against key priorities of the ECDP relevant to the draft PP are discussed in further detail in Table 5 below.

**Table 4:** Consistency with the key relevant planning priorities within the Eastern City District Plan

Planning Priority	Comment	Consistency
<b>Infrastructure and Collaboration</b>		
E1 Planning for a city supported by infrastructure	<p><i>Future Transport 2061</i>, the <i>Greater Sydney Region Plan</i> and the <i>Eastern City District Plan</i> all identify major road and public transport infrastructure projects for investigation that will support growth in this part of the LGA. The proposal facilitates development which is aligned to the future uplift in infrastructure capacity and accessibility.</p> <p>The proposal facilitates development which is aligned to the future infrastructure capacity.</p>	Consistent
<b>Liveability</b>		
E6 Creating and renewing great places and local centres and respecting the District's heritage	<p>The site is in a prominent position both for travellers on Rocky Point Road and residents within the apartments at Garrigarrang Avenue. Council has raised concerns with the proponent that the concept building design does not provide a high-quality design outcome for the location or provide a sense of arrival and community identity.</p> <p>The proponent's response (see <b>Attachment 3</b>) is that these are issues beyond what is required for a Planning Proposal, relating to the height limit alone.</p>	Inconsistent

<b>Productivity</b>		
E7 Growing a stronger and more competitive Harbour CBD	Facilitating the use of the site for urban services land does support economic development of the local area. This therefore does make a minor contribution to support the economic functions of the Harbour CBD.	Consistent
E12 Retaining and managing industrial and urban services land	Facilitating the development of this site for storage does help to ensure that the site can provide urban services to the local community, while reducing pressure on other industrial land which has a critical strategic role.	Consistent

## STRATEGIC PLANNING FRAMEWORK – LOCAL

### Bayside Local Strategic Planning Statement (LSPS)

Council's LSPS sets the 20-year vision for the Bayside LGA, including identifying the special character and values to be preserved and how change will be managed. The LSPS explains how Council is implementing the planning priorities and actions in the relevant district plan, in conjunction with its Community Strategic Plan. An analysis against the following relevant Planning Priorities identified in the Bayside LSPS is provided in Table 5, below:

**Table 5:** Consistency with the key relevant planning priorities within the Bayside LSPS

<b>Planning Priority</b>	<b>Comment</b>	<b>Consistency</b>
<b>B9 Manager and enhance the distinctive character of the LGA through good quality urban design, respect for existing character and enhancement of the public realm</b>  LSPS Action: 9.1 Council will encourage good built form outcomes through Design Excellence Competitions, Design Excellence Guidelines and Design Review Panel.	The site is in a prominent position both for travellers on Rocky Point Road and residents within the apartments at Garrigarrang Avenue. Council has raised concerns with the proponent that the concept building design does not provide a high-quality design outcome for the location or provide a sense of arrival and community identity.  The proponent's response (see <b>Attachment 3</b> ) is that these are issues beyond what is required for a Planning Proposal relating to the building height limit alone.	<i>Inconsistent</i>
<b>B12 Delivering an integrated land use and a 30-minute city</b>  LSPS Actions: 12.4 Plan for urban development, new centres, better places and employment uses that are integrated with existing transport infrastructure and proposed transport projects.  12.7 Ensure a degree of self-sufficiency of local services on either side of the Airport to ensure access to services and jobs.	Future Transport 2061, the Greater Sydney Region Plan and the Eastern City District Plan all identify major road and public transport infrastructure projects for investigation that will support growth in this part of the LGA. The proposal facilitates development which is aligned to the future uplift in infrastructure capacity and accessibility.  The proposal also facilitates an urban services development in an area of the LGA which is largely residential and where access to storage services is more limited.	Consistent
<b>B13 Contribute to growing a stronger and more competitive Harbour CBD.</b>	Facilitating the use of the site for urban services land does support economic development of the local area. This therefore does make a minor contribution to support the economic functions of the Harbour CBD.	Consistent
<b>B17 Retain and manage industrial and urban services land</b>  LSPS Actions:	The Planning Proposal Request is closely aligned to this planning priority and its actions by: <ul style="list-style-type: none"> <li>Delivering urban services to support local needs, and</li> </ul>	Consistent



<p>17.1 Retain and manage industrial and urban services and business park land to support local need generated by small business parks, business and trade supplies and population services such as smash repairs and storage.</p> <p>17.2 Review the planning controls to ensure they meet the needs of current and emerging industrial and urban services trends including increased building heights and floor space.</p>	<ul style="list-style-type: none"> <li>Reviewing planning controls such as building heights to support the needs of emerging urban services trends.</li> </ul>	
--	--	--

## BAYSIDE COMMUNITY STRATEGIC PLAN 2018-2032

An analysis against the community outcomes and associated strategies in the Bayside Community Strategic Plan 2032 is provided below in Table 6.

**Table 6:** Consistency with the key relevant community outcomes within the Bayside Community Strategic Plan 2018-2032

Community Outcome	Strategies	Consistency / Comment
<b>Theme One – In 2032 Bayside will be a vibrant place</b>		
1.3 Bayside's places are people focused	<p><i>Create and maintain vibrant, visually appealing, and welcoming places with their own village atmosphere and sense of identity.</i></p> <p><i>Promote innovative and well-designed local developments which incorporate open space and put people first</i></p>	<p><b>Inconsistent:</b> The site is in a prominent position both for travellers on Rocky Point Road and residents within the apartments at Garrigarrang Avenue. Council has raised concerns with the proponent that the concept building design does not provide a high-quality design outcome for the location or provide a sense of arrival and community identity.</p> <p>The proponent's response (see <b>Attachment 3</b>) is that these are issues beyond what is required for a Planning Proposal relating to the building height limit alone.</p>
<b>Theme Four – In 2032 Bayside will be a prosperous community</b>		
4.1 Bayside generates diverse local employment and business opportunities	<i>Support innovative and new and emerging businesses to locate in Bayside</i>	<p><b>Consistent:</b> Facilitating development of this site will allow a storage business to operate. Storage premises provide services which support both individual customers and other businesses.</p>
4.2 Bayside recognises and leverages opportunities for economic development	<i>Support major employers to partner with local small business</i>	
	<i>Preserve industrial lands and employment lands and partner with major employers to support local jobs</i>	

## BAYSIDE LOCAL ENVIRONMENTAL PLAN 2021 (BAYSIDE LEP 2021)

While the proposed amendments would amend the HOB map to exclude Clause 4.3A from applying to the subject site, all other current applicable provisions within the Bayside LEP 2021 would continue to apply to the subject site. No changes are expected to the text of the Bayside LEP 2021 written instrument, with only the extent of "Area 15" on the Height of Buildings Map proposed to be amended. Whilst it is noted that any subsequent application for *Storage Premises* would be subject to a merits-based DA assessment, below is a preliminary

consideration of the proposed amendment and relationship to relevant sections of the Bayside LEP 2021.

**Table 7:** An assessment of the draft PP against the key provisions of Bayside LEP 2021

Control	Objective(s)	Consistency
Zone E3 Productivity Support	<ul style="list-style-type: none"> <li>To provide a range of facilities and services, light industries, warehouses and offices.</li> <li>To provide for land uses that are compatible with, but do not compete with, land uses in surrounding local and commercial centres.</li> <li>To maintain the economic viability of local and commercial centres by limiting certain retail and commercial activity.</li> <li>To provide for land uses that meet the needs of the community, businesses and industries but that are not suited to locations in other employment zones.</li> <li>To provide opportunities for new and emerging light industries.</li> <li>To enable other land uses that provide facilities and services to meet the day to day needs of workers, to sell goods of a large size, weight or quantity or to sell goods manufactured on-site.</li> <li><b>To promote redevelopment that is likely to contribute to the locality, including by improving the visual character of the locality, improving access and parking, reducing land use conflicts and increasing amenity for nearby residential development.</b></li> <li>To encourage uses in arts, technology, production and design sectors.</li> <li>To promote businesses along main roads and to encourage a mix of compatible uses.</li> </ul>	<p>Storage Premises are a permissible use, with consent, in the E3 zone.</p> <p>The concept development would be broadly consistent with most zone objectives. However, concerns are raised in relation to the design quality and overshadowing by the development in relation to the seventh objective (in <b>bold</b>).</p>
Clause 4.3 Height of Buildings	<p>(a) to ensure that building height is consistent with the desired future character of an area,</p> <p>(b) to minimise visual impact of new development, disruption of views, loss of privacy and loss of solar access to existing development,</p> <p>(c) to nominate heights that will provide an appropriate transition in built form and land use intensity.</p>	<p>With the removal of the building height plane from the site under Clause 4.3A, the concept development would appear to comply with the mapped building heights imposed by Clause 4.3.</p> <p>However, concerns are raised in relation to loss of solar access to existing development, and appropriate transition in built form by the development in relation to objectives (b) &amp; (c).</p>
Clause 4.4 Floor space ratio	<p>(a) to establish standards for the maximum development density and intensity of land use,</p> <p>(b) to ensure buildings are compatible with the bulk and scale of the existing and desired future character of the locality,</p> <p>(c) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,</p> <p>(d) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing or likely to undergo a substantial transformation,</p>	<p>The concept development would appear to comply with the floor space ratio imposed under Clause 4.4</p> <p>However, concern is raised in relation to the expression of 1.8:1 FSR on this site alone without a building height plane in effect. The controls for this site were designed as part of the previous Planning Proposal for the broader Darrell Lea site. In single ownership the GFA generated by this portion of land could have been expressed elsewhere within the E3 zone.</p>

	(e) to ensure buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks and community facilities.	Now as an isolated site, this FSR may no longer generate an acceptable outcome without the building height plane in place. Therefore objectives (b), (c), (d) & (e) may not be satisfied.
--	--	---

Clause 6.10 Design Excellence will not apply to development on the site.

## BAYSIDE DEVELOPMENT CONTROL PLAN 2022 (BDCP 2022)

A site-specific DCP has *not* been proposed, as controls exist within the Bayside DCP 2022 to guide a merits-based assessment for any future DA.

The BDCP 2022 contains controls for *Storage Premises*.

**Table 8:** An assessment of the draft PP against the key provisions of Bayside DCP 2022

Section	Objective / Control	Consistency																	
6.4.2 Storage premises	O2. To achieve developments that enhance the amenity and streetscape of the locality.	<i>Inconsistent.</i>  Concerns are raised in relation to the bulk, scale and aesthetic qualities of the concept design.																	
	C6. Not less than 10% of the development site shall be landscaped. On sites over 2,000m <sup>2</sup> the front landscaped setbacks are additional to the 10% requirement. The majority of landscaping shall front the street/s to which the development fronts and include side and rear landscaped areas.	<i>Inconsistent.</i>  The site area is 3107m <sup>2</sup> and must therefore provide 10% landscaped area in addition to required front setbacks. If front setback areas are excluded, the concept design appears to provide 8.7% of the site as landscaped area.																	
	C7. Setbacks are to be in accordance with the following table.	<i>Inconsistent.</i>  The concept design provides only a 5 metre building setback to Rocky Point Road (classified), and a 4.5 metre building setback to Garrigarrang Avenue (non-classified).  These reduced front setbacks appear to be necessary to move the bulk of the building forward to preserve solar access to adjacent existing dwellings to the sides and rear.  The variation may also be justified on the basis of the existing commercial building at 170 Rocky Point Road also having minimal setbacks. This appears to align with the footprint of demolished factory buildings.																	
	<table><tr><th>Boundary</th><th>Landscape Setback</th><th>Building Setback</th></tr><tr><td>Front – to a non-classified road</td><td>3 metres</td><td>9 metres</td></tr><tr><td>Front – to a classified road</td><td>4 metres</td><td>9 metres</td></tr><tr><td>Side – adjoining a non-residential use/zone including lanes</td><td>2 metres</td><td>3-4 metres</td></tr><tr><td>Side – adjoining a residential use/zone or in the Council's opinion the building impacts on the streetscape</td><td>3 metres</td><td>3-4 metres</td></tr><tr><td>Rear – (Refer to Note)</td><td>Nil to 3 metres</td><td>Nil to 3 metres</td></tr></table>	Boundary	Landscape Setback	Building Setback	Front – to a non-classified road	3 metres	9 metres	Front – to a classified road	4 metres	9 metres	Side – adjoining a non-residential use/zone including lanes	2 metres	3-4 metres	Side – adjoining a residential use/zone or in the Council's opinion the building impacts on the streetscape	3 metres	3-4 metres	Rear – (Refer to Note)	Nil to 3 metres	Nil to 3 metres
Boundary	Landscape Setback	Building Setback																	
Front – to a non-classified road	3 metres	9 metres																	
Front – to a classified road	4 metres	9 metres																	
Side – adjoining a non-residential use/zone including lanes	2 metres	3-4 metres																	
Side – adjoining a residential use/zone or in the Council's opinion the building impacts on the streetscape	3 metres	3-4 metres																	
Rear – (Refer to Note)	Nil to 3 metres	Nil to 3 metres																	

## Site-Specific Considerations and Technical Studies

### APPLICATION OF CLAUSE 4.3A

The Planning Proposal Request relies in part on a justification that the building height plane in Clause 4.3A was not intended to apply to the B6/E3 zoned land on the former Darrell Lea site. It provides extensive background documentation which it argues demonstrates that the building height plane was only contemplated in relation to the residential land up until the finalisation stage.

The Planning Proposal was finalised by the former DPE (now DPHI) in conjunction with advice from the NSW Parliamentary Counsel. It was their role to integrate all the advice and submissions made in relation to the Planning Proposal before translating that into specific changes to the clauses in the LEP. Communications in relation to the drafting of legislation (including EPIs) are protected by Parliamentary Privilege and therefore this information cannot be provided to support the argument in either direction.

Buildings cast shadows regardless of how their floor space is used. In the absence of contrary evidence, it is plausible that the former DPE formed a view that the building height plane should apply to both the residential and commercial zones. At the time, the Darrell Lea site was in a single ownership, being developed as part of a Masterplan. The former Darrell Lea factory site is not located near a railway station or adjacent to a town centre. It is surrounded by low density residential, industrial and open space land. Tall buildings at the southern end of the former Darrell Lea site would have had unacceptable impacts on the adjacent homes with no clear strategic or public interest justification. The building height plane served to shift building height from the southern part of the former Darrell Lea site to the northern part. While the site was in single ownership, this allowed GFA to be transferred across the site, ensuring no loss of development potential while protecting the amenity of adjacent residents.

If the proponent of the original Planning Proposal for the former Darrell Lea site had considered that the former DPE had erred in the drafting of Clause 4.3A they could have challenged the validity of the instrument in the Courts within 3 months of April 2016. Instead, they lodged pre-DA reports and plans in June 2016 which were aiming to take advantage of the building height plane being applied to the B6 zoned land (as shown in Figures 1, 2 & 3). By contrast, the applicant for the present Planning Proposal Request may have been unaware of the application of the building height plane to the subject site when they lodged the *non-compliant* DA-2023/186 after 7 years.

Council considers that the building height plane, which was implemented via a proponent-led Planning Proposal for the subject land in 2016, currently enables a level of compromise between the rights of adjacent residents to amenity and enjoyment of their homes and the rights of the site owners to develop their land. Undoing that compromise now is not considered to be in the public interest, and, in the absence of any other comparative planning mechanism to manage potential impacts on adjoining land, would be counterproductive to achieving appropriate planning outcomes for development within the subject site, and how impacts from that development can be managed or mitigated for adjoining landowners.

### SOLAR ACCESS TO EXISTING DWELLINGS

The proposal is supported by an hourly solar analysis (**Attachment 4**) prepared by BN Group. The analysis demonstrates:

- Solar access will be achieved for the north facing windows on the existing dwelling at 208 Rocky Point Road between 11am and 3pm at mid-winter.
- Solar access will be achieved for the north facing windows on the existing dwelling at 2 Margate Street between 10am and 3pm at mid-winter.
- While not analysed numerically, it appears that the private open space for both dwellings will receive sunlight between 9am and 2pm.

This exceeds the two-hour minimum solar access requirements specified in the Bayside DCP 2022 5.2.1.5 for adjoining dwellings and at least 50% of their private open space.

Council's urban designers suggested a further numerical analysis of the solar access to the private open space to demonstrate that it meets the DCP requirements. However, it is considered that the information already provided is sufficient for Council to decide on this matter, especially given that the applicant is seeking a timely decision.

Council's Development Services team raised concerns that removal of the building height plane would remove the planning control needed to ensure an acceptable outcome for future development within the site. The proponent's response (**Attachment 3**) notes that Bayside LEP 2021 retains zone objectives, Clause 4.3 objectives and Bayside DCP 2022 controls for solar access to low density residential development, which can be used to ensure a good outcome can be achieved during the DA assessment process.

## DESIGN QUALITY & BUILT FORM

The Planning Proposal Request is accompanied by a concept building layout (**Attachment 5**) which provides 5592m<sup>2</sup> of GFA across 6 levels. The ground level is shown partly excavated below existing ground level. Viewed from Rocky Point Road, the building will likely present as having 5 storeys. As noted in the section above, in order to avoid impacts on solar access to adjacent dwellings, the concept building form has been brought closer to the street frontages.

Council's Development Services and City Design teams raised concerns with the bulk, scale & aesthetics of the concept design. Attention was drawn to the need for the building to create a *sense of arrival* at the intersection of Rocky Point Road and Garrigarrang Ave. They also noted that these issues in combination with the lack of a Design Excellence provision would not ensure a good design outcome. Bayside LEP *Clause 6.10 Design Excellence* does not presently apply to the site, and will not apply to the future development.

The proponent's Planning Proposal includes an addendum (**Attachment 3**) responding to these concerns, in summary:

- Development of this type and form was envisaged by the master plan and previous Planning Proposal process for the former factory.
- *A visually appealing and practical transition to surrounding development will be achieved by:*
  - Land to the north of the site is already permitted to exceed the 18m height limit due to the rise of the height plane.
  - The concept design features substantial building setbacks from the rear and side boundaries. 20m upper-level setbacks from the east and 12m-14m setbacks from the south.
- *The proposal being able to demonstrate its enhancement of the "sense of arrival and community identity at the intersection of Rocky Point Road and Garrigarrang Avenue"*



*is a level of place-and-design consideration beyond what should reasonably be required for a Planning Proposal of this nature which seeks only to change the permitted achievable building height. Such outcomes will be achievable through design responses regardless of whether the height plane is maintained or not.*

## Conclusion

As detailed in the report, the proposed amendment to the Bayside LEP 2021 for changes to the Height of Buildings Map to remove “Area 15” from the subject site has been prepared in accordance with Section 3.33 of the *Environmental Planning & Assessment Act 1979* and the relevant guidelines prepared by the DPHI, including the *Local Environmental Plan Making Guideline*, August 2023.

The Planning Proposal Request justifies the amendment to the Bayside LEP 2021 by arguing that the application of the building height plane in Clause 4.3A is a mistake. Council considers that the building height plane was introduced to move building bulk away from existing homes at the southern edge of the Darrell Lea site to protect resident amenity, across the *entire* southern boundary of the subject site – regardless of the zoning. Any lost development potential at the southern edge of the Darrell Lea site is compensated for by gained potential to the north, given the mapped height of building limit can be exceeded in those areas further north within the subject site, up to the point of the building height plane administered by Clause 4.3A.

While the Planning Proposal Request may have some strategic merit particularly in relation to the use of the site (which this proposal does not seek to amend), there are clear unresolved concerns around the quality of the concept design and its capacity to contribute positively to this place. On these issues, the Planning Proposal Request does not fully align with the Eastern City District Plan, Bayside Local Strategic Planning Statement and the Bayside Community Strategic Plan. Therefore, the proposal cannot fully demonstrate both strategic and site-specific merit.

It is therefore recommended that the Bayside Local Planning Panel recommend to Council that pursuant to s3.34 of the *Environmental Planning and Assessment Act 1979* the Planning Proposal Request to amend the Bayside Local Environmental Plan 2021 for 204 Rocky Point Road, Kogarah should *not* be supported and should *not* be submitted to the Department of Planning, Housing and Infrastructure for a Gateway Determination.

## Attachments

- 1 [↓](#) Updated Planning Proposal Report - 204 Rocky Point Road, Kogarah
- 2 [↓](#) 204 Rocky Point Road, Kogarah - Response to RFI Cover Letter
- 3 [↓](#) A1 - Detailed RFI Response - 204 Rocky Point Road, Kogarah
- 4 [↓](#) A3 - Updated Solar Analysis\_(replaces Appendix 10)
- 5 [↓](#) A4 - Updated Concept Building Layout\_(replaces Appendix 11)
- 6 [⇒](#) Appendix 1 - Planning Proposal, August 2013\_PP-2024-1690 (Under separate cover Attachments Part One)
- 7 [⇒](#) Appendix 2 - Rockdale Council Meeting, 19 February 2014\_PP-2024-1690 (Under separate cover Attachments Part One)
- 8 [⇒](#) Appendix 3 - Additional Height Plane Submission to JRPP\_PP-2024-1690 (Under separate cover Attachments Part One)
- 9 [⇒](#) Appendix 4 - Architectus Analysis\_PP-2024-1690\_Attachment 9 (Under separate cover Attachments Part One)

- 10 ➡ Appendix 5 - Planning Proposal, February 2015\_PP-2024-1690 (Under separate cover Attachments Part One)
- 11 ➡ Appendix 6 - Indicative Master Plan and Urban Design Report\_PP-2024-1690\_opt (Under separate cover Attachments Part One)
- 12 ➡ Appendix 7 - Gateway Report\_PP-2024-1690 (Under separate cover Attachments Part One)
- 13 ➡ Appendix 8 - Gateway Determination\_PP-2024-1690 (Under separate cover Attachments Part One)
- 14 ➡ Appendix 9 - Rockdale Council Meeting, 2 December 2015\_PP-2024-1690 (Under separate cover Attachments Part One)
- 15 ↓ Appendix 12 - Height Plane Analysis\_PP-2024-1690 (Note: Appendices 10 & 11 replaced by A3 & A4 above)



# Rocky Point Road Planning Proposal

204 Rocky Point Road, Kogarah

ON BEHALF OF

ABACUS STORAGE FUNDS LIMITED

OCTOBER 2024



## Project

204 Rocky Point Road, Kogarah – Planning Proposal

Document Control				
No.	Version	Date	Author(s)	Reviewed by
1	Draft	12/07/2024	Georgia Quinn, Senior Planner	Mason Stankovic, Managing Director
2	Final Draft	18/07/2024	Georgia Quinn, Senior Planner	Mason Stankovic, Managing Director
3	Final	29/07/2024	Georgia Quinn, Senior Planner	Mason Stankovic, Managing Director
4	Update – Response to Council comments	18/10/2024	Georgia Quinn, Senior Planner	Mason Stankovic, Managing Director

COPYRIGHT

© Patch Planning

All Rights Reserved. No part of this document may be reproduced, transmitted, stored in a retrieval system, or translated into any language in any form by any means without the written permission of Patch Planning (Patch Planners Pty Ltd).

All Rights Reserved. All methods, processes, commercial proposals and other contents described in this document are the confidential intellectual property of Patch Planning and may not be used or disclosed to any party without the written permission.

## Table of Contents

1	Introduction .....	1
1.1	Report Structure .....	2
2	Site Context and Description .....	3
2.1	Regional Context .....	3
2.2	Local Context .....	3
2.3	Site Description .....	4
2.4	Local Planning Context .....	5
2.4.1	Bayside Local Environmental Plan 2021 .....	5
3	Planning Proposal Background .....	9
3.1	Summary .....	9
3.2	Detailed Site Planning History .....	12
3.3	Council Consultation .....	18
3.3.1	Required Studies & Documents .....	19
4	Part 1 – Objectives and Intended Outcomes .....	20
4.1	Concept development outcome .....	20
5	Part 2 – Explanation of Provisions .....	21
6	Part 3 – Justification of Strategic and Site-Specific Merit .....	22
6.1	Section A – Need for the Planning Proposal .....	22
6.1.1	Q1 – Is the planning proposal a result of an endorsed LSPS, strategic study or report? .....	22
6.1.2	Q2 – Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way? .....	22
6.2	Section B – Relationship to the Strategic Planning Framework .....	22
6.2.1	Q3 – Will the planning proposal give effect to the objectives and actions of the applicable regional or district plan or strategy (including any exhibited draft plans or strategies)? .....	23
6.2.2	Q4 – Is the planning proposal consistent with a council LSPS that has been endorsed by the Planning Secretary or GSC, or another endorsed local strategy or strategic plan? .....	25
6.2.3	Q5 – Is the planning proposal consistent with any other applicable State and regional studies or strategies? .....	27
6.2.4	Q6 – Is the planning proposal consistent with applicable SEPPs? .....	27
6.2.5	Q7 – Is the planning proposal consistent with applicable Ministerial Directions (section 9.1 Directions)? .....	29

6.3	Section C – Environmental, Social and Economic Impact.....	35
6.3.1	Q8 – Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected because of the proposal? .....	37
6.3.2	Q9 – Are there any other likely environmental effects of the planning proposal and how are they proposed to be managed? .....	37
6.4	Section D – Infrastructure (Local, State and Commonwealth) .....	42
6.4.1	Q11 – Is there adequate public infrastructure for the planning proposal? .....	42
6.5	Section E – State and Commonwealth Interests .....	42
6.5.1	Q12 – What are the views of state and federal public authorities and government agencies consulted in order to inform the Gateway determination? .....	42
7	Part 4 – Mapping.....	43
8	Part 5 – Community Consultation .....	44
9	Part 6 – Project Timeline.....	45
10	Conclusion .....	46



## Figures

<b>Figure 1: Site Context Map</b>	3
<b>Figure 2: Local Context Aerial</b>	4
<b>Figure 3: Site Aerial</b>	5
<b>Figure 4: Land Zoning Map</b>	6
<b>Figure 5: Height of Buildings Map</b>	6
<b>Figure 6: Floor Space Ratio Map</b>	8
<b>Figure 7: Lot Size Map</b>	8
<b>Figure 8: Site within former Darrel Lea Site (black dash) and broader industrial area</b>	9
<b>Figure 9: Former (2015) view of subject site looking north along Rocky Point Road</b>	10
<b>Figure 10: Present day view to north of site, looking south along Rocky Point Road</b>	10
<b>Figure 11: Originally proposed building height map under Rockdale LEP 2011</b>	11
<b>Figure 12: Height Plane Analysis</b>	11
<b>Figure 13: Development footprint layout</b>	20
<b>Figure 14: Height of Building Map</b>	38
<b>Figure 15: Height Plane Analysis Section</b>	39
<b>Figure 16: Massing study</b>	39
<b>Figure 17: Solar Study Diagrams (midwinter 9am – 3pm)</b>	40
<b>Figure 18: Solar Study Diagrams (midwinter 9am – 3pm)</b>	41
<b>Figure 19: Current HOB Map</b>	43
<b>Figure 20: Proposed HOB Map with revised “Area 15” in pink</b>	43

## Tables

Table 1. Historic Planning Proposal Timeline	12
Table 2. Required Studies & Documents	19
Table 3. Planning Proposal Response to Greater Sydney Region Plan	23
Table 4. Planning Proposal Response to Eastern City District Plan	25
Table 5. Planning Proposal Response to Bayside Local Strategic Planning Statement 2020	25
Table 6. Planning Proposal Response to Bayside Community Strategic Plan 2023	26
Table 7. Consistency with State Environmental Planning Policies	27
Table 8. Section 9.1 Compliance Table	29
Table 9. Site-Specific Merit Test	36
Table 10. Indicative Project Timeline	45

## 1 Introduction

This updated Planning Proposal report has been prepared on behalf of Abacus Storage Funds Limited (Abacus) and supports an application to Bayside Council to initiate a proponent led amendment to the *Bayside Local Environmental Plan 2021* (BLEP 2021) in relation to land known as 204 Rocky Point Road, Rocky Point (the site).

The Planning Proposal (PP) seeks to amend BLEP 2021 to correct an error made during the finalisation of a previous amendment to the former *Rockdale Local Environmental Plan 2011* (RLEP 2011) in 2016. Specifically, the Planning Proposal seeks to alter the boundary referred to as 'Area 15' in the Height of Buildings (HOB) map so that it no longer includes the site. This change would result in the building height plane prescribed within Clause 4.3A of the BLEP 2021 no longer applying to the land, as we have demonstrated was originally intended.

The PP has been prepared in accordance with the requirements outlined under section 3.33(2) of the *Environmental Planning & Assessment Act 1979* (EP&A Act 1979) and has duly considered the Department of Planning & Environment (DPE) document *Local Environmental Plan Making Guideline – August 2023*. It should be read in conjunction with:

- **Appendix 1** - Planning Proposal, August 2013
- **Appendix 2** - Rockdale Council Meeting, 19 February 2014
- **Appendix 3** - Additional Height Plane Submission to JRPP
- **Appendix 4** - Architectus Analysis
- **Appendix 5** - Planning Proposal, February 2015
- **Appendix 6** - Indicative Master Plan and Urban Design Report
- **Appendix 7** - Gateway Report
- **Appendix 8** - Gateway Determination
- **Appendix 9** - Rockdale Council Meeting, 2 December 2015
- **Appendix 10** - Solar Analysis Study
- **Appendix 11** - Concept Building Layout Plan
- **Appendix 12** - Height Plane Analysis

As detailed in this report, the proposed LEP amendment (the Planning Proposal) warrants support as it can be demonstrated that no height plane control was ever envisioned for the site under original Master Planning work throughout 2013-2016. Accordingly, Clause 4.3A of BLEP 2021 erroneously applies to the land.

Furthermore, notwithstanding the administrative foundation of the proposal sought, the PP is also entirely consistent with the strategic planning framework and can mitigate potential environmental impacts appropriately. Accordingly, it demonstrates both strategic and site-specific merit in accordance with the requirements for planning proposals in New South Wales (NSW).

## 1.1 Report Structure

This Planning Proposal has been prepared in accordance with DPE's *Local Environmental Plan Making Guideline* (August 2023) and is structured as follows:

### Introduction

- Chapter 1 – Introduction;
- Chapter 2 – Site Context and Description
- Chapter 3 – Planning Proposal Background

### Planning Proposal

- Chapter 4 – Part 1 – Objectives and Intended Outcomes
- Chapter 5 – Part 2 – Explanation of Provisions
- Chapter 6 – Part 3 – Justification of Strategic and Site-Specific Merit
- Chapter 7 – Part 4 – Mapping
- Chapter 8 – Part 5 – Community Consultation
- Chapter 9 – Part 6 – Project Timeline; and

### Conclusion

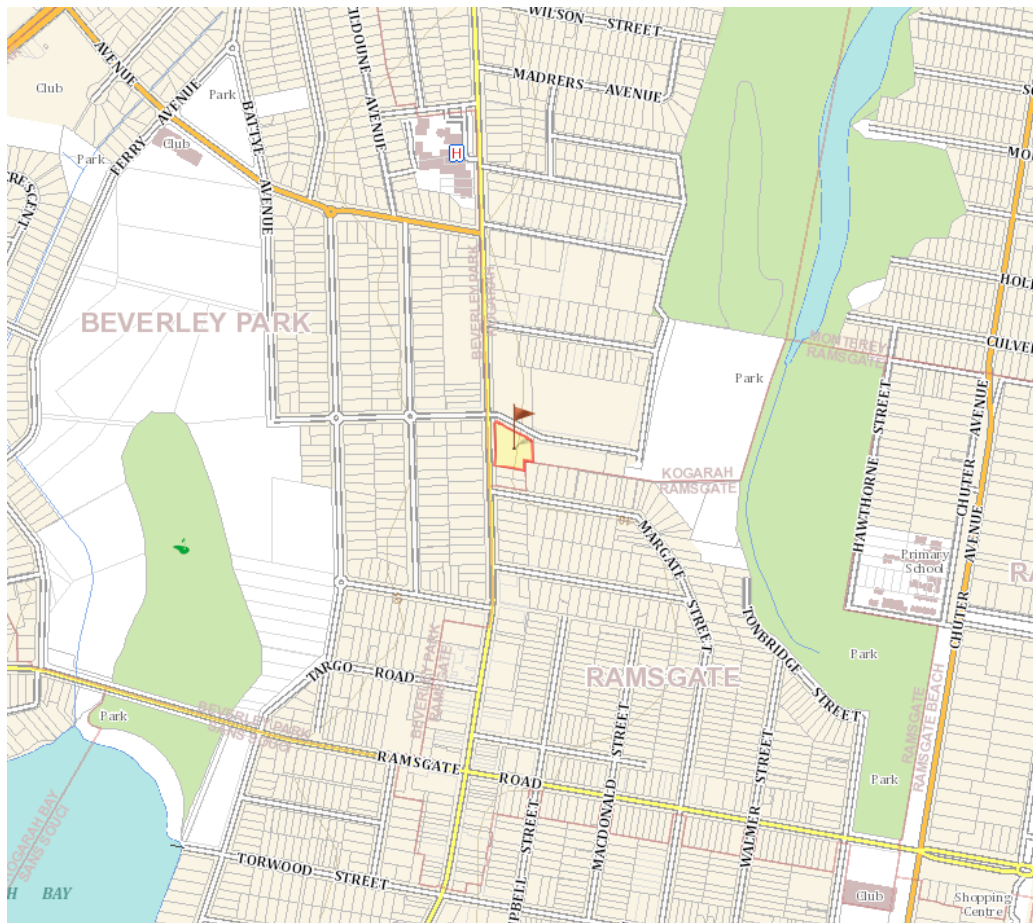
- Chapter 10 – Conclusion

## 2 Site Context and Description

### 2.1 Regional Context

The subject site is located within the Bayside LGA, within the Sydney metropolitan area. More broadly the site sits within the Eastern City District, just to the south of the Eastern Economic Corridor which stretches from Macquarie Park in the north to Port Botany and Sydney Airport in the south.

Although the site itself is not located within a local or strategic centre, it falls between the Kogarah Health and Education Precinct and the Ramsgate Beach Local Centre (refer to **Figure 1** below). Further north of the site is the Rockdale Proposed Strategic Centre.



**Figure 1: Site Context Map**

Source: SixMaps

### 2.2 Local Context

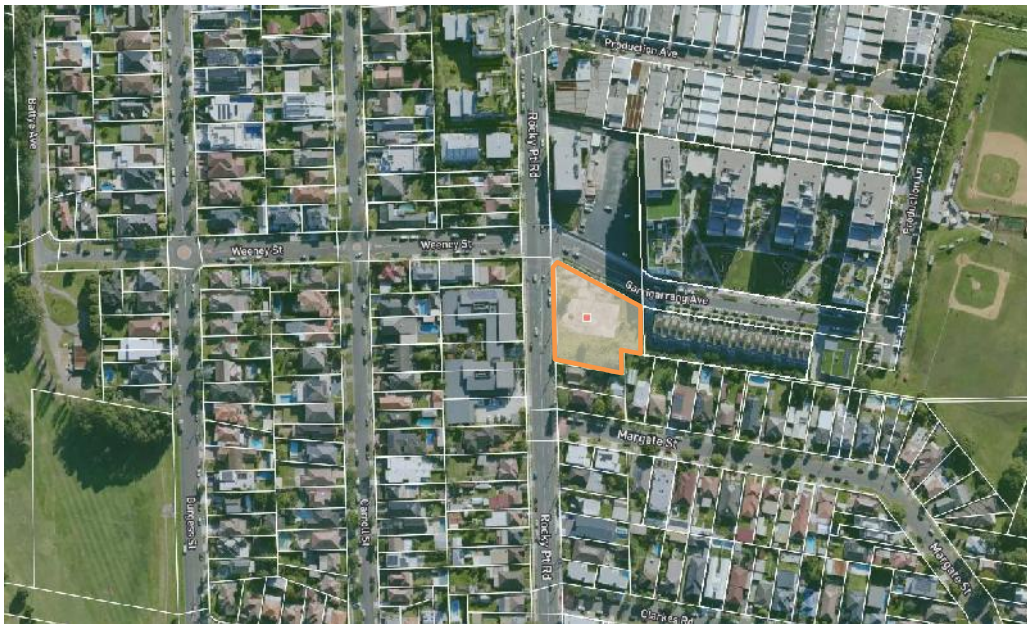
The site is located within the former Rockdale portion of the Bayside LGA, between the suburbs of Kogarah and Ramsgate Beach.



The site is directly adjoined to its south by low density residential development. Land to the east and north comprises high density residential development of varying scales from three-storey buildings up to an 18-storey building. Further north of the R4 zoned land is a parcel of E4 General Industrial zoned land, which comprises largely two-storey warehousing and industrial premises.

On the opposite side of Garrigarrang Avenue (to the north of the site) there is an E3 Productivity Support zoned lot, which contains a multi-storey commercial office building. To the west of the site, on the opposite side of Rocky Point Road, is a mix of low and medium density residential development.

Further east of the site by approximately 200m are Leo Smith Reserve and Scarborough Park. Beverley Park Golf Course is also located approximately 300m to the west of the site.



**Figure 2: Local Context Aerial**

Source: Metromap, modified by Patch

### 2.3 Site Description

The site is known as 204 Rocky Point Road, Kogarah, legally described as Lot 11 in DP 1289336. The site has a total area of approximately 3,107sqm and is an irregularly shaped corner lot with frontages to Rocky Point Road (west) and Garrigarrang Avenue (north), as depicted in **Figure 3** below.

The site is within the Bayside Local Government Area (LGA) and subject to the provisions of the BLEP 2021, under which it is zoned E3 Productivity Support. Adjoining land to the east and northeast is zoned R4 High Density Residential, with low density residential development occurring to the south and west of the site.



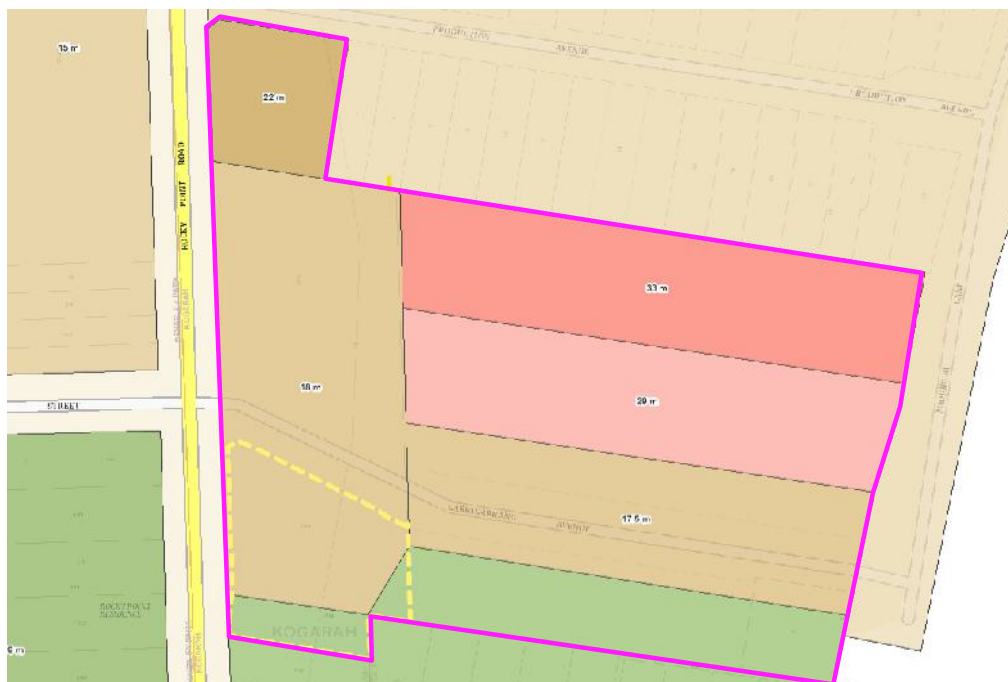


**Figure 4: Land Zoning Map**

Source: NSW Planning Portal Spatial Viewer

#### HEIGHT OF BUILDINGS

The site is subject to a height of buildings (HOB) control of 8.5m in the south (green shaded areas in below mapping extract), and 18m in the north (beige shaded areas). The site also falls within "Area 15" as illustrated via the pink outline in **Figure 5**.



**Figure 5: Height of Buildings Map**

Source: NSW Planning Portal Spatial Viewer, modified by Patch

Clause 4.3A applies to land within “Area 15” and stipulates the application of a building height plane as follows:

**4.3A Exception to height of buildings—Rocky Point Road, Kogarah**

- (1) *This clause applies to land in Area 15 identified on the Height of Buildings Map.*
- (2) *Despite clause 4.3(2), the height of a building on land to which this clause applies may exceed the maximum height shown for the land on the Height of Buildings Map, but must not exceed the building height plane for the land.*
- (3) *Clause 5.6 does not apply to a building on land to which this clause applies.*
- (4) *In this clause—*

*building height plane means a continuous plane commencing at a height of 1.5 metres above ground level (existing) and at a distance of 13.6 metres south of the southern boundary of Lot 22, DP 620329 (Point A), projecting to a position at a height of 11.7 metres above ground level (existing) and at a distance of 31.6 metres north of Point A, and continuing at that projection over the land to which this clause applies.*

The wording of Clause 4.3A indicates that the height plane prevails in the event of any inconsistency with the HOB map. Furthermore, Clause 4.3A cannot be varied through the mechanisms of Clause 4.6, in accordance with Clause 4.6(8)(bc) of BLEP 2021, which reads as follows:

**4.6 Exceptions to development standards**

- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following—*

...

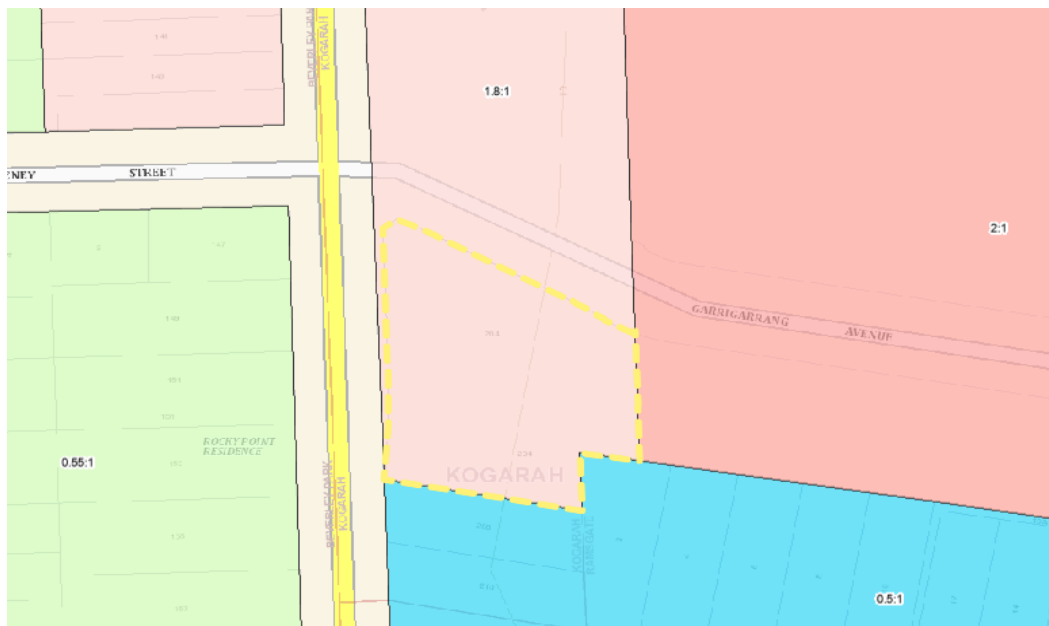
- (bc) *Clause 4.3A,*

As such, there is no ability to contravene the height plane control prescribed within Clause 4.3A.

**FLOOR SPACE RATIO**

The site is subject to a floor space ratio control of 1.8:1, as illustrated in **Figure 6** below.





**Figure 6: Floor Space Ratio Map**

Source: NSW Planning Portal Spatial Viewer

#### MINIMUM SUBDIVISION LOT SIZE

The southern-most portion of the site is subject to a minimum lot size control of 450sqm, as illustrated in **Figure 7** below. The northern portion of the site is not subject to a minimum subdivision lot size control.



**Figure 7: Lot Size Map**

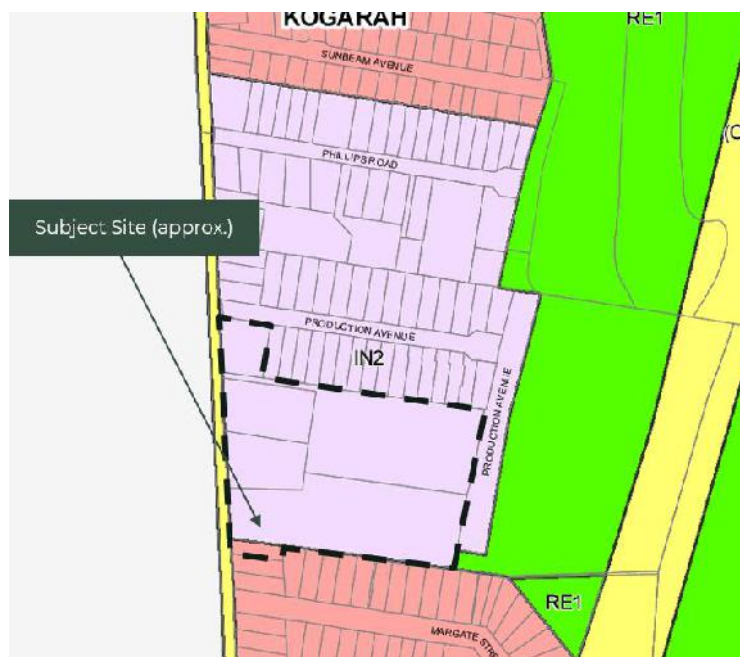
Source: NSW Planning Portal Spatial Viewer

### 3 Planning Proposal Background

This chapter provides a brief summary of the background to the PP, followed by a more comprehensive chronology of events.

#### 3.1 Summary

The subject site was originally part of the former Darrel Lea Chocolate factory site. The site was primarily zoned IN2 Light Industrial, and a part of a larger industrial area situated to the east of Rocky Point Road in Kogarah, as shown in **Figure 8**.



**Figure 8: Site within former Darrel Lea Site (black dash) and broader industrial area**

*Source: Rockdale Local Environmental Plan 2011 [repealed] (marked up by Patch)*

The broader precinct has historically presented to Rocky Point Road with industrial and enterprise corridor characteristics, as demonstrated in **Figure 9** and **Figure 10**, notwithstanding the presence of residential land to its north and south. In particular, the subject site itself historically presented a fairly unsympathetic transition to residential land which it immediately adjoined to the south, as shown in the following image.



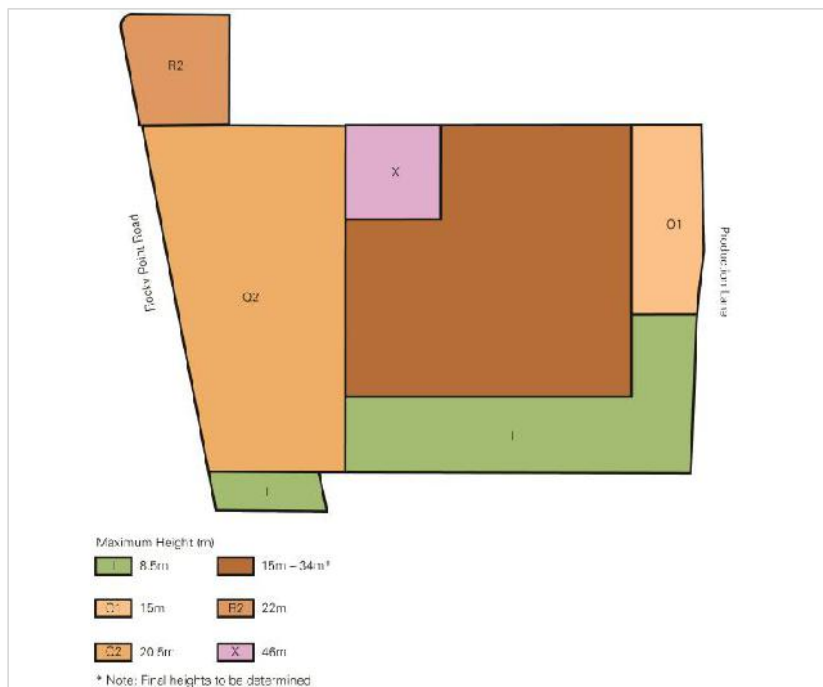
**Figure 9: Former (2015) view of subject site looking north along Rocky Point Road**  
Source: Google Maps



**Figure 10: Present day view to north of site, looking south along Rocky Point Road**  
Source: Google Maps

In 2013, a PP was submitted to Rockdale Council to rezone the 3.3 hectare site from IN2 Light Industrial, to part B6 Enterprise Corridor and part R4 High Density Residential.

The original PP sought to permit a range of building heights across the site, from 8.5m to 22m for the allocated B6 zoned land, as shown in **Figure 11**.

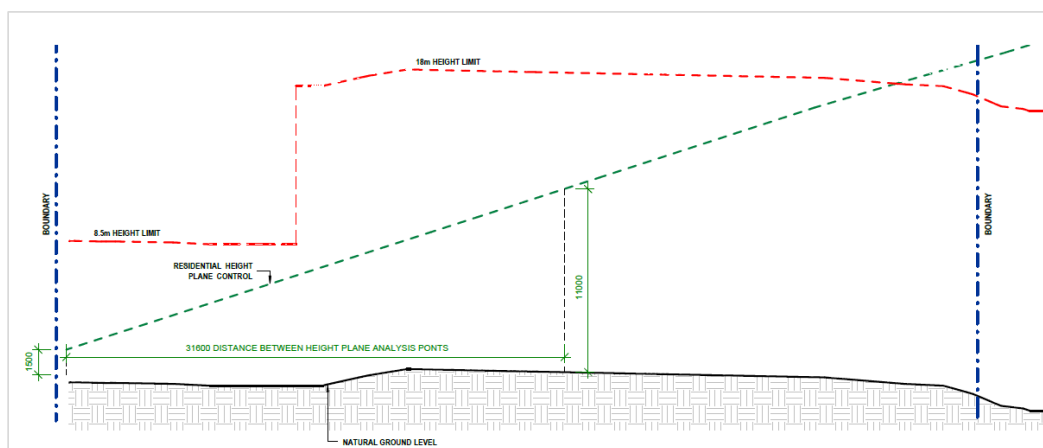


**Figure 11: Originally proposed building height map under Rockdale LEP 2011**

Source: Planning Proposal Report, prepared by JBA, dated 21/08/13

The original PP did not include any provisions relating to a building height plane, which appears to have been introduced as a concept by Council throughout the assessment process. Importantly, notwithstanding the introduction of the concept of a building height plane throughout the PP's assessment, no height plane was ever tested on the subject site – only on land proposed to be rezoned to R4 High Density Residential.

**Figure 12** below demonstrates the effect of the height plane when applied to the subject site.



**Figure 12: Height Plane Analysis**

Source: BN Group



The RLEP 2011 was amended in April 2016 and adopted revised HOB mapping which had been put forward by the proponent throughout the assessment process. This included Clause 4.3A which was drafted in a way to apply to the subject site (then rezoned to B6), despite all height plane analysis only focusing on the R4 land up until that point.

In August 2021, BLEP 2021 commenced and repealed RLEP 2011. The written provisions pertaining to height and the height plane control were replicated from RLEP 2011, and "Area 15" was introduced to identify the former Darrel Lea site.

More recently, a DA was lodged for the construction of a six-storey storage premises (ref. DA-2023/186), which was ultimately withdrawn in January 2024 due to the implication of the height plane control. Discussions with Council's strategic planning team have since occurred, where it was agreed that the most appropriate pathway for rectifying this error would be to submit a PP in accordance with the requirements prescribed within section 3.33(2) of the EP&A Act.

### 3.2 Detailed Site Planning History

Table 1 below sets out the comprehensive timeline of key events and commentary surrounding the site and the application of a height plane control under Clause 4.3A, clearly demonstrating that its imposition was made in error for the extent to which it applies to the subject site.

Table 1. Historic Planning Proposal Timeline	
Date	Item
August – December 2013	An initial PP ( <b>Appendix 1</b> ) was lodged with Rockdale Council seeking to change zoning, FSR, and height provisions applying to the wider landholding (then known as the Darrel Lea Site which at the time was predominantly zoned for industrial purposes.  Variable height limits were proposed within the initial PP, but no height plane was proposed at this time. The proposed B6 Enterprise Corridor Zone, which included the subject site, was intended to allow for building heights up to 22m.
19 December 2013	The proponent lodged a Pre-Gateway Review Request with DPE. Accordingly, advice was to be sought from the Sydney East Joint Regional Planning Panel (JRPP) as to whether the PP should progress to Gateway.
19 February 2014	Council assessment of the PP continued regardless of the Pre-Gateway Review Request, with a report made to the Council meeting dated 19 February 2014 ( <b>Appendix 2</b> ). Council resolved that heights on the portion of the land zoned B6 – Enterprise Corridor (including what is now the subject site) should be reduced to 14.5 metres (4 storeys) with an FSR of 1.5:1.
Early – Mid 2014	Information requests from the JRPP relating to height and other matters were responded to by the applicant in April 2014 ( <b>Appendix 3</b> ) as part of the Pre-Gateway Review process.  Four options for the site were proposed in the submission known as options 1(a), 1(b), 2(a), and 2(b), each providing a variation between height and zoning boundaries. These options considered a Council height plane, which is expected to have been proposed by Council sometime after the lodgement of the Pre-Gateway Review Request.  The proponent's submission indicates that the height plane was only intended for areas to be zoned R4 – High Density Residential, and not areas proposed to be zoned B6 – Enterprise Corridor, as per below:  <i>"Option 1 (a) complies with the height map proposed by Council for the site as requested by the JRPP for the area proposed to be zoned R4 High Density residential. The heights for the proposed B6 zone have been kept as per the applicant's submission considered by the JRPP at</i>

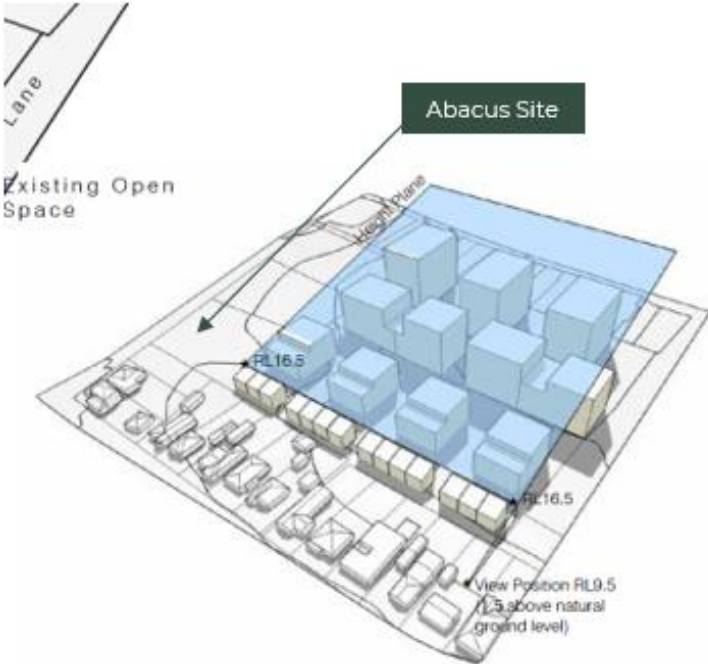
Table 1. Historic Planning Proposal Timeline	
Date	Item
	<p><i>its meeting of 15 April as no alteration was requested."</i></p> <p>Height plane mapping within the proponent's JRPP submission was informed by an independent review led by Architectus (<b>Appendix 4</b>). An extract from the Architectus review is shown below, clearly indicating that the height plane was not tested nor intended to apply to the subject site.</p> 
13 October 2014	<p>Following advice from the JRPP, DPE (as delegate for the Minister) advised that the PP should proceed to Gateway.</p> <p>The revised PP later submitted to DPE (<b>Appendix 5</b>) suggests that the JRPP had indicated that the PP should reflect the development controls proposed under option 2(a) referred to above, with proposed height controls to be adjusted so they would not exceed Council's building plane.</p>
23 February 2015	<p>The updated PP was submitted to DPE for Gateway determination incorporating revised height provisions, in line with outcomes from the JRPP advice.</p> <p>JBA's updated Planning Proposal Report (<b>Appendix 5</b>) included mapping of the proposed HOB control, shown below. These were ultimately incorporated into the RLEP amendment and remain the mapped HOB controls under BLEP 2021. For the subject site, this included a mix of 8.5m and 18m mapped HOB limits.</p>

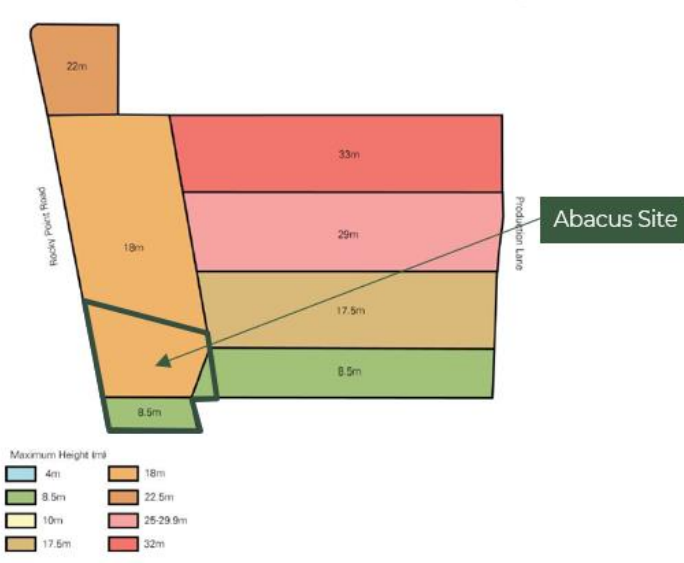

Table 1. Historic Planning Proposal Timeline	
Date	Item
	<div>  <p>The diagram illustrates the Abacus Site with various height planes and maximum height limits. The site is bounded by Rocky Point Road to the west and Production Lane to the east. The diagram is divided into several colored zones with height limits: 4m (light blue), 8.5m (green), 10m (yellow), 17.5m (orange), 18m (dark orange), 22.5m (red-orange), 25-29.9m (pink), and 32m (red). The site itself is divided into zones with heights: 22m, 19m, 33m, 29m, 17.5m, and 8.5m. A legend below the diagram lists the maximum height limits for each color.</p> </div> <p>The revised PP also included a proposed LEP clause introducing a building height plane clause, intended <b>only</b> to apply only to land zoned R4 High Density Residential. This is indicated in the image below, extracted from the Indicative Master Plan and Urban Design Report (<b>Appendix 6</b>).</p> <div>  <p>Abacus Site</p> <p>HEIGHT PLANE PERSPECTIVE</p> </div> <p>The wording of the proposed clause, provided below, confirms the height plane was only intended to apply to the R4 zoned land:</p> <p><i>“(a) The height of a building <b>on land zoned R4 High Density Residential</b> at 152-206 Rocky Point Road is not to exceed the maximum</i></p>

Table 1. Historic Planning Proposal Timeline	
Date	Item
	<p>height shown on the Building Height Map, except where the maximum height of the building is below the <b>Building Height Plane</b>.</p> <p>(b) The Building Height Plane is measured as a perpendicular line between Point A south of the site's southern boundary and a corresponding Point B north of the sites southern boundary, and projects as a continuous plane where:</p> <ul style="list-style-type: none"> <li>- Point A is taken at a height of 1.50 metres above natural ground level at a distance of 13.6 metres south of the southern property boundary of Lot 22 in DP620329.</li> <li>- Point B is taken at a height of 11.70 metres above natural ground level at distance of 18.0 metres north of the southern boundary of Lot 22 in DP620329"</li> </ul>
15 April 2015	<p>DPE finalised its Gateway Determination Report (<b>Appendix 7</b>), recommending support for the PP.</p> <p>The report states that Rockdale Council had requested delegation of plan making functions for the PP. This was not supported by DPE given the PP was subject to a Pre-Gateway Review. DPE retained plan making functions.</p> <p>Notably, page 8 of the determination report states the following with respect to the proposed height plane clause:</p> <p><b><i>"The Department considers that inclusion of a specific height plane provision in the LEP is not appropriate. Instead, for exhibition purposes, it is recommended to include a paragraph explaining the intent of the height plane and its relationship to the proposed development. In addition, this section should also explain that the proposed buildings do not exceed the building height plane, irrespective of the proposed maximum building heights prescribed on the building height map."</i></b></p> <p>The above suggests that as of April 2015 DPE were not necessarily in favour of any written height plane provision in the LEP, despite one ultimately being adopted.</p>
4 May 2015	<p>A Gateway determination (<b>Appendix 8</b>) was issued by DPE which explicitly refers to the Lippman and JBA Reports as supporting documentation, neither of which propose a height plane for the Abacus site.</p> <p>The Gateway determination states the following with respect to the height plane provision, indicating DPE did not want specific wording of a height plane clause exhibited within the PP:</p> <ol style="list-style-type: none"> <li>1. Prior to public exhibition the planning proposal is to be amended to include: ...an updated section 4.1.6 of the planning proposal to include the intent of the proposed subclause regarding building height plane, in place of a draft subclause...</li> </ol>
2 December 2015	<p>An officer report was presented to Rockdale Council at the meeting dated 2 December 2015 following assessment and exhibition of the PP (<b>Appendix 9</b>).</p> <p>As of this date, Council continued to express concerns with the PP's proposed height limits. The officer recommendation was that the Minister finalise the PP subject to changes to development standards to reflect Council's preferred outcomes previously identified.</p> <p>For land proposed to be zoned B6 – Enterprise Corridor (including the subject site), this was:</p> <ul style="list-style-type: none"> <li>• That the height be reduced to 14.5m (4 storeys); and</li> <li>• The FSR be reduced to 1.5:1.</li> </ul> <p>The following resolution was passed at the meeting:</p> <ol style="list-style-type: none"> <li>1. That Council receives and notes the report of the Council officers and</li> </ol>



Table 1. Historic Planning Proposal Timeline	
Date	Item
	<p><i>the accompanying public submissions and refers the report to the Department of Planning and Environment for its consideration and decision.</i></p> <p><i>2. That should the Department approve the LEP amendment as exhibited, Council enters into the Voluntary Planning Agreement with the owners of 152-206 Rocky Point Road, Kogarah.</i></p> <p>Whilst the resolution was passed, the officer report noted that Council ultimately did not have delegation to make the LEP and any decision on determining its final form would ultimately be made by the Minister:</p> <p><i>"Following Council's determination of the Planning Proposal, the Planning Proposal will be forwarded to the DPE with a request that the Minister make the LEP amendment, subject to any amendments resolved by Council. The Planning Proposal is subject to the Pre-Gateway review process, and Council does not have delegation to make the LEP. Given that the DPE issued a Gateway determination that permitted exhibition of the Planning Proposal in its current form, and that the officer's recommendation is consistent with Council's resolution of 19 February 2014, the Minister will need to consider Council's resolution in determining the form of the LEP amendment.</i></p> <p><i>It is also assumed that, given this Council report responds to the submissions and provides recommendations in order to address those submissions, the Minister will consider these in determining how the Planning Proposal shall proceed and what form the LEP amendment will be made. As this Planning Proposal represents the first Pre-Gateway review for a Planning Proposal within the City of Rockdale, no precedent exists regarding process and the liaison that can be expected between Council and the DPE at this part of the process. This point is particularly relevant since the officer's recommendation (if supported) would endorse a Planning Proposal that, although consistent with Council's previous resolution and subsequent submission to the JRPP, seeks to reduce the Height of Building and Floor Space Ratio development standards to those that were included in the exhibited Planning Proposal."</i></p>
15 April 2016	<p>Rockdale Local Environmental Plan 2011 (RLEP 2011) was amended in 2016, rezoning the site to a mix of R4 and B6, making changes to FSR and height controls, and introducing Clause 4.3A.</p> <p>It is noted that the mapped HOB controls did <b>not</b> adopt Council's suggested reductions and instead reflected the proponent's original mapping (i.e. 8.5m - 18m for the subject site).</p> <p>Notably however, the gazetted building height plane under Clause 4.3A <u>did not</u> limit application to R4 zoned land only, and instead refers to all lots including Lot 22 DP 320329 (which comprised the subject site at the time).</p> <p><b>4.3A Exception to height of buildings</b></p> <p><b>(1) This clause applies to land at 152–206 Rocky Point Road, Kogarah, being Lot 22, DP 620329, Lot 2, DP 838198, Lot 1, DP 599502, Lot 1, DP 1144981, Lot 1, DP 666138 and Lot 2, DP 405531.</b></p> <p>(2) Despite clause 4.3, the height of a building on land to which this clause applies may exceed the maximum height shown for the land on the Height of Buildings Map, but must not exceed the building height plane for that land.</p> <p>(3) Clause 5.6 does not apply to a building on land to which this clause applies.</p> <p>(4) In this clause—</p>

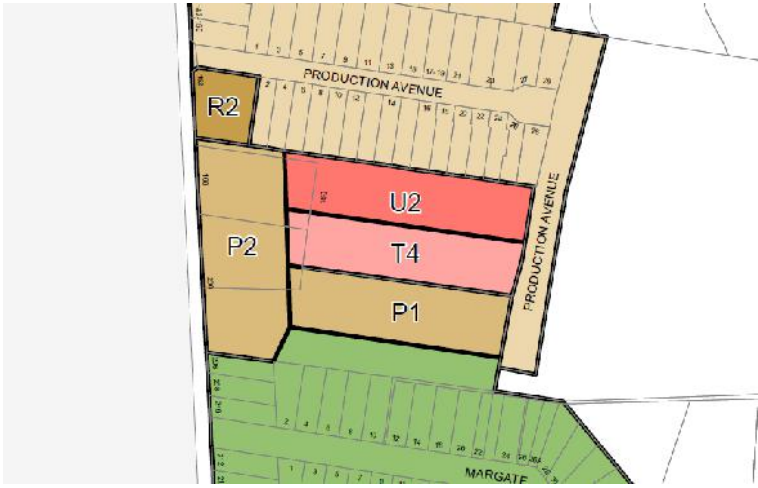

Table 1. Historic Planning Proposal Timeline	
Date	Item
	<p><i>building height plane means a continuous plane commencing at a height of 1.5 metres above ground level (existing) and at a distance of 13.6 metres south of the southern boundary of Lot 22, DP 620329 (Point A), projecting to a position at a height of 11.7 metres above ground level (existing) and at a distance of 31.6 metres north of Point A, and continuing at that projection over the land to which this clause applies.</i></p> <p>The drafting of Clause 4.3A above was also supported by additional amendments to the RLEP 2011 which restricted the application of Clause 4.6 to the building height plane under Clause 4.3A, as shown below:</p> <p><b>4.6 Exceptions to development standards</b></p> <p>(8) This clause does not allow development consent to be granted for development that would contravene any of the following:</p> <p>...</p> <p>(cb) clause 4.3A.</p> 
27 August 2021	<p>BLEP 2021 commences and repeals RLEP 2011. Written provisions relating to height and the height plane under clause 4.3A are replicated from RLEP 2011 except for individual property references being replaced with an "Area 15" identifier, linked to the HOB Map. As shown below, this includes the subject site.</p>

Table 1. Historic Planning Proposal Timeline	
Date	Item
	
30 June 2023	Clause 4.3A is renamed “Exception to height of buildings—Rocky Point Road, Kogarah”. No change to the height plane control itself is made.
12 July 2023	A DA is lodged for “Construction of a six (6) storey storage premises, operating 24 hours a day, 7 days a week” known as DA-2023/186.
23 January 2024	DA-2023/186 is withdrawn due to the implication of the height plane control, which is where the erroneous application of Clause 4.3A become evident.

The above clearly demonstrates that no height plane control was ever intended to apply to the subject site, rather, it was to control densities within the R4 High Density Residential zone. Accordingly, it can be concluded that an error was made at the time of finalising the abovementioned amendment to RLEP 2011 in 2016, which this PP seeks to rectify.

### 3.3 Council Consultation

Patch Planning wrote to the Strategic Planning team at Bayside Council on 22 May 2024 setting out the history of the site, as above, in order to discuss potential planning pathways available to rectify the unintended application of Clause 4.3A upon the subject site.

Following this initial engagement, Patch Planning and representatives of the Client met with strategic planning officers from Council on 11 June 2024. A summary of the matters raised during this engagement and how they have been considered prior to lodgement are set out below.

#### Scoping Stage

The Council officers confirmed that they were satisfied that the detailed planning review, submitted 22 May 2024 and the meeting held on 11 June 2024, constituted the ‘scoping stage’ of the Planning Proposal.

### Solar Access

Council noted that it would be beneficial for the Planning Proposal to be supported with a detailed solar analysis, to demonstrate that the relevant DCP provisions could be met in the instance where the height plane was not applicable to the subject site.

As demonstrated by the supporting Solar Analysis Study (**Appendix 10**) the dwelling directly south of the site (No. 208 Rocky Point Road) would continue to receive a minimum of 2 hours of direct sunlight in habitable living spaces (assumed to be located at the rear of the dwelling). It would also continue to receive direct sunlight to at least 50% of the primary private open space between 9am and 3pm in mid-winter.

This accords with the relevant provision of the Bayside DCP 2022, being Control C1 within section 5.2.1.5, and is achieved in both building layout scenarios.

### Floor Space Ratio

It was recommended than any future Planning Proposal be supported by concept envelope plans that show that a compliant scheme can be developed in accordance with the applicable 1.8:1 FSR development standard (pursuant to Clause 4.4 of the BLEP 2021).

As demonstrated on the accompanying building layout plans (**Appendix 11**), both of the building arrangement options comply with the FSR control, such that the objectives of Clause 4.4. of BLEP 2021 are achieved.

### 3.3.1 Required Studies & Documents

Council identified the following documents were required to be submitted with the planning proposal.

Table 2. Required Studies & Documents	
Document	Provided
Solar Analysis Study	<b>Appendix 10</b>
Concept Building Layout Plans	<b>Appendix 11</b>



## 4 Part 1 – Objectives and Intended Outcomes

The objective of this PP is to correct the application of the building height plane development standard which applies to the site under Clause 4.3A.

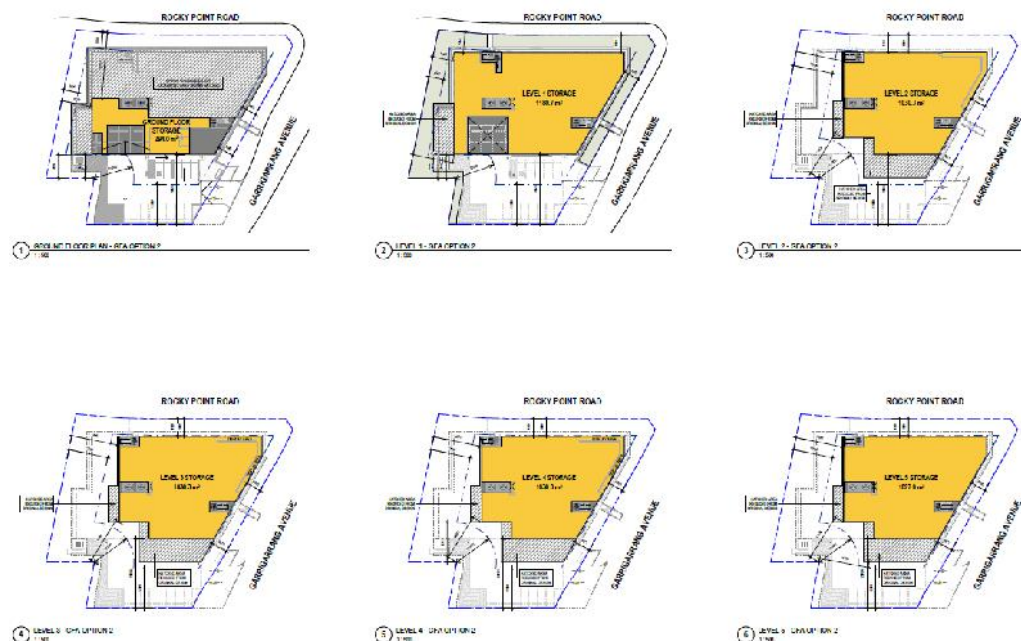
As has been clearly detailed in Section 3 of this PP report, the building height plane was drafted with the intention of applying to the R4 zoned land only. However, during the progression of the site's original rezoning, it was ultimately imposed in a way such that it now applies to the entirety of "Area 15" which includes the subject site.

The proposed correction would facilitate development opportunities in line with the prescribed 8.5 – 18m HOB development standard, in turn enabling an appropriate quantum of employment floorspace to be delivered for the locality.

### 4.1 Concept development outcome

Concept building plans have been prepared by BN Group (**Appendix 11**). It should be noted that the ultimate outcome is still being refined and the option utilised for this Planning Proposal is simply the current preferred outcome. Detailed plans do not exist, however, more design work would be undertaken prior to the lodgement of a new development application.

The working development option for the site presents a six-storey building with an FSR of 1.8:1 (or 5,592.6sqm of GFA), shown in **Figure 13**.



**Figure 13: Development footprint layout**

Source: BN Group

The current option can achieve the stipulated FSR control of 1.8:1 within the mapped 18m height limit, does not result in any unacceptable environmental impacts, and requires minimal excavation. More detailed consideration of environmental issues, as appropriate for and commensurate to the current Planning Proposal, is contained further in this report.

## 5 Part 2 – Explanation of Provisions

To achieve the objectives of this Planning Proposal, the following amendment is sought to be corrected within the BLEP 2021:

- Amend the Height of Buildings Map to correct the outline of “Area 15” to exclude the subject site.

Amended LEP mapping extracts have been provided in Chapter 7 – Part 4 – Mapping.

As a result of the above, Clause 4.3A would no longer apply to the land. The building height plane defined within the clause would therefore have no effect on the subject site.

It is noted that the building height control currently applies to No. 170 Rocky Point Road, Kogarah (to the north) which is also zoned E3 Productivity Support. By extension of the analysis undertaken related to the original rezoning, it is concluded that the height plane should also not apply to No. 170 Rocky Point Road, Kogarah. However, as it is outside the control of the Proponent, this Planning Proposal does **not** request removal of the height plane from No. 170 Rocky Point Road.

## 6 Part 3 – Justification of Strategic and Site-Specific Merit

### 6.1 Section A – Need for the Planning Proposal

#### 6.1.1 Q1 – Is the planning proposal a result of an endorsed LSPS, strategic study or report?

**Yes.** As demonstrated within the original PP and the raft of supporting documents submitted alongside it, the location, context, and attributes of the former Darrel Lea site rendered it more suitable for a mix of residential and commercial uses rather than general or heavy industrial uses which it was zoned for at the time.

The original PP confirmed that the Darrel Lea site could support the delivery of up to 18,000sqm of employment generating floor space, and that such development would not hinder economic impacts upon other existing commercial centres in the locality. This projection was based on future developments fulfilling the prescribed built form controls, including the HOB and FSR development standards.

The site's contribution towards meeting this delivery of floor space therefore relies on development being able to optimise the 18m building height limit. Subsequently, this would also allow the site to achieve the prescribed 1.8:1 FSR control.

#### 6.1.2 Q2 – Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

**Yes.** Clause 4.3A cannot be varied through the mechanisms of Clause 4.6, in accordance with Clause 4.6(8)(bc) of BLEP 2021. As such, the only option to facilitate the intended development outcome on the site is to correct the application of Clause 4.3A, by removing the subject site from control of this Clause, via a PP.

### 6.2 Section B – Relationship to the Strategic Planning Framework

DPE's Planning Circular (PS 16-004) notes that a key factor in determining whether a proposal should proceed to Gateway determination should be its strategic and site-specific merit.

The planning proposal is considered to meet these tests as outlined in the following sections.

#### **Does the proposal have strategic merit?**

The strengthened strategic merit test criteria require that a Planning Proposal demonstrate strategic merit against at least one of the following three criteria:

1. Give effect to the relevant regional plan outside of the Greater Sydney Region, the relevant district plan within the Greater Sydney Region, and/or corridor/precinct plans applying to the site. This includes any draft regional, district or corridor/precinct plans released for public comment or a place strategy for a strategic precinct including any draft place strategy; or
2. Demonstrate consistency with the relevant LSPS or strategy that has been endorsed by the Department or required as part of a regional or district plan; or
3. Respond to a change in circumstances that has not been recognised by the existing planning framework.

As described in the subsequent sections, the Planning Proposal demonstrates strategic merit against the first two criteria, in that:

1. The Planning Proposal will give effect to the Greater Sydney Region Plan and the Eastern City District Plan as outlined in Table 3 and Table 4 below.
2. The Planning Proposal is consistent with the intent of the *Bayside Local Strategic Planning Statement 2020*, as it will safeguard E3 zoned land in addition to being capable of better supporting the range of businesses required to be in proximity to the trade gateways, being Sydney Airport and Port Botany, once full development potential of the site is enabled.

Detailed discussion regarding these items is provided in the following sections.

#### 6.2.1 Q3 – Will the planning proposal give effect to the objectives and actions of the applicable regional or district plan or strategy (including any exhibited draft plans or strategies)?

**Yes.** The Planning Proposal will give effect to the objectives and actions of the applicable objectives and priorities detailed in the Greater Sydney Region Plan 2018 and the Eastern City District Plan 2018, as outlined below.

#### **GREATER SYDNEY REGION PLAN: A METROPOLIS OF THREE CITIES – CONNECTING PEOPLE**

The Greater Sydney Region Plan provides the overarching strategic plan for growth and change across the Sydney metropolitan area. It is a 20-year plan with a 40-year vision that seeks to transform Greater Sydney into a Metropolis of Three Cities – the Western Parkland City, Central River City and Eastern Harbour City.

Of particular relevance is **Chapter 5 – Productivity**.

The ways in which the Planning Proposal gives effect to the relevant objectives and actions are outlined in the table below.

Table 3. Planning Proposal Response to Greater Sydney Region Plan		
Direction	Relevant Objective	Response
6. A well-connected city	16. Freight and logistics network is competitive and efficient	<p>As above, the site is in proximity to Sydney Airport and Port Botany, which are identified within the BLSPS 2020 and this Region Plan as national trade gateways.</p> <p>The trade gateways are surrounded with industrial lands to provide support services which are critical to their operations. Correcting the planning controls applicable to the site will enable greater contribution to maintaining support services, including warehouse and light industrial floor space, within proximity of the trade gateways. The Planning Proposal will continue to retain the E3 zoning, thereby achieving Strategy 16.1 by contributing to the maintenance of the industrial area interface.</p>



Table 3. Planning Proposal Response to Greater Sydney Region Plan		
7. Jobs and skills for the city	18. Harbour CBD is stronger and more competitive	Although the site is not located directly within the boundaries of the Harbour CBD, the Planning Proposal nevertheless will enable greater contribution to meeting anticipated demand for additional employment floor space within an area close to Sydney Airport, Port Botany and the Sydney CBD. It therefore contributes towards the provision of services nearby to the Harbour CBD, in turn ensuring its ongoing economic strength and competitiveness.
	23. Industrial and urban services land is planned, retained and managed	The Planning Proposal does not seek any changes to the current E3 Productivity Support zoning. The correction sought to be made via this proposal would subsequently enhance the provision of supporting light industrial and warehouse floorspace within the Eastern Harbour City. The Region Plan acknowledges that while smaller industrial parcels of land may only appear to represent a small part of the industrial land supply, they remain imperative for providing urban services. Upon removal of the incorrect and restrictive building height plane control, the site will be able to make the best use of its E3 zoning with an additional floorspace offering.

#### OUR GREATER SYDNEY 2056: EASTERN CITY DISTRICT PLAN

The Eastern City District Plan is a 20-year plan to manage growth in the context of economic, social and environmental matters to achieve the 40-year vision for Greater Sydney. This Plan is a bridge between regional and local planning and identifies priorities to achieve a liveable, productive, and sustainable future for the district.

Of particular importance is **Priority E12 – Productivity**.

The ways in which the Planning Proposal gives effect to the relevant objectives and actions are outlined in the table below.

Table 4. Planning Proposal Response to Eastern City District Plan		
Priority	Relevant Objective	Response
<b>Productivity</b>		
E12	Retaining and managing industrial and urban services land	The removal of the unintended height plane control from the site will enable development to come forward on the site as envisaged by the LEP HOB mapping, such that additional light industrial and warehousing floor space could contribute to rising demand. This will support the retention and management of critical industrial land within the Eastern Economic Corridor, and the Eastern City District.

**6.2.2 Q4 – Is the planning proposal consistent with a council LSPS that has been endorsed by the Planning Secretary or GSC, or another endorsed local strategy or strategic plan?**

**Yes.** The planning proposal is consistent with the *Bayside Local Strategic Planning Statement 2020*.

The LSPS provides a 20-year vision for the growth of the Bayside LGA and explains how the Council intends to implement the planning priorities and actions in the Eastern City District Plan.

The ways in which the Planning Proposal gives effect to the relevant priorities are outlined in the table below.

Table 5. Planning Proposal Response to Bayside Local Strategic Planning Statement 2020		
Priority		Response
<b>Infrastructure and Collaboration</b>		
B3	Working through collaboration	The Planning Proposal has been submitted following initial engagement with Bayside Council's Strategic Planning team. Feedback from the consultation process has been incorporated into this report and supporting technical studies.
<b>Productivity</b>		
B13	Contribute to growing a stronger and more competitive Harbour CBD	The removal of the height plane control from the site will enable greater development potential (in line with the mapped 18m HOB control). This would safeguard and furthermore support the economic function of the Eastern Economic Corridor.

Table 5. Planning Proposal Response to Bayside Local Strategic Planning Statement 2020		
Priority		Response
B17	Retain and manage industrial and urban services land	<p>Rectifying the application of Clause 4.3A, i.e. excluding the site as initially intended, would enable a development in line with the 18m mapped HOB control to come forward.</p> <p>This additional E3 zoned floorspace would respond to the increased demand within the locality and will also support the safeguarding of critical industrial areas needed to support the trade gateways.</p>

#### **BAYSIDE 2032: COMMUNITY STRATEGIC PLAN**

The Bayside Community Strategic Plan provides the overall vision and direction for Bayside's future. The guiding principles of the plan, as informed by the Bayside community, are as follows:

- Bayside to be a vibrant place;
- Our people to be connected in a creative way;
- A green, resilient and sustainable Bayside; and
- A prosperous community.

The ways in which the Planning Proposal gives effect to the relevant strategies of the Plan are outlined in the table below.

Table 6. Planning Proposal Response to Bayside Community Strategic Plan 2023		
Strategy		Response
<b>Theme 4. In 2032 Bayside will be a prosperous community</b>		
4.2.3	Preserve industrial lands and employment lands and partner with major employers to support local jobs	The removal of the height plane control from the site will enable greater development potential (in line with the mapped 18m HOB control). This would safeguard and furthermore support the economic function of the site, whilst also safeguarding employment land.
4.3.6	Plan for growth and development so the benefits of prosperity are shared	The intent of the Planning Proposal is to enable development opportunities on the site to come forward as intended by the applicable LEP development standards i.e. 18m HOB and 1.8:1 FSR. Removal of the erroneous building height plane from the site would facilitate such, in turn contributing to the desired growth and development prosperity within Bayside.

### 6.2.3 Q5 – Is the planning proposal consistent with any other applicable State and regional studies or strategies?

**Not applicable**, there are no other State or regional studies or strategies relevant for consideration as part of this Planning Proposal.

### 6.2.4 Q6 – Is the planning proposal consistent with applicable SEPPs?

**Yes.** The Planning Proposal's consistency with relevant State Environmental Planning Policies (SEPPs) is summarised in the table below.

Table 7. Consistency with State Environmental Planning Policies		
SEPP	Comment	Consistent?
SEPP (Biodiversity and Conservation) 2021	The Planning Proposal does not contain any provisions which undermine or conflict with the provisions of this SEPP. Any future development application on the site would be supported by the relevant technical reports should removal of any non-exempt trees be proposed.	<b>Yes.</b>
SEPP (BASIX) 2004	Not Applicable – applies to residential development only.	<b>N/A</b>
SEPP (Exempt and Complying Development Codes) 2008	The Planning Proposal does not contain any provisions which undermine or conflict with the provisions of this SEPP.	<b>Yes.</b>
SEPP (Industry and Employment) 2021	The Planning Proposal does not contain any provisions which undermine or conflict with the provisions of this SEPP.	<b>Yes.</b>
SEPP (Housing) 2021	Not Applicable – applies to residential development only.	<b>N/A</b>
SEPP No. 65 – Design Quality of Residential Apartment Development	Not Applicable – applies to residential development only	<b>N/A</b>
SEPP (Planning Systems) 2021	SEPP (Planning Systems) 2021 provides the framework for defining State Significant Development and Regional Development, development on Aboriginal land, and concurrence processes in development applications.  The Planning Proposal does not contain any provisions which undermine or conflict with the provisions of this chapter of the SEPP.	<b>Yes.</b>
SEPP (Precincts – Central River City) 2021	Not Applicable – the site is not within the Central River City.	<b>N/A</b>



Table 7. Consistency with State Environmental Planning Policies		
SEPP	Comment	Consistent?
SEPP (Precincts – Eastern Harbour City) 2021	Not Applicable – the site is not within the Eastern Harbour City.	<b>N/A</b>
SEPP (Precincts – Regional) 2021	Not Applicable – the site is not within any Precinct identified in this SEPP.	<b>N/A</b>
SEPP (Precincts – Western Parkland City) 2021	Not Applicable – the site is not within the Western Parkland City.	<b>N/A</b>
SEPP (Primary Production) 2021	The Planning Proposal does not contain any provisions which undermine or conflict with the provisions of this chapter of the SEPP.	<b>Yes.</b>
SEPP (Resilience and Hazards) 2021	<p><u>Chapter 4 Remediation of land</u></p> <p>Chapter 4 of the Resilience and Hazards SEPP provides a state-wide planning framework for the remediation of contaminated land. Clause 4.6 states that a consent authority must not consent to development unless it has considered whether the land is contaminated and, if required, it is satisfied that the land will be remediated before it is used for its intended purpose.</p> <p>A review of the contamination status of the land was prepared by Geosyntec Consultants as part of the previously withdrawn DA on the site (ref. DA-2023/186).</p> <p>The report concludes that natural material consisting of medium coarse, silty sand within the depth of both bore hold test pits, and that the underlying bedrock was sandstone. Some groundwater is likely to be encountered during excavation works. This would not preclude the site from being developed in line with the current E3 zoning.</p> <p>A Detailed Site Investigation Report would be provided in support of any future DA, and where necessary a Remedial Action Plan (RAP) would be developed to support the future use of the site to satisfy the provisions of Chapter 4 of this SEPP.</p>	<b>Yes.</b>
SEPP (Resources and Energy) 2021	<p>The Resources and Energy SEPP applies to mining, petroleum production, and extractive industries across the State.</p> <p>The Planning Proposal does not contain any provisions which undermine or conflict with the provisions of this chapter of the SEPP.</p>	<b>Yes.</b>

Table 7. Consistency with State Environmental Planning Policies		
SEPP	Comment	Consistent?
SEPP (Sustainable Buildings) 2022	The Sustainable Buildings SEPP commenced on 1 October 2022 and provides a framework for the development of sustainable buildings across the State.  The Planning Proposal does not contain any provisions which undermine or conflict with the provisions of this SEPP.	<b>Yes.</b>
SEPP (Transport and Infrastructure) 2021	<u>Chapter 2 Infrastructure</u>  Chapter 2 of the Transport and Infrastructure SEPP identifies matters to be considered in the assessment of development adjacent to particular types of infrastructure. For the subject site, future development would need to be considered against Clause 2.122 Traffic-generating development, as the site adjoins a classified road (Rocky Point Road).	<b>Yes.</b>

#### 6.2.5 Q7 – Is the planning proposal consistent with applicable Ministerial Directions (section 9.1 Directions)?

The PP's consistency with applicable Section 9.1 Ministerial Directions is outlined in the table below.

Table 8. Section 9.1 Compliance Table		
Ministerial Direction	Comment	Consistent
<b>Focus Area 1: Planning Systems</b>		
1.1 Implementation of Regional Plans	The Planning Proposal is consistent with Direction 1.1 as it will give effect to objectives and priorities of the <i>Greater Sydney Region Plan</i> per the response to Q3 above.	<b>Yes.</b>
1.2 Development of Aboriginal Land Council land	Does not apply to the proposal.	<b>N/A</b>
1.3 Approval and Referral Requirements	The Planning Proposal makes no changes to provisions for concurrence, consultation or referrals.	<b>Yes.</b>
1.4 Site Specific Provisions	The Planning Proposal does not contain any unnecessarily restrictive site specific planning controls. Rather, it seeks to correct an unintended restrictive control from applying to the site – the building height plane prescribed in Clause 4.3A.	<b>Yes.</b>
<b>Focus area 1: Planning Systems – Place-based</b>		

Table 8. Section 9.1 Compliance Table		
Ministerial Direction	Comment	Consistent
1.5 Parramatta Road Corridor Urban Transformation Strategy	Does not apply to the proposal.	<b>N/A</b>
1.6 Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	Does not apply to the proposal.	<b>N/A</b>
1.7 Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	Does not apply to the proposal.	<b>N/A</b>
1.8 Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	Does not apply to the proposal.	<b>N/A</b>
1.9 Implementation of Glenfield to Macarthur Urban Renewal Corridor	Does not apply to the proposal.	<b>N/A</b>
1.10 Implementation of the Western Sydney Aerotropolis Plan	Does not apply to the proposal.	<b>N/A</b>
1.11 Implementation of Bayside West Precincts 2036 Plan	The Planning Proposal does not include land within the Bayside West Precincts in Arncliffe, Banksia, or Cooks Cove.	<b>N/A</b>
1.12 Implementation of Planning Principles for the Cooks Cove Precinct	Does not apply to the proposal.	<b>N/A</b>
1.13 Implementation of St Leonards and Crows Nest 2036 Plan	Does not apply to the proposal.	<b>N/A</b>
1.14 Implementation of Greater Macarthur 2040	Does not apply to the proposal.	<b>N/A</b>
1.15 Implementation of the Pyrmont Peninsula Place Strategy	Does not apply to the proposal.	<b>N/A</b>

Table 8. Section 9.1 Compliance Table		
Ministerial Direction	Comment	Consistent
1.16 North West Rail Link Corridor Strategy	Does not apply to the proposal.	N/A
1.17 Implementation of the Bays West Place Strategy	Does not apply to the proposal.	N/A
1.18 Implementation of the Macquarie Park Innovation Precinct	Does not apply to the proposal.	N/A
1.19 Implementation of the Westmead Place Strategy	Does not apply to the proposal.	N/A
1.20 Implementation of the Camellia-Rosehill Place Strategy	Does not apply to the proposal.	N/A
1.21 Implementation of South West Growth Area Structure Plan	Does not apply to the proposal.	N/A
1.22 Implementation of the Cherrybrook Station Place Strategy	Does not apply to the proposal.	N/A
<b>Focus area 2: Design and Place</b>		
<i>[This Focus Area was blank when the Directions were made]</i>		
<b>Focus area 3: Biodiversity and Conservation</b>		
3.1 Conservation Zones	<p>Direction 3.1 requires a Planning Proposal to include provisions relating to the protection and conservation of environmentally sensitive areas.</p> <p>Given the urbanised setting of the subject site, the proposal is unlikely to have a significant impact on species, populations, and communities listed under the BC Act 2016 or EPBC Act 1999. Accordingly, no additional specific provisions are considered necessary.</p>	<b>Yes.</b>
3.2 Heritage Conservation	<p>Direction 3.2 requires a Planning Proposal to contain provisions that facilitate the conservation of environmental heritage, including Aboriginal areas, objects, or places.</p>	<b>Yes.</b>

Table 8. Section 9.1 Compliance Table		
Ministerial Direction	Comment	Consistent
	<p>The proposal is unlikely to have a significant impact on heritage values (including Aboriginal cultural heritage) given the separation distances between the site and the nearest heritage assets (c. 250m).</p> <p>It is noted that the proposal will be subject to the provisions of Clause 5.10 of the BLEP 2020 which provide suitable safeguards to ensure due consideration to heritage significance at future development stages.</p>	
3.3 Sydney Drinking Water Catchments	Does not apply to the proposal.	<b>N/A</b>
3.4 Application of C2 and C3 Zones and Environmental Overlays in Far North Coast LEPs	Does not apply to the proposal.	<b>N/A</b>
3.5 Recreation Vehicle Areas	Does not apply to the proposal.	<b>N/A</b>
3.6 Strategic Conservation Planning	Does not apply to the proposal.	<b>N/A</b>
3.7 Public Bushland	Does not apply to the proposal.	<b>N/A</b>
3.8 Willandra Lakes Region	Does not apply to the proposal.	<b>N/A</b>
3.9 Sydney Harbour Foreshore and Waterways Area	Does not apply to the proposal.	<b>N/A</b>
3.10 Water Catchment Protection	Does not apply to the proposal.	<b>N/A</b>
<b>Focus Area 4: Resilience and Hazards</b>		
4.1 Flooding	<p>A Flood Advice Letter has been obtained from Bayside Council (dated, 10 May 2023) which confirms that the site is not affected by the 1% Annual Exceedance Probability (AEP) Flood. Council has notated this property as being affected by a Probable Maximum Flood (PMF) Flood.</p>	<b>Yes.</b>



Table 8. Section 9.1 Compliance Table		
Ministerial Direction	Comment	Consistent
	<p>Pursuant to Directions 4.1(3)(d) and 4.1(4)(c), the Planning Proposal would not result in an increase in the development density of the land from that that was intended pursuant to the BLEP 2021. The LEP HOB map permits an 18m maximum height across majority of the site, of which the proposal does not seek to uplift. Rather, the proposal seeks to enable a development to come forward in line with this control. Similarly, the proposal does not seek an uplift to the applicable 1.8:1 FSR development standard, and as illustrated on the accompanying FSR diagrams, the site is capable of delivering an FSR compliance scheme.</p> <p>Any future DA would be supported with a preliminary Flood Statement confirming that the development would not have an adverse flood impact elsewhere or within the subject site.</p>	
4.2 Coastal Management	Does not apply to the proposal.	N/A
4.3 Planning for Bushfire Protection	Does not apply to the proposal	N/A
4.4 Remediation of Contaminated Land	<p>Under Direction 4.4, a planning proposal authority must consider whether land that is subject to a planning proposal is contaminated, and if so, whether it can be made suitable through remediation for its proposed use.</p> <p>The Planning Proposal does not seek to change the E3 Productivity Support zoning of the site. A review of the contamination status of the land was prepared by Geosyntec Consultants as part of the previously withdrawn DA on the site (ref. DA-2023/186).</p> <p>The report concludes that natural material consists of medium coarse, silty sand within the depth of both bore hold test pits, and that the underlying bedrock was sandstone. Some groundwater is likely to be encountered during excavation works. This would not preclude the site from being developed in line with the current E3 zoning.</p>	Yes.

Table 8. Section 9.1 Compliance Table		
Ministerial Direction	Comment	Consistent
	A Detailed Site Investigation Report would be provided in support of any future DA, and where necessary a Remedial Action Plan (RAP) would be developed to support the future use of the site.	
4.5 Acid Sulfate Soils	The land is categorised as Class 5 Acid Sulfate Soils. An Acid Sulfate Soils Management Plan could be provided in support of any future DA as necessary.	<b>Yes.</b>
4.6 Mine Subsidence and Unstable Land	Does not apply to the proposal.	<b>N/A</b>
<b>Focus Area 5: Transport and Infrastructure</b>		
5.1 Integrating Land Use and Transport	Does not apply to the proposal.	<b>N/A</b>
5.2 Reserving Land for Public Purposes	Does not apply to the proposal.	<b>N/A</b>
5.3 Development Near Regulated Airports and Defence Airfields	The subject site is not located within the Sydney Airport ANEF contours. Notwithstanding, given the proximity of the site to the Airport, consultation would be undertaken at the DA stage and future development would not infringe upon the Obstacle Limitation Surfaces (OLS).	<b>Yes.</b>
5.4 Shooting Ranges	Does not apply to the proposal.	<b>N/A</b>
<b>Focus Area 6: Housing</b>		
6.1 Residential Zones	Does not apply to the proposal.	<b>N/A</b>
6.2 Caravan Parks and Manufactured Home Estates	Does not apply to the proposal.	<b>N/A</b>
<b>Focus Area 7: Industry and Employment</b>		
7.1 Employment Zones	<p>The Planning Proposal is consistent with direction 7.1 as removal of the height plane restriction pursuant to clause 4.3A will:</p> <ul style="list-style-type: none"> <li>Safeguard the existing E3 Productivity Support zoning;</li> </ul>	<b>Yes.</b>

Table 8. Section 9.1 Compliance Table		
Ministerial Direction	Comment	Consistent
	<ul style="list-style-type: none"> <li>Facilitate the creation of additional floorspace for uses as intended within the E3 zone, i.e. light industrial and warehouse uses; and</li> <li>Enable the best use of the land in line with the objectives of the E3 zone, whilst giving effect to the priorities of the relevant Regional and District Plans (as demonstrated in response to Q3 above).</li> </ul>	
7.2 Reduction in non-hosted short term rental accommodation period	Does not apply to the proposal.	<b>N/A</b>
7.3 Commercial and Retail Development along the Pacific Highway, North Coast	Does not apply to the proposal.	<b>N/A</b>
<b>Focus area 8: Resources and Energy</b>		
8.1 Mining, Petroleum Production and Extractive Industries	Does not apply to the proposal.	<b>N/A</b>
<b>Focus area 9: Primary Production</b>		
9.1 Rural Zones	Does not apply to the proposal.	<b>N/A</b>
9.2 Rural Lands	Does not apply to the proposal.	<b>N/A</b>

### 6.3 Section C – Environmental, Social and Economic Impact

#### Does the proposal have site-specific merit?

In addition to meeting at least one of the strategic merit criteria, a Planning Proposal is required to demonstrate site-specific merit against criteria as set out in the table below.

The Planning Proposal demonstrates site-specific merit in relation to all criteria as set out below, with these matters described in further detail below.

Table 9. Site-Specific Merit Test	
Criteria	Assessment
<i>Does the proposal give regard and assess impacts to:</i>	
<i>the natural environment on the site to which the proposal relates and other affected land (including known significant environmental areas, resources or hazards)</i>	<p>The site has previously been deemed as suitable for a land use outcome generally in line with the intended objective of this PP, through its rezoning to B6 (subsequently E3) in 2016.</p> <p>It is noted that the recently withdrawn DA (ref. DA-2023/186) was accompanied by relevant technical studies to support the proposed storage premises development. A raft of necessary supporting documents would be provided as part of any future DA, likely including:</p> <ul style="list-style-type: none"> <li>• A Flood Advice Letter;</li> <li>• A Preliminary Contamination Report;</li> <li>• An Arboricultural Impact Assessment; and</li> <li>• Civil and Stormwater Management Plans.</li> </ul> <p>The Planning Proposal is therefore not likely to discernibly impact on the natural environment because of the nature of the LEP amendment sought.</p>
<i>existing uses, approved uses, and likely future uses of land in the vicinity of the land to which the proposal relates</i>	<p>The Planning Proposal has considered the existing uses, approved uses, and likely future uses of land in the vicinity of the land to which the proposal relates.</p> <p>The proposal does not seek to change the E3 zoning of the site. The correction sought to the application of the building height plane control, pursuant to Clause 4.3A, would safeguard and increase the permissible floorspace capable of being delivered on site to make the best use of this E3 zoned land.</p> <p>Uses permissible within the E3 zone are well established, considering the site has been zoned for light industrial/warehouse uses since the adoption of the RLEP 2011 amendment in 2016. The subject site aligns with the broader setting of the area, noting the extension of this zone to the north of the site, and the broader E4 zoned land parcel further north of this.</p>
<i>services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision</i>	<p>The site will be connected to the relevant services at the construction stage.</p>

**6.3.1 Q8 – Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected because of the proposal?**

**No.** The planning proposal is not likely to impact on critical habitat or threatened species, populations or ecological communities, or their habitats given the site's location within a highly urbanised setting. The site is adjoined on all boundaries by residential development, and the site is currently void of any mature vegetation.

**6.3.2 Q9 – Are there any other likely environmental effects of the planning proposal and how are they proposed to be managed?**

**No** significant environmental effects are expected as a result of the Planning Proposal. The proposal simply seeks to correct an erroneous restriction from applying to the subject site. The height plane control, as detailed within the planning background chapter above, was developed to shape development within the R4 High Density Residential zone only. Its application to the E3 zone is illogical as the 18m LEP HOB allowance cannot currently be achieved across the site. This is prohibitive for necessary development coming forward on the subject site and removal of the height plane will rectify this error.

Notwithstanding the administrative basis of this Planning Proposal, due consideration has been given to the following built form matters:

- Achievement of Floor Space Ratio;
- Building height transition; and
- Solar access.

**FLOOR SPACE RATIO**

Concept building layout plans have been developed by BN Group and are provided at **Appendix 11**.

The plans indicate the site can deliver a compliant development with regard to the FSR standard of 1.8:1 and the objectives of Clause 4.4 of BLEP 2021, notwithstanding removal of the building height plane control.

Separate testing has also been undertaken by BN Group to support this Planning Proposal for a self-storage premises that maintains the height plane control. The analysis indicates that a development outcome could likely only achieve an effective FSR of 1.1:1 where the height plane control is maintained. This is approximately 40% lower than the mapped FSR control, and only marginally more than the previous 1:1 control that applied prior to rezoning.

We highlight the significant disconnect between the mapped and achievable FSR controls as a result of the height plane, which is not considered to present a logical planning outcome, and further supports the height plane being an erroneous application in the first instance.

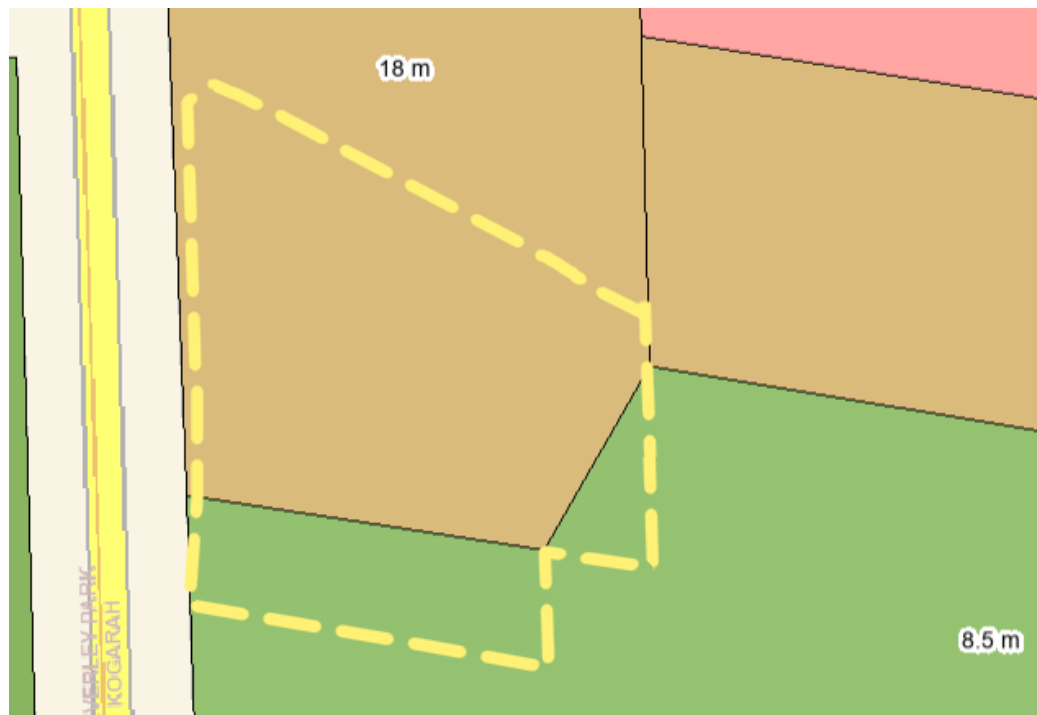
This matter is important when considering the "Supporting Reasons" outlined in the original rezoning's Gateway Report (**Appendix 7**), which discussed the loss of employment land proposed under the Darrel Lea rezoning. Partly, the reason the rezoning was deemed appropriate in accordance with the *Industrial Lands Strategic Assessment checklist* was that more intensive employment generating land uses would be retained on the site in the B6 Zone. Employment numbers were established based on the assumption the B6 (now E3) Zone could achieve its intended FSR outcome of 1.8:1.

The application of the height plane control to the site has eroded this potential, which was a key consideration for the original rezoning and Gateway Determination. This Planning Proposal seeks to rectify this by enabling the site to fully achieve its intended FSR outcome.



### BUILDING HEIGHT TRANSITION

Pursuant to BLEP 2021 HOB mapping, the majority of the site is controlled by an 18m maximum building height control, with the southernmost portion subject to an 8.5m maximum building height control (see **Figure 14**). This in effect already forces a transition in height from the north to the south.



**Figure 14: Height of Building Map**

Source: NSW Planning Portal Spatial Viewer

BN Group have prepared a height plane analysis (**Appendix 12** and excerpt at **Figure 15**) showing the permissible building height under LEP height plane controls.

For the southern (green shaded) portion of land, development is restricted to an average height of between only 1.5m and 6.7m, as taken from the location of the second section provided by BN Group. This represents a reduction of up to 82.4% from the permissible 8.5m development standard. In practice a large proportion of this area would be undevelopable because of the height plane (i.e. minimum ceiling heights could not be achieved).

In effect, the height plane represented a **downzoning** of this portion of land, given it was previously able to achieve an 8.5m building height prior to rezoning.

For the northern (beige shaded) portion of the site, the maximum building height permitted is between 6.7m and 17.9m for approximately 88% (or 35.8m) of the site's depth. A mere 12% (or 5.1m) of the site can actually achieve the 18m HOB maximum under current controls, as taken from the location of the second section provided by BN Group. This represents a reduction of up to 62.8% from the permissible 18m development standard.



It is also noted that the removal of the height plane control will not disrupt the ability to achieve a sensitive built form transition from the R2 zoned land to the south of the site. The variable HOB controls across the site, notably the 8.5m maximum applied across the lower portion, will ensure a resolved design outcome is delivered, and that reasonable amenity is protected for neighbours. This is further demonstrated by the Solar Analysis Study (**Appendix 10**) provided as part of this submission and as discussed under the following heading.



Notably, the concept plans at **Appendix 11** show significant separation can be achieved to No. 208 Rocky Point Road (the closest low density dwelling). The tallest building portion is setback significantly from the lot boundary and the actual dwelling. The separation is highlighted in the massing diagram shown in **Figure 16** which clearly indicates a logical height transition is maintained from the tallest development components to the north, down to the lowest density development in the south.

This outcome respects the transition to lower density development, whilst also respecting the intent of the original rezoning which sought to provide an improved urban design outcome at the site. Additional design refinement and mitigations implemented at the DA stage such as articulation, façade modulation, and landscaping, would further ensure a sensitive transition is achieved.

### SOLAR ACCESS

The Solar Analysis Study (**Appendix 10**) demonstrates that solar access would be maintained for the adjoining residential properties, particularly the dwelling located directly south of the site (No. 208 Rocky Point Road), in line with Control C1 within Section 5.2.1.5 of the Bayside DCP, which states:

#### DCP Control 5.2.1.5 C1

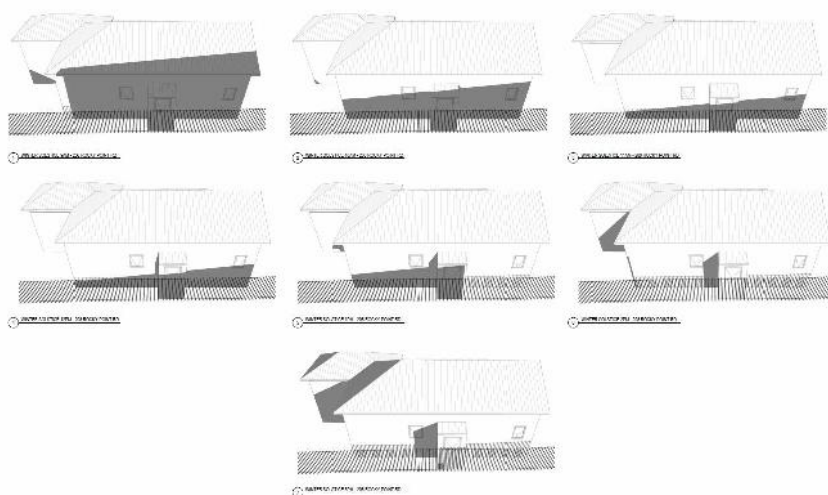
*Dwellings within the development site and adjoining properties should receive a minimum of 2 hours direct sunlight in habitable living areas (family rooms, rumpus, lounge and kitchen areas) and in at least 50% of the primary private open space between 9am and 3pm in mid-winter. Council may grant consent to a development that does not comply with the 2 hours of solar access requirement.*

It is noted that No. 208 Rocky Point Road is the only nearby site affected by overshadowing to any discernible extent. These impacts are discussed below.

#### Habitable Living Areas

A survey has been undertaken to enable façade overshadowing testing to No. 208 Rocky Point Road. This indicates forward and rear windows to the northern façade, plus a middle window which is understood to be a bathroom or entry room given its design.

Given detailed floor plans are not available, it has been assumed **both** windows are habitable living areas. The façade analysis clearly indicates that both windows would achieve at least 2hrs of direct sunlight in midwinter (see **Figure 17**).

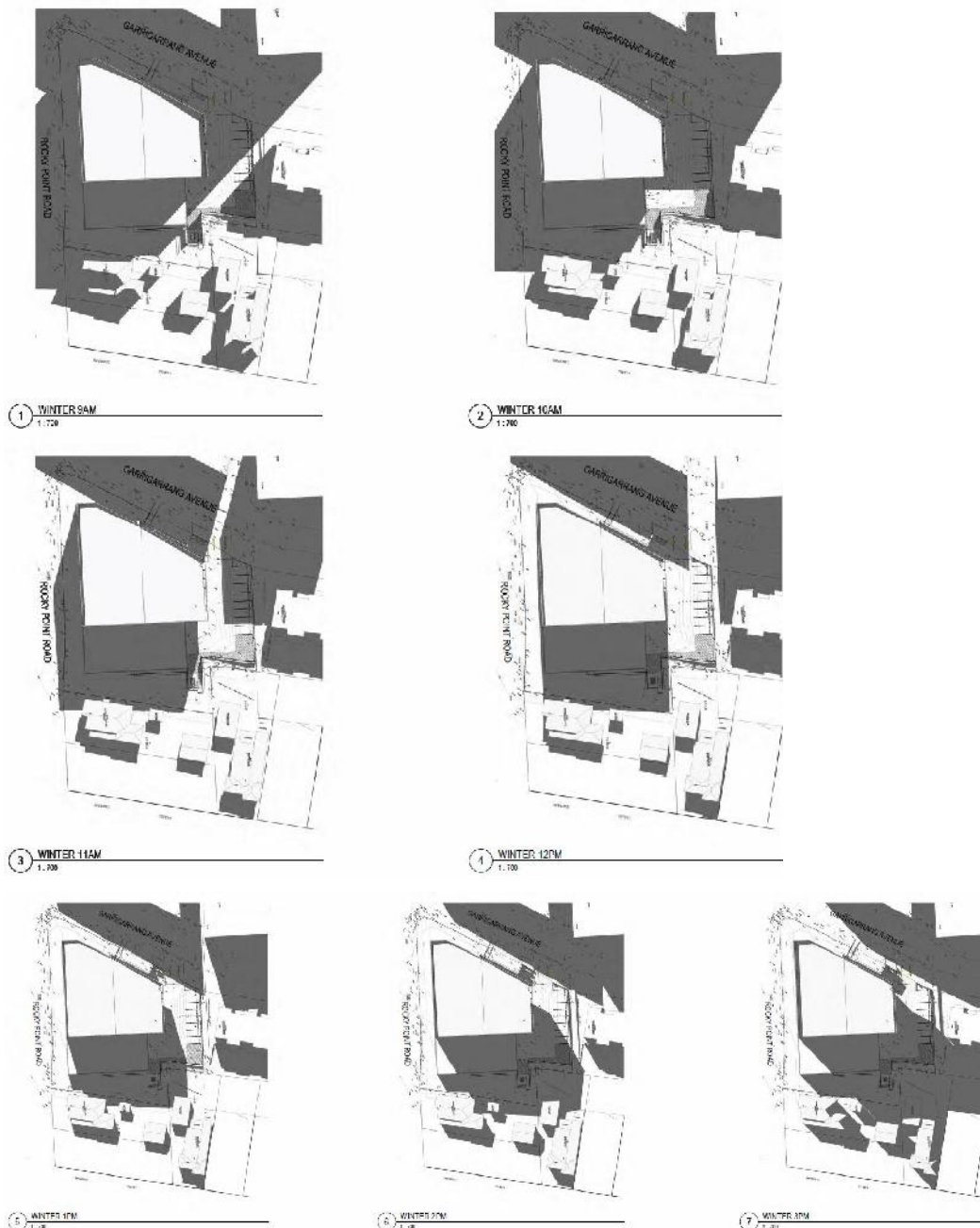


**Figure 17: Solar Study Diagrams (midwinter 9am – 3pm)**

Source: BN Architecture

### Open Space

As shown in **Figure 18**, much more than 50% of No. 208 Rocky Point Road's rear primary private open space easily retains direct solar access between 9am-1pm (4hrs).



**Figure 18: Solar Study Diagrams (midwinter 9am – 3pm)**  
Source: BN Architecture

## 6.4 Section D – Infrastructure (Local, State and Commonwealth)

### 6.4.1 Q11 – Is there adequate public infrastructure for the planning proposal?

**Yes**, the Planning Proposal would be supported by adequate infrastructure.

Reticulated water and sewer infrastructure are currently available at the boundary of the subject site. All subsequent development will be required to connect to Council's water, stormwater and sewerage network where appropriate.

The subject site would be accessed off Garrigal Road, being the lower order road compared to Rocky Point Road (a classified road).

## 6.5 Section E – State and Commonwealth Interests

### 6.5.1 Q12 – What are the views of state and federal public authorities and government agencies consulted in order to inform the Gateway determination?

The relevant State government agencies will be consulted during the consultation phase of the planning proposal, which is anticipated to be referred to:

- Transport for NSW (TfNSW); and
- Department of Planning and Environment (DPE).

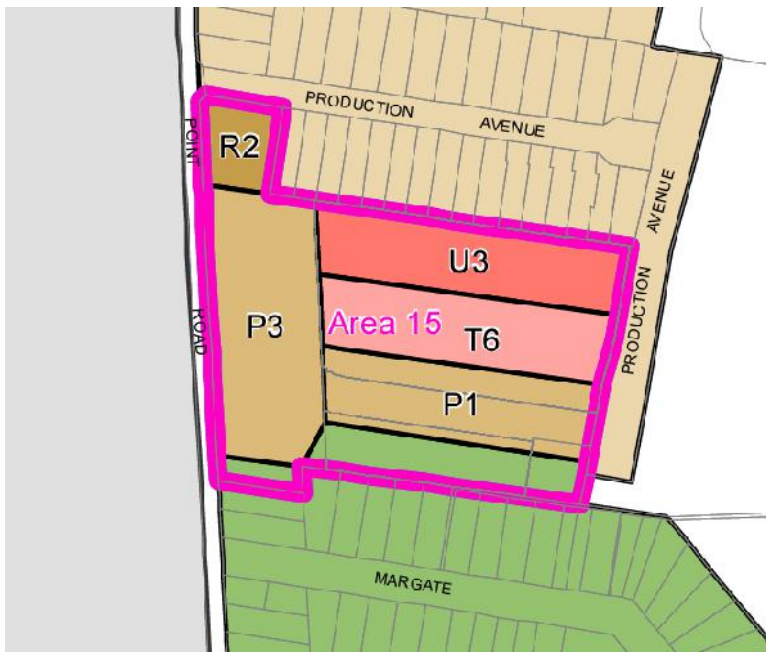


## 7 Part 4 – Mapping

The Planning Proposal seeks to amend the following map under the BLEP 2021 as shown in **Figure 19** and **Figure 20**.

- Amend the Height of Buildings Map to correct the outline of “Area 15” to exclude the subject site

Indicative mapping is shown in the below figures.



**Figure 19: Current HOB Map**  
Source: NSW Legislation



**Figure 20: Proposed HOB Map with revised “Area 15” in pink**  
Source: NSW Legislation, modified by Patch

## 8 Part 5 – Community Consultation

Schedule 1, Clause 4 of the EP&A Act requires the relevant planning authority to consult with the community in accordance with the Gateway determination.

As such it is expected that the Planning Proposal will be publicly exhibited for at least 20 days in accordance with the EP&A Act and DPE's *A Guide to Preparing Local Environmental Plans*.

At a minimum, the notification of the public exhibition of the Planning Proposal is expected to involve:

- Publishing the relevant documentation on Bayside Council's website;
- Exhibiting the Planning Proposal on the Planning Portal; and
- Written correspondence to owners and occupiers of adjoining and nearby properties and relevant community groups.

## 9 Part 6 – Project Timeline

It is anticipated that the LEP amendment will be completed within 11 months.

An indicative project timeframe is provided below based on the Department of Planning and Environment's benchmark timelines for a 'Standard' LEP amendment Planning Proposal. The below has incorporated known Council reporting timelines available to the end of the year.

Table 10. Indicative Project Timeline	
Stage	Anticipated date
Consideration by Council	July 2024
Council decision	January 2025
Gateway referral to the Department	February 2025
Gateway determination	March 2025
Commencement and completion of public exhibition period	March 2025 – April 2025
Finalisation of Planning Proposal	April 2025 – May 2025
Gazettal of LEP amendment	May 2025

## 10 Conclusion

This report has been prepared to support a Planning Proposal at 204 Rocky Point Road, Kogarah, seeking to correct the erroneous application of a building height plane control to the subject site pursuant to Clause 4.3A of the *Bayside Local Environmental Plan 2021*.

As detailed within this report, the building height plane was not intended to apply to the subject site and has subsequently restricted logical development outcomes from occurring. The correction sought to be rectified via this Planning Proposal would enable a development to come forward on the site in line with its envisaged scale and height controls prescribed within Clause 4.3 of BLEP 2021.

Furthermore, notwithstanding the administrative foundation of the proposal sought, the PP is also entirely consistent with the strategic planning framework and can mitigate potential environmental impacts appropriately. Accordingly, it demonstrates both strategic and site-specific merit in accordance with the requirements for planning proposals in NSW.

This document has been prepared in accordance with the DPE's *Local Environmental Plan Making Guideline* and has demonstrated that the proposal has site specific and strategic merit, because it:

- Is in accordance with the overarching strategic framework including Council's Local Strategic Planning Strategy;
- Will provide additional floorspace within proximity to the national trade gateways, being Sydney Airport and Port Botany;
- Has demonstrated through supporting technical investigations that the land can be developed for envisaged uses within the E3 Productivity Support zone, including storage premises, without adverse impact upon the environment or neighbouring properties; and
- Will complement the existing operations of land surrounding the site.

It is recommended that the Planning Proposal is supported by Bayside Council for advancement to Gateway Determination.



**P A T C H**

PLANNING & DEVELOPMENT

Patch Planners Pty Ltd

E [info@patchplanning.com.au](mailto:info@patchplanning.com.au)

[www.patchplanning.com.au](http://www.patchplanning.com.au)





18 October 2024

Josh Ford  
Coordinator Planning Policy  
Bayside Council  
PO Box 21  
Rockdale NSW 2216

**ATTN: Robert McKinlay**

Dear Robert,

**RE. UPDATED DRAFT PLANNING PROPOSAL (PP-2024/4/1) IN RESPONSE TO INITIAL COUNCIL COMMENTS AT 204 ROCKY POINT ROAD, KOGARAH.**

Thank you for your recent correspondence relating to the draft Planning Proposal for the site at 204 Rocky Point Road, Kogarah. This letter has been prepared to provide a detailed response to each of the issues raised following a review by Council's various internal departments, and to provide an updated Planning Proposal package for progression to the Bayside Local Planning Panel.

This letter is accompanied by:

- **Attachment 1** - Detailed response to matters raised by Council
- **Attachment 2** - Updated Planning Proposal Report
- **Attachment 3** - Updated Solar Study (originally Appendix 10 to the Planning Proposal)
- **Attachment 4** - Updated Concept Building Layout Plans (originally Appendix 11 to the Planning Proposal)

All other appendices originally submitted alongside the Planning Proposal in July 2024 remain relevant and unchanged.

We believe the additional information provided herein suitably addresses and resolves the issues raised by Council to this point. We consider the level of information now available to Council is sufficient to determine strategic and site specific merit for the Planning Proposal, particularly when considering the scale of work already undertaken to support the site's original rezoning in 2016 (which, we reiterate, never intended to implement a height plane control on the subject site).

Accordingly, we request Council officers support for this application enabling it to proceed to the soonest available Bayside Local Planning Panel meeting and to ultimately receive Gateway determination.

If you have any further questions or clarifications, please don't hesitate to contact me on 0401 699 336 or Georgia Quinn at [gquinn@patchplanning.com.au](mailto:gquinn@patchplanning.com.au).

Kind Regards,

Mason Stankovic  
**MANAGING DIRECTOR**

Patch Planners Pty Ltd  
M 0401 699 336  
E [info@patchplanning.com.au](mailto:info@patchplanning.com.au)  
[www.patchplanning.com.au](http://www.patchplanning.com.au)

ATTACHMENT 1 - REFERRAL RESPONSE TABLE		
Department	Commentary recieved	Proponent response
Development Assessment	<p>The subject site forms part of the front of the curtilage of the redevelopment site which was included and should be included in the building height plane. All of the lots on this part of Rocky Point Road were considered together and were intentionally scaled down in height to the south to relate to the lower density fronting Margate Street and beyond. This is because of the magnitude of the redevelopment approved on the chocolate factory land and the need to regulate bulk and scale across the site which is limited by its residential context. The objectives of this original building height plane should be revisited if considering any changes to the control.</p>	<p>An exhaustive review of the history of the original planning proposal was included within the Planning Proposal Report provided to Council. This clearly demonstrates that the height plane control was never envisaged to apply to the E3 zoned land and had only ever intended to be applied to the residential (R4 – High Density Residential) land.</p> <p>As such we refute the statement that the site should be included within the building height plane as this was not the intent of all urban design work undertaken by the original Proponent.</p>
	<p>An attempt to excise the site from the building height plane provision should be avoided as it would render the land open to a development that pays little regard to its context and will not be consistent with the nature of the residential development on the adjoining properties in all directions. The height control applying to the entire site is 18m and removal of the height plane would see a building with this height across the entire site which may not be appropriate. As I understand it, the building height plane also applies to the property fronting Rocky Point Road at No. 170 which is also appropriate. I believe the information submitted by the applicant does not address the property at No. 170.</p>	<p>The Planning Proposal Report has been updated to speak to No. 170 Rocky Point Road.</p> <p>It is correct that the height plane control would continue to apply to No. 170 Rocky Point Road as proposed under our submission. As this landholding is outside of the control of the Proponent, it was decided to not include it within the Planning Proposal.</p> <p>From our research, we believe that the height plane should not have been applied to No. 170 Rocky Point Road. However, the removal of the height plane control from the site could significantly impact design and feasibility given the wording of Clause 4.3A currently allows development to exceed the mapped 18m control (but not the height plane).</p>

ATTACHMENT 1 - REFERRAL RESPONSE TABLE		
Department	Commentary recieved	Proponent response
		Again, as this site is outside our client's control, making such amendments to its planning controls was not deemed appropriate. We consider it to be a matter for Council to consider whether the PP should be expanded to include No. 170 Rocky Point Road.
	As you know, previously a DA was lodged for a self storage facility on this property (DA-2023/186), which was not appropriate and did not comply with the height plane and contained signage on a built form that had no relation to its context let alone the residential developments on the adjoining properties. Council received 56 letters of objection to this proposal.	Noted. Resolution of development-specific issues is a matter that is best resolved at the DA stage.
	Unless you replace the building height plane with a similar form of envelope control with prescribed setbacks that you feel would be appropriate and consistent with the original objectives of the previous building height plane, you will end up with a redevelopment that is not appropriate for the site's context. If you remove the building height plane, you are removing the control under which a development may be properly assessed to ensure it remains commensurate with the built form and scale of surrounding area.	<p>We disagree with this assessment.</p> <p>The Planning Proposal seeks only to amend the permitted height under the BLEP 2021. Any future development would still be assessed under all remaining provisions of the BLEP 2021 and the Bayside Development Control Plan 2022. This includes:</p> <ul style="list-style-type: none"> <li>• The objectives for development in the E3 Zone, which speaks to <i>"reducing land use conflicts and increasing amenity for nearby residential development"</i>;</li> <li>• The objectives of the height standard under clause 4.3, which speaks to desired future character, visual impact, solar access, and appropriate height transitions; and</li> <li>• Solar access to low density development (Control 5.2.1.7(l) of the DCP), which this Planning Proposal shows can be achieved despite the removal of the height plane.</li> </ul> <p>As such, there is ample opportunity for Council to ensure an appropriate development outcome when assessing a future DA.</p>



ATTACHMENT 1 - REFERRAL RESPONSE TABLE		
Department	Commentary recieved	Proponent response
	<p>Another reason to consider the above, is that an 18m high building across the site will result in detrimental overshadowing impacts to the two adjoining residential properties to the south at No. 208 and 210 Rocky Point Road. These two properties are zoned R2 Low Density Residential and such a scheme would render the two homes unusable from a residential point of view.</p>	<p>We disagree with this assessment.</p> <p>As shown in the detailed shadow diagrams prepared, the preferred 6-storey Option 2 can achieve more than 2-hours of sunlight to the northern façade of No. 208 Rocky Point Road including both to front and rear windows.</p> <p>The rear private open space also receives ample sunlight, being almost wholly unaffected by any shadows cast by the proposal.</p> <p>The concept proposal has no impact on No. 210 Rocky Point Road, as shown in solar access diagrams.</p>
	<p>From a use point of view, two examples of permissible uses within the E3 zone that would be more appropriate would be Neighbourhood shops and Office premises.</p>	<p>Storage premises are permitted in the zone and are an appropriate development outcome for a site of this scale fronting a major road corridor.</p>
Urban Design	<p>The original planning proposal for 152-206 Rocky Point Road envisioned a masterplan design distinct from the final development outcome we observe today. It is crucial for the current proposal to reflect and integrate the existing context of the site, considering the surrounding environment and local character.</p> <p>The proposal is located to serve as a gateway structure that transitions from the Rocky Point Road into the high-density residential precinct toward Garrigarrang Avenue, as it should create a visually appealing and practical transitioning into the residential area.</p> <p>To the east, the development adjoins a row of two-storey townhouses that establishes a residential scale and character. On the southern boundary, the site is adjacent to detached houses, which further influences the design considerations for maintaining a respectful and complementary relationship with existing low-rise residential properties.</p> <p>Overall, more details should be provided to demonstrate that the proposal will enhance the sense of arrival and community identity at the intersection of Rocky Point Road and Garrigarrang Avenue.</p>	<p>As outlined in Table 1 of the Planning Proposal Report and its many attachments, the original PP went through many rounds of assessment and feedback between its lodgement to Rockdale Council in August 2013, the issuance of a Gateway Determination in October 2014, and its publication in April 2016.</p> <p>We strongly contest the suggestion that the current PP does not align with the original master plan design. Rather, the current PP seeks only to reinforce the intended development outcome envisaged under the original PP which was never intended to contain a height plane control over the B6 (now E3) land.</p> <p>Additionally, townhouses on the south side of Garrigarrang Avenue are three stories in height and present as medium density in scale.</p>

ATTACHMENT 1 - REFERRAL RESPONSE TABLE		
Department	Commentary recieved	Proponent response
		<p>The outcomes of the current PP still facilitate a “visually appealing and practical transition” to surrounding development noting:</p> <ul style="list-style-type: none"> <li>Land to the north of Garrigarrang Avenue is already permitted to exceed 18m under the current controls, given the wording of the height plane control allows the mapped HOB to be exceeded but not the height plane control;</li> <li>The concept architectural floor plans indicate substantial building setbacks from lower density development to the south and east, including: <ul style="list-style-type: none"> <li>Upper level setbacks in excess of 20m from the eastern boundary; and</li> <li>Upper level setbacks of 12m-14m from the southern boundary.</li> </ul> </li> </ul> <p>The proposal being able to demonstrate its enhancement of the “sense of arrival and community identity at the intersection of Rocky Point Road and Garrigarrang Avenue” is a level of place-and-design consideration beyond what should reasonably be required for a PP of this nature which seeks only to change the permitted achievable building height. Such outcomes will be achievable through design responses regardless of whether the height plane is maintained or not.</p>
	<p><b>Two options are presented:</b></p> <p>The Planning Proposal outlines two distinct design options, each featuring different building massing. Specifically, Option 2 proposes a six-storey warehouse design, while Option 3 features a five-storey warehouse design. These alternatives will result in noticeably different outcomes for the site.</p>	<p>The amended Planning Proposal Report has been updated to remove Option 3 from consideration and talk only to the preferred Option 2.</p>





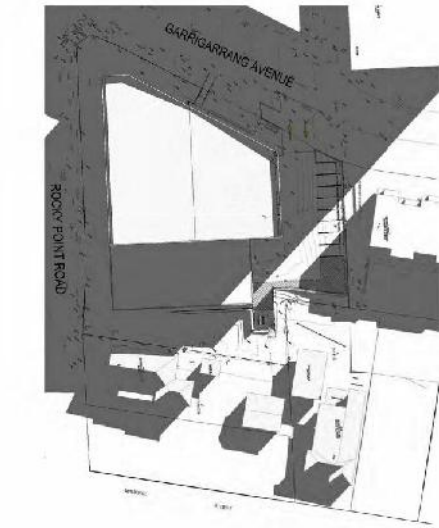
ATTACHMENT 1 - REFERRAL RESPONSE TABLE		
Department	Commentary recieved	Proponent response
	<p>Figures 13 and 14 in the Planning Proposal depict Option 2, the six-storey design, which also appears to be represented in the shallow analysis diagrams. The proponent is required to clearly delineate and quantify the impacts of both design options. This includes a detailed assessment to determine which option aligns best with the site context, shadow impacts, and overall development goals. Both options are not adequately described. In order to fully assess the variances between the option more information is required.</p>	<p>A final design remains in development with several options continuing to be tested. Two options were presented simply to demonstrate that differing built form outcomes are achievable notwithstanding removal of the height plane.</p>
	<p><b>Overshadow Impact:</b></p> <p>The height restrictions implemented for R4 zoned land were established primarily to safeguard both solar and visual amenity for the R2 zoned properties located to the south. These regulations were intended to prevent excessive overshadowing and preserve amenities for the residents in those areas. This was likely due to the opposition to the original proposal from local residents.</p> <p>A similar approach is necessary for the current development proposal on the proposed site, particularly in relation to the detached residential properties situated to the south of the site boundary. Specifically, the development is likely to cast significant shadows over the property at 208 Rocky Point Road, thereby potentially diminishing its solar access and overall amenity.</p> <p>While the planning proposal asserts that minimum solar access requirements for the affected dwelling will be met, it fails to provide sufficient evidence to substantiate this claim. A comprehensive assessment of the overshadowing impacts needs to be clearly documented and addressed. More information is required including detailed analysis and evidence demonstrating how the proposal will align with the necessary solar access standards and mitigate any negative effects on the southern property's amenity.</p>	<p>The PP Report has been updated with a more comprehensive analysis of the shadowing impacts to No. 208 Rocky Point Road. This has reconfirmed the acceptable mid-winter impact to this property which would continue to receive 2hrs of sunlight to its northern facing façade and primary open space.</p>
	<p><b>Aesthetic:</b></p> <p>A considered approach must be given to the materiality and design expression of the building to how it interacts with its surrounding environment. Special attention should be focused on the east and north facades of the building, as these elevations will be exposed to a high-density residential context.</p> <p>To ensure the building interacts well with its surroundings and contributes positively to the neighbourhood, the design should avoid large blank walls. Instead, facades should be articulated to enhance visual interest and complement the urban fabric. If a large blank wall surface is present, it must incorporate public art to contribute to the cultural and visual vibrancy of the area.</p>	<p>While it is acknowledged all topics raised would need to be addressed through future applications, these are design level matters that should not have a bearing on the PP which seeks only to deal with the topic of height.</p>



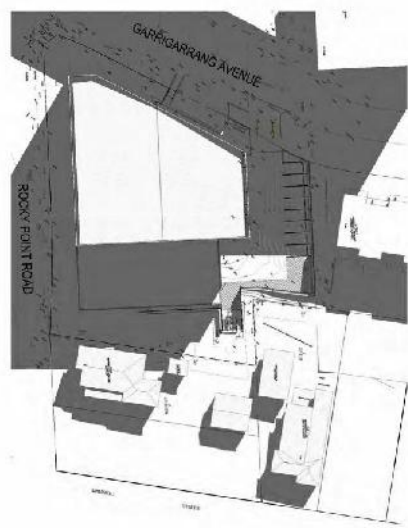
FOR INFORMATION

All dimensions to be checked on site. Written dimensions only to be used. Do not scale from drawings. Copyright of the design shown herein is retained by the Architect. Written authority is required for any reproduction.

WORK IN PROGRESS  
15/10/2024 2:08:02 PM



1 WINTER 9AM  
1:700



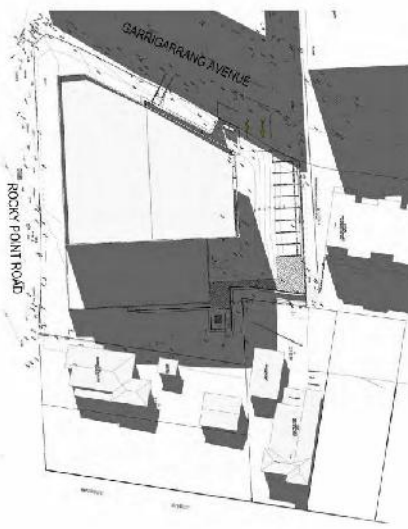
2 WINTER 10AM  
1:700



3 WINTER 11AM  
1:700



4 WINTER 12PM  
1:700



5 WINTER 1PM  
1:700



6 WINTER 2PM  
1:700



7 WINTER 3PM  
1:700

ABACUS

PROPOSED SELF-STORAGE CONCEPT  
204 ROCKY POINT ROAD, KOGARAH, NSW 2217

ISSUE	DATE	DESCRIPTION
P1	20.06.24	FOR INFORMATION
P2	08.10.24	FOR INFORMATION
P3	15.10.24	FOR INFORMATION

SOLAR STUDY

A100.50 DA P3  
1:700 @ A1  
1:1400 @ A3



82 Alexander Street,  
Crows Nest, NSW 2085  
ABN 43 022 980 499  
T +61 2 9437 0511  
www.bnrgrouponline.com

BN Architecture  
Urban Design  
Masterplanning  
Graphics  
Interiors

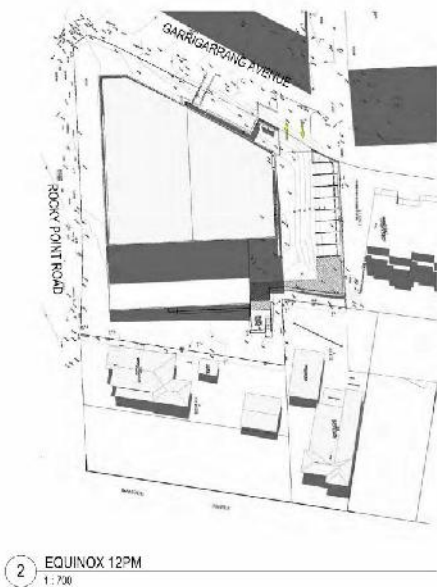
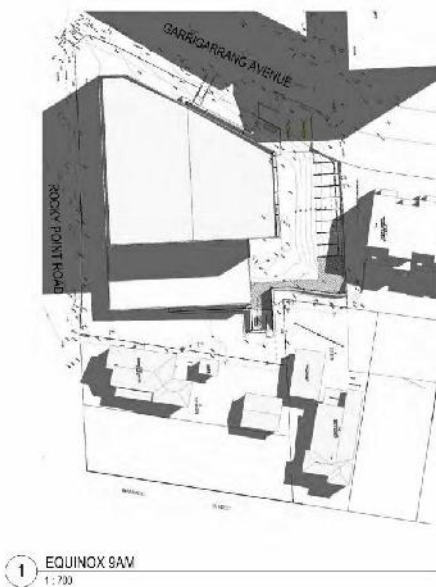
C:\Users\p\Documents\2216\_DA\_R23\_CTL\_Shadow\_Study\_sp2024\SSN.rvt

PRINTED: 15/10/2024 2:08:02 PM

FOR INFORMATION

All dimensions to be checked on site. Written dimensions only to be used. Do not scale from drawings. Copyright of the design shown herein is retained by the Architect. Written authority is required for any reproduction.

WORK IN PROGRESS  
15/10/2024 2:08:06 PM



ABACUS

PROPOSED SELF-STORAGE CONCEPT  
204 ROCKY POINT ROAD, KOGARAH, NSW 2217

ISSUE	DATE	DESCRIPTION
P1	25.06.24	FOR INFORMATION
P2	08.10.24	FOR INFORMATION
P3	15.10.24	FOR INFORMATION

SOLAR STUDY

A100.51 DA P3  
1:700 @ A1  
1:1400 @ A3



82 Alexander Street,  
Crows Nest, NSW 2085  
ABN 43 022 985 495  
T +61 2 9437 0511  
www.bnrgrouponline.com

BN Architecture  
Urban Design  
Masterplanning  
Graphics  
Interiors

C:\Users\sp\Documents\2216\_DA\_R23\_CTL\_Shadow\_Study\_sp2024\SSN.rvt

PRINTED: 15/10/2024 2:08:06 PM



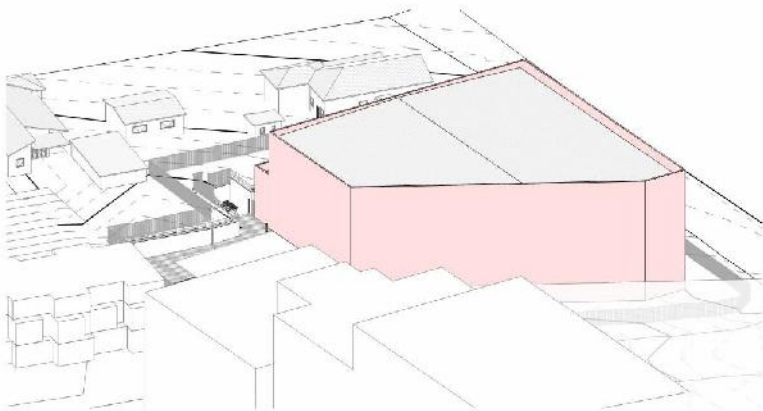
**FOR INFORMATION**

All dimensions to be checked on site. Written dimensions only to be used. Do not scale from drawings. Copyright of the design shown herein is retained by the Architect. Written authority is required for any reproduction.

**WORK IN PROGRESS**  
15/10/2024 2:08:10 PM

**HOURLY SOLAR ANALYSIS  
JUNE 21**

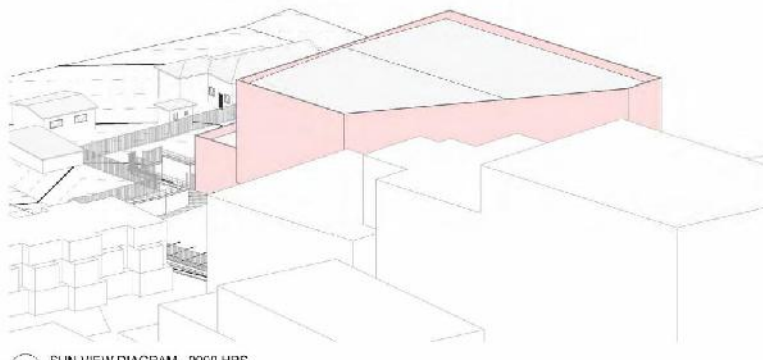
**THE VIEW FRAME (CAMERA POSITION) ASSUMES THE POSITION OF THE SUN. AT ANY HOURLY INTERVAL, EVERYTHING THAT CAN BE SEEN WILL RECEIVE SUN, AND INVERSELY ANYTHING THAT IS HIDDEN FROM VIEWS IS IN SHADE.**



2 SUN VIEW DIAGRAM - WINTER 1000 HRS



3 SUN VIEW DIAGRAM - WINTER 1100 HRS



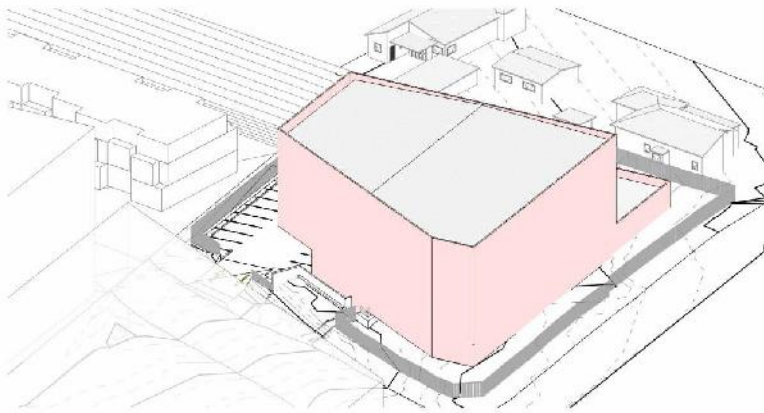
1 SUN VIEW DIAGRAM - 0900 HRS



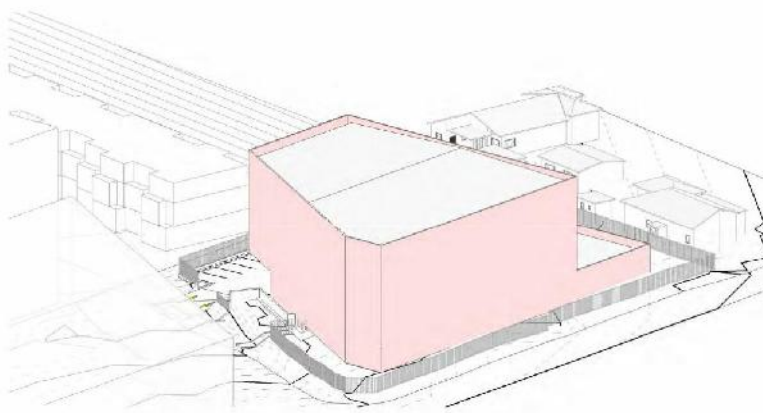
4 SUN VIEW DIAGRAM - WINTER 1200 HRS



5 SUN VIEW DIAGRAM - WINTER 1300 HRS



6 SUN VIEW DIAGRAM - WINTER 1400 HRS



7 SUN VIEW DIAGRAM - WINTER 1500 HRS

**ABACUS**

**PROPOSED SELF-STORAGE CONCEPT**  
204 ROCKY POINT ROAD, KOGARAH, NSW 2217

ISSUE	DATE	DESCRIPTION
P1	25.06.24	FOR INFORMATION
P2	08.10.24	FOR INFORMATION
P3	15.10.24	FOR INFORMATION

**SUN VIEW DIAGRAMS**

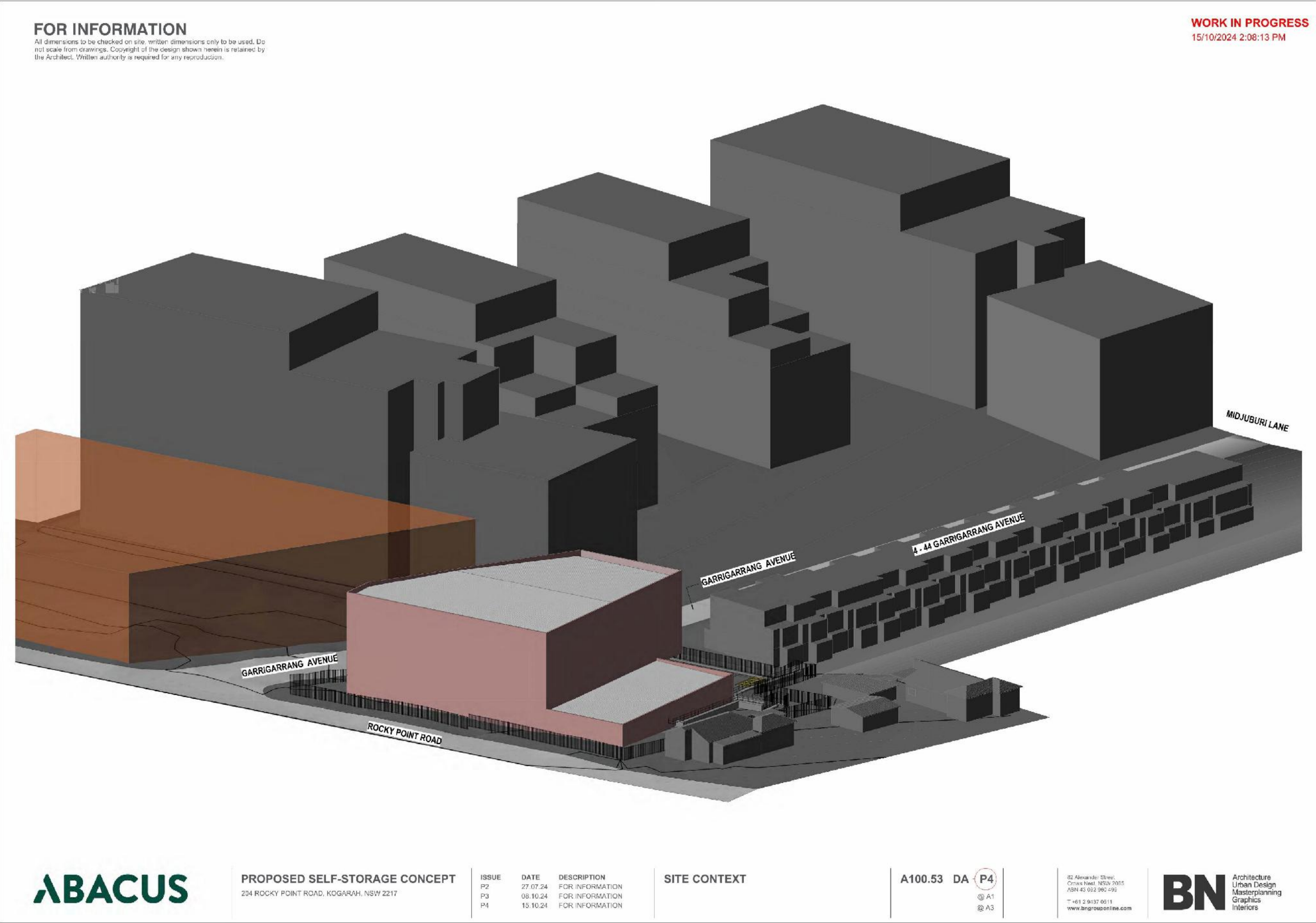
**A100.52 DA P3**  
@ A1  
@ A3

82 Alexander Street  
Crows Nest, NSW 2085  
ABN 43 032 980 499  
T +61 2 9437 0511  
www.bnrgrouponline.com

**BN** Architecture  
Urban Design  
Masterplanning  
Graphics  
Interiors

C:\Users\p\Documents\2216\_DA\_R23\_CTL\_Shadow\_Study\_sp23\SSN.rvt

PRINTED: 15/10/2024 2:08:10 PM



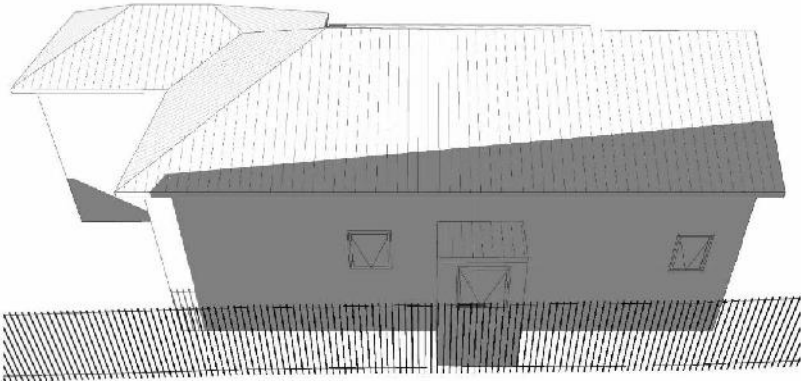


FOR INFORMATION

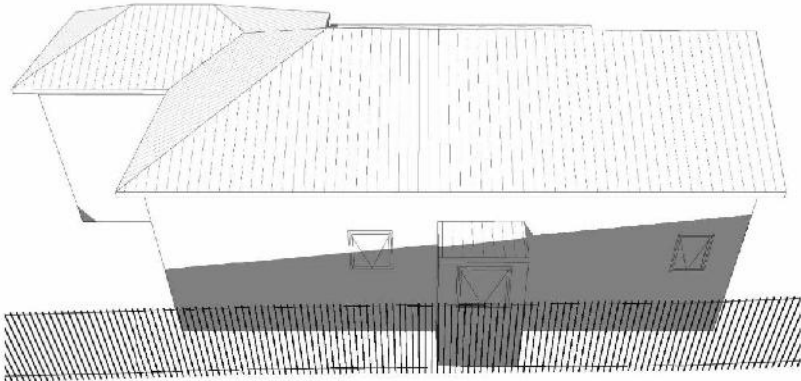
All dimensions to be checked on site. Written dimensions only to be used. Do not scale from drawings. Copyright of the design shown herein is retained by the Architect. Written authority is required for any reproduction.

WORK IN PROGRESS  
15/10/2024 2:08:17 PM

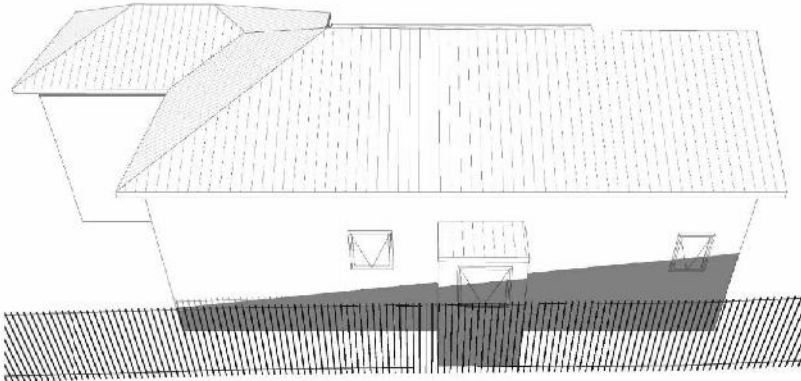
C:\Users\p\Documents\2216\_DA\_R23\_CTL\_Shadow\_Study\_sp23\SSN.rvt



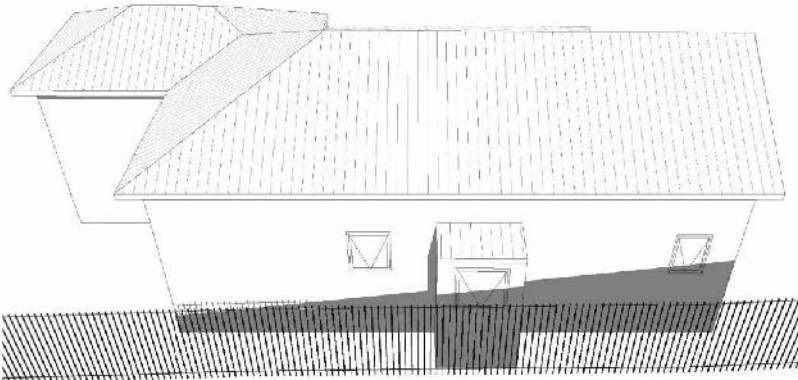
1 WINTER SOLSTICE 9AM - 208 ROCKY POINT RD



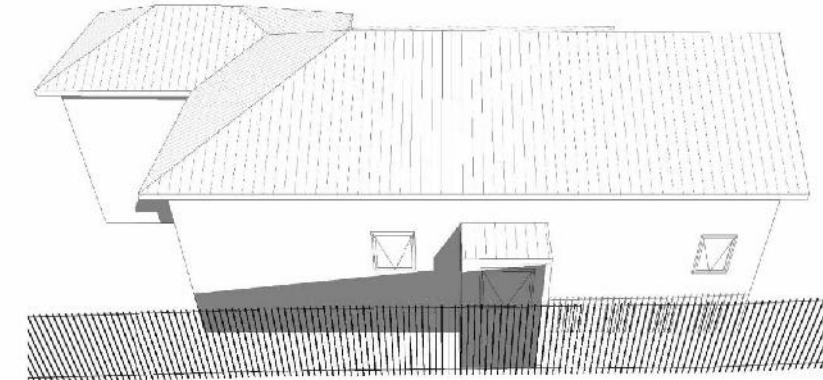
2 WINTER SOLSTICE 10AM - 208 ROCKY POINT RD



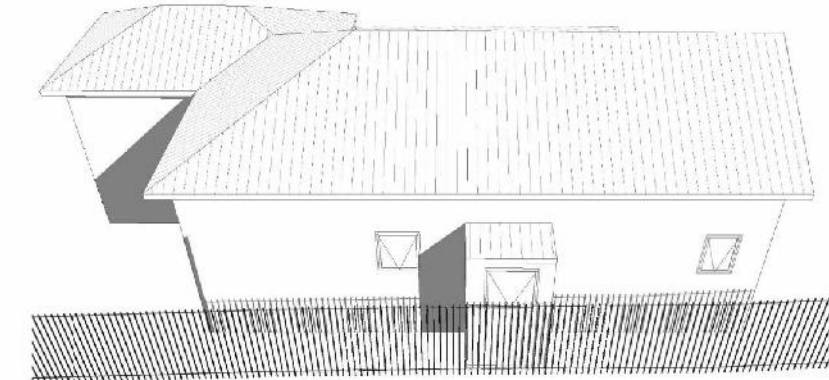
3 WINTER SOLSTICE 11AM - 208 ROCKY POINT RD



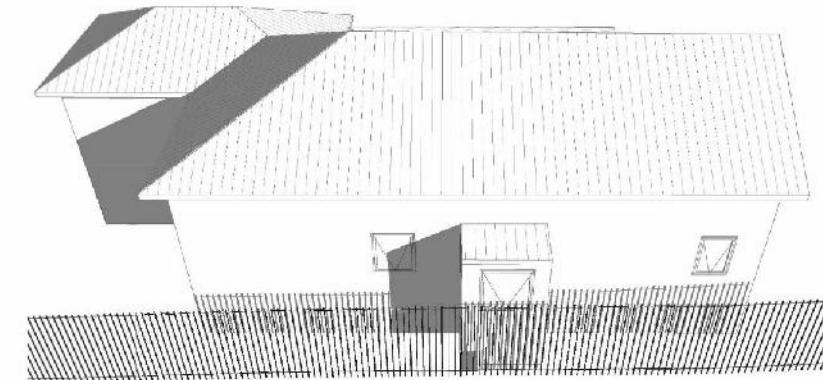
4 WINTER SOLSTICE 12PM - 208 ROCKY POINT RD



5 WINTER SOLSTICE 1PM - 208 ROCKY POINT RD



6 WINTER SOLSTICE 2PM - 208 ROCKY POINT RD



7 WINTER SOLSTICE 3PM - 208 ROCKY POINT RD

ABACUS

PROPOSED SELF-STORAGE CONCEPT  
204 ROCKY POINT ROAD, KOGARAH, NSW 2217

ISSUE	DATE	DESCRIPTION
P1	08.10.24	FOR INFORMATION
P2	15.10.24	FOR INFORMATION

SOLAR STUDY - 208 ROCKY POINT RD

A100.54 DA P2  
@ A1  
@ A3

82 Alexander Street,  
Crows Nest, NSW 2085  
ABN 43 022 985 499  
T +61 2 9437 0511  
www.bnrgrouponline.com

BN Architecture  
Urban Design  
Masterplanning  
Graphics  
Interiors

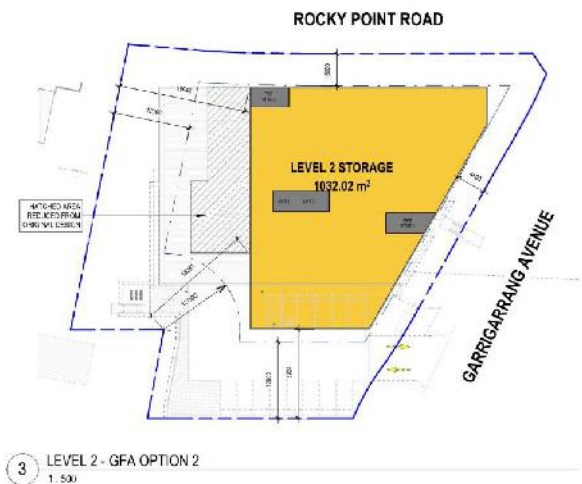
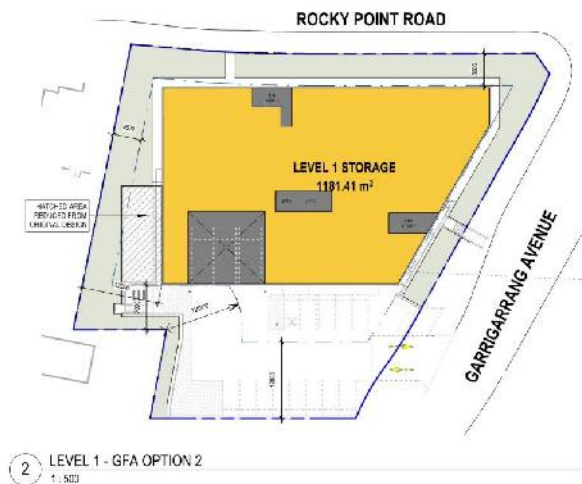
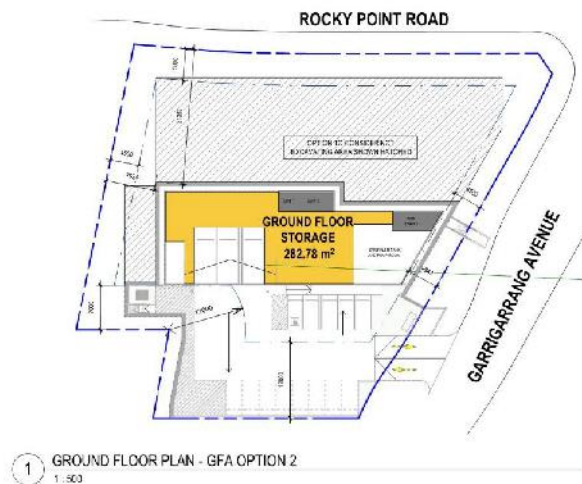
PRINTED: 15/10/2024 2:08:17 PM



FOR INFORMATION

All dimensions to be checked on site. Written dimensions only to be used. Do not scale from drawings. Copyright of the design shown herein is retained by the Architect. Written authority is required for any reproduction.

WORK IN PROGRESS  
15/10/2024 2:17:55 PM



SITE INFORMATION & CONTROLS

SITE AREA: 3107m²  
MAX BUILDING HEIGHT: 18m  
MIN FRONT SET BACK: 5.00m  
MAX FSR: 1.5:1

GFA METHOD OF MEASUREMENT

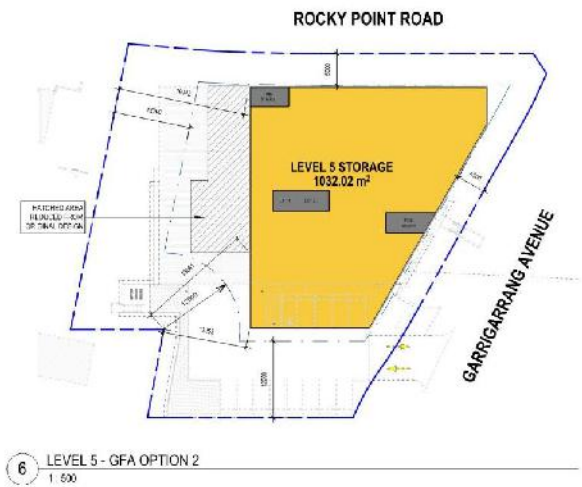
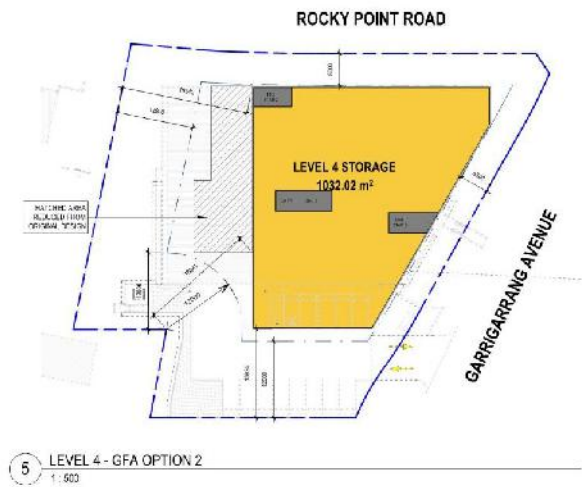
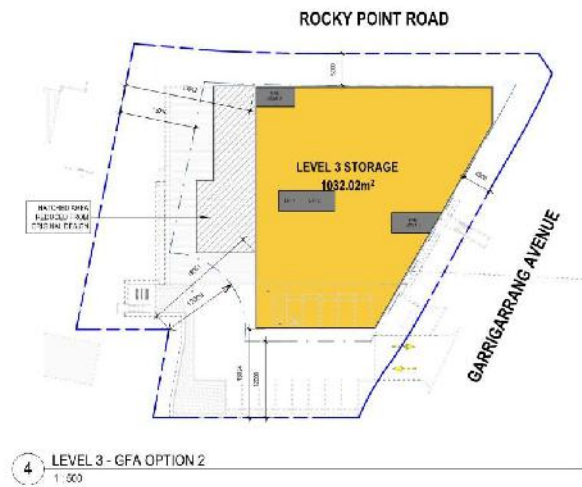
KOGARAH LOCAL ENVIRONMENTAL PLAN 2011

\*GROSS FLOOR AREA MEANS THE SUM OF THE FLOOR AREA OF EACH STOREY OF A BUILDING MEASURED FROM THE INTERNAL FACE OF EXTERNAL WALLS, OR FROM THE INTERNAL FACE OF WALLS SEPARATING THE BUILDING FROM ANY OTHER BUILDING, MEASURED AT A HEIGHT OF 1.4 METRES ABOVE THE FLOOR, AND INCLUDES:

- (A) THE AREA OF A MEZZANINE WITHIN THE STOREY, AND
- (B) HABITABLE ROOMS IN A BASEMENT, AND
- (C) ANY SHOP, AUDITORIUM, CINEMA, AND THE LIKE, IN A BASEMENT OR ATTIC, BUT EXCLUDES:
- (1) ANY AREA FOR COMMON VERTICAL CIRCULATION, SUCH AS LIFTS AND STAIRS, AND
- (2) ANY BASEMENT:
- (i) STORAGE, AND
- (ii) VEHICULAR ACCESS, LOADING AREAS, GARBAGE AND SERVICES, AND
- (3) PLANT ROOMS, LIFT TOWERS AND OTHER AREAS USED EXCLUSIVELY FOR MECHANICAL SERVICES OR DUCTING, AND
- (4) CAR PARKING TO MEET ANY REQUIREMENTS OF THE CONSENT AUTHORITY (INCLUDING ACCESS TO THAT CAR PARKING), AND
- (5) ANY SPACE USED FOR THE LOADING OR UNLOADING OF GOODS (INCLUDING ACCESS TO IT), AND
- (6) TERRACES AND BALCONIES WITH OUTER WALLS LESS THAN 1.4 METRES HIGH, AND (J) VOIDS ABOVE A FLOOR AT THE LEVEL OF A STOREY OR STOREY ABOVE.

GFA CALCULATION - OPTION 1

GFA	PROPOSED
GROUND FLOOR	282.78m²
1st FLOOR	1181.41m²
2nd FLOOR	1032.02m²
3rd FLOOR	1032.02m²
4th FLOOR	1032.02m²
5th FLOOR	1032.02m²
TOTAL	5592.27m²
FSR	1.8:1



ABACUS

PROPOSED SELF-STORAGE CONCEPT  
204 ROCKY POINT ROAD, KOGARAH, NSW 2217

ISSUE  
P1  
P2

DATE  
20.06.24  
15.10.24

DESCRIPTION  
FOR INFORMATION  
FOR INFORMATION

GFA CALCULATION  
OPTION 2

A150.02 SK P2  
@ A1  
@ A3  
1:1000



82 Alexander Street  
Crows Nest, NSW 2085  
ASN 43 022 985 499  
T +61 2 9437 0511  
www.bngronline.com

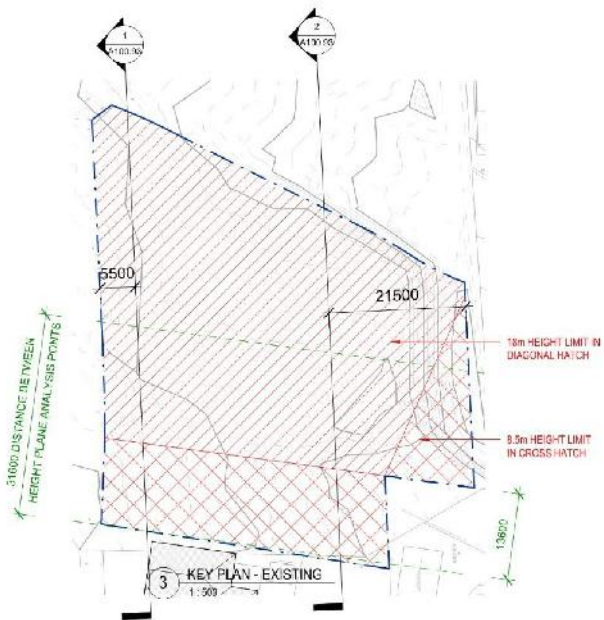
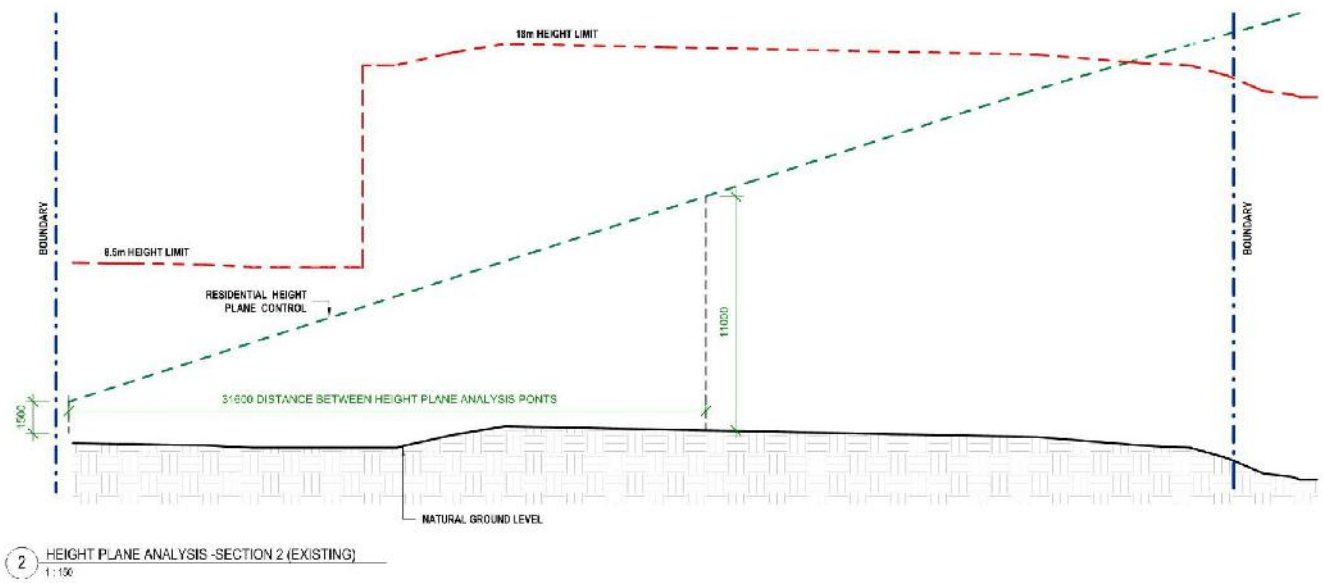
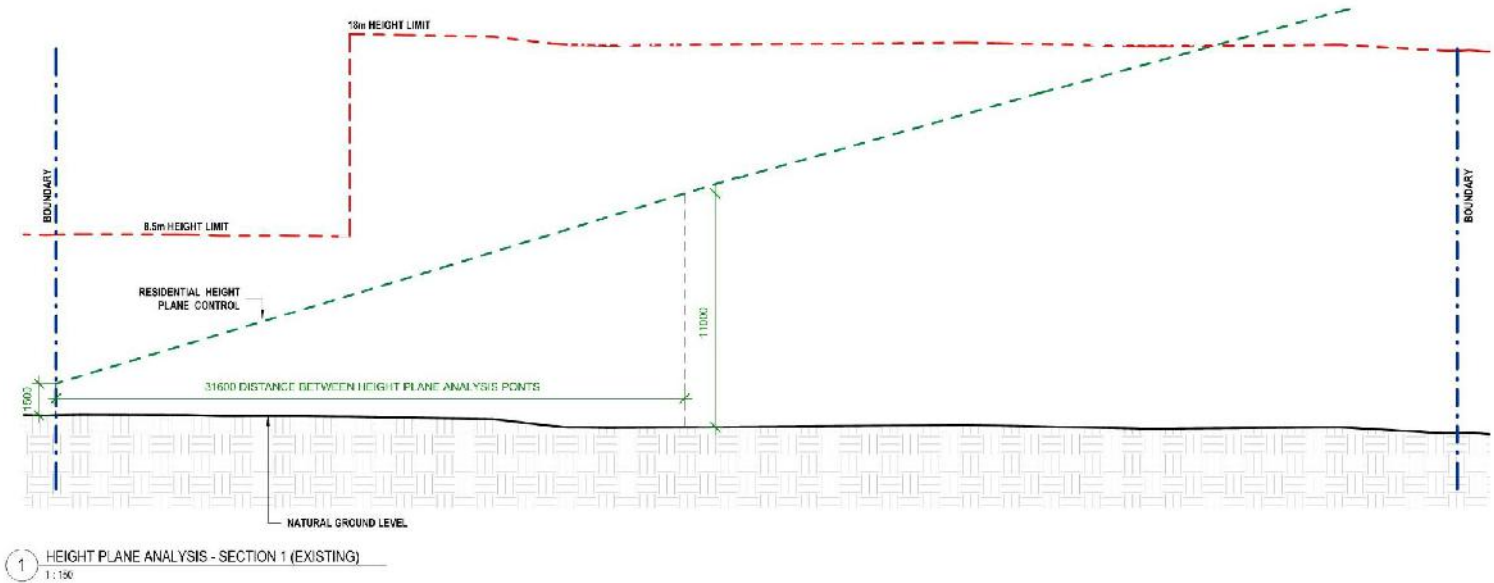
BN Architecture  
Urban Design  
Masterplanning  
Graphics  
Interiors

PRINTED: 15/10/2024 2:17:55 PM

FOR INFORMATION

All dimensions to be checked on site, written dimensions only to be used. Do not scale from drawings. Copyright of the design shown herein is retained by the Architect. Written authority is required for any reproduction.

WORK IN PROGRESS  
11/06/2024 10:01:42 AM



ABACUS

PROPOSED SELF-STORAGE FACILITY  
204 ROCKY POINT ROAD, KOGARAH, NSW 2217

ISSUE	DATE	DESCRIPTION
P1	03.06.24	FOR INFORMATION
P2	07.06.24	FOR INFORMATION

HEIGHT PLANE ANALYSIS - EXISTING

A100.93 SK P2  
1:150 @ A1  
1:300 @ A3

82 Alexander Street,  
Crows Nest, NSW 2005  
ABN 43 032 982 495  
T +61 2 9437 0511  
www.bnrgrouponline.com

BN Architecture  
Urban Design  
Masterplanning  
Graphics  
Interiors

PRINTED: 11/06/2024 10:01:42 AM