



IRF25/557

## Gateway determination report – PP-2024-1690

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204 Rocky Point Road, Kogarah

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# Acknowledgment of Country

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

## Contents

<b>1</b>	<b>Planning proposal.....</b>	<b>1</b>
1.1	Overview .....	1
1.2	Objectives of planning proposal.....	1
1.3	Explanation of provisions.....	1
1.4	Site description and surrounding area .....	2
1.5	Mapping .....	3
1.6	Background .....	4
<b>2</b>	<b>Need for the planning proposal .....</b>	<b>5</b>
<b>3</b>	<b>Strategic assessment .....</b>	<b>6</b>
3.1	Regional Plan .....	6
3.2	District Plan .....	6
3.3	Local.....	7
3.4	Local planning panel (LPP) recommendation .....	8
3.5	Section 9.1 Ministerial Directions.....	8
3.6	State environmental planning policies (SEPPs) .....	9
<b>4</b>	<b>Site-specific assessment .....</b>	<b>10</b>
4.1	Environmental .....	10
4.2	Social and economic .....	12
4.3	Infrastructure .....	13
<b>5</b>	<b>Consultation.....</b>	<b>13</b>
5.1	Community .....	13
5.2	Agencies .....	13
<b>6</b>	<b>Timeframe .....</b>	<b>13</b>
<b>7</b>	<b>Local plan-making authority .....</b>	<b>13</b>
<b>8</b>	<b>Assessment summary .....</b>	<b>13</b>
<b>9</b>	<b>Recommendation.....</b>	<b>14</b>

# 1 Planning proposal

## 1.1 Overview

**Table 1 Planning proposal details**

<b>LGA</b>	Bayside
<b>PPA</b>	Bayside Council
<b>NAME</b>	204 Rocky Point Road, Kogarah
<b>NUMBER</b>	PP-2024-1690
<b>LEP TO BE AMENDED</b>	Bayside Local Environmental Plan 2021
<b>ADDRESS</b>	204 Rocky Point Road, Kogarah
<b>DESCRIPTION</b>	Lot 11 DP1289336
<b>RECEIVED</b>	4/03/2025
<b>FILE NO.</b>	IRF25/557
<b>POLITICAL DONATIONS</b>	There are no donations or gifts to disclose and a political donation disclosure is not required
<b>LOBBYIST CODE OF CONDUCT</b>	There have been no meetings or communications with registered lobbyists with respect to this proposal

## 1.2 Objectives of planning proposal

The planning proposal contains objectives that adequately explain the intent of the proposal.

The objective of the planning proposal is to remove the height of building plane from the site and apply design excellence provisions to facilitate development for employment uses.

## 1.3 Explanation of provisions

The land is zoned E3 Productivity Support under the Bayside LEP 2021. The maximum height of buildings is part 8.5m and part 18m and the maximum FSR is 1.8:1.

The planning proposal seeks to amend the Bayside LEP 2021 to make the following changes:

- Amend the Height of Buildings Map to exclude the site from 'Area 15'. This has the effect of removing the building height plane (Clause 4.3A) that applies to the site.
- Amend the Design Excellence Map so that Clause 6.10 Design Excellence applies to the site.

There are no changes proposed to the existing land zoning or the height of buildings and floor space ratio development standards.

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

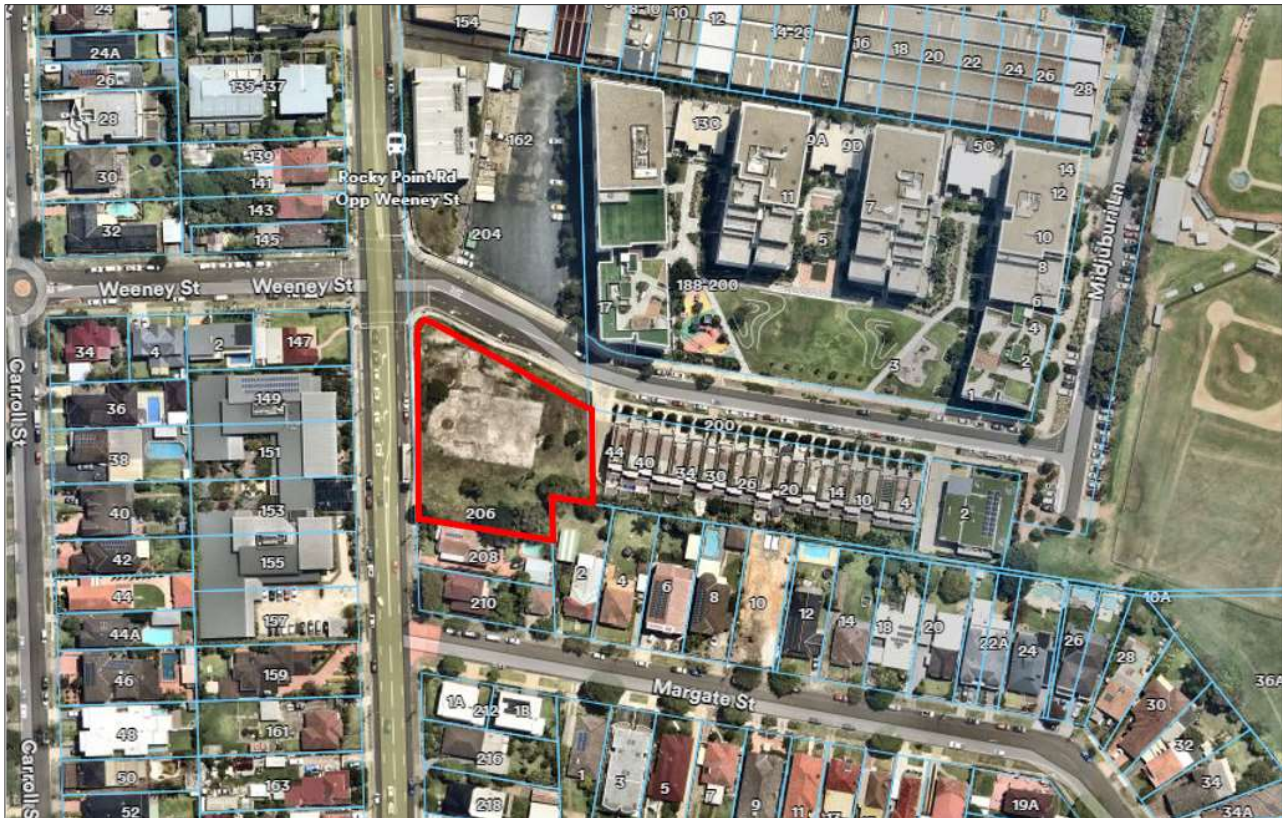
## 1.4 Site description and surrounding area

The planning proposal applies to land at 204 Rocky Point Road, Kogarah (Lot 11 in DP1289336) (**Figure 1**). The site is a vacant and has an area of approximately 3,107m<sup>2</sup> and fronts Rocky Point Road and Garrigarrang Avenue.

The site is located within the former Darrell Lea Factory site, most of which was redeveloped for residential purposes (completed 2019).

Surrounding development includes mid-rise apartment buildings and industrial land to the north, and low density housing and an aged care facility to the east.

The subject site is not heritage item nor within a heritage conservation area.



**Figure 1** Subject site, outlined in red (source: Nearmap, 2025)



## 1.5 Mapping

The planning proposal includes mapping showing the proposed changes to the Height of Buildings and Design Excellence maps, which are suitable for community consultation.

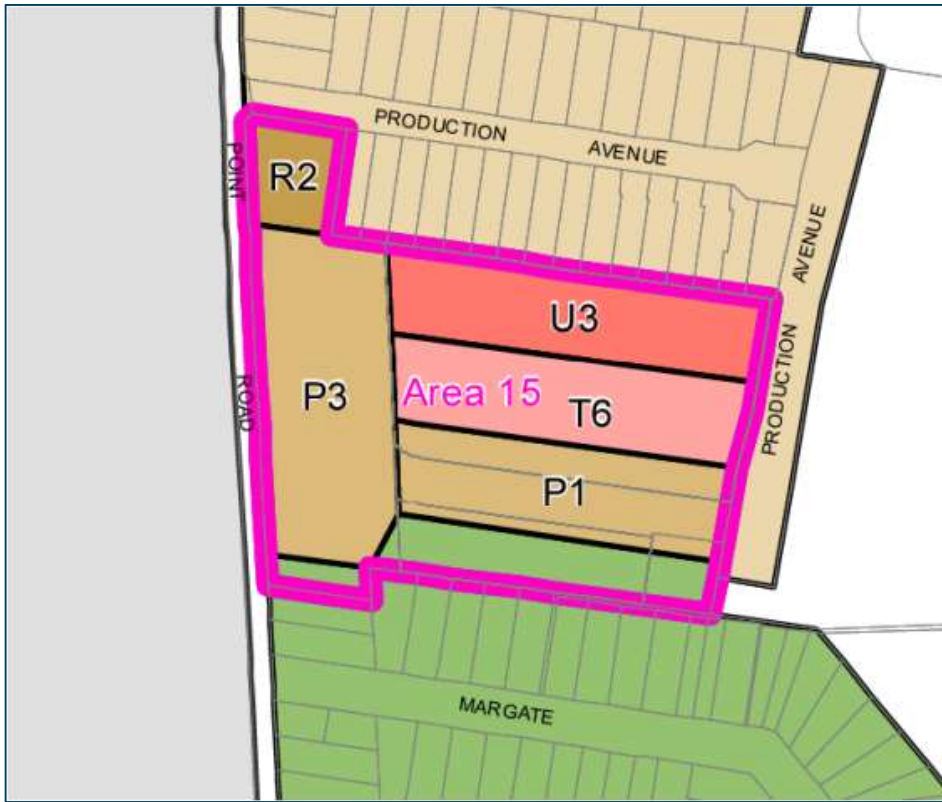


Figure 3 Current Height of Buildings Map (source: Planning Proposal 2025)



Figure 4 Proposed Height of Buildings Map (source: Planning Proposal 2025)



**Figure 5 Proposed Design Excellence Map (source: Planning proposal 2025)**

## 1.6 Background

The following table provides a background of the planning proposal.

**Table 2 Background**

Date	Event
August 2013	Request for planning proposal lodged with Rockdale City Council to rezone the Darrell Lea factory 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), with increases to building heights and floor space ratios. It was accompanied by a master plan.
2014	Darrell Lea factory ceases operation.
28 August 2014	Sydney East Joint Regional Planning Panel (JRPP) supported the planning proposal at pre-Gateway review (including an amendment to include a building height plane provision).as it had strategic merit.
13 October 2014	The Minister's delegate determined that the proposal should proceed to Gateway.
4 December 2014	Council agreed to be the relevant planning authority for the proposal.
4 May 2015	Gateway determination issued.

Date	Event
15 April 2016	Rockdale Local Environmental Plan 2011 (Amendment No. 11) was published 15 April 2016.
28 November 2017	DA consent DA-017/224 was issued for the former Darrell Lea site was granted. It did not include construction of commercial buildings on the subject site.
2019	Residential component of the Darrell Lea site is completed.
27 August 2021	Bayside LEP 2021 replaced the Rockdale LEP 2011 and Botany Bay LEP 2013.
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.
26 April 2023	Employment zones reform changed the zoning of the subject site from Corridor zone to E3 Productivity Support
5 July 2023	DA-2023/186 lodged for the subject site for a 6 storey Storage Premises (self-storage units). The DA was withdrawn 23 January 2024.
23 August 2024	Request for planning proposal formally lodged with Bayside Council.
10 December 2024	Bayside Local Planning Panel (BLPP) recommended that the proposal be supported and should be submitted to the Department for a Gateway determination, subject to application of clause 6.10 Design Excellence to the site to address site specific concerns raised in the Council officer assessment report.
26 February 2025	Bayside Council resolves to forward the planning proposal for Gateway.
4 March 2025	Planning proposal submitted Gateway assessment.

## 2 Need for the planning proposal

The planning proposal is not the result of any strategic study or report. It is a proponent initiated site-specific planning proposal to facilitate development on the site for employment related uses.

The proposal seeks to remove the building height plane and apply design excellence provisions which require an amendment to the Bayside LEP 2021. A planning proposal is the best mechanism to amend the LEP for local planning matters.

The subject site was rezoned in 2016 as part of the rezoning of the larger former Darrell Lea factory site. The residential component of the redevelopment was completed in 2019. It has been a notable amount of time since the broader former factory site was rezoned and redeveloped and the subject site remains vacant.

The planning proposal is supported by a development concept for a storage premise on the subject site, which is a permissible land use in the E3 Productivity Support zone under the Bayside LEP 2021. The planning proposal will apply design excellence provisions to the site as recommend by the Bayside LPP to ensure a good design outcome. This in combination with the retention of the 8.5m height limit on the southern part of the site will also help ensure there is suitable height transition and solar access to residential properties to the south.



The planning proposal states that application of the building height plane to the site was a mistake. The delegate for the Plan Making Authority would have regard to the policy intent, the objectives and explanation of provisions described in the planning proposal and matters raised in submissions when it made Rockdale LEP 2011 (Amendment No. 11). Whilst the Department has no objections in principle to the subject planning proposal as it has individual strategic and site merit, the justification that it corrects an error is not supported and should be removed from the proposal prior to consultation.

The planning proposal will retain existing employment land and encourage development for employment related uses consistent with the objectives of the zone.

The planning proposal is considered to be the best means of achieving the objectives and intended outcomes.

## 3 Strategic assessment

### 3.1 Regional Plan

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

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

### 3.2 District Plan

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

The planning proposal is consistent with the priorities for infrastructure and collaboration, liveability, productivity, and sustainability. In particular, the planning proposal is consistent with the following planning priorities:

- Planning Priority E6: Creating and renewing great places and local centres, and respecting the District's heritage.
- Planning Priority E12: Retaining and managing industrial and urban services land

The site is employment land located on a classified road (Rocky Point Road). The District Plan seeks to ensure retention of industrial and urban services land, and the planning proposal seeks to facilitate development of the site for a storage premises consistent its current E3 Productivity Support zoning.

The Department is satisfied the planning proposal gives effect to the District Plan in accordance with section 3.8 of the *Environmental Planning and Assessment Act 1979*.

### 3.3 Local

The proposal states that it is consistent with the following local plans and endorsed strategies.

**Table 3 Local strategic planning assessment**

Local Strategies	Justification
Bayside Local Strategic Planning Statement (LSPS)	<p>The Bayside LSPS was endorsed by the former Greater Sydney Commission in 2020. The LSPS seeks to provide a strategic land use vision for Bayside and aligns local planning with the objectives and priorities of the Region and District Plans.</p> <p>The planning proposal is consistent with the relevant priorities and actions of the LSPS, including:</p> <ul style="list-style-type: none"> <li>• Planning Priority B3: <i>Working through collaboration</i></li> <li>• Planning Priority B9: <i>Manage and enhance the distinctive character of the LGA through good quality urban design, respect for existing character and enhancement of the public realm</i></li> <li>• Planning Priority B13: <i>Contribute to growing a stronger and more competitive Harbour CBD</i></li> <li>• Planning Priority B17: <i>Retain and manage industrial and urban services land</i></li> </ul> <p>The proposal will support the ongoing use of employment land in Kogarah consistent with Council's priorities to retain industrial and urban services land and promote good quality urban design via design excellence provisions. It will generate jobs during its construction and operational phases.</p> <p>The proposal is consistent with the LSPS.</p>
Bayside Community Strategic Plan 2018-2032	<p>Bayside 2032: Community Strategic Plan (CSP) 2018-2032 sets the strategic direction for Council's Delivery Program and Operational Plans. It identifies the priorities for the future and objectives and strategies to achieve the community vision.</p> <p>The proposed amendment will facilitate development of the site to create additional employment floor space and jobs in an existing employment zone. It is consistent with the following strategies:</p> <ul style="list-style-type: none"> <li>• 1.3.2 <i>Create and maintain vibrant, visually appealing, and welcoming places with their own village atmosphere and sense of identity</i></li> <li>• 1.3.3 <i>Promote innovative and well-designed local developments which incorporate open space and put people first</i></li> <li>• 4.2.3 <i>Preserve industrial lands and employment lands and partner with major employers to support local jobs</i></li> <li>• 4.3.6 <i>Plan for growth and development so the benefits of prosperity are shared</i></li> </ul> <p>The planning proposal is consistent with the CSP.</p>

### 3.4 Local planning panel (LPP) recommendation

On 10 December 2024 the Bayside LPP issued the following advice:

*The Bayside Local Planning Panel recommend to the City Planning and Environment Committee and Council that pursuant to s3.34 of the Environmental Planning and Assessment Act 1979, the Planning Proposal Request for 204 Rocky Point Road, Kogarah should:*

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

On 26 February 2025, Council considered the advice of the LPP and resolved to support the planning proposal proceeding to Gateway.

### 3.5 Section 9.1 Ministerial Directions

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

**Table 4 9.1 Ministerial Direction assessment**

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.4 Site Specific Provisions	Consistent	<p>Direction 1.4 seeks to discourage unnecessarily restrictive site-specific planning controls.</p> <p>The proposal will remove an existing building height plane control apply design excellence provisions. This will better achieve a good design outcome on the site.</p> <p>The planning proposal is consistent with the terms of the Direction.</p>
4.1 Flooding	Consistent	<p>This Direction seeks to ensure that development of flood prone land is consistent with the NSW Flood Planning Framework and ensure LEP provisions are commensurate with the flood behaviour and consider the potential impacts on and off the land.</p> <p>Council's flood mapping and assessment report identify that the subject site is not impacted by the 1% AEP or PMF flood events. There is an inconsistency between the planning proposal document and the Council Report as to whether the site is affected by the PMF. This inconsistency should be resolved prior to consultation. Notwithstanding this inconsistency, the planning proposal is not seeking to increase existing maximum HOB and FSR controls.</p> <p>The planning proposal is consistent with the terms of the Direction.</p>

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
4.5 Acid Sulfate Soils	Inconsistent	<p>The objective of this direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils.</p> <p>The site is mapped as potentially containing Class 5 acid sulfate soils. An acid sulfate soils study has not been provided.</p> <p>This inconsistency is of minor significance as Class 5 acid sulfate soils are a low risk class and the Bayside LEP 2021 contains suitable provisions to ensure that this matter can be appropriately considered during development assessment processes.</p> <p>The proposal is therefore justifiably inconsistent with this direction.</p>
5.3 Development Near Regulated Airports and Defence Airfields	Consistent	<p>The objectives of this direction are to ensure the effective and safe operation of regulated airports and defence airfields. It also aims to ensure surrounding development incorporates appropriate measures to mitigate aircraft noise.</p> <p>The site is not located within the Sydney Airport ANEF contours, and has an identified Airport Obstacle Limitation Surface (OLS) limit of 60-70m AHD which is well above the existing 18m height control.</p> <p>The planning proposal is consistent with the terms of the Direction.</p>
7.1 Employment Zones	Consistent	<p>This Direction seeks to encourage employment growth in suitable locations, protect employment land in employment zones, and support the viability of identified centres.</p> <p>The planning proposal will removal a building height plane control and apply design excellence provisions to the site, facilitating development for employment floorspace and retaining the existing E3 Productivity Support zoning.</p> <p>The planning proposal is consistent with the terms of the Direction.</p>

### 3.6 State environmental planning policies (SEPPs)

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

**Table 5 Assessment of planning proposal against relevant SEPPs**

SEPPs	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
SEPP (Industry and Employment) 2021	Consistent	<p>The Planning Proposal does not contain any provisions which conflict with the provisions of this SEPP. Any signage associated with the redevelopment of the site will be subject to assessment against Chapter 3 of the SEPP at development application stage.</p>

SEPPs	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
SEPP (Transport and infrastructure) 2021	Consistent	<p>The SEPP plans for the provision of infrastructure and services across NSW and sets consultation requirements with relevant public authorities during the development assessment process.</p> <p>The planning proposal does not contain any provisions that will impede the operation of the SEPP.</p>

## 4 Site-specific assessment

### 4.1 Environmental

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

**Table 6 Environmental impact assessment**

Environmental Impact	Assessment
Natural hazards	An assessment against the provisions of Section 9.1 Directions 4.1 Flooding and 4.5 Acid Sulfate Soils is in Section 3.5 of this report.
Biodiversity	The proposal is not anticipated to have any adverse impacts on critical habitat areas, threatened species, populations or ecological communities or their habitats.

Environmental Impact	Assessment
Bulk and Scale	<p>The removal of the existing clause 4.3A height plane control and replacement with the application Clause 6.10 Design Excellence will change the potential distribution of height on the site.</p> <p>The proposal states design excellence provisions will help ensure a good design outcome and mitigate bulk and scale impacts to the low-density residential area to the south, without being too prescriptive. It is also noted that the 8.5m height controls will be retained on the southern part of the site.</p> <p>The development concept is supported by building layout plans and a massing study which compares the current and proposed heights and show a transition in bulk and scale to the south.</p> <p>The Department is satisfied that the planning proposal has adequately considered bulk and scale impacts.</p> <div data-bbox="432 786 1418 1243"> </div> <p><b>Figure 6 Excerpt of Height Plane Analysis (source: planning proposal 2025)</b></p> <div data-bbox="432 1339 1418 1899"> </div> <p><b>Figure 7 Excerpt of Massing Study (source: planning proposal 2025)</b></p>




Environmental Impact	Assessment								
Solar Impact	<p>The planning proposal is accompanied by a Solar Analysis Study prepared by BN Group. It shows that minimum solar access to adjoining residential development can be achieved. This includes the dwelling directly south of the site (No. 208 Rocky Point Road) which is modelled as receiving more than 2 hours of direct sunlight in habitable living spaces and would continue to receive direct sunlight to at least 50% of the primary private open space between 9am and 3pm on the winter solstice.</p> <p>The solar impacts are acceptable and can be mitigated in the future detailed design at the development assessment stage.</p>  <p><b>FOR INFORMATION</b> All content is for information only. It is not intended to be used for any purpose other than for information. It is not intended to be used for any purpose other than for information. It is not intended to be used for any purpose other than for information.</p> <p><b>WORK IN PROGRESS</b> 15/10/2024 2:58:02 PM</p> <p><b>ABACUS</b> PROPOSED SELF-STORAGE CONCEPT 208 ROCKY POINT ROAD, ROCKY POINT, NSW 2217</p> <table border="1"> <thead> <tr> <th>DATE</th> <th>DESCRIPTION</th> </tr> </thead> <tbody> <tr> <td>15/10/24</td> <td>FOR INFORMATION</td> </tr> <tr> <td>15/10/24</td> <td>FOR INFORMATION</td> </tr> <tr> <td>15/10/24</td> <td>FOR INFORMATION</td> </tr> </tbody> </table> <p><b>SOLAR STUDY</b></p> <p>A100.50 DA (P3) 1:100 @ A1 1:100 @ A2</p> <p><b>BN</b> Architecture Urban Design Development Planning</p>	DATE	DESCRIPTION	15/10/24	FOR INFORMATION	15/10/24	FOR INFORMATION	15/10/24	FOR INFORMATION
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Figure 8 Excerpt of Solar Study (source: planning proposal 2025)

## 4.2 Social and economic

The planning proposal is unlikely to result in any significant adverse social or economic impacts.

The proposal is located on E3 Productivity Support zoned land intended for employment uses. The removal of the building height plan and application of design excellence will facilitate development on the site whilst ensuring a good design outcome.

The community will have an opportunity to share their views on the proposal during the consultation stage.

Notwithstanding the above, the planning proposal does not specifically address social and economic impacts. The planning proposal should be updated to address this consistent with Section C of the matters to be address in a planning proposal set out in the LEP Making Guidelines (August 2023).

## 4.3 Infrastructure

The site is located within an established urban area which is serviced by infrastructure and utilities

## 5 Consultation

### 5.1 Community

Council proposes a community consultation period of 28 days (20 working days), as per the LEP Plan Making Guidelines (August 2023).

The exhibition period proposed is considered appropriate, and forms one of the conditions of the Gateway determination.

### 5.2 Agencies

The proposal does not specifically raise which agencies will be consulted. No further agency consultation is proposed.

## 6 Timeframe

The planning proposal proposes an LEP completion date in May 2025.

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

The Department recommends an LEP completion date of 4 February 2026 in line with its commitment to reducing processing times and with regard to the benchmark timeframes. A condition to the above effect is recommended in the Gateway determination.

## 7 Local plan-making authority

Council has advised that it would like to exercise its functions as a local plan-making authority.

As the planning proposal is of local significance the Department recommends that Council be authorised to be the local plan-making authority for this proposal.

## 8 Assessment summary

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

- The proposal will facilitate the retention and development of employment land.
- The proposal is consistent with the objectives, directions and planning priorities of the District Plan and Bayside Local Strategic Planning Statement.
- The proposal is generally consistent with the relevant Section 9.1 Ministerial Directions.
- The proposal does not hinder the application of any SEPPs.
- The proposal is not anticipated to generate any significant adverse environmental, social or economic outcomes.

## 9 Recommendation

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

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

1. The planning proposal is to be updated to:
  - Include an assessment of social and economic impacts in section 6.3 of the planning proposal.
  - Resolve inconsistencies between Council officer assessment report and planning proposal, including the response to Direction 4.1 Flooding
  - Remove references justifying the proposed changes based on 'mistakes' implementing the previous 2013 proposal.
2. The planning proposal should be made available for community consultation for a minimum of 20 working days.

Given the nature of the planning proposal, it is recommended that the Gateway authorise council to be the local plan-making authority and that an LEP completion date of 4 February 2026 be included on the Gateway.



Kelly McKellar

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3 April 2025

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