



IRF24/2266

Gateway determination report – PP-2024-1753

'Le Beach Hut', 179-183 Russell Avenue, Dolls Point

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Acknowledgment of Country

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

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Table 1 Reports and plans supporting the proposal

Relevant reports and plans
Design Report prepared by Sam Crawford Architects (December 2023)
Technical Memorandum (Traffic) prepared by SLR Consulting Australia (October 2023)
Geotechnical Investigation prepared by AssetGeoEnviro (November 2019)
Additional commentary, acid sulfate soils prepared by AssetGeoEnviro (December 2022)
Flood Impact Modelling Report prepared by Quantum Engineers (February 2024)
Bayside Local Planning Panel meeting minutes 11 June 2024
Bayside City Planning and Environment Committee meeting minutes 10 July 2024
Bayside City Planning and Environment Committee meeting agenda 10 July 2024
Bayside Council meeting minutes 24 July 2024
NSW Coastal Design Guidelines Checklist

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Bayside
PPA	Bayside Council
NAME	Le Beach Hut, Depena Reserve
NUMBER	PP-2024-1753
LEP TO BE AMENDED	Bayside Local Environmental Plan 2021
ADDRESS	179-183 Russell Avenue Dolls Point
DESCRIPTION	Lots 66 to 73 in DP 2237
RECEIVED	9/08/2024
FILE NO.	IRF24/2266
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

1.2 Objectives of planning proposal

The planning proposal contains an objective and intended outcomes to explain the intent of the proposal.

The objective of the planning proposal is to permit development for the purposes of a ‘restaurant or café’ in order to facilitate the renewal of ‘Le Beach Hut’ restaurant whilst ensuring the proposal does not result in significantly greater impacts on the public reserve than the existing development.

The objectives of this planning proposal are clear and adequate.

1.3 Explanation of provisions

The planning proposal seeks to amend the Bayside LEP 2021 to permit with consent ‘restaurant or café’ with any building having a gross floor area of no more than 825m². The planning proposal intends that this be through an additional permitted use under Schedule 1 of the LEP.

The land is currently zoned RE1 Public recreation and has no mapped height of buildings or floor space ratio maximums. The planning proposal does not seek to change the existing zoning or any of other LEP provisions applying to the land.

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

updated prior to consultation to consistently use the Standard Instrument LEP term 'restaurant or café'.

1.4 Site description and surrounding area

The planning proposal applies to crown land at 179-183 Russell Avenue, Dolls Point (Lots 66 to 73 in DP 2237) under the management of Council (**Figure 1**). The site has an area of approximately 6000m² and is located within the Peter Depena Reserve with access from Russell Avenue, Malua Street and Carruthers Drive.

The site is covered by the Cook Park Plan of Management and Masterplan which applies to crown land stretching for six suburbs along the northern and western edges of the Botany Bay foreshore.

Existing development on the site comprises the 'Le Beach Hut' restaurant, car parking, a section of the recently upgraded Dolls Point Playground and trees and vegetation.

Surrounding development includes Dolls Point Playground, Waradiel Creek, low-rise apartments buildings, The Scots College Brighton Preparatory campus, Cook Park, Dolls Point Beach and Botany Bay.

The subject site is not heritage item or within a heritage conservation area, however it is adjacent to the Cook Park and Primrose House (190 Russell Avenue) heritage items (**Figure 3**).



Figure 1 Subject site, outlined in red (source: planning proposal 2024)



Figure 2 Site context (source: Nearmap 2024)

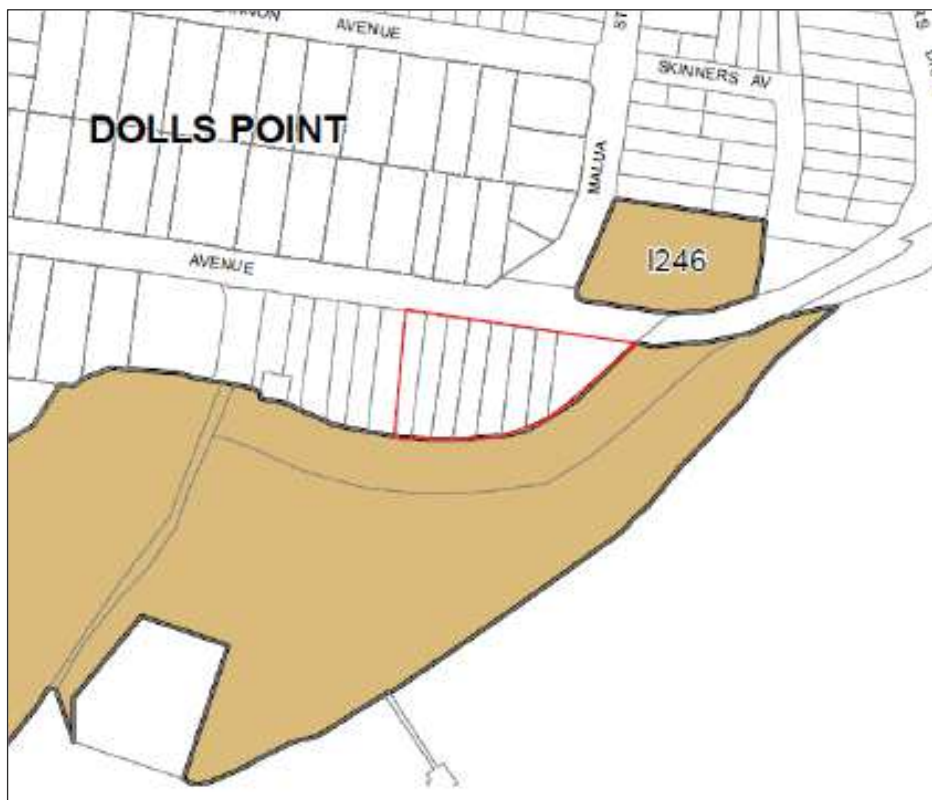


Figure 3 Extract from Bayside LEP 2021 Heritage Map (2024)

1.5 Mapping

The planning proposal includes mapping showing the proposed changes to the Additional Permitted Uses map, which is suitable for community consultation.



Figure 4 Current Additional Permitted Uses Map (source: Bayside LEP 2021, 2024)



Figure 5 Proposed Additional Permitted Uses Map (Source: planning proposal 2024)

1.6 Background

The following table provides a background of the planning proposal.

Date	Event
1950s	Original restaurant/café building constructed.
January 2021	Council exhibition of initial designs for Depena Reserve revitalisation, including café upgrade.
June/July 2023	Additional community consultation for the Depena Reserve revitalisation.
11 June 2024	Bayside LPP advised Council to proceed with planning proposal.
24 July 2024	Council resolved to forward the planning proposal for a Gateway determination.
9 August 2024	Planning proposal submitted for Gateway assessment.

2 Need for the planning proposal

This planning proposal is not the result of any strategic study or report. The proposal was initiated by Council to support its revitalisation project to renew the existing ‘Le Beach Hut’ restaurant and permit its ongoing use.

The site is zoned RE1 Public Recreation under the Bayside LEP 2021 and ‘Restaurants or cafes’ are not permitted within the zone. The proposal states that the site currently relies on existing use rights which would not be sufficient to permit the redevelopment of the site. The proposed 825m² maximum GFA seeks to limit impacts on the public reserve.

To make and ‘Restaurants or cafes’ a permissible use on the site an amendment to the Bayside LEP 2021 is required.

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

3 Strategic assessment

3.1 Regional Plan

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

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

3.2 District Plan

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

The planning proposal is consistent with the priorities for infrastructure and collaboration, liveability, productivity, and sustainability in the plan as outlined below.

The Department is satisfied the planning proposal gives effect to the District Plan in accordance with section 3.8 of the *Environmental Planning and Assessment Act 1979*. The following table includes an assessment of the planning proposal against relevant directions and actions.

Table 5 District Plan assessment

District Plan Priorities	Justification
Planning Priority E6 - Creating and renewing great places and local centres, and respecting the District's heritage	<p>This priority seeks to identify, conserve, interpret and celebrate the district's heritage values.</p> <p>The proposal seeks make 'Restaurants or cafes' permissible and facilitate renewal and ongoing use and the existing 'Le Beach Hut' restaurant. The proposal does not seek to reduce existing heritage provisions in the LEP. The planning proposal has given adequate consideration of heritage impacts.</p> <p>The proposal is consistent with this priority.</p>
Planning Priority E14 - Protecting and improving the health and enjoyment of Sydney Harbour and the District's waterways	<p>This priority seeks to ensure the coast and waterways are protected and healthier.</p> <p>The site is within the Cooks River Basin catchment and is within 82m of Botany Bay at its closest point. The planning proposal seeks to facilitate the renewal and ongoing use of an existing restaurant and include a maximum GFA to limit impacts. The 'Le Beach Hut' restaurant is recognised in the Cook Park Plan of Management and Masterplan.</p> <p>The planning proposal is consistent with this priority.</p>
Planning Priority E16 - Protecting and enhancing scenic and cultural landscapes	<p>This priority seeks to identify, enhance and protect the districts scenic and cultural landscapes.</p> <p>The site falls under the Cook Park Plan of Management and Masterplan, which notes surrounding areas as having environmental and heritage significance.</p> <p>The proposal seeks make 'Restaurants or cafes' permissible and facilitate renewal and ongoing use of the existing 'Le Beach Hut' restaurant. It does not seek to amend the principal development standards or other provisions in the LEP. The proposal has given adequate consideration to environmental impacts and is not expected to adversely affect the district's scenic and cultural landscapes.</p> <p>The proposal is consistent with this priority.</p>

District Plan Priorities	Justification
Planning Priority E18 - Delivering high quality open space	<p>This priority seeks to ensure public open space is accessible, protected and enhanced.</p> <p>The site is located in the Depena Rever. The planning proposal seeks to facilitate the renewal and ongoing use of an existing restaurant and include a maximum GFA to limit impacts.</p> <p>The planning proposal is part of the implementation of Council's Depena Reserve revitalisation project. Other elements of revitalisation, such as the playground upgrade, have already been completed.</p> <p>The planning proposal is consistent with this priority.</p>

3.3 Local

The proposal states that it is consistent with the following local plans and endorsed strategies. It is also consistent with the strategic direction and objectives, as stated in the table below:

Table 6 Local strategic planning assessment

Local Strategies	Justification
Bayside Local Strategic Planning Statement - A Land Use Vision to 2036	<p>The planning proposal is broadly consistent with the Bayside Local Strategic Planning Statement (March 2020) priorities:</p> <ul style="list-style-type: none"> • Planning Priority B2: Align land use planning with the delivery and management of assets by Bayside Council to support our community. • Planning Priority B4: Provide social infrastructure to meet the needs of the Bayside Community • Planning Priority B5: Foster healthy, creative, culturally rich and socially connected communities • Planning Priority 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 • Planning Priority B11: Develop clear and appropriate controls for development of heritage items, adjoining sites and within conservation areas • Planning Priority B21: Deliver high quality open space • Planning Priority B22: Protect and enhance scenic and cultural landscapes <p>The proposal will facilitate the renewal of the existing building with a contemporary facility consistent with Council's Depena Reserve revitalising project.</p> <p>The Department is satisfied the planning proposal is consistent with the LSPS.</p>

Bayside Community Strategic Plan 2018-2032	<p>The planning proposal states that it is consistent with the <i>Bayside Community Strategic Plan 2018-2032</i> as it will support the following Community Outcomes:</p> <ul style="list-style-type: none"> • 1.1 Bayside's places are accessible to all • 1.2 Bayside's places are dynamic and connected • 1.3 Bayside's places are people focussed • 2.1 Bayside celebrates and respects our diverse community • 2.3 The community feels valued and supported • 2.4 The community is united and proud to live in Bayside • 3.3 Bayside's waterways and green corridors are regenerated and preserved • 4.2 Bayside recognises and leverages opportunities for economic development <p>The proposal will facilitate the renewal of the existing building with a contemporary facility consistent with Council's Depena Reserve revitalising project.</p> <p>The Department is satisfied the planning proposal is consistent with the CSP.</p>
Cook Park Plan of Management and Masterplan	<p>The Cook Park Plan of Management and Masterplan applies to the site. It identifies the Depena Reserve and the surrounding areas as having environmental and heritage significance.</p> <p>It seeks to ensure that any changes or development in the park should not negatively impact on the natural environment of both land and water and provide opportunities for interpretation of the Park's natural and cultural heritage.</p> <p>The plan includes recommendations for the existing 'Le Beach Hut' building, including clear access through or around leased premises, publicly accessible facilities, and appropriate building bulk and scale.</p> <p>The Department is satisfied that the proposal is broadly consistent with the Plan and that Council has considered the relevant recommendations.</p>

3.4 Local planning panel (LPP) recommendation

On 11 June 2024, the Bayside LPP provided the following 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.*

On 10 July 2024, Council considered the advice of the LPP and resolved to support the planning proposal proceeding to Gateway.

3.5 Section 9.1 Ministerial Directions

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

Table 7 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.4 Site Specific Provisions	Inconsistent	<p>The Direction seeks to discourage unnecessarily restrictive site-specific planning controls.</p> <p>The site is public land zoned RE1 Public Recreation. 'Restaurant or café' is a prohibited use in the zone under the Bayside LEP 2021.</p> <p>The planning proposal seeks to facilitate renewal of the existing restaurant on site whilst ensuring that the development does not exceed a maximum GFA of 825m² on future buildings.</p> <p>This will support the ongoing use of the restaurant whilst not permitting expansion of uses that may compete with the primary recreation purpose of the reserve and limit impacts on the coastal land. This provides a clear and simpler planning pathway for the site.</p> <p>The alternative of a site specific provision would be inclusion of the use of 'restaurant or café' as a permitted land use in the RE1 Public Recreation zone. Broadening this permissibility may lead to unintended consequences and development misaligned to the objectives of the zone.</p> <p>Inconsistency with this direction is considered justified in accordance with the terms of the direction.</p>
3.2 Heritage Conservation	Consistent	<p>The Direction seeks to conserve items, areas, objects and places of environmental and indigenous heritage significance.</p> <p>The site is not a heritage item or within a heritage conservation area. There are two heritage items adjacent to the site:</p> <ul style="list-style-type: none"> • Cook Park • Primrose House (190 Russell Avenue). <p>The proposal aims to facilitate renewal and ongoing use of an existing restaurant. It does not seek to reduce existing heritage provisions in the LEP. Clause 5.10 of the LEP ensures heritage impacts are considered as part of development applications</p> <p>The planning proposal is consistent with the terms of the Direction.</p>

4.1 Flooding

Inconsistent

This Direction seeks to ensure that development of flood prone land is consistent with the Government’s Flood Planning Framework and ensure LEP provisions are commensurate with the flood behaviour and consider the potential impacts on and off the land.

The planning proposal is supported by a Flood Impact Modelling Report prepared by Quantum Engineers (February 2024). The site is identified as affected in the 1% AEP and PMF flood events, as well at 0.9m Sea Level Rise. It is affected by overland flooding from the local upstream catchment, which flows towards Waradiel Creek, located 100m west of the site.

The report shows existing overland flow paths across the site are largely maintained at a H1 categorisation in the 1% AEP and at a H1 with some areas of H2 in both the PMF event and 0.9m Sea Level Rise scenario (see **Figures 6, 7 and 8**). H1 is generally safe for people, buildings and vehicles and H2 is generally unsafe for small vehicles. The report also provides recommendations for evacuation management.

The planning proposal seeks to enable renewal of the existing restaurant and does not seek to rezone the land or to permit additional sensitive land uses. It does not contain provisions that will hinder the application of existing flood risk management planning controls. It is unlikely to significantly affect existing flood behaviour.

The planning proposal is justified in accordance with the terms of the Direction.

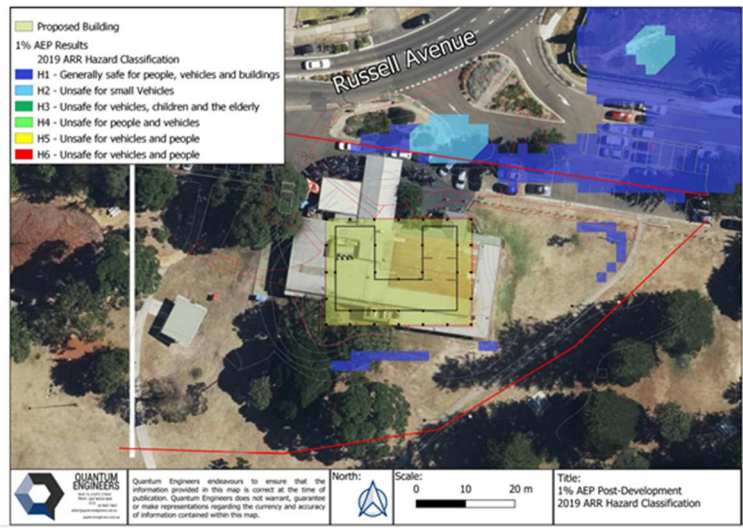
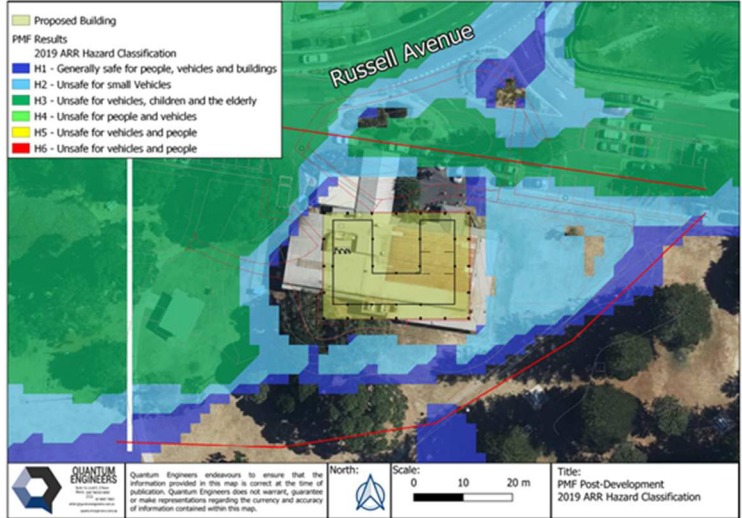
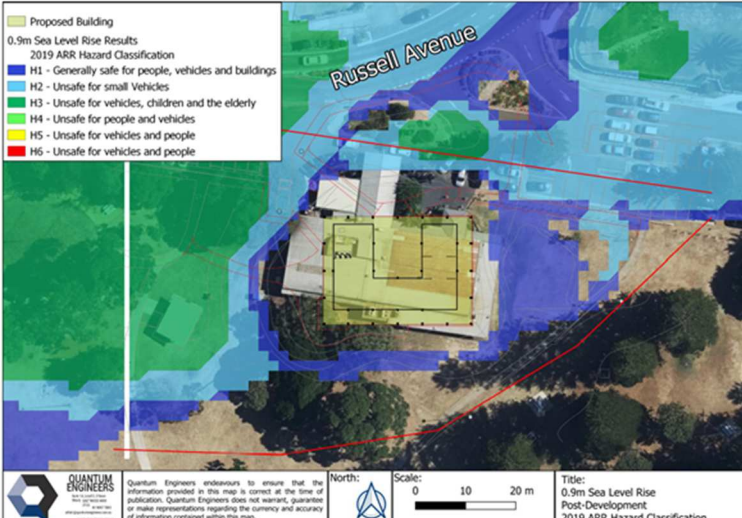


Figure 6 Post Development Flood Hazard Categorisation in 1% AEP event (Source: Quantum Engineers 2024)

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
		 <p>Figure 7 Post Development Flood Hazard Categorisation in PMF event (Source: Quantum Engineers 2024)</p>  <p>Figure 8 Post Development Flood Hazard Categorisation for 0.9m Sea Level Rise (Source: Quantum Engineers 2024)</p>

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
4.2 Coastal Management	Consistent	<p>The objective of this Direction is to protect and manage coastal areas of NSW.</p> <p>A small part of the site is mapped on both the Coastal Environment Area Map and the Coastal Use Area Maps under the SEPP (Resilience and Hazards) 2021. It is covered by the Georges River Estuary Coastal Zone Management Plan, which is currently being transitioned to a Coastal Management Plan.</p> <p>The proposal does not include any rezoning of land in the coastal zone and includes suitable provisions to support ongoing use of the existing restaurant whilst limiting the potential intensification of the use.</p> <p>The planning proposal is consistent with the terms of the Direction.</p>
4.5 Acid Sulfate Soils	Consistent	<p>This direction seeks to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils.</p> <p>The site is identified in the Bayside LEP 2021 as potentially affected by Class 3 acid sulfate soils.</p> <p>The planning proposal is supported by an Acid Sulfate Soils Statement prepared by AssetGeoEnviro. It identified that the presence of acid sulfate soils is unlikely to a depth of 6m and as the concept plans do not propose excavation an Acid Sulfate Soil Management Plan is not required at this time.</p> <p>The planning proposal further does not seek to change the RE1 Public Recreation zone and the Bayside LEP 2021 contains suitable provisions to ensure that this matter can be appropriately considered during development processes.</p> <p>The planning proposal is consistent with the terms of this Direction.</p>

3.6 State environmental planning policies (SEPPs)

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

Table 8 Assessment of planning proposal against relevant SEPPs

SEPPs	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
SEPP (Resilience and Hazards) 2021	Consistent	<p>Chapter 2 of the SEPP aims to promote an integrated and co-ordinated approach to land use planning in the coastal zone in a manner consistent with the objects of the <i>Coastal Management Act 2016</i>.</p> <p>A small part of the site is mapped on both the Coastal Environment Area Map and the Coastal Use Area Map of the SEPP. The site is in the existing Georges River Estuary Coastal Zone Management Plan, which is currently being transitioned to a Coastal Management Plan.</p> <p>The planning proposal seeks to facilitate renewal of the existing restaurant and includes provisions to limit the GFA of the use. It does not reduce existing provisions for coastal management. The planning proposal will not hinder the operation of the SEPP.</p>

4 Site-specific assessment

4.1 Environmental

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

Table 9 Environmental impact assessment

Environmental Impact	Assessment
Natural hazards	An assessment against the provisions of Section 9.1 Directions 4.1 Flooding and 4.5 Acid Sulfate Soils is in Section 3.5 of this report.
Building Bulk, Visual impact and Scale	<p>The planning proposal seeks to facilitate renewal of the exiting restaurant and include a maximum GFA provisions to limit expansion of the use. This will also allow the site to retain its amenity as a public foreshore park and recreation space by restricting the scale of future development.</p> <p>Any proposed built form changes associated with the redevelopment of the existing restaurant will be subject to the applicable development assessment processes.</p>

Noise and amenity	<p>The proposal to retain the existing restaurant use and is unlikely to result in a significant increased impact on noise and amenity. Council in their planning proposal and concept design have considered potential acoustic impacts from patrons and operation.</p> <p>Any potential noise and amenity impacts will need to be managed through design responses and will be assess as part of any future DA.</p>
Heritage	Heritage conservation is discussed in Section 3.5 of this report.
Traffic and Transport	<p>The proposal is supported by a Traffic Technical Memorandum provided at Appendix 2. The memorandum notes that future traffic generation potential will be similar to, or less than, the existing restaurant on site.</p> <p>Given the proposal seeks to allow a similar arrangement to the existing use, it is unlikely there will be significant additional traffic and transport impacts directly resulting from the proposal. The proposal notes a detailed traffic impact assessment (TIA) report will be prepared to support the future DA.</p> <p>The Department is satisfied that impacts can be adequately addressed through future development assessment processes when a detailed design has been prepared.</p>

4.2 Social and economic

The proposal is unlikely to generate any significant adverse social or economic impacts. It does not seek to rezone land or reduce the permissible density of land in the Bayside LGA. It seeks to enable processes to permit the renewal and ongoing operation of an existing restaurant.

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

4.3 Infrastructure

There is no specific infrastructure demand that will directly result from the planning proposal. The site is serviced by water, sewer services, electricity, gas and telecommunications. The proposal is not seeking to materially intensify the use of the land and is unlikely to generate significant demand for infrastructure or services.

5 Consultation

5.1 Community

Council proposes a community consultation period of 20 working days.

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

5.2 Agencies

Agency consultation is not required as part of the Gateway determination.

6 Timeframe

Council proposes a 10 month time frame to complete the LEP.

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

The Department recommends an LEP completion date of 11 July 2025 in line with its commitment to reducing processing times and with regard to the benchmark timeframes. A condition to the above effect is recommended in the Gateway determination.

7 Local plan-making authority

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

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

8 Assessment summary

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

- It is generally consistent with the Greater Sydney Region Plan, Eastern City District Plan, Council's Local Strategic Planning Statement, and the relevant SEPPs and Section 9.1 Directions. The inconsistency with Section 9.1 Directions 1.4 Site Specific Provisions and 4.1 Flooding is justified in accordance with the terms of the Direction.
- The proposal will facilitate the renewal and continued use of the existing restaurant.
- An amendment to the Bayside LEP 2021 is the best means of achieving the objectives and intended outcomes of the planning proposal.

9 Recommendation

It is recommended the delegate of the Secretary:

- Agree that any inconsistency with section 9.1 Direction 1.4 Site Specific Provisions and 4.1 Flooding is justified in accordance with the terms of the Directions.

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

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

1. The planning proposal is to be updated to prior to consultation to consistently use the Standard Instrument LEP term 'restaurant or café'.
2. The planning proposal should be made available for community consultation for a minimum of 20 working days.

Given the nature of the planning proposal, it is recommended that the Gateway authorise council to be the local plan-making authority and that an LEP completion date of 11 July 2025 be included on the Gateway.



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11 October 2024

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