
City Planning & Environment Committee

10/07/2024

Item No	CPE24.024
Subject	Planning Proposal - Le Beach Hut, Peter Depena Reserve, Dolls Point - Additional Permitted Use
Report by	Peter Barber, Director City Futures
File	SF24/3269

Summary

A Masterplan and Feasibility Study was undertaken by Council to investigate options for asset renewal at Le Beach Hut Restaurant and Kiosk in Peter Depena Reserve (179-183 Russell Avenue, Dolls Point). The current Le Beach Hut café and restaurant building is close to 60 years old and requires a substantial amount of work to make it compliant with current standards. It is practically at end of useful life as an asset.

Council, at its meeting on 13 May 2020 supported replacement of the current building, however, development consent for demolition and construction of a new café or restaurant cannot be granted under existing use rights, and the use is not currently permissible within the RE1 Public Recreation zone under the Bayside Local Environmental Plan 2021 (BLEP 2021). A Planning Proposal (PP) has therefore been prepared for a site-specific additional permitted use (APU) for a restaurant and café to permit the redevelopment.

This Planning Proposal seeks to amend the BLEP 2021 as follows:

- Introduce a new Additional Permitted Use in Schedule 1 that enables a restaurant or cafe as a permissible use with development consent on the site;
- Impose a maximum gross floor area (GFA) of 825sqm on future buildings for the café / restaurant Additional Permitted Use; and
- Amend the Additional Permitted Uses Map to identify where the proposed APU applies.

The PP documentation is included in **Attachment 1**.

This current PP has been the subject of a detailed strategic and site-specific merit assessment against the planning framework and is recommended for support. The PP was considered by the Bayside Local Planning Panel (BLPP) on 11 June 2024. The BLPP recommended that the PP be submitted to the Department of Planning, Housing and Infrastructure (DPHI) for a Gateway determination, seeking exhibition.

Officer Recommendation

- 1 That Council notes the advice of the Bayside Local Planning Panel;
- 2 That Council:
 - a) endorse the draft Planning Proposal for the inclusion of *Restaurant or cafe* as an Additional Permitted Use for 179-183 Russell Avenue, Dolls Point;

- b) forward the draft Planning Proposal and supporting documents to the Department of Planning, Housing and Infrastructure for a Gateway Determination with a request that Council be authorised as the Local Plan Making Authority (LPMA);
 - c) delegate authority to the General Manager to make any amendments to the Planning Proposal and supporting documents prior to public exhibition;
 - d) subject to receiving a Gateway determination from the Department of Planning, Housing and Infrastructure, and satisfying any conditions, proceed to public exhibition for community and stakeholder input; and
 - e) consider a further report following the results of public exhibition to consider any submissions received, and any changes to the draft Planning Proposal arising from the exhibition process.
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Background

The current Le Beach Hut café and restaurant building is close to 60 years old and requires a substantial amount of work to make it compliant with current standards. A Feasibility Study was undertaken to investigate the opportunities and constraints for a new building to replace the Le Beach Hut café and restaurant. The cost to bring the building up to standard is not favourable against the option of demolition and construction of a new fit for purpose building.

A concept design for the future facility was considered by Council and community consultation was undertaken in early 2021. The concept design was updated in response to the feedback received from Council, the community and internal stakeholders.

The new concept design addresses functionality and operational space, ensuring it is practical and attractive for future tenants. In addition, it provides accessible connecting paths within the park and to the newly upgraded play space.

If this draft Planning Proposal (PP) is supported through to finalisation, development consent for the new building will then be sought via a Development Application (DA).

Subject Site

The site subject of this draft PP is known as 179-183 Russell Avenue, Dolls Point and is legally described as Lot 66 to 73 in Deposited Plan 2237. The subject site is shown in **Figure 1** below, outlined in thick red.



Figure 1: Aerial photo of the Subject Site and adjacent land

The subject site is located on the southern side of Russell Ave between Clareville Avenue to the west and Cook Park to the south and east. The subject site is irregular in shape with an area of approximately 6,334sqm and is generally flat. The site is located within Depena Reserve, which is classified as community land, owned by Bayside Council and adjoins Cook Park. Cook Park is a Crown Reserve under the Crown Lands Management Act 2016.

The existing development on the site includes a single storey restaurant and café with outdoor seating, perpendicular parking associated with the Park and Reserve, part of a children's playground and picnic seating shelter. The existing building has a roofed area of approximately 930sqm and a GFA of approximately 825sqm. There are also a number of significant trees surrounding the built form within the site.

There is no dedicated parking for the current use of the building and the adjoining parking spaces are for use by the general public. The site is also accessible via bus routes 303 connecting Sans Souci to Prince of Wales Hospital and 478 that connects Miranda to Rockdale through Ramsgate. Bus stops servicing both routes in either direction are located on Russell Ave to the north and west of the site. The site is also well connected with the Cook Park / Botany Foreshore walk / cycleway.

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



Figure 2: Photos of the site and existing development surrounding the site
(Views from the front of site, rear of site, and development opposite)

Details of the Planning Proposal

The draft Planning Proposal (**Attachment 1**) seeks an amendment to Schedule 1 relating to Additional Permitted Uses (APUs) in the Bayside LEP 2021. The proposed amendments are shown in **Table 1** below.

Table 1: Proposed Amendments to the Bayside LEP 2021

Provisions	Change
Schedule 1 – Additional Permitted Use	<ul style="list-style-type: none"> Amend Schedule 1 and Additional Permitted Uses of the BLEP 2021 to permit a Café or Restaurant on land zoned RE1 Public Recreation at 179-183 Russell Ave, Dolls Point. Apply a maximum cap on Gross Floor Area (GFA) for the proposed additional permitted uses equal to the existing building equating to 825m².

The objective of the Planning Proposal (PP) is to amend the BLEP 2021 to include an 'Additional Permitted Use' within Schedule 1 of the BLEP 2021 to make restaurant and cafes a permissible use on the subject site.

The Le Beach Hut building which includes a restaurant and kiosk was approved prior to BLEP 2021, and also predates the Rockdale LEP and the 1973 Rockdale Planning Scheme Ordinance. A search of Council's records show that the building existed on the subject site prior to 1967 as alterations to the kiosk were approved (BA-1967/643) and additions to the restaurant were approved in 1972 (BA-1972/595). Consent was subsequently issued for reinstatement of the fire damaged building under BA-1989/160. Numerous subsequent applications for works have been approved since that time.

Given the cost of asset upgrades, Council plans to demolish the existing building and construct a new contemporary restaurant / café. The current restaurant / café benefits from 'existing use rights' under Division 4.11 of the Environmental Planning and Assessment Act 1979 (the Act), which will be lost if the building is completely demolished.

Under the RE1 Public Recreation zone, restaurant and cafes are a prohibited use. Accordingly, a Planning Proposal has been prepared to include restaurants and cafés as an additional permitted use on the site. This will allow rebuilding of the restaurant and café to enhance the community's use of the site.

Assessment of the Planning Proposal Request

A detailed assessment of the proposal's strategic and site-specific merit in accordance with the DPHI's LEP Making Guidelines is included in the planning assessment report to the BLPP in **Attachment 1**.

The PP is supported as it provides sufficient justification to support the proposed APU for a café / restaurant on the subject site. The PP is to formalise a use that is currently on the site and allow redevelopment of the café. A restaurant / café use complements the public open space use by serving as a focal point and bringing together users of the park and associated facilities as well as encouraging patrons of a future restaurant / café use to utilise the recreational open space. The proposed Gross Floor Area (GFA) cap associated with the APU

would limit development intensity. This limitation ensures that any future built form aligns appropriately with the location's significance and preserves the extensive views across Botany Bay. Furthermore, the GFA cap would allow for continued high-quality landscaping around the site, integrating the future built form into Depena Reserve and the broader Green Grid.

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

The Planning Proposal for Le Beach Hut is also consistent with the Cook Park Plan of Management and Masterplan. The Plan of Management authorises the current lease for the restaurant and kiosk premises and outlines the details of the lease. The PP supports the delivery of the objectives and performance targets included in the Plan of Management.

Council has also undertaken an assessment of the site-specific considerations, including an assessment of traffic and parking, built form and heritage, flooding and acid sulphate soils which is addressed in the Planning Assessment report.

Bayside Local Planning Panel Advice

The Planning Proposal was considered by the Bayside Local Planning Panel at its meeting on 11 June 2024. The Panel advises Council that the PP should be supported, and their advice is outlined below (also refer **Attachment 2** – BLPP Advice).

1. *That the Bayside Local Planning Panel recommend to Council that pursuant to s3.34 of the Environmental Planning and Assessment Act 1979, the draft Planning Proposal for 179-183 Russell Avenue, Dolls Point, be supported and submitted to the Department of Planning, Housing and Infrastructure for a Gateway determination; and*
2. *That the Bayside Local Planning Panel recommend to Council that following receipt of a Gateway Determination, public exhibition be undertaken and, following that, a post-exhibition report be presented to Council to respond to any submissions received.*
3. *That the Bayside Local Planning Panel recommend that the concept plan prepared by Sam Crawford Architects be exhibited with the Planning Proposal to inform the community the nature of what is proposed.*

The concept plans that have been included with the BLPP report have previously been subject of a Have Your Say campaign by Council. In relation to point 3 of the BLPP advice, should a Gateway determination be issued for this PP, the concept plans will form part of the exhibition package as per standard practice.

Conclusion

The proposed amendment to the BLEP 2021 for the inclusion of an APU in Schedule 1 for the use of the subject land as a *Restaurant or Cafe* has been prepared in accordance with s3.33 of the *Environmental Planning & Assessment Act 1979* and the relevant guidelines prepared by the DPHI, including the *Local Environmental Plan Making Guideline August 2023*.

The PP provides justification for the proposed amendment to BLEP 2021 and is considered to have site-specific merit. Further, it does not conflict with any strategic planning objectives, plans or policies applicable to the site.

The PP is a necessary response to achieve the intended outcomes of the proposal in response to the zoning of the site, which currently prohibits restaurant or café development.

It is therefore recommended that Council supports the draft Planning Proposal and that it be submitted to the DPHI for a Gateway Determination.

Financial Implications

Not applicable	<input type="checkbox"/>
Included in existing approved budget	<input checked="" type="checkbox"/>
Additional funds required	<input type="checkbox"/>

Community Strategic Plan

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

Risk Management – Risk Level Rating

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

Community Engagement

If Council supports the Planning Proposal, and a Gateway determination is issued, the Planning Proposal will be exhibited as per the requirements outlined in the Gateway determination and relevant legislation.

Attachments

- 1 Bayside Local Planning Panel Assessment Report (Under separate cover Attachments Part One)
- 2 Bayside Local Planning Panel Advice [↓](#)



MINUTES

Bayside Local Planning Panel - Other Applications held in the Committee Room, Botany Town Hall Corner of Edward Street and Botany Road, Botany on **Tuesday 11 June 2024 at 4:00 PM**

Decisions outside the public meeting
in according with the Operational Procedures

Present

Richard Pearson, Chairperson
Scott Barwick, Independent Expert Member
Larissa Ozog, Independent Expert Member
Emma Kirkman, Community Representative

Also present

Luis Melim, Manager Development Services
David Smith, Manager Strategic Planning
Christopher Mackey, Coordinator Development Assessment
Angela Lazaridis, Coordinator Development Administration and Advisory
Josh Ford, Coordinator - Planning Policy
Bianca Chiu, Senior Urban Planner, Strategic Planning
Christopher Lazaro, Senior Urban Planner, Strategic Planning
Reanne Salame, Development Assessment Planner
Dawson Heperi, Customer Relationship Analyst

The Chairperson opened the meeting at 4.04pm.

1 Acknowledgement of Country

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

2 Apologies

There were no apologies received.

3 Disclosures of Interest

There were no declarations of interest – refer to the attached declarations.

4 Minutes of Previous Meetings

4.1 Minutes of the Bayside Local Planning Panel - Other Applications Meeting - 14 May 2024

Decision

That the Bayside Local Planning Panel noted that the Minutes of the Bayside Local Planning Panel - Other Applications meeting held on 14 May 2024 have been confirmed as a true record of proceedings by the Chairperson of that meeting.

5 Reports – Planning Proposals

5.1 Planning Proposal - Le Beach Hut, Peter Depena Reserve, Dolls Point - Additional Permitted Use

An on-site inspection took place at the property earlier in the day.

The following person spoke at the meeting:

- Mr Adrian Melo, an applicant representative, spoke for the officer's recommendation and responded to the Panel's questions.

Advice to Council

- 1 That the Bayside Local Planning Panel recommend to Council that pursuant to s3.34 of the *Environmental Planning and Assessment Act 1979*, the draft Planning Proposal for 179-183 Russell Avenue, Dolls Point, be supported and submitted to the Department of Planning, Housing and Infrastructure for a Gateway determination; and
- 2 That the Bayside Local Planning Panel recommend to Council that following receipt of a Gateway Determination, public exhibition be undertaken and, following that, a post-exhibition report be presented to Council to respond to any submissions received.
- 3 That the Bayside Local Planning Panel recommend that the concept plan prepared by Sam Crawford Architects be exhibited with the Planning Proposal to inform the community the nature of what is proposed.

Bayside Local Planning Panel - Other Applications

11/06/2024

Name	For	Against
Richard Pearson	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Larissa Ozog	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Scott Barwick	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Emma Kirkman	<input checked="" type="checkbox"/>	<input type="checkbox"/>
