



# Rocky Point Road Planning Proposal

204 Rocky Point Road, Kogarah

ON BEHALF OF

ABACUS STORAGE FUNDS LIMITED

JANUARY 2025

## Project

204 Rocky Point Road, Kogarah – Planning Proposal

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# 1 Introduction

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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 alter the boundary referred to as 'Area 15' in the Height of Buildings (HOB) map so that it no longer includes the site. Subsequently, the design excellence provisions under Clause 6.10 of BLEP 2021 are proposed to be applied to 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.

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 is entirely consistent with the strategic planning framework and can mitigate potential environmental impacts appropriately. The application of Clause 6.10 Design excellence in place of the current height plane ensures any future development on the site will exhibit the highest standard of architectural, urban and landscape design, along with appropriate amenity for neighbours. 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**

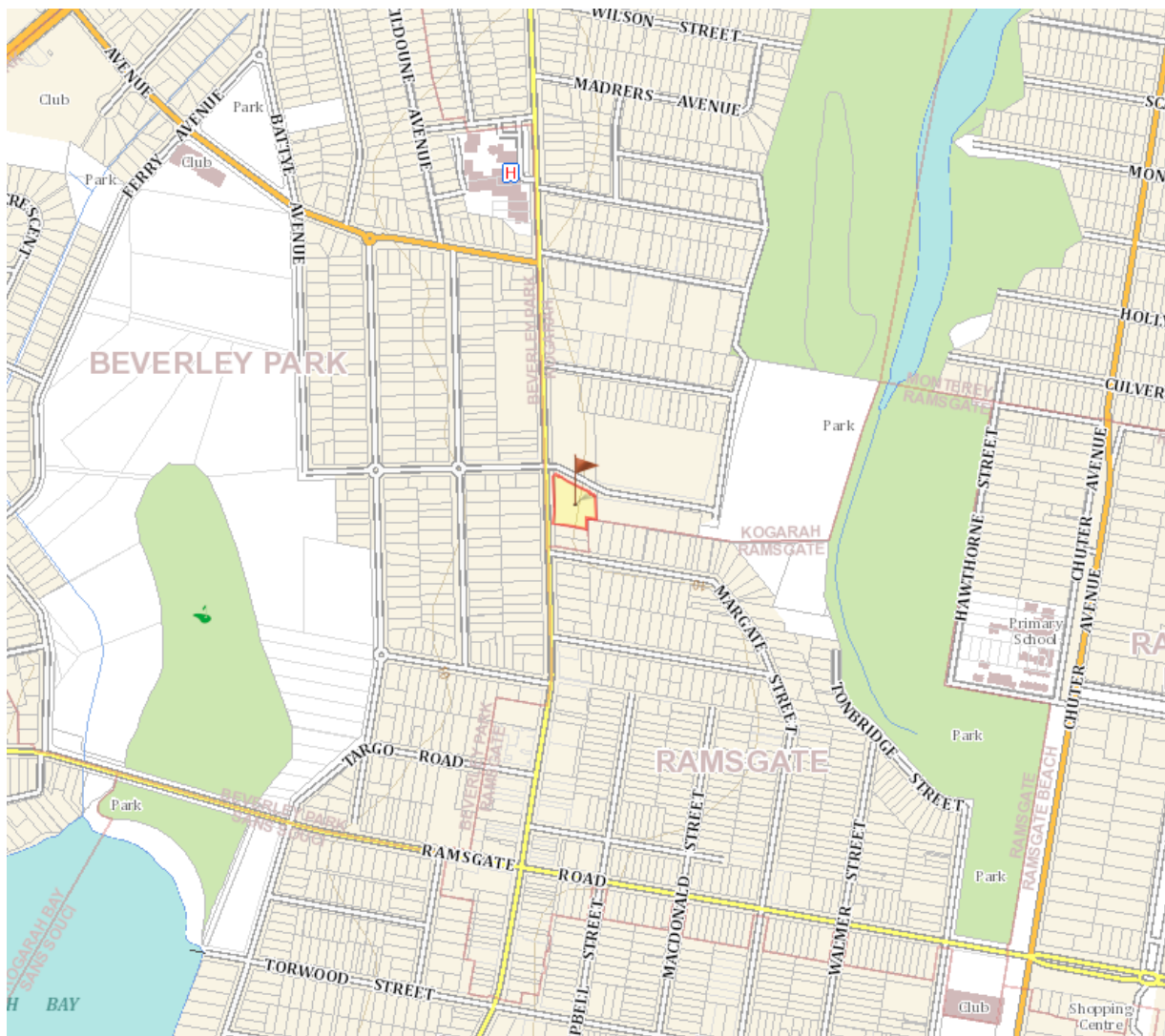
- Chapter 10 – Conclusion

## 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

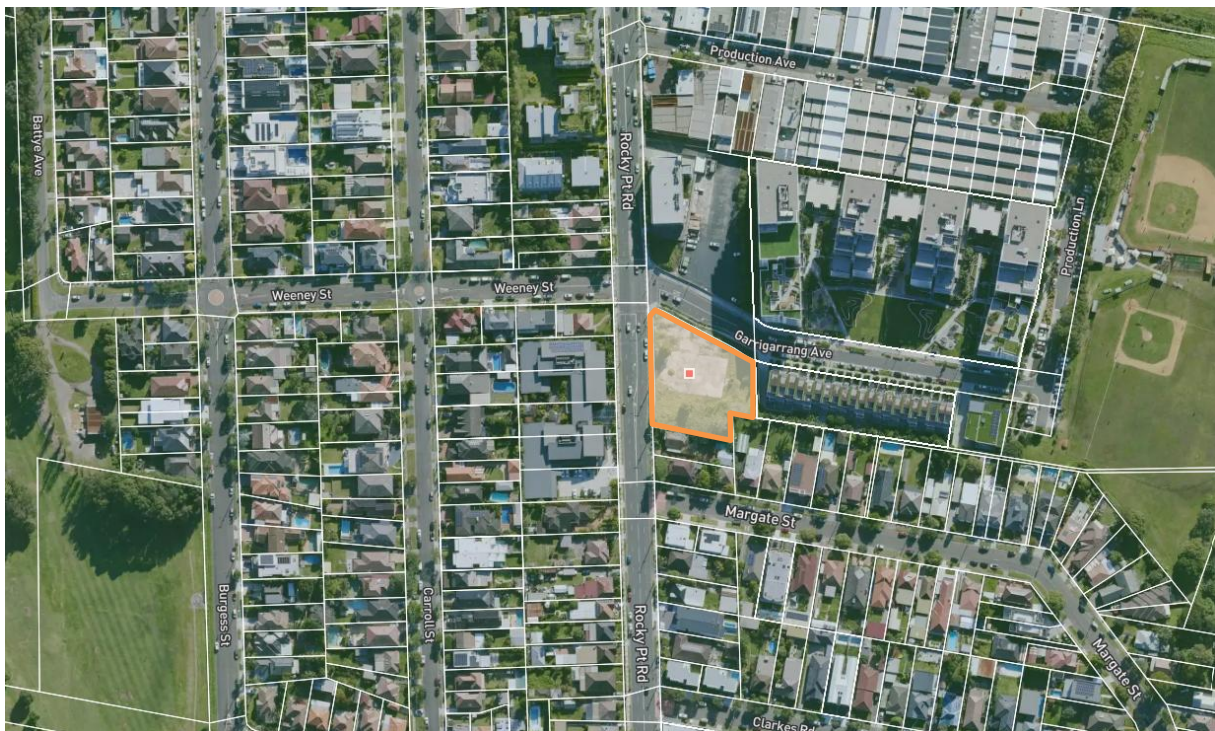
The site is located within the former Rockdale portion of the Bayside LGA, between the suburbs of Kogarah and Ramsgate Beach.



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 3: Site Aerial**

Source: Metromap, modified by Patch

## 2.4 Local Planning Context

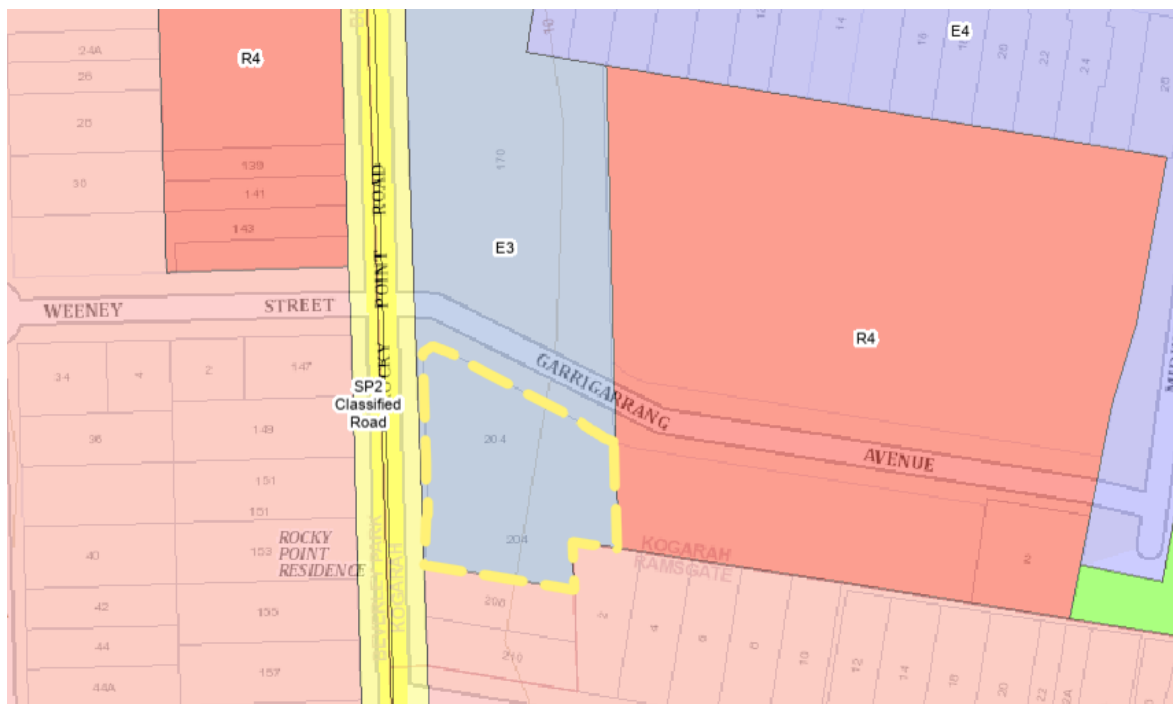
### 2.4.1 Bayside Local Environmental Plan 2021

The principal Environmental Planning Instrument applying to the site is the BLEP 2021. A summary of the key existing provisions applying to the site are provided below.

#### **LAND ZONING**

The site is zoned E3 Productivity Support as illustrated in **Figure 4** below.



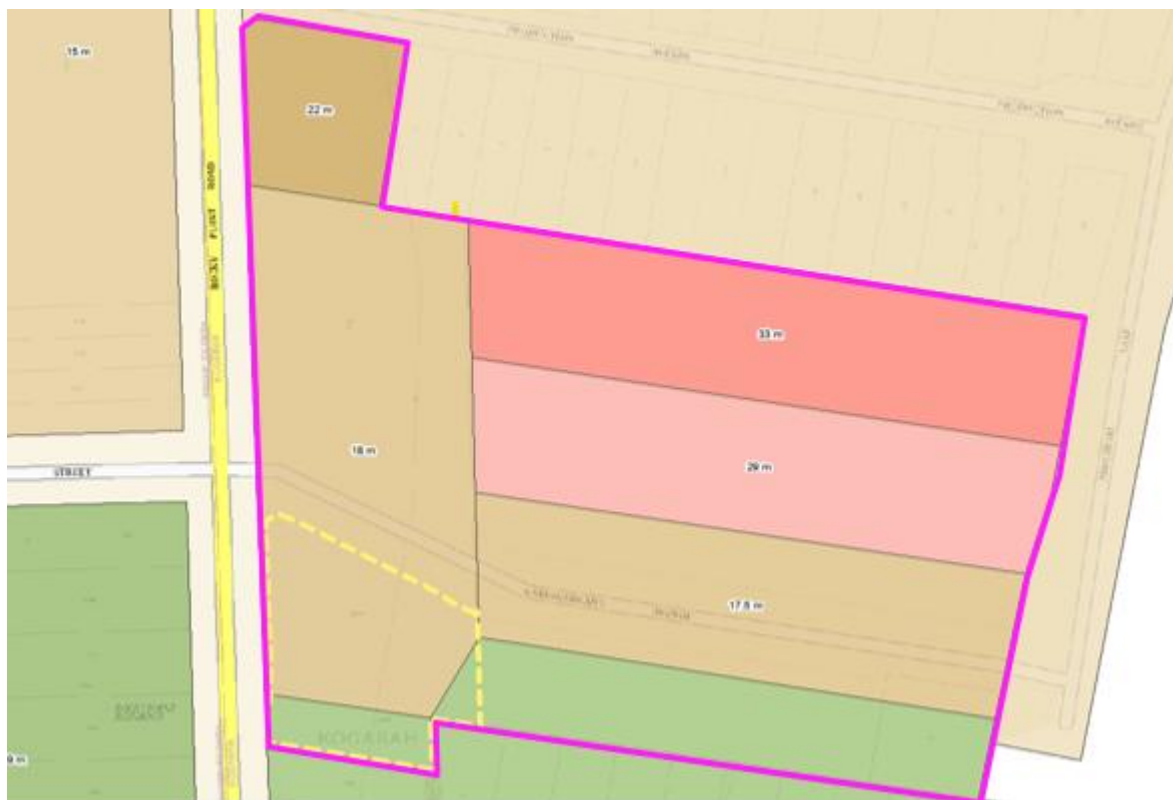


**Figure 4: Land Zoning Map**

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—*

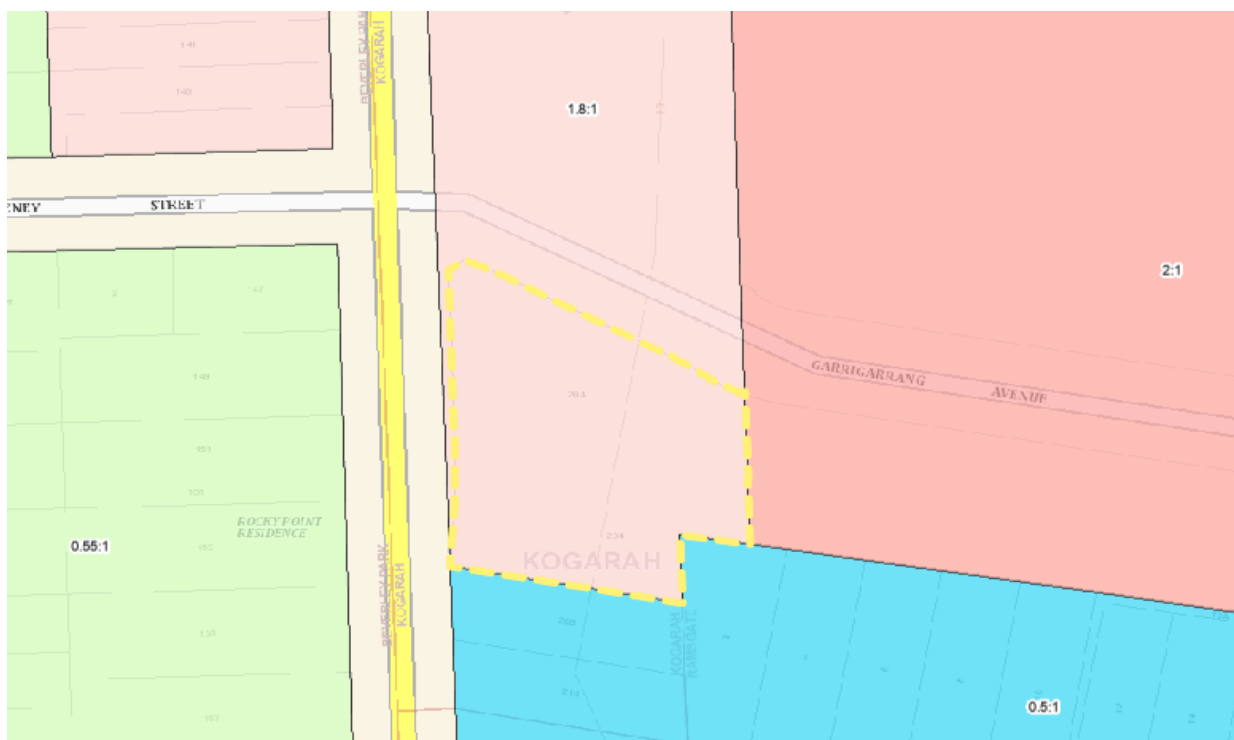
*...*

*(bc) Clause 4.3A,*

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

**FLOOR SPACE RATIO**

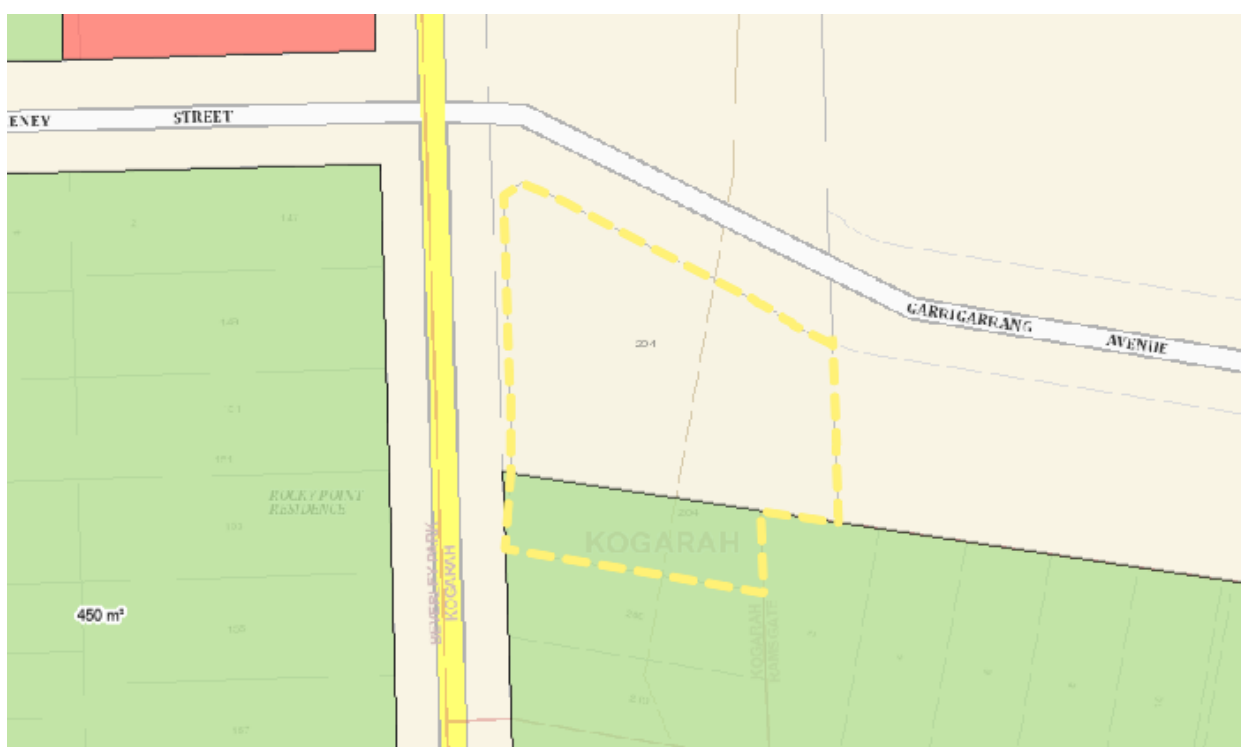
The site is subject to a floor space ratio control of 1.8:1, as illustrated in **Figure 6** below.



**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.



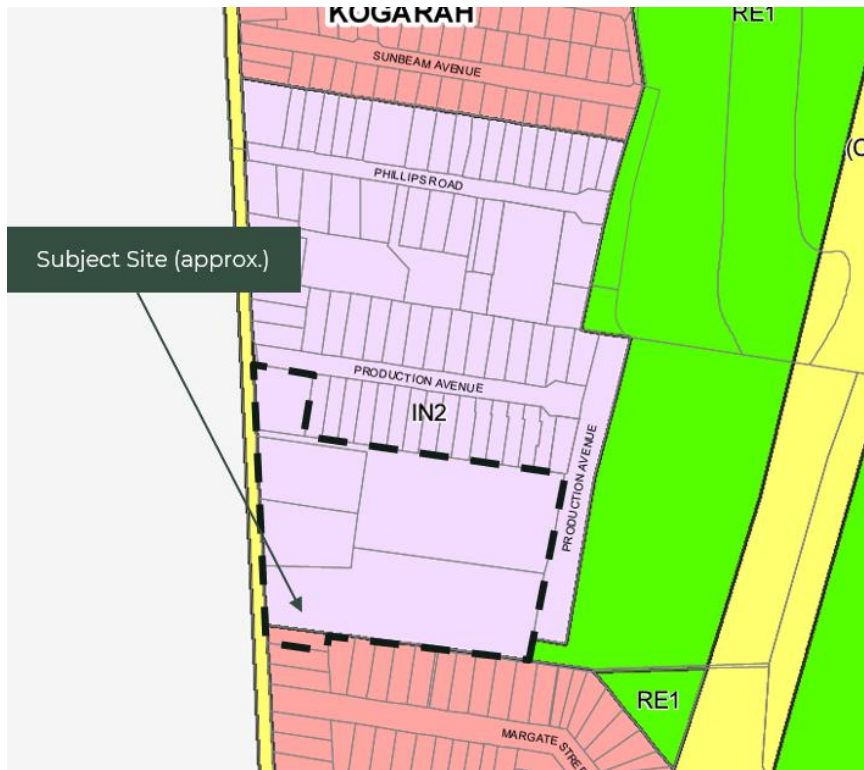
**Figure 7: Lot Size Map**  
Source: NSW Planning Portal Spatial Viewer

### 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**.

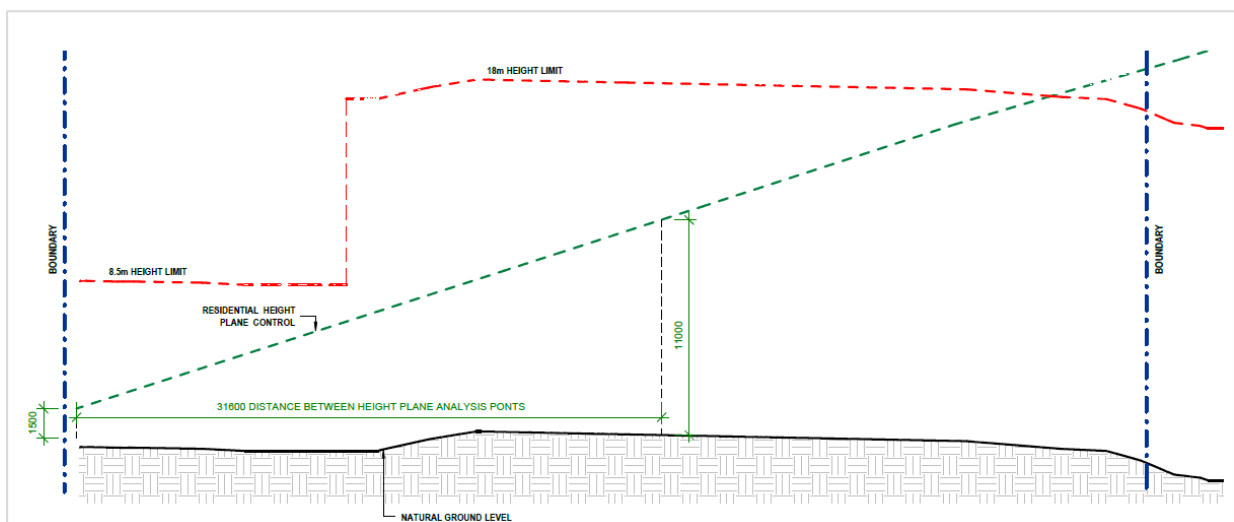


**Figure 11: Originally proposed building height map under Rockdale LEP 2011**

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 to remove the application of the height plane control 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.

Table 1. Historic Planning Proposal Timeline	
Date	Item
August – December 2013	<p>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.</p> <p>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.</p>
19 December 2013	<p>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.</p>
19 February 2014	<p>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.</p>
Early – Mid 2014	<p>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.</p> <p>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.</p> <p>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:</p> <p><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 its meeting of 15 April as no alteration was requested.”</i></p> <p>Height plane mapping within the proponent's JRPP submission was informed</p>

Table 1. Historic Planning Proposal Timeline

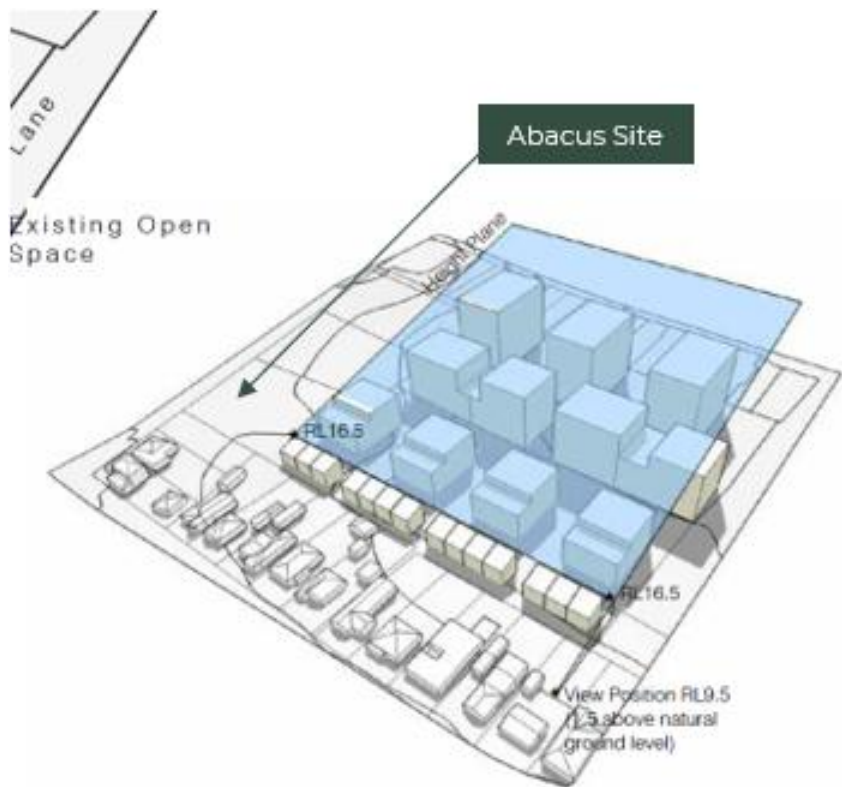
Date	Item
	<p>by an independent review led by Architectus (<b>Appendix 4</b>). An extract from the Architectus review is shown below, clearly indicating that the height plane was not tested nor intended to apply to the subject site.</p> 
13 October 2014	<p>Following advice from the JRPP, DPE (as delegate 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 data-bbox="518 389 1331 1014"> <p>Maximum Height limit</p> <table border="1"> <tr> <td>4m</td> <td>18m</td> </tr> <tr> <td>8.5m</td> <td>22.5m</td> </tr> <tr> <td>10m</td> <td>25-29.9m</td> </tr> <tr> <td>17.5m</td> <td>32m</td> </tr> </table> </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 data-bbox="450 1164 1396 1910"> <p>152-206 ROCKYPOINT ROAD, ROCKDALE, PLANNING PROPOSAL HEIGHT PLANE PERSPECTIVE</p> <p>Lippmann</p> </div> <p>The wording of the proposed clause, provided below, suggests 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>	4m	18m	8.5m	22.5m	10m	25-29.9m	17.5m	32m
4m	18m								
8.5m	22.5m								
10m	25-29.9m								
17.5m	32m								

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 15.1.</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><i>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.</i></p> <p><i>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).</i></p> <p><i>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).</i></p> <p><b>4.3A Exception to height of buildings</b></p> <p><b><i>(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.</i></b></p> <p><i>(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.</i></p> <p><i>(3) Clause 5.6 does not apply to a building on land to which this clause applies.</i></p> <p><i>(4) In this clause—</i></p>

Table 1. Historic Planning Proposal Timeline


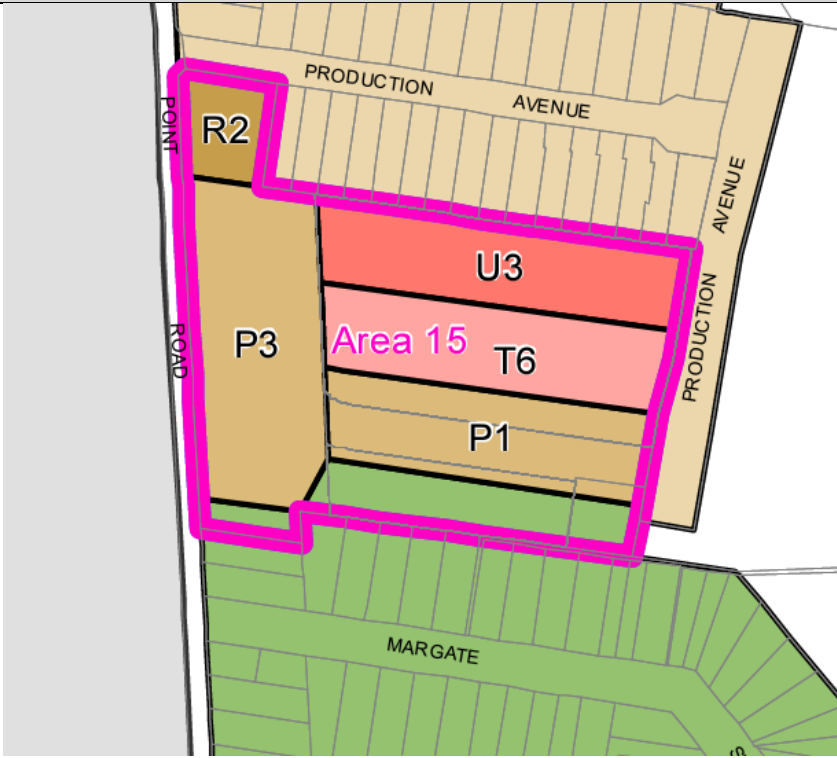
Date	Item
	<p><i>building height plane means a continuous plane commencing at a height of 1.5 metres above ground level (existing) and at a distance of 13.6 metres south of the southern boundary of Lot 22, DP 620329 (Point A), projecting to a position at a height of 11.7 metres above ground level (existing) 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 overly restrictive nature of Clause 4.3A become evident.

The above demonstrates that the height plane control was likely intended to control densities within the R4 High Density Residential zone. Notwithstanding, as set out within this report, the Planning Proposal seeks to remove the site from the boundaries of “Area 15” such that the mapped HOB limits can be realised, subject to development satisfying the Clause 6.10 Design excellence provisions.

### 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 pursue the amendment to the “Area 15” boundary and subsequent removal of 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**), the building arrangement complies 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 amend the “Area 15” boundary on the HOB map, to in effect remove application of the building height plane development standard which applies to the site under Clause 4.3A. Subsequently, development proposed on the site will instead be required to exhibit design excellence in line with Clause 6.10 of BLEP 2021.

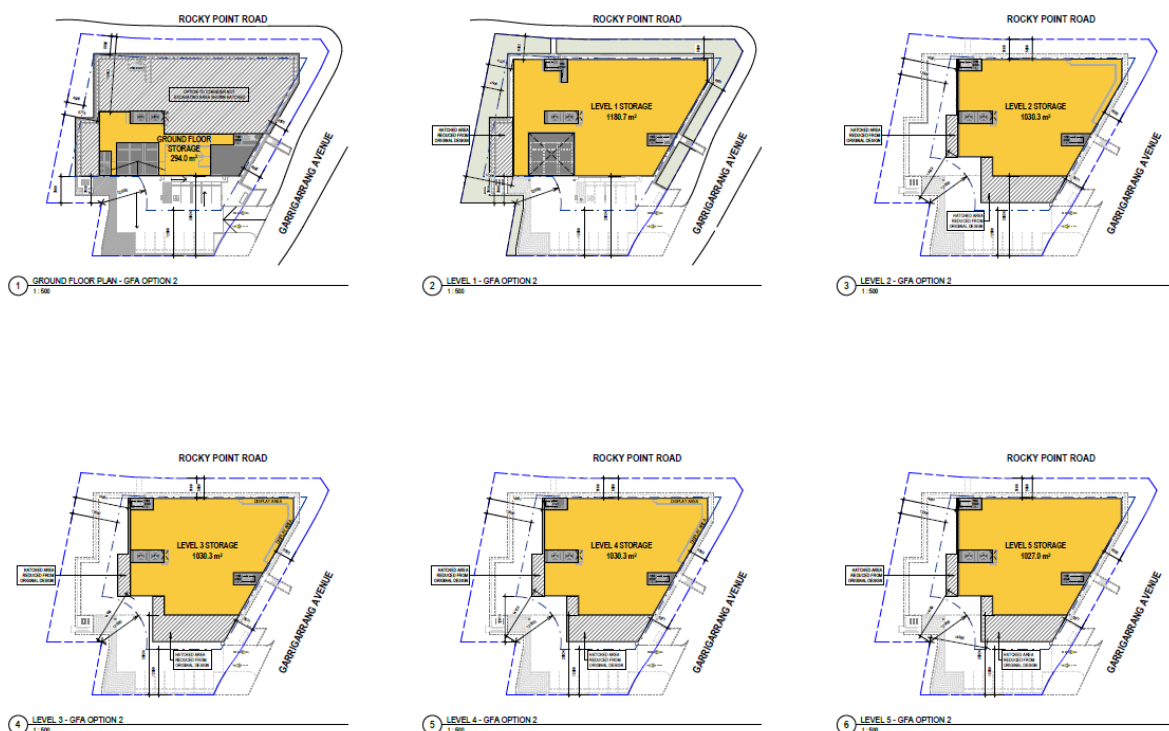
The proposed “Area 15” boundary amendment would, in turn, facilitate development opportunities at the site to realise the prescribed 8.5m – 18m HOB development standard. This would enable an appropriate quantum of employment floorspace to be delivered for the locality. The application of Clause 6.10 Design excellence would also ensure that future development exhibits high-quality built form and amenity.

### 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 a current preferred concept. Detailed plans do not yet exist, however, design refinement would be undertaken prior to the lodgement of a new development application. Of note, this will be developed in line with the prescriptions of Clause 6.10 Design excellence of BLEP 2021, ensuring the highest standard of architectural, urban and landscape design is delivered, alongside amenity protection for neighbours.

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

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To achieve the objectives of this Planning Proposal, the following amendments to BLEP 2021 are sought:

- Amend the Height of Buildings Map, specifically the outline of “Area 15”, to exclude the subject site.
- Amend the Design Excellence Map to outline the subject site in black marking.

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, and Clause 6.10(2)(b) would be triggered and apply to the land instead. The building height plane defined within the clause would therefore have no effect on future development, however, future development would need to demonstrate design excellence in accordance with Clause 6.10 of the BLEP 2021. Specifically, noting that future development is intended to be less than 40m and 12 storeys in height, the provisions of Clause 6.10(5)(a) would apply which would require future development to be reviewed by a design review panel.

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 reasonable to suggest 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

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### 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>Liveability</b>		
E6	Creating and renewing great places and local centres and respecting the District's heritage	<p>The proposal is supported with a concept building design, which has been provided primarily to demonstrate that reasonable amenity can be maintained in the event the LEP HOB and FSR mapped controls are utilised, notwithstanding the correction of the building height plane (i.e. removal of its application from the site). This concept layout will be subject to ongoing design refinement prior to lodgement of any future DA.</p> <p>Removal of the height plane application will be supplemented with the requirement for development to exhibit design excellence, in line with Clause 6.10. High standards of architectural, urban, and landscape design outcomes are there ensured as part of this process. Subsequently, the site will deliver a high-quality design that is appropriate for its prominent corner location.</p>
<b>Productivity</b>		
E12	Retaining and managing industrial and urban services land	<p>The removal of the 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.</p>

#### 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>Liveability</b>		
B9	Manage and enhance the distinctive character of the LGA through good quality urban design, respect for existing character and enhancement of the public realm	<p>The proposal is supported with a concept building design, which has been provided primarily to demonstrate that reasonable amenity can be maintained in the event the LEP HOB and FSR mapped controls are utilised, notwithstanding the removal of the building height plane from the site. This concept layout will be subject to ongoing design refinement prior to lodgement of any future DA.</p> <p>Removal of the height plane application will be supplemented with the requirement for development to exhibit design excellence, in line with Clause 6.10. High standards of architectural, urban, and landscape design outcomes are there ensured as part of this process. Subsequently, the site will deliver a high-quality design that is appropriate for its prominent corner location.</p>
<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.
B17	Retain and manage industrial and urban services land	Removing the application of Clause 4.3A would enable a development in line with the 18m mapped HOB control to come forward.

Table 5. Planning Proposal Response to Bayside Local Strategic Planning Statement 2020		
Priority		Response
		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.

## 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
Theme one. In 2032 Bayside will be a vibrant place		
1.3.2	Create and maintain vibrant, visually appealing, and welcoming places with their own village atmosphere and sense of identity	Removal of the height plane application is sought to be supplemented with the requirement for future development to exhibit design excellence, in line with Clause 6.10. High standards of architectural, urban, and landscape design outcomes are there ensured as part of this process. Subsequently, the site will deliver a high-quality design that is appropriate for its prominent corner location.
1.3.3	Promote innovative and well-designed local developments which incorporate open space and put people first	
Theme 4. In 2032 Bayside will be a prosperous community		
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.



Table 6. Planning Proposal Response to Bayside Community Strategic Plan 2023

Strategy		Response
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 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>

Table 7. Consistency with State Environmental Planning Policies

SEPP	Comment	Consistent?
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>
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	<u>Chapter 4 Remediation of land</u>  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.  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).	<b>Yes.</b>

Table 7. Consistency with State Environmental Planning Policies		
SEPP	Comment	Consistent?
	<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>	
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>
SEPP (Sustainable Buildings) 2022	<p>The Sustainable Buildings SEPP commenced on 1 October 2022 and provides a framework for the development of sustainable buildings across the State.</p> <p>The Planning Proposal does not contain any provisions which undermine or conflict with the provisions of this SEPP.</p>	<b>Yes.</b>
SEPP (Transport and Infrastructure) 2021	<p><u>Chapter 2 Infrastructure</u></p> <p>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).</p>	<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>		

Table 8. Section 9.1 Compliance Table

Ministerial Direction	Comment	Consistent
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>		
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>

Table 8. Section 9.1 Compliance Table

Ministerial Direction	Comment	Consistent
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>
1.16 North West Rail Link Corridor Strategy	Does not apply to the proposal.	<b>N/A</b>
1.17 Implementation of the Bays West Place Strategy	Does not apply to the proposal.	<b>N/A</b>
1.18 Implementation of the Macquarie Park Innovation Precinct	Does not apply to the proposal.	<b>N/A</b>
1.19 Implementation of the Westmead Place Strategy	Does not apply to the proposal.	<b>N/A</b>
1.20 Implementation of the Camellia-Rosehill Place Strategy	Does not apply to the proposal.	<b>N/A</b>
1.21 Implementation of South West Growth Area Structure Plan	Does not apply to the proposal.	<b>N/A</b>
1.22 Implementation of the Cherrybrook Station Place Strategy	Does not apply to the proposal.	<b>N/A</b>
<b>Focus area 2: Design and Place</b>		
<i>[This Focus Area was blank when the Directions were made]</i>		

Table 8. Section 9.1 Compliance Table

Ministerial Direction	Comment	Consistent
<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> <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>	<b>Yes.</b>
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>

Table 8. Section 9.1 Compliance Table

Ministerial Direction	Comment	Consistent
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, 3 July 2023) which confirms that the site is not affected by the 1% Annual Exceedance Probability (AEP) Flood or the Probable Maximum Flood (PMF).</p> <p>The site is, therefore, not flood affected, and this direction does not apply to the proposal.</p>	<b>N/A</b>
4.2 Coastal Management	Does not apply to the proposal.	<b>N/A</b>
4.3 Planning for Bushfire Protection	Does not apply to the proposal	<b>N/A</b>
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> <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.</p>	<b>Yes.</b>

Table 8. Section 9.1 Compliance Table

Ministerial Direction	Comment	Consistent
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> <li>• Facilitate the creation of additional floorspace for uses as intended within the E3 zone, i.e. light industrial and warehouse uses; and</li> </ul>	<b>Yes.</b>



Table 8. Section 9.1 Compliance Table		
Ministerial Direction	Comment	Consistent
	<ul style="list-style-type: none"> <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>	

Table 9. Site-Specific Merit Test

Criteria	Assessment
<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 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 amendment 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 remove application of the building height plane from the subject site. The height plane control, as detailed within the planning background chapter above, was likely drafted to control densities within the R4 High Density Residential zone. Its application to the E3 zone is very restrictive, 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 remedy this.

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;
- Solar access; and
- Design excellence.

#### 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.

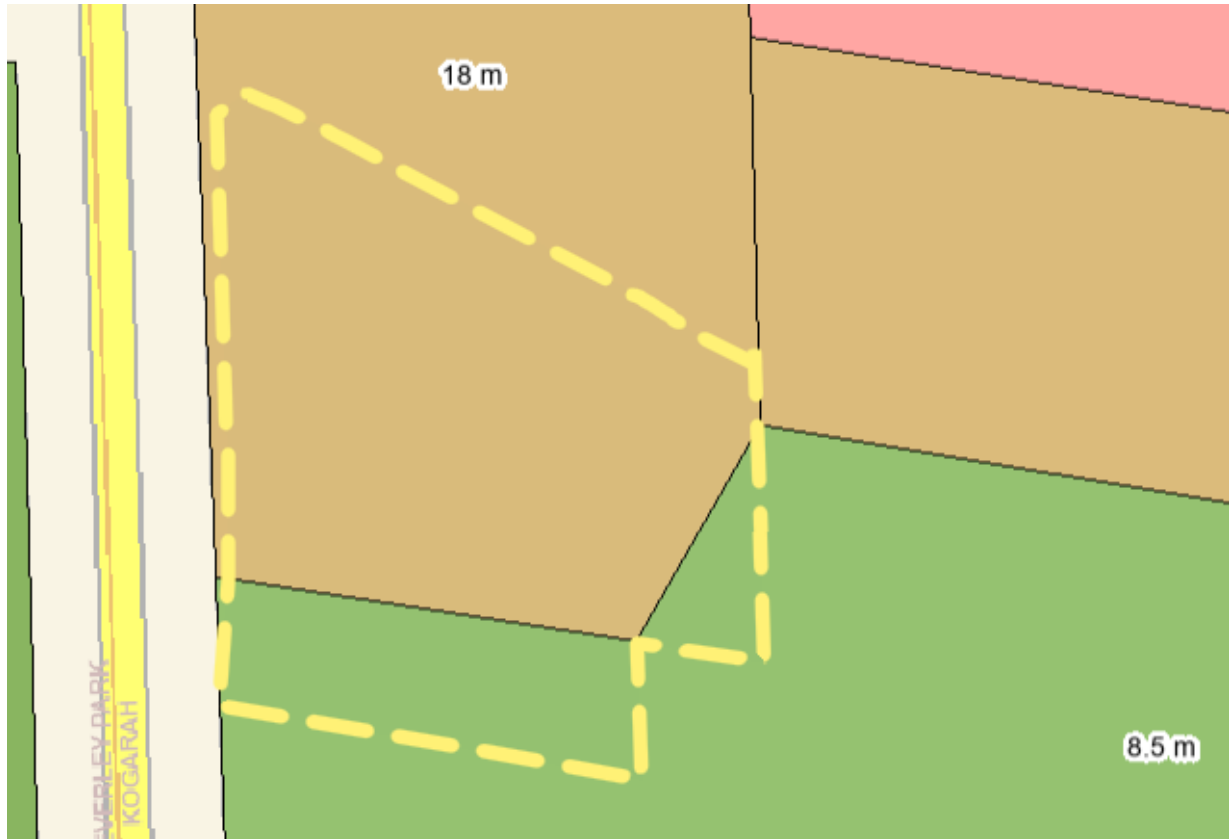
We highlight the significant disconnect between the mapped and achievable FSR controls as a result of the height plane, which is not considered to present a logical planning outcome.

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**

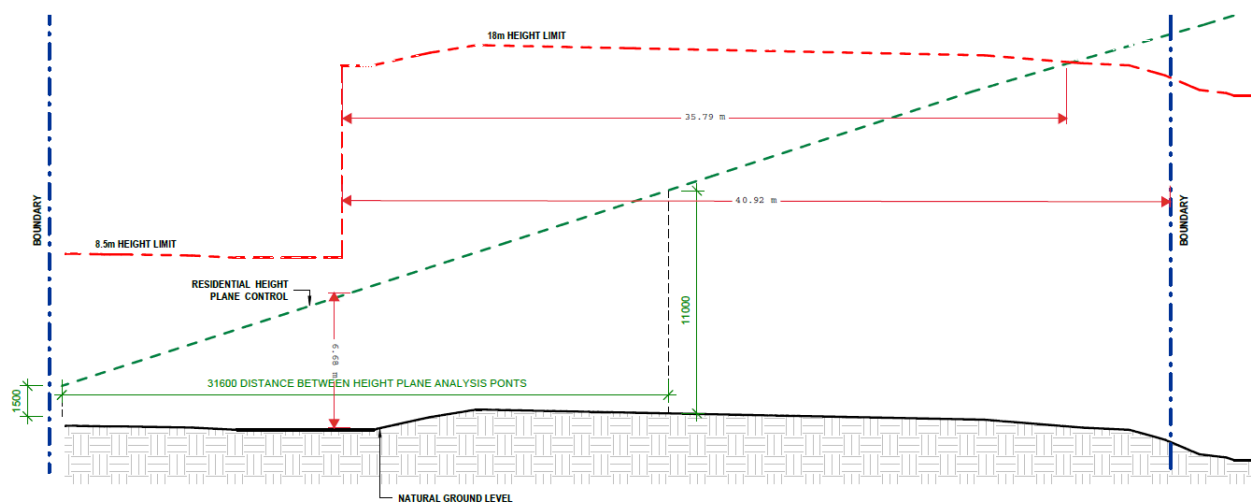
Source: NSW Planning Portal Spatial Viewer

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.



2 HEIGHT PLANE ANALYSIS -SECTION 2 (EXISTING)  
1:150

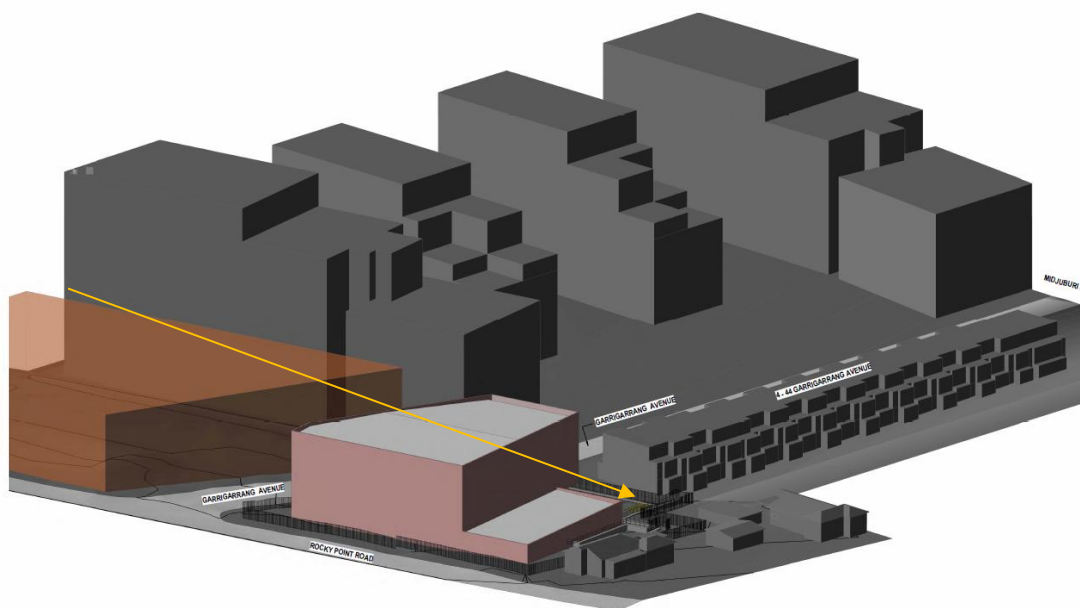
### Figure 15: Height Plane Analysis Section

Source: BN Group, modified by Patch

The proposed amendment to the extent to which Clause 4.3A applies within “Area 15” would enable development to come forward on the subject site of a scale as envisaged since the original rezoning. The concept envelope would comply with the prescribed 8.5m and 18m building height controls, such that the objectives of Clause 4.3 of BLEP 2021 can be achieved notwithstanding removal of the building height plane control.

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.

The proposed introduction of the design excellence requirements in line with Clause 6.10 ensures that a high standard of architectural, urban, and landscaping design comes forward on the site notwithstanding removal of the height plane. In addition, Clause 6.10 also requires due consideration of quality and amenity of the public domain, and the relationship between the development and neighbouring sites. Protection of amenity for neighbours will therefore be delivered as part of any future building on site, considering the prescriptions of 6.10(4). This matter has been discussed further under heading ‘Design Excellence’ below.



**Figure 16: Massing study**

Source: BN Group, modified by Patch

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 all pursuant to Clause 6.10 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

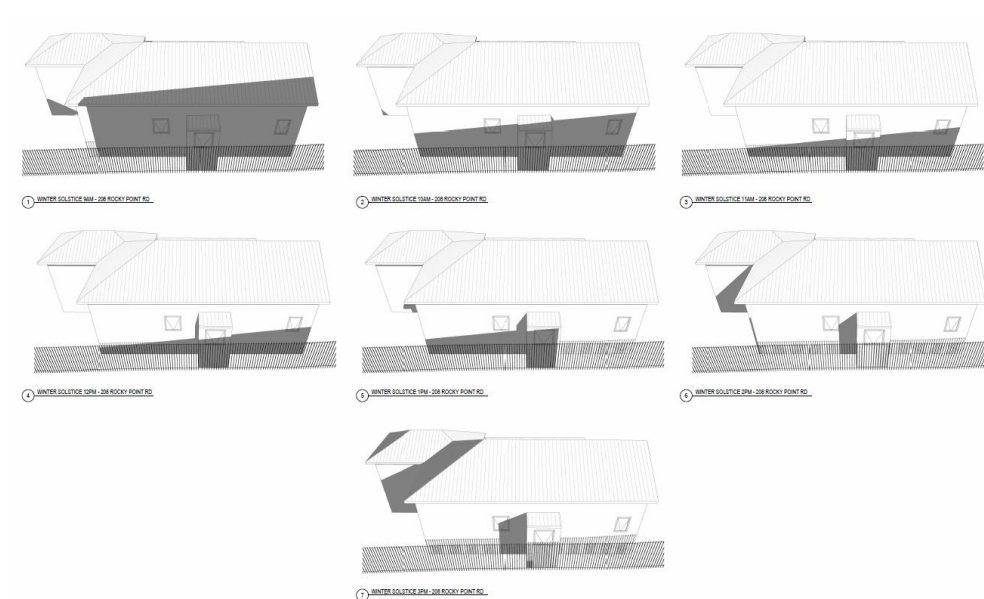
*Dwellings within the development site and adjoining properties should receive a minimum of 2 hours direct sunlight in habitable living areas (family rooms, rumpus, lounge and kitchen areas) and in at least 50% of the primary private open space between 9am and 3pm in mid-winter. Council may grant consent 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**).



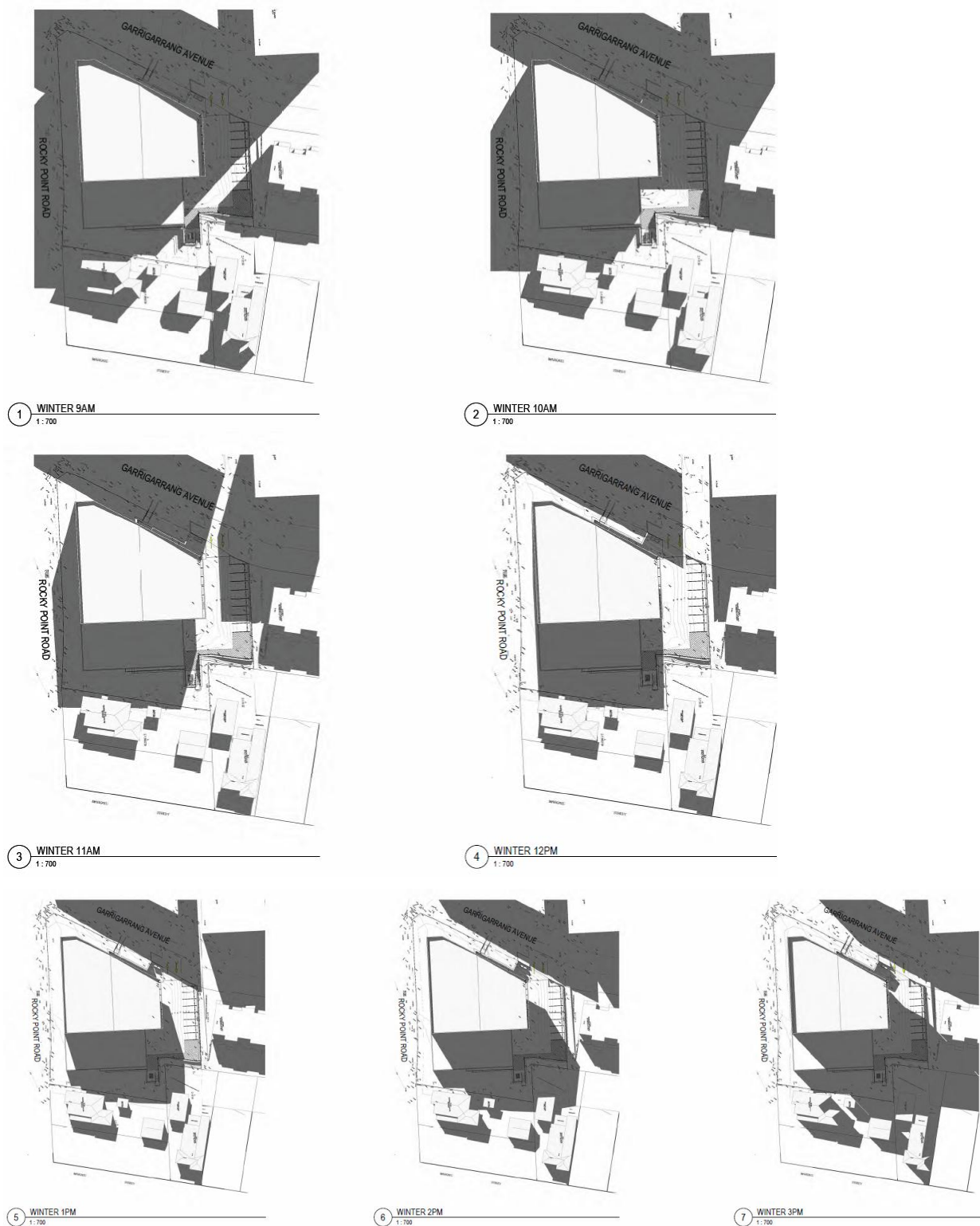
**Figure 17: Solar Study Diagrams (midwinter 9am – 3pm)**

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

## DESIGN EXCELLENCE

This Planning Proposal seeks to amend BLEP 2021 to apply Clause 6.10 to future development upon the site. Subsequently, any development on the site would need to exhibit the highest standard or architectural, urban and landscape design. For the consent authority to consider



the development as exhibiting design excellence, regard must be had to the following matters, per Clause 6.10(4) of BLEP 2021:

*“(4) In considering whether the development exhibits design excellence, the consent authority must have regard to the following matters—*

- (a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,*
- (b) whether the form, arrangement and external appearance of the development will improve the quality and amenity of the public domain,*
- (c) whether the development detrimentally impacts on view corridors,*
- (d) the requirements of any development control plan made by the Council and as in force at the commencement of this clause,*
- (e) how the development addresses the following matters—*
  - (i) the suitability of the land for development,*
  - (ii) existing and proposed uses and use mix,*
  - (iii) heritage issues and streetscape constraints,*
  - (iv) the relationship of the development with other development (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,*
  - (v) bulk, massing and modulation of buildings,*
  - (vi) street frontage heights,*
  - (vii) environmental impacts such as sustainable design, overshadowing, wind and reflectivity,*
  - (viii) the achievement of the principles of ecologically sustainable development,*
  - (ix) pedestrian, cycle, vehicular and service access, circulation and requirements,*
  - (x) the impact on, and any proposed improvements to, the public domain,*
  - (xi) achieving appropriate interfaces at ground level between the building and the public domain,*
  - (xii) excellence and integration of landscape design.”*

Therefore, due consideration will be given to ensure a sensitive built form outcome is delivered, including height transitions from the R2 low density zoned land, as well as appropriate separation distances, solar access provisions, privacy, and outlook.

In addition to the heads of considerations required above, subclause (5) prescribes that development consent cannot be granted to development which this clause applies unless:

- “(a) if the development is in respect of a building that is, or will be, higher than 12 metres or 3 storeys (or both) but not higher than 40 metres or 12 storeys (or both)—*
- (i) a design review panel has reviewed the development, and*
  - (ii) the consent authority takes into account the findings of the design review panel, or*
- ...”*

Subsequently, any proposed development at the site that exceeds 12m or 3 storeys will be subject to scrutiny by a design review panel<sup>1</sup>. The consent authority is required to take into account the findings of the panel within their assessment.

Notwithstanding removal of the building height plane control from the site, the application of Clause 6.10 in turn ensures that an appropriate built form outcome will be delivered, having regard to high quality neighbouring amenity, public domain, architectural design, and streetscape character.

### 6.3.3 Q10 – Has the planning proposal adequately addressed any social and economic impacts?

**Yes**, the Planning Proposal is expected to provide economic benefits for the local area, though the provision of additional employment floorspace and the increased opportunity that realisation of the 18m height limit would in turn allow. This accords with the strategic planning objectives for the area, as identified within the Greater Sydney Region Plan, the Eastern City District Plan and the LSPS, as outlined in Section B of this report.

The Planning Proposal is intended to facilitate a self-storage premises development on the site, which would in turn contribute to the economic viability and growth for the local area.

Social impacts associated with the proposal are expected to be minor. Amenity impacts relating to traffic and noise generation arising from the development would be appropriately mitigated and/or managed on-site, through provision of adequate parking spaces and façade treatments. These detailed design considerations would be assessed and determined at the DA phase.

A positive social benefit of the proposal, as identified above, is the increase in employment opportunities in an accessible location, which would be generated during both the construction and operational phases of the development. Furthermore, the proposal would result in the introduction of a high-quality built form outcome for Rocky Point Road, noting any future development on the site is required to exhibit design excellence.

The Planning Proposal will therefore have positive economic and social benefits for the local area and community.

## 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).

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<sup>1</sup> **Design review panel** means a panel of at least 3 persons established by the consent authority, per subclause (7) of Clause 6.10 of BLEP 2021

## **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:

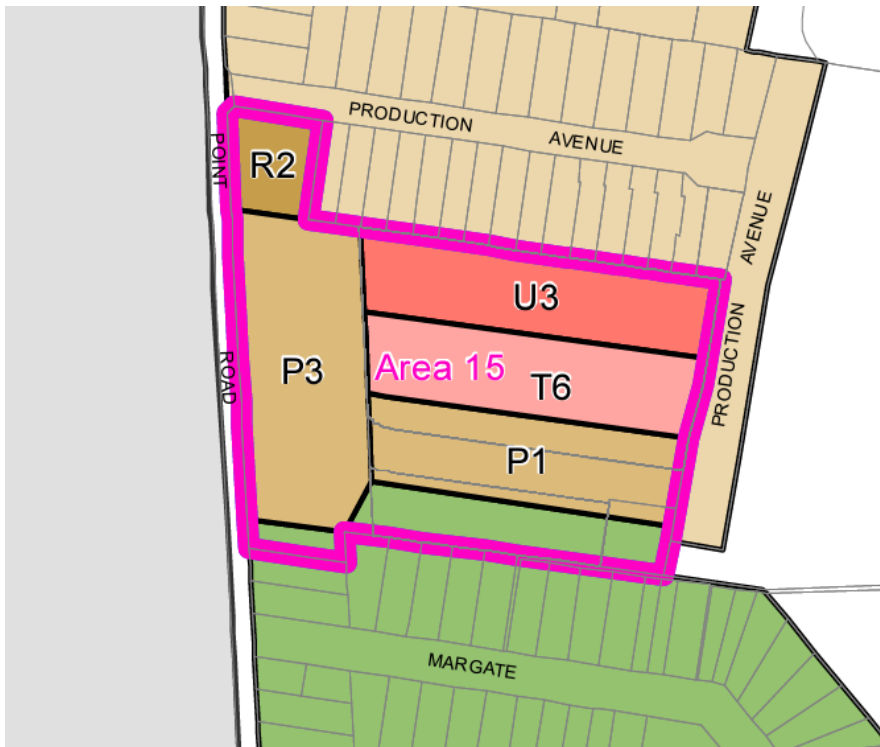
- Transport for NSW (TfNSW); and
- Department of Planning and Environment (DPE).

## 7 Part 4 – Mapping

The Planning Proposal seeks to amend the following maps under the BLEP 2021 as shown in **Figure 19**, **Figure 20**, and **Figure 21**.

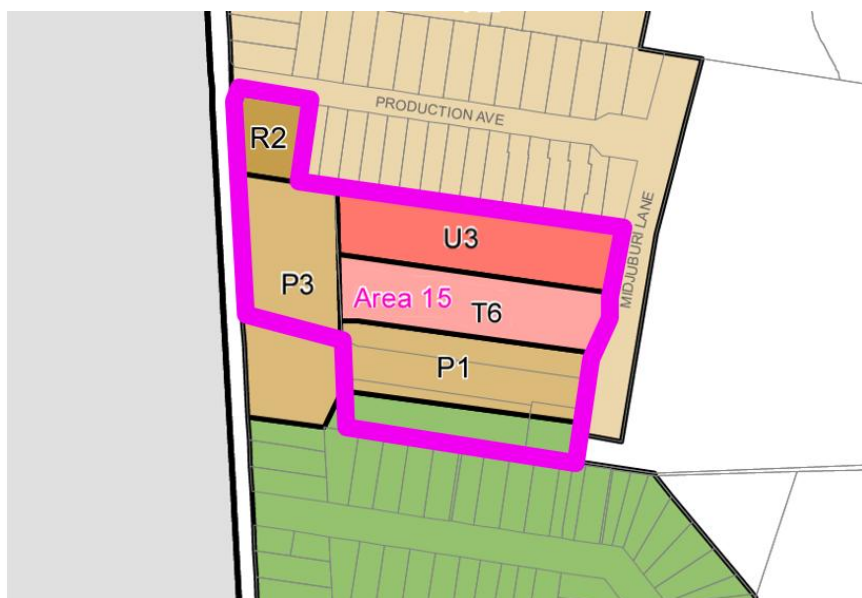
- Amend the Height of Buildings Map (HOB\_006), specifically the outline of “Area 15”, to exclude the subject site.
- Amend the Design Excellence Map (DEX\_006) outlining the subject site in black.

Indicative mapping is shown in the below figures.



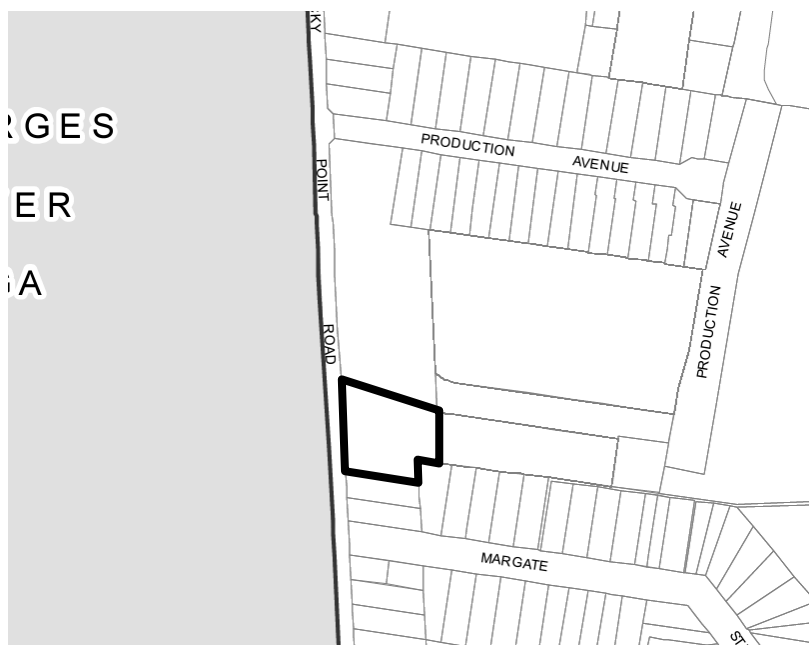
**Figure 19: Current HOB Map**

Source: NSW Legislation



**Figure 20: Proposed HOB Map with revised “Area 15” in pink**

Source: NSW Legislation, modified by Patch



**Figure 21: Proposed DEX Map with site edged heavy black**  
*Source: NSW Legislation, modified by Patch*

## 8 Part 5 – Community Consultation

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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 13 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 – December 2024
Council decision	February 2025
Gateway referral to the Department	March 2025
Gateway determination	April 2025
Commencement and completion of public exhibition period	May 2025 – June 2025
Finalisation of Planning Proposal	August 2025 – September 2025
Gazettal of LEP amendment	September 2025



## 10 Conclusion

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This report has been prepared to support a Planning Proposal at 204 Rocky Point Road, Kogarah, seeking to remove application of the Clause 4.3A building height plane control from the subject site. Subsequently, removal of the height plane control would be supplemented by the application of Clause 6.10 Design excellence to future development on the site.

As detailed within this report, the building height plane restricts logical development outcomes from occurring at the site. The amendment sought to be adopted via this Planning Proposal would enable a development to come forward on the site in line with envisaged scale and height controls prescribed within Clause 4.3 of BLEP 2021. Development would also be subject to Clause 6.10 design excellence provisions, to ensure a high-quality built form and amenity outcome is delivered.

The Planning Proposal is 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, being the planning proposal authority, who are authorised to exercise the functions of the local plan-making authority per the Gateway Determination.



**P A T C H**

PLANNING & DEVELOPMENT

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