

MEETING NOTICE

The **Ordinary Meeting** of
Bayside Council
will be held in the Rockdale Town Hall, Council Chambers,
Level 1, 448 Princes Highway, Rockdale
on **Wednesday 12 September 2018** at **7.00 pm**

AGENDA

- 1 ACKNOWLEDGEMENT OF TRADITIONAL OWNERS**
- 2 OPENING PRAYER**
- 3 APOLOGIES**
- 4 DISCLOSURES OF INTEREST**
- 5 MINUTES OF PREVIOUS MEETINGS**
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- 7 PUBLIC FORUM**

Members of the public, who have applied to speak at the meeting, will be invited to address the meeting.

Any item the subject of the Public Forum will be brought forward and considered after the conclusion of the speakers for that item.
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The meeting will be video recorded and live streamed to the community via Council's Facebook page, in accordance with Council's Code of Meeting Practice.

Meredith Wallace
General Manager

Council Meeting

12/09/2018

Item No	5.1
Subject	Minutes of the Council Meeting - 8 August 2018
Report by	Michael Mamo, Director City Performance
File	SF17/2828

Officer Recommendation

That the Minutes of the Council meeting held on 8 August 2018 be confirmed as a true record of proceedings.

Present

Mayor, Councillor Bill Saravinovski
Deputy Mayor, Councillor Joe Awada
Councillor Liz Barlow
Councillor Ron Bezic
Councillor Christina Curry
Councillor James Macdonald
Councillor Ed McDougall
Councillor Scott Morrissey
Councillor Michael Nagi
Councillor Vicki Poulos
Councillor Paul Sedrak
Councillor Andrew Tsounis

Also Present

Meredith Wallace, General Manager
Michael McCabe, Director City Futures
Debra Dawson, Director City Life
Michael Mamo, Director City Performance
Colin Clissold, Director City Presentation
Bruce Cooke, Acting Manager Governance & Risk
Matthew Walker, Manager Finance
Clare Harley, Manager Strategic Planning
Samantha Urquhart, Manager Property
Vincenzo Carrabs, Head of Communications & Events
Bill Niklovski, IT Support Officer
Lauren Thomas, Governance Officer

The Mayor opened the meeting at 7:08 pm.

The Mayor informed the meeting, including members of the public, that the meeting is being video recorded and live streamed to the community via Council's Facebook page, in accordance with Council's Code of Meeting Practice.

1 Acknowledgement of Traditional Owners

The Mayor affirmed that Bayside Council respects the traditional custodians of the land, elders past and present and future leaders, on which this meeting takes place, and acknowledges the Gadigal and Bidjigal Clans of the Eora Nation.

2 Opening Prayer

Pastor Andrew Harper of Bay City Church, Rockdale, opened the meeting in prayer.

3 Apologies

RESOLUTION

Minute 2018/166

Resolved on the motion of Councillors Nagi and Macdonald

That the following apologies be received and leave of absence granted:

Councillor Tarek Ibrahim

Councillor Dorothy Rapisardi

Councillor Petros Kalligas

4 Disclosures of Interest

Councillor Saravinovski declared a Less than Significant Non-Pecuniary Interest in Item 8.15 on the basis that he had looked at the list of names and he knows some of the people who have been nominated, but stated he would remain in the Chamber for consideration and voting on the matter because he has no professional relationship with any of them.

Councillor McDougall declared a Less than Significant Non-Pecuniary Interest in Item 8.15 on the basis that he knows a number of people who have been nominated, but stated he would remain in the Chamber for consideration and voting on the matter because he has no professional relationship with any of them.

Councillor Curry declared a Less than Significant Non-Pecuniary Interest in Item 8.15 on the basis that she knows one of the nominees who was a former Councillor of the City of Botany Bay at the same time that she was a Councillor, but stated she would remain in the Chamber for consideration and voting on the matter because she has no professional relationship with him.

5 Minutes of Previous Meetings

5.1 Minutes of the Council Meeting - 11 July 2018

RESOLUTION

Minute 2018/167

Resolved on the motion of Councillors Tsounis and Nagi

That the Minutes of the Council meeting held on 11 July 2018 be confirmed as a true record of proceedings.

Councillor Vicki Poulos advised the meeting that the resolution of the ordinary Council Meeting held on 14 March 2018, being Minute number 2018/050, nominated her attendance at the National Local Roads and Transport Congress, on 20-22 November 2018 in Uluru. Due to unforeseen circumstances, she would like to withdraw her nomination as she is now unable to attend.

6 Mayoral Minutes

6.1 Mayoral Minute - The Big Drought Appeal

RESOLUTION

Minute 2018/168

Resolved on the motion of Councillors Saravinovski and Tsounis

- 1 That Council recognises and supports our rural NSW farming communities who are facing a devastating drought by making a \$5,000 donation to The Big Dry Drought Appeal and that Council will also donate an additional \$1000 for each Sydney metropolitan council that accepts the Mayor's challenge by donating \$5000 or more to the Appeal.
- 2 That Council lobby the State and Federal Governments to provide further financial support to the New South Wales rural farming communities.

7 Public Forum

Details associated with the presentations to the Council in relation to items on this agenda can be found in the individual items.

8.1 128 and 130-150 Bunnerong Road, Eastgardens - Meriton Voluntary Planning Agreement Offer

Mr Matthew Lennartz, speaking for the Officer Recommendation, addressed the Council

Division called by Councillor Saravinovski

For: Councillors Tsounis, Saravinovski, Sedrak, Morrissey, Curry, Nagi, Poulos, McDougall, Macdonald, Bezic, Barlow and Awada

The division was declared carried

RESOLUTION

Minute 2018/169

Resolved on the motion of Councillors Tsounis and Nagi

That Council drafts a Voluntary Planning Agreement in relation to 128 and 130-150 Bunnerong Road, Eastgardens (known as BATA II) for public exhibition for a period of 28 days as profiled in Table 2 of this report.

8.6 Ador Reserve - Summer Allocation

Mr Angelo Bonura, speaking for the Officer Recommendation, addressed the Council.

RESOLUTION

Minute 2018/170

Resolved on the motion of Councillors Nagi and Tsounis

That Council awards a permit to St George Football Association, Rockdale City Suns and St George Football Club for the 2018/2019 summer use in accordance with Council adopted 2018/2019 Fees and Charges and a further rate to be determined subject to lighting arrangements and costs.

8 Reports

8.2 Draft Planning Proposal: 8 Princess Street, Brighton Le Sands

RESOLUTION

Minute 2018/171

Resolved on the motion of Councillors McDougall and Nagii

That this matter be referred back to the Bayside Planning Panel and all the information pertaining to the previous Development Application for this property be made available to the Panel; including the breach of height and FSR controls that required a Clause 4.6 Variation.

Division called by Councillor Saravinovski

For: Councillors Tsounis, Saravinovski, Sedrak, Morrissey, Curry, Nagi, Poulos, McDougall, Macdonald, Bezic, Barlow and Awada

The division was declared carried

8.3 Bayside Council F6 Submission

RESOLUTION

Minute 2018/172

Resolved on the motion of Councillors Barlow and Tsounis

- 1 That Council endorses the attached submission prepared in response to NSW Roads and Maritime Service F6 Extension Stage 1 New M5 Motorway at Arncliffe to President Ave at Kogarah Project Overview documentation, including the following additional items:
 - a. That an additional air quality monitoring stations are provided adjacent to the two proposed ventilation stacks and that these monitoring stations are located at an appropriate elevation to reflect the elevated ventilation outlets design.
 - b. That additional air quality monitoring station to be located close to O'Connell St, Monterey to reflect the likelihood of significant increase of traffic on this roadway as a result of the proposed motorway.
 - c. That the RMS undertakes an analysis of the impact of increased traffic on the safety of existing intersections including Marshall St and Rocky Point Rd, Kogarah.
- 2 That Council endorses the inclusion of the Moorefield Estate submission as an appendix to Council's submission.
- 3 That a copy of Council's submission be provided to Bayside's local Members of Parliament.

8.4 The Future of the Fishermans Club- 100B Bestic Street, Kyeemagh

RESOLUTION

Minute 2018/173

Resolved on the motion of Councillors Nagi and Poulos

That approval be granted for the following:

- 1 To proceed with recommended Option 2 within this report, to replace the existing 'Fishermans Club' building, and to finalise the scope, funding and program of this option.
- 2 To engage an appropriate consultant to undertake a Masterplan for the Muddy Creek precinct.

- 3 To continue to work with the Muddy Creek Boating and Fishing Association to explore a longer term licence for their current occupation, considering the demolition of the existing Fisherman's Club building.
- 4 A further report be submitted in early 2019 to provide an update on the scope, funding and the program to implement Option 2, referred to in this report.

8.5 Sale of Lots 101,103,104 in DP 445997 at 1545 Botany Road, Botany

RESOLUTION

Minute 2018/174

Resolved on the motion of Councillors Morrissey and Saravinovski

That Item 8.5 be determined in Closed Session at the end of the Council meeting to discuss the confidential attachment.

8.7 Tender for Foreshore Upgrade Works at Cahill Park and Pine Park

RESOLUTION

Minute 2018/175

Resolved on the motion of Councillors Tsounis and Awada

- 1 That, with reference to Section 10(A)(2)(d)(i) of the Local Government Act 1993, the attachment relates to(d)(i) commercial information of a confidential nature that would, if disclosed, prejudice the commercial position of the person who supplied it. It is considered that if the matter were discussed in an open Council Meeting it would, on balance, be contrary to the public interest due to the issue it deals with.
- 2 That in accordance with Regulation 178 (1) (a) of the Local Government (General) Regulations 2005, Council accepts the tender of Antoun Civil Engineering (Aust) Pty Ltd for the contract F18/447 being the construction of the Major Park and Foreshore upgrades at two prime locations: Pine Park at Ramsgate Beach and Cahill Park at Wolli Creek for the amount of \$7,175,923.64 exclusive of GST.
- 3 That Carruthers Drive between The Grand Parade and Sandringham Street be converted to a road related area and remain open to cyclist, pedestrians, emergency services and service vehicles, but otherwise be closed to the public for driving, riding or parking vehicles.

8.8 Call for Motions and Nominations for Councillor Attendance at Local Government NSW Annual Conference, Albury NSW

RESOLUTION

Minute 2018/176

Resolved on the motion of Councillors Sedrak and Poulos

- 1 That Councillors Awada, Macdonald, Nagi, Curry and Tsounis be authorised to attend the 2018 Local Government NSW Annual Conference and associated functions.
- 2 That the nominations above be registered to attend the relevant conference(s) including all associated functions in accordance with the Expenses and Facilities Policy.
- 3 That motions be submitted to the 2018 Local Government NSW Annual Conference as follows:
Increased Fines for Illegal Waste Dumping for Local Government
Beach Erosion

It was noted that Councillor Nagi stated that he would pay the costs associated with attending the conference.

8.9 Statutory Financial Report for June 2018

RESOLUTION

Minute 2018/177

Resolved on the motion of Councillors Nagi and Bezic

That the Statutory Financial Report by the Responsible Accounting Officer be received and noted.

8.10 Councillors Expenses and Facilities Policy Review

RESOLUTION

Minute 2018/178

Resolved on the motion of Councillors Tsounis and Barlow

- 1 That the draft Councillor Expenses and Facilities Policy, attached to the report be placed on public exhibition for 28 days in accordance with Section 253 of the Local Government Act.
- 2 That a further report on this matter be submitted to the next Council meeting following the expiration of the public exhibition period to consider adoption of this policy.

8.11 Planning Panel Name Change

RESOLUTION

Minute 2018/179

Resolved on the motion of Councillors Nagi and Morrissey

That the Bayside Planning Panel be renamed the Bayside Local Planning Panel.

8.12 Public Interest Disclosures Policy

RESOLUTION

Minute 2018/180

Resolved on the motion of Councillors Nagi and Awada

That the Public Interest Disclosures Policy, annexed to the report, be adopted.

8.13 Review of Key Governance Codes

RESOLUTION

Minute 2018/181

Resolved on the motion of Councillors Nagi and Tsounis

- 1 That Council determines, as a result of the current review and anticipated regulatory changes, that it makes no changes to the current Code of Meeting Practice, and Code of Conduct and Procedures other than any minor cosmetic edits.
- 2 That the Code of Meeting Practice, and Code of Conduct and Procedures, attached to the report, be adopted.
- 3 That the Code of Meeting Practice and Code of Conduct and Procedures be further reviewed once the requirement to adopt the new/revised model codes are prescribed.
- 4 That 'Committees of Council' and 'Advisory Committees' be clarified.

8.14 Disclosure of Interest Return

RESOLUTION

Minute 2018/182

Resolved on the motion of Councillors Nagi and Poulos

That the information be received and noted.

8.15 Community Representatives - Sydney East Planning Panel and Bayside Local Planning Panel

MOTION

Motion moved by Councillors Nagi and Awada

- 1 That Council nominates the following three non-councillor members as alternate members to the Sydney East Planning Panel from expressions of interest of community representatives members for the Bayside Local Planning Panel.

Louay Moustapha, Michael Shiels and Paul Pappas

- 2 That, in the case that the nominated persons decline Council's invitation to be a representative, the General Manager, in consultation with the Mayor, appoint other suitable representatives.

AMENDMENT

Amendment moved by Councillor Curry

That Ann Mairaed Bilmon be added to the nominations.

RESOLUTION

Minute 2018/183

Resolved on the motion of Councillors Nagi and Awada

- 1 That Council nominates the following four non-councillor members as alternate members to the Sydney East Planning Panel from expressions of interest of community representatives members for the Bayside Local Planning Panel:

Louay Moustapha, Michael Shiels, Paul Pappas and Ann Mairaed Bilmon.

- 2 That, in the case that the nominated persons decline Council's invitation to be a representative, the General Manager, in consultation with the Mayor, appoint other suitable representatives.

9 Minutes of Committees

9.1 Minutes of the Sport & Recreation Committee Meeting - 16 July 2018

RESOLUTION

Minute 2018/184

Resolved on the motion of Councillors Macdonald and Morrissey

- 1 That the Minutes of the Sport & Recreation Committee meeting held on 16 July 2018 be received and the recommendations therein be adopted.
- 2 That it be noted:
 - that the Sport & Recreation Committee discussed an issue previously raised at the meeting of 14 May 2018 regarding the use of Booralee Park for a group of Under 12 year olds relocated temporarily from Mutch Park for up to 4 hours per week;
 - that it be confirmed that no issues were raised about this matter at the previous meeting and that it was unanimously agreed that the hire to this group was appropriate; and
 - that the Committee requests that the General Manager respond to the Member for Heffron clarifying the Committee's views.
- 3 That a GM Briefing Session be held to address Council's support of circuses and representatives from Stardust circus be invited to attend.
- 4 That Todd McHardy from Bluefit be invited to address the next meeting of the Sport and Recreation Committee regarding maintenance issues at Angelo Anestis Aquatic Centre.
- 5 That Item 5.2 - Fry's Reserve Cricket Net Upgrade - of the Sport & Recreation Committee Meeting held on 16 July 2018 be referred back to the next meeting of the Sport and Recreation Committee for further discussion.

9.2 Minutes of the Finance & Asset Management Committee Meeting - 30 July 2018

RESOLUTION

Minute 2018/185

Resolved on the motion of Councillors Morrissey and Tsounis

That the Minutes of the Finance & Asset Management Committee meeting held on 30 July 2018 be received and the recommendations therein be adopted.

9.3 Minutes of the Bayside Traffic Committee Meeting - 1 August 2018

RESOLUTION

Minute 2018/186

Resolved on the motion of Councillors McDougall and Tsounis

- 1 That the Minutes of the Bayside Traffic Committee meeting held on 1 August 2018 be received and the recommendations therein be adopted, subject to the following amendment:

- 2 That in relation to BTC18.177 of the Minutes of the Bayside Traffic Committee Meeting held on 1 August 2018, the following additional matters be investigated:
 - a. The 'No Stopping' restriction outside 12 Edgehill Avenue, Botany, be extended to 6m east of the eastern end of the newly constructed median strip.
 - b. Further investigation be carried out to prevent residents, of the newly constructed residential block at 15-19 Edgehill Avenue, from taking a short cut by driving over the concrete median island in Edgehill Avenue.

10 Notices of Motion

There were no Notices of Motion.

11 Questions With Notice

11.1 Night Markets

Councillor McDougall asked why the night markets close at 9:00pm.

The General Manager responded that night markets are permitted without consent up until 9:00 pm. If there is a desire for the markets to have extended hours, a Development Application would be required.

11.2 Botany Golf Course - State of Grounds

Councillor Curry advised that the Botany Golf Course is looking extremely dry. Quite some time ago, testing showed that the bore water there could not be used. Councillor Curry asked if there has been any recent testing of the bore water to see if it has improved and what other options can be utilised if the bore water still cannot be used. She asked if a report on this matter could be submitted to the next meeting of Council.

RESOLUTION

Minute 2018/187

Resolved on the motion of Councillors Saravinovski and Curry

That a GM Briefing Session be scheduled to discuss further testing of the bore water at the Botany Golf Course, other possible watering options and maintaining the grounds of the Golf Course.

12 Call For Rescission Motions

There were no Rescission Motions.

13 Confidential Reports

In accordance with Council's Code of Meeting Practice, the Mayor invited members of the public to make representations as to whether this part of the meeting should be closed to the public.

There were no representations.

Closed Council Meeting

RESOLUTION

- 1 That, in accordance with section 10A (1) of the Local Government Act 1993, the Council considers the following items in closed Council Meeting, from which the press and public are excluded, for the reasons indicated:

8.5 CONFIDENTIAL - Sale of Lots 101,103,104 in DP 445997 at 1545 Botany Road, Botany

In accordance with section 10A (2) (c) of the Local Government Act 1993, the matters dealt with in the valuation attachment to this report relate to information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business. It is considered that if the matter were discussed in an open Council Meeting it would, on balance, be contrary to the public interest due to the issue it deals with.

- 2 That, in accordance with section 11 (2) and (3) of the Local Government Act 1993, the reports, correspondence and other documentation relating to these items be withheld from the press and public.

8.5 Sale of Lots 101,103,104 in DP 445997 at 1545 Botany Road, Botany

RESOLUTION

Minute 2018/188

Resolved on the motion of Councillors Tsounis and Macdonald

- 1 That approval be granted for the sale of Lots 101, 103 and 104 in DP 445997 at 1543-1545 Botany Road to Dunning 77 Pty Limited for a value of not less than 100% of the combined equated values referenced at Confidential Attachment 2, (Valuation Analysis).
- 2 That approval be granted for the sale of Lots 101, 103 and 104 in DP 445997 at 1543-1545 Botany Road to Dunning 77 Pty Limited be sold on all other terms set out in Confidential Attachment 3 – term Sheet.
- 3 That all costs associated with the sale be paid by 77 Dunning Pty Limited.
- 4 That the General Manager be authorised to finalise the commercial terms of the sale and sign the required documentation to finalise the matter.

Resumption of Open Council Meeting

RESOLUTION

Minute 2018/189

Resolved on the motion of Councillors Saravinovski and Awada

That, the closed part of the meeting having concluded, the open Council Meeting resume and it be open to the press and public.

The General Manager made public the resolutions that were made during the closed part of the meeting.

The Mayor closed the meeting at 9:27 pm.

Councillor Bill Saravinovski
Mayor

Meredith Wallace
General Manager

Attachments

Nil

Council Meeting

12/09/2018

Item No	6.1
Subject	Mayoral Minute - No Cruise Ships in Port Botany
File	SF17/2828

Motion

That Council calls on the State Government to reject Botany Bay as a destination for cruise ships and looks for other, more viable options.

Mayoral Minute

In July the State Government released its *NSW Cruise Development Plan – building on NSW's reputation as a world-class cruise destination*.

I am extremely concerned about this proposal which would see cruise ships docking in Botany Bay.

While the proposed passenger terminal at either Molineaux Point or Yarra Bay is not technically in Bayside, I am concerned about the impact a passenger terminal will have — not just on Botany Bay — but on every Bayside resident.

The impacts from past dredging and reclamation works primarily associated with the development of the port and the airport continue to degrade the foreshore of Botany Bay — and Bayside residents have been paying the ongoing environmental repair costs ever since.

There are serious concerns that further dredging would lead to the erosion of the few sandy beaches left around the bay, including our own beach front stretching from Kyeemagh to Sans Souci.

Sailing into the historic Botany Bay may hold some appeal but the idea of docking a cruise liner 'adjacent to a liquid gas storage facility' has none of the wow factor of Sydney Harbour. Arriving in Botany Bay to be greeted by container terminals and chemical plants is hardly what anyone would expect when signing up for a cruise to Sydney. They want the Harbour Bridge and the Opera House.

Apart from contributing to the further environmental destruction of Botany Bay there would need to be a major infrastructure spend to transport tourists from Yarra Bay or Molineaux Point.

Modern cruise ships can hold 6000 passengers and are only getting bigger. The roads around the port and airport are already at capacity, so I ask how is the Government planning to deal with the increased transport needs?

Botany Bay might well be the birth place of our nation but sadly its tourist potential has been ignored for decades.

I firmly believe the quickest way to kill the cruise industry is to just dump it on the end of the Port facilities without careful examination of the logistics as well as the impact it will have on the local community.

The State Government must consider the historical and environmental importance of Botany Bay and look at other options.

Attachments

Nil

Council Meeting

12/09/2018

Item No	8.1
Subject	Cook Cove - Trust Lands
Report by	Michael McCabe, Director City Futures
File	SF18/416

Summary

Land in the Cook Cove Precinct is in different ownership and some land is subject to reservations and trusts. Council is the registered proprietor of the 'Trust Lands' which are two parcels of classified community land under the Local Government Act 1993 (LG Act). The Trust Lands are located in the northern precinct of the Cook Cove Precinct, identified hatched on the site plan at Attachment 1.

Council holds a dual role in the Cook Cove project, a planning function and a property function. It is critical for Council to maintain clear separation between the planning function and property function. Governance and probity management plans have been previously established to formalise this separation and the management of responsibilities within each arm.

This report deals with the property considerations as they relate to the Cook Cove project only and does not seek to consider the planning function.

The 'Trust Lands' consist of both Lot 1 in DP 108492 and Lot 14 in DP 213314. Both land parcels are subject to a 'Charitable Trust' (Trusts), through a Declaration and Deed respectively, requiring the Council to hold the 'Trust Lands' as trustee for the following purposes:

- For road purposes.
- Pending use for road purposes, only for a public park, public reserve or public recreation area.

Council, as the trustee of the 'Trust Lands', is under a duty to hold and use the 'Trust Lands' for the purposes of these Charitable Trusts.

Cook Cove Inlet (CCI), through a proponent led Planning Proposal seeks to subdivide this land and vest a portion of the Trust Land in the proponent (CCI) for construction of a high density, Residential and Mixed Use development. The proposed use is inconsistent with Council's obligations under the Charitable Trust.

This report will outline:

- the purpose of the 'Trust Lands';
 - Council's obligations to uphold these Charitable Trusts;
 - the commencement of discussions with relevant stakeholders for the removal of the road purpose upon the 'Trust Lands' post the RMS use of the 'Trust Lands';
 - next steps.
-

Officer Recommendation

- 1 That Attachments 7, 8, 9 and 10 to this report be withheld from the press and public as they are confidential for the following reason:

With reference to Section 10A(2)(g) of the Local Government Act 1993, these attachments contain advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege. It is considered that if the matter were discussed in an open Council Meeting it would, on balance, be contrary to the public interest due to the issue it deals with.

- 2 That Council as trustee cannot advance the current Planning Proposal to re-classify the Trust Lands without a conflict of duty arising and that Council await a formal response from the Attorney General as detailed in the body of this report.
- 3 That Council engages with the relevant parties, including The Attorney General and RMS to explore the re-constitution of the 'Trust Lands' to exclude the road, post the RMS use of the 'Trust Lands'.

Background

The Cook Cove Development site comprises a land parcel that has an area of approximately 100ha, located in the Sydney suburbs of Banksia, Arncliffe and Kyeemagh, as shown on the site plan at Attachment 1. This site is divided into the northern and southern precinct by the M5 motorway.

Council holds a dual role in the Cook Cove project, a planning function and a property function. It is critical for Council to maintain clear separation between the planning function and property function.

This report deals with the property considerations as they relate to the Cook Cove project only and does not seek to consider the planning function.

The 'Trust Lands'

Land in the Cook Cove Precinct is in different ownership and some land is subject to reservations and trusts. Council is the registered proprietor of the 'Trust Lands' which are two parcels of public land classified community land under the LG Act, located in the northern precinct of the Cook Cove Precinct, identified hatched on the site plan at Attachment 1.

The 'Trust Lands' consist of both Lot 1 in DP 108492 and Lot 14 in DP 213314. Both land parcels are encumbered with a 'Charitable Trust', through a Declaration and Deed respectively, requiring the Council to hold the 'Trust Lands' as trustee for the following purposes:

- For road purposes.
- Pending use for road purposes, only for a public park, public reserve or public recreation area.

The duty of a trustee to avoid a conflict of duty is described as one of the fundamental fiduciary obligations owed by a trustee.

Court Case- Roads & Maritime Services (RMS) vs Rockdale City Council and Ors (2015)

In 2015 RMS required the 'Trust Lands' to be made available for construction of the M5 Motorway at no cost for 5 years. Council refused to make the land available and RMS subsequently commenced Supreme Court proceedings. The Attorney General approved commencement of proceedings under the Charitable Trusts Act 1993.

The Court held that:

- 1 The Trusts are Charitable Trusts. This is significant as this means that the Attorney General has a supervisory role as the protector of charities under the Charitable Trusts Act 1993.
- 2 The Council must be able to perform the Trusts in their entirety, in respect of both categories of land use (road and recreation) or the Council is not able perform the Trusts at all, i.e. it must resign as trustee.
- 3 The Trusts roads purpose applies to the whole of the Trust Lands, not only those parts that might be required for future roads.
- 4 The community land classification under the LG Act and the Trusts can co-exist.
- 5 Reclassifying the 'Trust Lands' would put Council in a conflict of duty.

The Court stated in the context of considering the functions of the Council under Part 2, Chapter 6 of the LG Act (at [114]):

... the Council is not entitled to continue to act as trustee in a conflict of duty as and duty, if an exercise of classification of land which it is required to perform under the LGA 1993 would be inconsistent with its obligation as trustee, or would defeat the purposes of the trusts, at least where it could readily avoid that conflict by resignation as trustee of the trusts.

This is consistent with the duty of a trustee to avoid a conflict of duty being described as one of the fundamental fiduciary obligations owed by a trustee.

For further detail pertaining to the court findings, please see the Judgement at Attachment 2.

On 20 June 2016 a Council report recommending an appeal of the court findings was lost and the Council resolved to receive and note the outcome of the court case. The estimated costs of the appeal, being identified as \$150,000 and were considered too costly to proceed. The report is shown at Attachment 3.

In this regard, RMS are currently in occupation of the majority of the 'Trust Lands' for the purposes of the M5 Motorway. It is envisaged that they will continue to utilise this land post the term of their current lease for the construction of the F6 motorway.

After RMS has finished using the Trust Lands there may be an opportunity for Council to explore the reconstitution of the 'Charitable Trusts' by removing the road purpose. This sentiment aligns with correspondence received from RMS post the 2015 court case, as shown at Confidential Attachment 9. However, due to the inherent nature of Charitable Trusts, it is noted that any reconstitution of the Charitable Trusts would likely be for another public purpose, most likely for public recreation purposes.

Proponent-Led Proposal for the Cook Cove Precinct

On 7 October 2015 Council resolved (refer to the Resolution at Attachment 4) a decision making process and governance structure for the relocation of the KGC, based on the proposal at the time (as detailed above).

In mid-2016 the proponent provided Council with an Indicative Development Proposal (IDP), which now considered development upon the Trust Lands. This IDP was prepared in line with the deliverables required as part of the Decision making process. This document enabled Council to resolve to direct deal with the proponent, as per Resolution of Council, dated 18 May 2016 (refer to Attachment 5).

The final location of the proposed deliverables for the northern precinct were not finalised as part of the IDP, the locations proposed were indicative and subject to change. The final locations were subject to the priority precinct process and further negotiations with the trustee for the 'Trust Lands'. The following was stated within the body of the IDP:

"Westconnex and RMS are reviewing the longer term plans for the Southern Connector through the Cook Cove site and the future F6 Corridor. The outcome of this exercise may impact upon the layout of the sports and recreation precinct location and may necessitate a future boundary re-alignment agreement between the KGC freehold land and the Trust land to achieve the best possible outcome."

The final boundaries of the development were confirmed upon lodgement of the Planning Proposal in mid-2017.

Planning Proposal

In mid-2017, the proponent lodged a Planning Proposal, which formalised the proposed inclusion of the 'Trust Lands' within the development. The Planning Proposal (current proposal) contemplates the following uses upon the 'Trust Lands':

- Residential and mixed use development:
 - approx. 2100 dwellings, being approx. 40% of the dwellings proposed
 - commercial floor space
- School
- Two synthetic sporting fields
- Roads
- Public domain

The plan at Attachment 6 overlays the Proposal on the northern precinct and in particular the 'Trust Lands'.

The proponent through the Planning Proposal requests the following works upon the 'Trust Lands':

- The re-classification of the 'Trust Lands' from community to operational land, and also the extinguishment of the 'Charitable Trusts'; then

- subdivide the land into two parcels, one zoned B4- Mixed Use, the other RE1- Recreation
- Council to divest the B4 zoned parcel to CCI to be developed into high density mixed use parcels.
- CCI to construct the synthetic fields, public domain and roads upon the RE1 zoned parcel, to be retained by Council as the owner.

Council Considerations

Prior to proceeding with the current proponent led proposal Council must consider the following:

- 1 Whether the Proposal as currently contemplated is inconsistent with the purposes of the 'Charitable Trusts'.
- 2 Whether Council's role in connection with the Proposal gives rise to a potential conflict of interest in its capacity as trustee of the 'Charitable Trusts'.
- 3 Whether the restrictions on the 'Trust Lands' prevent the proposed development upon the 'Trust Lands' from being included in the Proposal.

Council has obtained legal advice on the inclusion of the 'Trust Lands' in a Planning Proposal relating to the Cook Cove precinct. This advice is shown at Confidential Attachment 7, and is reflected in the body of this report.

Extinguishment of the Trusts

It is considered that the current Planning Proposal contemplates development upon the 'Trust Lands' that is inconsistent with the purposes of the 'Charitable Trusts', being road purposes and then recreation purposes.

To enable the Planning Proposal to potentially proceed to gateway. The 'Charitable Trusts' will need to be extinguished. There are only two mechanisms by which the 'Charitable Trusts' may be extinguished:

- 1 ***An application to the Supreme Court*** to terminate the 'Charitable Trusts'. In such proceedings, the Council would have to demonstrate that the purposes of the trusts are impossible or impracticable to achieve;

This mechanism is not viable in this instance, as the 'Trust Lands' are currently used by Roads & Maritime Services for road purposes. RMS have recently indicated they would not support the extinguishment of the 'Charitable Trusts' at this time, as shown in the letter at Confidential Attachment 8.

Subsequent to RMS occupation of the 'Trust Lands', there is a current and future demand for recreation space within the Bayside Local Government Area, meaning the recreational purpose would not be impossible or impracticable to achieve.

- 2 ***Reclassifying the 'Trust Lands' from community to operational land*** and expressly extinguishing the 'Charitable Trusts' by the inclusion of a provision as authorised under section 30 of the LG Act

There are two requirements Council need to satisfy in order to achieve this. These are:

- Ensuring that any Planning Proposal put forward by the Council to the Minister in relation to the Trust Lands is consistent with the Trusts, otherwise Council will place itself in a position of conflict with its role as trustee; and
- Obtaining the Governor's approval; to extinguishing the 'Charitable Trusts'

This mechanism of extinguishment is proposed by the developer, however legal advice to date (refer Confidential Attachment 7) has identified an impediment to adopting this option.

Council promoting the reclassification via the Planning Proposal process gives rise to the risk that the Council will place itself in conflict with its duties as trustee of the Trusts. This is because the Proposal (which the Planning Proposal is intended to facilitate) involves uses of the Trust Lands which are inconsistent with the purposes of the Trusts.

The duty of a trustee to avoid a conflict of duty is described as one of the fundamental fiduciary obligations owed by a trustee

The duty of a trustee to avoid conflict is critical, refer above to RMS vs Rockdale Council Court case and the Judgement at Attachment 2.

In order to proceed with the extinguishment of the 'Charitable Trusts' upon the 'Trust Lands' Council would need to resign as trustee, which depending on whether Council retains a management role, would involve relinquishing the 16Ha parcel of land.

Any replacement trustee appointed to hold the Trust Lands subject to the Trusts will be under a similar obligation to avoid a conflict of duty, however the replacement trustee would need to give consent to any Planning Proposal. Due to its role as trustee of the Trust Lands, this will put any replacement trustee in the same position as the Council had previously been in, that is, in a position of conflict.

Therefore, there is no utility in appointing a replacement trustee of the Trust Lands.

Attorney General Advice

Given the Attorney General has a supervisory role as keeper of the 'Charitable Trust', Council has sought advice from the Attorney General regarding:

- Conflict of duties pertaining to the reclassification of the 'Trust Lands' from community to operational land:
 - Retaining the 'Charitable Trusts' upon the land; or
 - Extinguishing the 'Charitable Trusts'.

On 4 July 2018 the Crown Solicitors Office met with Council officers to discuss the current situation (refer to Confidential Attachment 7). The views expressed were consistent with our legal advice to date, considering the findings of the Court case referred to above.

Crown Solicitors have subsequently written to Council, advising Council to seek formal advice from the Attorney General on our ability to determine, propose or engage in conduct to support (in any capacity) a proposal that is inconsistent with the performance of the road or park purpose.

Council has now responded to this request, as shown at Attachment 10. We await a formal response from the Attorney General, however it is our opinion that the Attorney General will be of the view that a conflict does exist.

Council informed the proponent of our legal advice to date and of the above concerns at a meeting held on 24 July 2018. Additionally, the proponent is aware of what options they have in regard to the current status of their Planning Proposal and particularly their ability to amend their Planning Proposal to exclude the trust lands.

In consideration of the above, Council (or any other replacement trustee) cannot advance the current Planning Proposal to re-classify the Trust Lands without a conflict of duty arising, the Proposal as currently formulated should not proceed.

Probity Considerations

In consideration of our Trust Land obligations. It has been recommended by our Probity Adviser, OCM that negotiations, especially commercial negotiations, with CCI and Kogarah Golf Club regarding the project cease until Council has further clarified with the Attorney General, Council's obligations with regards to the 'Trust Lands' and develops a position that aligns with Council's role as Trustee and its other legislative requirements.

Planning Panel recommendation

An independent planning consultant has reviewed the Cook Cove Planning Proposal, and subsequently prepared a report to the 14 August 2018 Bayside Planning Panel, recommending that the Planning Proposal has sufficient strategic merit and further recommending a substantial number of amendments prior to adopting the proposal, as shown at Attachment 11.

On 21 August 2018, the Bayside Planning Panel, recommended that the Planning proposal not proceed, as shown at Attachment 12.

Next Steps

- Obtain advice from Attorney General with regard to our trustee obligations and conflict;
- Council to explore the reconstitution of the 'Charitable Trusts' by removing the road purpose, post RMS use of the 'Trust Lands'.
- Upon receipt of Attorney General advice, prepare a further report to Council.

Financial Implications

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

Community Engagement

Not Applicable

Attachments

- 1 Attachment 1- Site Plan [↓](#)
- 2 Attachment 2- Judgement [↓](#)
- 3 Attachment 3 - Council Report 20 January 16 [↓](#)
- 4 Attachment 4 - Resolution of Council 7/10/2015 [↓](#)
- 5 Attachment 5- Resolution of Council 18/5/2016 [↓](#)
- 6 Attachment 6- Overlay Plan [↓](#)
- 7 Confidential Attachment 7- legal advice (confidential)
- 8 Confidential Attachment 8- RMS letter 2018 (confidential)
- 9 Confidential Attachment 9- RMS letter 2015 (confidential)
- 10 Attachment 10- Letter to Attorney General (confidential)
- 11 Attachment 11 - Planning Panel report [↓](#)
- 12 Attachment 12 - Planning Panel minutes [↓](#) (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege. It is considered that if the matter were discussed in an open Council Meeting it would, on balance, be contrary to the public interest due to the issue it deals with, or , or , or

Figure 2: Cook Cove Land Ownership Plan
Source: *Ethos Urban*



<https://www.caselaw.nsw.gov.au/decision/5660a199e4b05f2c4f0495cf> 01/08/2018

New South Wales

Medium Neutral Citation:	Roads and Maritime Services v Rockdale City Council & Ors [2015] NSWSC 1844
Hearing dates:	12, 13 and 17 November 2015
Decision date:	04 December 2015
Jurisdiction:	Equity
Before:	Black J
Decision:	Stand over the proceedings for a short time to allow the parties an opportunity to make submissions as to the form of any declaratory orders that should now be made and to allow the Council an opportunity to give effect to the trusts or give appropriate undertakings.
Catchwords:	<p>EQUITY – trusts and trustees – purpose trusts – where trustee was a local council – where council held land or parts of it on trust for a county road and other purposes – where condition of trusts was that council transfer land or parts of it required for a county road to named body when requested at no cost – where Plaintiff sought transfer of the parcels of land that it ‘required’ for the construction of a road – whether council required to transfer only that part of land that was previously ‘reserved’ or that part of land which was now ‘required’ to the Plaintiff under the terms of the trusts – whether use for a road encompassed ancillary requirements for the construction of the road.</p> <p>LOCAL GOVERNMENT – regulation and administration – ordinances, regulations, by-laws and local laws – where council held parcels of land on trust for particular purposes – whether obligations arising under the trusts were affected by Local Government Act 1993 (NSW) – application of County of Cumberland Planning Scheme Ordinance</p> <p>CHARITIES – charitable purposes – other purposes beneficial to public – where council held land on trust for road purposes and for the purposes of a public park, reserve or recreation area – whether trusts created for purposes of roads and road works are charitable trusts – whether trusts created for purposes of parks and public reserves are charitable trusts – whether trust purposes impractical or impossible – whether to order cy-pres scheme</p> <p>WORDS AND PHRASES – ‘required’ – ‘reserved’ – ‘road purposes’ – ‘purposes of a road’.</p>

Legislation Cited:

<https://www.caselaw.nsw.gov.au/decision/5660a199e4b05f2c4f0495cf> 01/08/2018

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- Charitable Trusts Act 1993 (NSW) ss 6, 9, 11
- Environmental Planning and Assessment Act 1979 (NSW) ss 9(1), 11(1), 11(4), 11(6)
- Environmental Protection and Biodiversity Conservation Act 1999 (Cth)
- Interpretation Act 1987 (NSW) ss 5(2), 21, 30, 30(1), Lands Acquisition Act 1906 (Cth)
- Land Acquisition (Just Terms Compensation) Act 1991 (NSW)
- Local Government Act 1993 (NSW) Ch 6 Pt 2 Div 2; ss 6, 8, 22, 23, 26, 29, 30, 31(3), 35, 36, 36(3A), 36(4), 36F, 36I, 37, 37(b), 37(d), 38, 40, 40A, 42, 43, 45, 45(1), 45(2), 46, 46(1), 46(2), 46(4), 47, 47A, 47D, 47F, 49, 186(3), 220, 674(1); sch 7 cl 2(1), 3, 3(2), 6, 6(2)
- Local Government Act 1919 (NSW) Pt XXIV Divs 3, 6; ss 518, 518(2), 519, 526, 529
- Local Government (Consequential Provisions) Act 1993 (NSW)
- Roads Act 1993 (NSW) s 178(1)
- Statute of Charitable Uses 1601
- Transport Administration Act 1988 (NSW) s 46
- Trustee Act 1925 (NSW) ss 6

- Rockdale Local Environment Plan 2000
- Rockdale Local Environmental Plan 2011
- Sydney Regional Environment Plan No 33 – Cooks Cove
- Local Government (General) Regulations 2005 (NSW) Pt 4 Div 1; regs 101, 103

Cases Cited:

- ADCO Constructions Pty Ltd v Goudappel [2014] HCA 18; (2014) 308 ALR 213
- Athletics Association (SA) Inc (Intervener) (1999) 76 LGRA 226
- Attorney General v Day [1900] 1 Ch 31
- Attorney-General (NSW) v Fulham [2002] NSWSC 629
- Australian Broadcasting Commission v Australasian Performing Right Association Ltd (1973) 129 CLR 99
- Bathurst City Council v PwC Properties Pty Ltd [1998] HCA 59; (1998) 195 CLR 566
- Berry v Wong [2000] NSWSC 1002
- Black Uhlands Inc v NSW Crime Commission [2002] NSWSC 1060; (2002) 12 BPR 22,421
- Brisbane City Council v Attorney-General (Qld) [1979] AC 411
- Bull v Attorney-General (NSW) (1913) 17 CLR 370
- Burnside City Council v Attorney-General (SA) [No 2]; Athletics Association (SA) Inc (Intervener) (1999) 76 LGRA 226

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- Carantinos v Magafas [2008] NSWCA 304
- Castle Constructions Pty Ltd v Sahab Holdings Pty Ltd [2013] HCA 11; (2013) 247 CLR 149
- City of Burnside v Attorney-General (1993) 61 SASR 107
- Council of the City of Newcastle v Royal Newcastle Hospital (1957) 96 CLR 493
- Council of the City of Newcastle v Royal Newcastle Hospital (1959) 100 CLR 1
- Council of the Shire of Sarina v Dalrymple Bay Coal Terminal P/L [2001] QCA 146
- Dobrijevic v Free Serbian Orthodox Church [2015] NSWSC 637
- Fitzgerald v Masters (1956) 95 CLR 420
- IW v The City of Perth (1997) 191 CLR 1
- Johnston v Brightstars Holding Company Pty Ltd [2014] NSWCA 150
- Ku-ring-gai Municipal Council v The Attorney-General (1954) 55 SR (NSW) 65
- Labracon Pty Ltd v Cuturich [2013] NSWSC 97
- Mareen Development Pty Ltd v Brisbane City Council [1972] Qd R 203
- Marshall v Director General Department of Transport [2001] HCA 37; (2001) 205 CLR 603
- Monds v Stackhouse (1948) 77 CLR 232
- NSW Aboriginal Land Council v Minister Administering the Crown Lands (Consolidation) Act and the Western Lands Act (1988) 14 NSWLR 685
- Queensland Premier Mines Pty Ltd v French [2007] HCA 53; (2007) 235 CLR 81
- Re Hadden [1932] 1 Ch 133
- Re Morgan [1955] 2 All ER 632
- Royal Botanic Gardens and Domain Trust v South Sydney City Council [2002] HCA 5; (2002) 240 CLR 45
- Ryde Municipal Council v Macquarie University (1978) 139 CLR 633
- Save Little Manly Beach Foreshore Inc v Manly Council (No 2) [2013] NSWLEC 156
- Special Commissioners of Income Tax v Pemsel [1891] AC 531
- Telstra Corporation Ltd v Port Stephens Council [2015] NSWLEC 1053
- Tempe Recreation Reserve Trust v Sydney Water Corporation [2014] NSWCA 437; (2014) 88 NSWLR 449
- Valuer General v Fivex Pty Ltd [2015] NSWCA 53
- Western Australian Planning Commission v Temwood Holdings Pty Ltd [2004] HCA 63; (2004) 221 CLR 30
- Westfield Management Ltd v Perpetual Trustee Co Ltd [2007] HCA 45; (2007) 233 CLR 528

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	<ul style="list-style-type: none"> - Willoughby City Council v Roads and Maritime Services [2014] NSWLEC 6; (2014) 201 LGERA 177 - Zhang v Canterbury City Council [2001] NSWCA 167; (2001) 51 NSWLR 589
Texts Cited:	<ul style="list-style-type: none"> - J D Heydon & M J Leeming, <i>Jacobs' Law of Trusts in Australia</i>, (7th ed, 2006, LexisNexis Butterworths) - G E Dal Pont, <i>The Law of Charity</i>, (2010, LexisNexis Butterworths) - DC Pearce and R S Geddes, <i>Statutory Interpretation in Australia</i>, (8th ed, 2014, LexisNexis Butterworths) - <i>Shorter Oxford English Dictionary</i> 2007
Category:	Principal judgment
Parties:	Roads and Maritime Services (Plaintiff) Rockdale City Council (First Defendant) Attorney General for New South Wales (Second Defendant) Minister administering the Environmental Planning and Assessment Act 1979 (Third Defendant) Kogarah Golf Club Limited (Fourth Defendant)
Representation:	Counsel: R Lancaster SC/P M Lane (Plaintiff) I Hemmings SC/P Newton (First Defendant) C Mantziaris/S Cominos (Second Defendant) T To (Fourth Defendant) Solicitors: Minter Ellison (Plaintiff) HWL Ebsworth (First Defendant) Crown Solicitors Office (Second Defendant) Beatty Legal (Fourth Defendant)
File Number(s):	2015/240470

JUDGMENT**The parties and the subject matter of the proceedings**

- 1 These proceedings concern issues as to the acquisition of certain land for the purpose of the widening of Marsh Street, Arncliffe, and for construction facilities and other facilities in respect of the proposed extension of the M5 motorway ("New M5 Project").
- 2 The Plaintiff, Roads and Maritime Services ("RMS") is a statutory corporation constituted by s 46 of the *Transport Administration Act* 1988 (NSW), and is the successor to the Roads and Traffic Authority, which in turn succeeded the Commissioner for Main Roads. The First Defendant, Rockdale City Council ("Council"), is a body politic of the State with perpetual succession under s 220 of the *Local Government Act* 1993 (NSW) ("LGA 1993") and is the successor to the Council of the

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Municipality of Rockdale. The Second Defendant, the Attorney General for New South Wales exercises functions under the *Charitable Trusts Act* 1993 (NSW) ("Charitable Trusts Act") in the enforcement of trusts for a charitable purpose and is the protector of charities and is joined to the proceedings in that capacity. With some exceptions in respect of factual disputes, the Attorney General largely adopts the submissions of RMS, and directs her submissions specifically to matters concerning two trusts that are in issue in the proceedings. The Third Defendant, the Minister administering the *Environmental Planning and Assessment Act* 1979 (NSW) ("EPA Act"), is the successor to the assets, rights and liabilities of Cumberland County Council, which was in turn constituted under the *Local Government Act* 1919 (NSW) ("LGA 1919") on 27 June 1951. The Minister did not take an active role in the proceedings. The Fourth Defendant, Kogarah Golf Club Ltd ("Club") operates a golf course partly on the land that is in issue in the proceedings.

- 3 The first parcel of land in issue is Lot 14 in DP 213314 located at 19 Marsh Street, Arncliffe ("Lot 14"), which is situated to the south east of Marsh Street and to the north east of Marsh Street, and is partly traversed by the existing corridor of Marsh Street, and is over 8 acres in area. The Council is the registered proprietor of that land, which it acquired on the terms of a deed dated 30 October 1957 ("Deed") between the Commonwealth of Australia, Cumberland County Council and the Commissioner for Main Roads, a predecessor to RMS. The Club has occupied Lot 14 since at least 1961 and it comprises part of the Kogarah golf course. The second parcel of land in issue in the proceedings is Lot 1 in DP 108492 located at 13 Marsh Street, Arncliffe ("Lot 1"), which comprises land to the south east of Marsh Street and to the north west of Marsh Street near Valda Avenue, and has an area in excess of 29 acres. A small part is traversed by the existing corridor of Marsh Street, although this is not identified as being part of the land the subject of RMS's claim. The Council is also the registered proprietor of that land, subject to a declaration of trust made on 14 April 1958 ("Declaration of Trust"). Part of Lot 1 to the south east of Marsh Street is also occupied by the Club and also comprises part of the Kogarah golf course.
- 4 As I noted above, the proceedings relate, in broad terms, to whether the Council is required, by the terms of the Deed and the Declaration of Trust, to transfer parts of these two parcels of land to RMS for use as a temporary works compound, and a smaller area for permanent use, in respect of the New M5 Project and a proposal for the widening of Marsh Street, Arncliffe, to provide three continuous westbound lanes. The New M5 Project in turn involves the design and construction of approximately 33 km of multi-lane roads to expand and link the M4 Western Motorway and the M5 South West Motorway. It is common ground that these works include the construction of a new, tolled multi-lane road link between the M5 East Motorway east of King Georges Road and St Peters, including twin motorway tunnels of approximately 9km in length and accommodating up to three lanes of traffic each, an interchange at St Peters and connection to the existing road network. Before the New M5 Project can proceed, it must be assessed and approved under the EPA Act and the *Environmental Protection and Biodiversity Conservation Act* 1999 (Cth). When the proceedings were heard in

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mid-November 2015, an Environmental Impact Statement for the New M5 Project was being prepared, an application for the approval of the New M5 Project had not yet been made and a contract for the design and construction of the New M5 Project has not yet been awarded (Reynolds 30.10.15 [20]–[24]).

- 5 By its Further Amended Summons filed on 25 September 2015 and its Amended Statement of Claim filed on 25 September 2015, RMS seeks orders that the Council make available certain land at Arncliffe to RMS, at no cost, for (or, arguably, to facilitate) road works under the terms of a Deed and a Declaration of Trust, to which I will refer below. Specifically, in paragraphs 1 and 2 of the relief claimed in the Amended Statement of Claim, RMS claims, first, declarations that, on the proper construction of the Deed, the Council must make available to RMS, at no cost to RMS, the land in Lot 14 and, on the proper construction of the Declaration of Trust, the Council must make available to RMS, at no cost to RMS, the land in Lot 1. In paragraph 3 of the relief claimed, RMS seeks an order that the Council do all things necessary to give RMS possession of Lot 1 and Lot 14, or such part of the said lots as RMS has required or shall require, for the period of 4 years and 11 months from the date of the order or for such other period as the court determines.
- 6 In the alternative to the declarations and orders sought in paragraphs 1–3 of the relief claimed in the Amended Statement of Claim, RMS seeks orders, if and to the extent that Lot 14 and Lot 1 is held on a charitable trust for the purposes stated in the Deed and the Declaration of Trust respectively, for an administrative scheme or in the alternative a cy-pres scheme, by which the land in Lot 14 and Lot 1 is to be made available to RMS at no cost. RMS seeks that relief on the basis that the trusts in question are charitable trusts, and the Attorney General has approved the commencement of the proceedings pursuant to s 6 of the Charitable Trusts Act in that regard. RMS also seeks further relief specified in paragraphs 6–10 of the Amended Statement of Claim.
- 7 There is a degree of urgency in the proceedings, arising from their context in respect of a proposed acquisition of land that needs to be completed prior to the commencement of construction works on the New M5 Project, and where the determination of the proceedings may determine the manner in which that acquisition proceeds. As will emerge below, Counsel for all parties advanced a range of relatively complex arguments and alternative arguments, and also addressed issues that would only arise if their primary positions were not accepted. There was also a degree of movement in the positions adopted by the parties between their pleadings, their opening written submissions and their oral submissions. I have sought to address the several versions of such positions where necessary, although that will involve a degree of repetition in referring to the parties' submissions below, since it is sometimes necessary to refer to several submissions which ultimately seem to be different ways of putting substantially the same point. I have largely sought to decide only those issues that need to be decided to determine the matter, so that this judgment could be delivered relatively promptly, rather than delaying it to address peripheral issues in a manner that might have deprived it of utility in determining the dispute between the parties within the time

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in which it needed to be determined in its practical context. The parties, helpfully, agreed certain background facts between them and I have drawn upon their statement of agreed facts in dealing with the issues in dispute below.

The legislative background

8 It will be necessary to refer to several aspects of the legislative regime governing roads and local government in dealing with the issues in dispute below and I should now identify the relevant instruments and their terms.

9 It appears that Lot 14 and Lot 1 were transferred to Council pursuant to s 526 of the LGA 1919 which provides that a council may accept and hold any real or personal property conveyed to it for any charitable or public purpose, and act in the administration of such property for the purposes and according to the trusts for which the same may have been conveyed. The Deed and Declaration of Trust in turn refer to the Cumberland County Council Planning Scheme Ordinance ("CCPSO"). The CCPSO came into force on 27 June 1951 and defined (in cl 3) the term "County road" to mean:

"any road indicated on the scheme map as land shown white between black lines or shown broken white between broken black lines irrespective of whether such road is a main road within the meaning of the Main Roads Acts, 1924-1950".

The Council takes the point in these proceedings, as I will note below, that the relevant trusts are limited only to the roads as marked on the relevant scheme map. Mr Hemmings, who appears with Mr Newton for the Council, made clear, in oral submissions (T20) that Council does not take a further and separate point that the relevant road is not a "County road" within the meaning of the CCPSO, or as to the subsequent repeal of the CCPSO.

10 The CCPSO also provided, in cl 5, that the Cumberland County Council was the responsible authority and was charged with the functions of carrying into effect and enforcing the provisions of the CCPSO relating to reservation of and restrictions on use of certain land under Part II. The CCPSO provided, in cl 10, that land indicated on the scheme map shown broken white between broken black lines and all land shown white between black lines was reserved for the purposes of a new County road and widening of an existing County road. The parties agree that the scheme map associated with the CCPSO shows a corridor in white between broken black lines on parts of Lot 14 and Lot 1. The CCPSO also provided, in cl 10, that land indicated on the scheme map shown in dark green was reserved for the purpose of parks and recreation areas. The parties agree that the scheme map associated with the CCPSO shows parts of Lot 14 and Lot 1, not being those parts indicated as land reserved for a County road, in areas coloured dark green reserved for parks and recreation areas.

11 It is also necessary to have regard to the LGA 1993. It is common ground that, from the commencement of the LGA 1993 on 1 July 1993, Lot 1 and Lot 14 were each taken to have been classified as community land for the purposes of Part 2 of Chapter 6 of the LGA 1993, pursuant to cl 6 of Sch 7 of the LGA 1993, because they were each subject to a trust for a public purpose. The parties also agree that the Declaration of Trust relating to Lot 1 and the Deed relating to Lot 14 and the consequential trusts continue to have effect despite the commencement of the LGA 1993.

12

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It is common ground that the Council has not adopted a plan of management for Lots 1 and 14 under the LGA 1993. However, on 21 October 2015, the Council passed a resolution to exhibit a draft plan of management (Ex P3, tabs 26–27) for all community land within the local government area, including Lot 1 and Lot 14 which would, if adopted, categorise each lot as a sports ground, excluding part of Lot 1 comprising part of Valda Avenue Reserve which would, if the draft plan of management were adopted, be categorised as a park (Ex P3, pp 736, 796 and 802). The future permitted purposes of Lot 1 and Lot 14 comprising the Kogarah Golf Course are noted in the draft plan of management as being "subject to review in conjunction with priority precinct planning" (Ex P3 p 774).

- 13 It is also common ground that, on 25 August 2000, the Rockdale Local Environment Plan 2000 ("RLEP") was gazetted and took effect. Lot 1 and Lot 14 were zoned, in part, as Zone 7(c) – Transport Reservation under the RLEP. It is also common ground that, on 25 June 2004, the Sydney Regional Environmental Plan No 33 – Cooks Cove ("SREP 33") was gazetted and took effect in respect of land at Cooks Cove, Arncliffe, as identified in the zoning map, and repealed RLEP to the extent that it applied to land to which SREP 33 applies. Lot 1 and Lot 14 are zoned, in part, Special Uses Zone under SREP 33 and parts of Lot 1 and Lot 14 are zoned Trade and Technology and Open Space under SREP 33. It is common ground that cl 11 of SREP 33 provides that the objectives of the Special Uses Zone are to accommodate existing special uses, including the M5 corridor and to provide for the development of a transport corridor by the then Roads and Traffic Authority or for other public transport infrastructure; the objectives of the Trade and Technology Zone are to encourage specified economic activity and to provide facilities for the workforce by allowing a limited range of ancillary, retail and recreational uses that are ancillary and provide support to the dominant functions within the zone; and the objectives of the Open Space Zone include providing for active sporting and recreational land uses and club facilities and other matters.

The affidavit evidence

- 14 RMS relies on the affidavits of Mr Simon Ball sworn 17 August 2015, 10 September 2015 and 30 October 2015; Mr Glenn McDiarmid sworn 9 September 2015, 3 November 2015 and 16 November 2015; and Mr Kenneth Reynolds sworn 30 October 2015. Mr Ball's first affidavit dated 17 August 2015 referred to and annexed correspondence between RMS, Westconnex Delivery Authority ("WDA") and the Council in relation to RMS's requirement for part of Lot 1 and part of Lot 14. Mr Ball also refers to the urgency involved in the proceedings as to the validity of that requirement, where an alternative to the exercise of RMS's claimed rights under the trusts is a compulsory acquisition of the land, and any compulsory acquisition notice would need to be published in the NSW Government Gazette by December 2015, if RMS is to acquire vacant possession of the land by the date it requires it, 31 March 2016 (Ball 17.8.15 [19]). There is also evidence that major works associated with the New M5 Project are scheduled to commence on the required land by mid-2016 and that the New M5 Project is projected to be open to traffic in late 2019 (Ex P2, tab 7). Mr

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Ball's further affidavit dated 10 September 2015 refers to the steps which had been taken to source planning maps relating to the CCPSO and to further correspondence with the Council in respect of RMS's requirement for the land. Mr Ball's third affidavit dated 30 October 2015 refers to further correspondence with Council's solicitors in respect of RMS's requirement for the land.

- 15 The affidavits of Mr McDiarmid are directed to identifying the extent to which the required land, which has varied in the period prior to the proceedings, overlaps with Lots 1 and 14 and the reservations of land for County road purposes under the CCPSO.
- 16 The affidavit of Mr Reynolds, who is Project Director for the New M5 Project, related to the program of works for, inter alia, the New M5 Project and identified the extent to which RMS sought to require land for that project and for the road widening works at Marsh Street. That affidavit described the works involved in the New M5 Project, and also referred to the steps which were being taken for assessment and approval of the project under the EPA Act and the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth), if required. Mr Reynolds' affidavit also set out the proposed use of the land required from Lot 14 and Lot 1 for the New M5 Project, and indicated that the boundaries of the footprint of the land required were now fixed, although the layout of road works and traffic control works within that footprint were subject to change depending on operational requirements and conditions of approval. That affidavit also set out the facilities which were proposed to be constructed on the land, to which I will refer below. Mr Reynolds also referred to the works to be done in widening Marsh Street, although Mr Hemmings pointed out that Mr Reynolds was not directly responsible for the Marsh Street work. An email from the Principal Manager Infrastructure Property of RMS to Mr Reynolds (Ex P2, tab 14) in turn indicates that RMS would require exclusive possession of part of the land on a temporary basis, under the terms of a lease which permitted its use for:

"The carrying out of road work, traffic control work (as those expressions are defined by the *Roads Act 1993* (NSW)), including but not limited to all ancillary works such as excavation, stockpiling, laying down, testing, removing and fencing, and any other work necessary or desirable to be carried out in connection with the New M5 Project and Marsh Street widening works."

Whether the whole or only part of Lot 14 is subject to the trusts for a County road created by the Deed

- 17 The first question in the proceedings is the content of the obligations upon the Council in respect of Lot 14, and also Lot 1 which I will address below. RMS pleads that the terms of the Deed provided for Lot 14 to be required for a County road (Amended Statement of Claim [13]); that it was a condition of the vesting of Lot 14 in the Council that the Council would make available Lot 14, when required for a County road, on request by RMS as the successor of the Commissioner of Main Roads (Amended Statement of Claim [14]); and also pleads that it is a term of the Deed that Lot 14 (in whole or in part) be made available without cost to RMS on request (Amended Statement of Claim [52]).

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On 11 September 1947, the Commonwealth of Australia compulsorily acquired Lot 14 under the *Lands Acquisition Act* 1906 (Cth). On 30 October 1957, the Commonwealth of Australia, Cumberland County Council and the predecessor to RMS entered into the Deed in respect of Lot 14. I set out relevant provisions below, with omissions as indicated for simplicity:

"WHEREAS by notification of acquisition by the [Commonwealth] under the Lands Acquisition Act 1906-1936 ... , lands comprising inter alia the land hereby conveyed were vested absolutely in the [Commonwealth] AND WHEREAS the [Commonwealth] has agreed to sell and the [Cumberland] County Council has agreed to purchase the said land and hereditaments for the sum of FOUR THOUSAND TWO HUNDRED AND NINETY POUNDS (£4,290.0.0) AND WHEREAS it has been agreed between the [Cumberland] County Council and the [Council] that the said land (which land is reserved under Division 2 of Part II in the Cumberland County Council Planning Scheme Ordinance for County Road purposes) shall be conveyed to the [Council] pursuant to the provisions of Clause 18(1) of the Cumberland County Council Planning Scheme Ordinance to be held by the said Council upon trust and subject to the conditions hereinafter expressed and declared concerning the said land NOW THIS DEED WITNESSETH that in consideration of the sum of Four thousand two hundred and ninety pounds (£4,290.0.0) paid by the [Cumberland] County Council to the [Commonwealth] (the receipt whereof is hereby acknowledged) the [Commonwealth] as beneficial owner doth hereby convey at the request and by the direction of the [Cumberland] County Council (as is testified by its execution hereof) to the [COUNCIL] in fee simple ALL THAT piece or parcel of land situate in the Municipality of Rockdale and containing [detailed description of Lot 14 omitted] and THE [COUNCIL] hereby ACKNOWLEDGES AND DECLARES that it will hold the said land UPON TRUST for the following purposes subject to the following conditions:-

1. THAT THE [COUNCIL] will hold the said land which is required for a County Road under the Cumberland County Council Planning Scheme, for that purpose AND will make the same available without cost to the Commissioner for Main Roads or any other body that may be the constructing authority for the County Road when required so to do by the said Commissioner or other body as aforesaid AND pending its requirement for a County Road the Council shall not use the said land or permit same to be used for any purpose other than the purpose of a public park, public reserve or public recreation area.
2. THAT THE COUNCIL will not erect or permit to be erected on the said land or any part thereof any building without first obtaining the approval of the County Council and will observe and comply with all conditions which the County Council may impose in connection with any such approval."

- 19 It is common ground that Cumberland County Council paid the Commonwealth the specified consideration of £4,290 and Lot 14 was conveyed to the Council.
- 20 The Council subsequently made available Lot 14 (and also Lot 1) to the Club pursuant to a deed dated 2 May 1961. The recitals to that deed record that, so far as Lot 14 is concerned, the relevant land:

"is held by the Council upon trust for the purpose of a County Road and subject to conditions (inter alia) that pending its requirement for a County Road the Council shall not use or permit to be used such land for any purpose other than the purpose of a public park, public reserve or public recreation area and will not erect or permit to be erected on such land or any part thereof any building without first obtaining the approval of the Cumberland County Council." (Ex K1, p 906)

The deed in turn provided for the lease of the relevant land to the Club for a 30 year period and provided, in cl 23 that:

"Immediately upon receipt of a written request by the Cumberland County Council, the Department of Main Roads or the Council, the Club shall vacate and peacefully yield up possession to the Council without the payment of any compensation or damages whatsoever so much of the land shown shaded blue in the said [p]lan as may be specified in the said written notice."

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(For completeness, I note that the parties did not make substantive submissions as to the extent of the land shaded blue in the plan attached to that deed).

- 21 Mr Lancaster, who appears with Ms Lane for RMS, refers (T14) to well accepted rules for the construction of instruments, which were also common ground between the parties, namely that the whole of the instrument has to be read and particular words are to be read in the context of the whole, and in accordance with the apparent purpose of the instrument as revealed from a consideration of the whole of its terms. In *Fitzgerald v Masters* (1956) 95 CLR 420 at 437, McTiernan, Webb and Taylor JJ observed that:

"It is trite law that an instrument must be construed as a whole. Indeed it is the only method by which inconsistencies of expression may be reconciled and it is in this natural and common sense approach to problems of construction that justification is to be found for the rejection of repugnant words, the transposition of words and the supplying of omitted words ... Many illustrations may be given of the circumstances in which these processes have been followed but to do so would add nothing to the rule that the intention of the parties is to be ascertained from the instrument as a whole and that this intention when ascertained will govern its construction."

- 22 Mr Lancaster also refers to *Australian Broadcasting Commission v Australasian Performing Right Association Ltd* (1973) 129 CLR 99 at 109, where Gibbs CJ observed that:

"It is trite law that the primary duty of a court in construing a written contract is to endeavour to discover the intention of the parties from the words of the instrument in which the contract is embodied. Of course the whole of the instrument has to be considered, since the meaning of any one part of it may be revealed by other parts, and the words of every clause must if possible be construed so as to render them all harmonious one with another. If the words used are unambiguous the court must give effect to them, notwithstanding that the result may appear capricious or unreasonable, and notwithstanding that it may be guessed or suspected that the parties intended something different. The court has no power to remake or amend a contract for the purpose of avoiding a result which is considered to be inconvenient or unjust. On the other hand, if the language is open to two constructions, that will be preferred which will avoid consequences which appear to be capricious, unreasonable, inconvenient or unjust."

In *Tempe Recreation Reserve Trust v Sydney Water Corporation* [2014] NSWCA 437; (2014) 88 NSWLR 449 at [53]–[56], Leeming JA summarised the relevant principles and observed, inter alia, that it is axiomatic that legal documents are to be read as a whole; that that requires effect to be given to each provision of the document having regard to the others, and reflects a presumption that the various provisions were intended to operate together to achieve a specific purpose or purposes; that the effect of doing so may be to depart from the natural and ordinary meaning of the words of one provision, where it is necessary to do so to avoid absurdity or inconsistency with the rest of the instrument; and that "in determining the legal meaning of language in a legal instrument, the law requires regard to be had to the immediate context, being the whole of the instrument."

- 23 RMS also submits that both the Deed and the Declaration of Trust may be read in conjunction with the enabling legislation under which they were made. In *Bathurst City Council v PwC Properties Pty Ltd* [1998] HCA 59; (1998) 195 CLR 566 at [44]–[65], the High Court reviewed the scope of the relevant sections of the LGA 1919, and specifically ss 518 and 526, and observed that s 526 of the LGA 1919 had the result that:

"... a council might accept real or personal property for a public purpose in the sense of that term, by then long understood in New South Wales, even though that purpose was not a charitable purpose and the property was not transferred to and accepted by the

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council on trust in the strict sense of that term. The council then would be restricted by s 518 in its dealings with that land, and subject to restraint at the suit of the Attorney-General."

Mr Lancaster also refers to *Western Australian Planning Commission v Temwood Holdings Pty Ltd* [2004] HCA 63; (2004) 221 CLR 30 at [119], where Gummow and Hayne JJ observed that the authorities suggested that the Crown may be subject to more than a moral or political obligation to observe the purpose of a vesting of land in it, but did not find it necessary to express a concluded view as to that question. RMS also submits, and I accept, that the LGA 1919 and the CCPSO at least provided the legislative framework for the transfer of Lot 14 and Lot 1 to the Council as an exercise of government functions for public purposes, and that the Council was obliged to perform the trusts in a way that advanced their objects in that statutory context: *Royal Botanic Gardens and Domain Trust v South Sydney City Council* [2002] HCA 5; (2002) 240 CLR 45 at [81].

- 24 Mr Lancaster also relied (T141–142) on *Westfield Management Ltd v Perpetual Trustee Co Ltd* [2007] HCA 45; (2007) 233 CLR 528 at [37]–[39], where the High Court observed that, together with the information appearing on the relevant folio, the registration of dealings manifests the scheme of the Torrens System to provide third parties with the information necessary to comprehend the extent or state of the registered title to the land in question, and that the extent of extrinsic material that would be relevant to interpretation of documents that are registered on title is limited. That approach was confirmed in *Queensland Premier Mines Pty Ltd v French* [2007] HCA 53; (2007) 235 CLR 81 at [14] and *Castle Constructions Pty Ltd v Sahab Holdings Pty Ltd* [2013] HCA 11; (2013) 247 CLR 149 at [20]. It seems to me that the obligations arising under the Deed and the Declaration of Trust are properly treated as matters registered on title, so far as in each case a caveat is recorded on the register which draws attention to the relevant instrument.
- 25 Broadly, RMS submits that, on the proper construction of the Deed, the Council must upon demand make available to RMS all or any part of Lot 14 that may from time to time be required by RMS for both a road and for ancillary road purposes at no cost to RMS. After closing submissions, I directed the parties to provide a summary of the key propositions in their submissions, which was intended to expose the logic of and key steps in their respective submissions. RMS's summary of the propositions for which it contended summarised its position as being that the whole of the land in Lot 14 (and also Lot 1) is held for the purposes of a road as required by RMS and otherwise for the purposes of a public park, public reserve or public recreation area. RMS also identified several steps in that submission, namely that "the said land" referred to in the Deed is the whole of Lot 14; the reference to "which is reserved" in the Deed is a general descriptive phrase about a characteristic of Lot 14, not a limitation on the area to which the trust for road purposes applies; it relies on the content of the phrase "which is required"; and the reference to "pending" in the Deed shows that the requirement is a matter for the future, not an existing reserved area on the CCPSO map. RMS also noted that, subject to the issue about the extent of land "which is required" for the purposes of a road (to which I refer below), the parties were not in dispute that the required land is for the purposes of a "County road" as that term should now be understood (T19–T20).

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The first step in RMS's submission is that the words "the said land (which land is reserved ... for County [r]oad purposes)" in the recitals to the Deed are not inconsistent with the Deed applying to the whole of the land in Lot 14. RMS submits that the quoted words do not have the effect of applying the obligation in the Deed only to that part of Lot 14 as was at the time of the Deed classified as a County road under the CCPSO, or that part of Lot 14 as might be at some other point in time classified as a County road under the CCPSO. RMS submits that the whole of the land in Lot 14 is subject to the Deed, and that the words in parentheses merely explain the basis on which the Deed was entered into. RMS submits that, as at the date of the Deed, there was no such road and the parties would have known that for it to be provided, more land than was ultimately to be the physically permanent road infrastructure would be required for its construction.

- 27 RMS also submits that, if the recitals to the Deed were to be understood as limiting the land within Lot 14 which would be, as between the parties, agreed to be made available, the recital should have read "*part of* which land is reserved ...", where only part of Lot 14 was in fact reserved for road purposes at the date of the Deed (McDiarmid 9.9.15 Annexure B page 22, 23). RMS also submits that the recitals bind the parties to the stated position, that the whole of Lot 14 would be considered to have been reserved for the purposes of a County road, even though only part of that land had in fact been so reserved: *Berry v Wong* [2000] NSWSC 1002 per Young J at [14]; *Labracon Pty Ltd v Cuturich* [2013] NSWSC 97 at [105]–[153], [159]. It is not necessary to determine that question, given the findings that I reach on other grounds below. RMS alternatively submits that, even if the recitals to the Deed do not prevent the Council from disputing that the whole of Lot 14 was to be treated as reserved for a County road, then the recitals set out the contextual understanding on which the parties entered into the Deed, which was that the whole of Lot 14 (which then contained a part of Marsh Street) was available for any future requirement for the purposes of a County road.
- 28 RMS submits that other matters support its construction of the Deed. First, RMS submits that the extent of any reservation from time to time is not precise. RMS relies on the reports of Mr McDiarmid which map the CCPSO scheme maps against the boundaries of the land and the land now required by RMS and estimates that the accuracy with which those maps could be plotted against the lot boundaries contains a significant margin for error and in some cases could not be plotted. RMS submits that the extent of the boundary of the reserved land cannot be identified with such a degree of precision as to support a construction that it was only the land subject to the reservation at the time that was intended to be subject to the trusts. RMS also submits that the provisions of the Deed were expressed in broad terms apt to accommodate the probability that town planning schemes would change or adapt in response to changing circumstances. RMS submits that the requirement to keep the whole of the land free from buildings was consistent with a construction that any part of the land was intended to be capable of being applied for the road purpose.

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RMS also emphasises the relevance of the requirement to make the land available "at no cost" and submits that the Cumberland County Council gave valuable consideration for the land before it was ultimately transferred to the Council. RMS submits that the effect of accepting the construction of the Deed contended for by the Council is that the RMS would be required to pay for the land (or so much of the land that comprises the land now required) to be made available for the public purposes of a road for a second time. Mr Hemmings responded to that submission by reference to a range of documentation which, he contended, suggested that, even if the Cumberland County Council had initially paid for the relevant land, its costs of doing so had ultimately been funded by the Council, so far as the Cumberland County Council had raised loans to pay for the land, and the principal and interest of those loans was reflected in rates and levies issued by the Cumberland County Council to Council (T81). RMS in turn contested that that matter was established by the relevant documents. It does not seem to be necessary to reach a finding as to that question, where the issues of the construction of the relevant documents do not depend upon whether the Cumberland County Council had paid for the land, from its own resources, or whether it would be fair or unfair that the State be required to exercise its rights under the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) ("Just Terms Act") to acquire that land, if it had originally paid for it.

- 30 By contrast, the Council submits that the declarations of trust contained in the Deed identify the parts of Lot 14 held by the Council for RMS by reference to the scheme map for the CCPSO; provide that only those parts of Lot 14 (shown white on the CCPSO scheme map) are held for RMS for new County roads and widening of existing County roads; and provide that the remainder of the land (shown green on the CCPSO scheme map) is dedicated as open space. The Council accepts that it is obliged under the Deed to make available to RMS that part of Lot 14 which is marked white between broken black lines on the CCPSO scheme map. It appears from oral submissions of Mr Hemmings that the Council also accepts that it is obliged to make available the land which was represented by the broken black lines themselves. However, the lack of textual guidance in the Deed as to that matter is a reason why the Council's construction of the Deed should not be accepted. I will identify several other difficulties with that construction below.
- 31 In its opening outline of submissions, the Council submits that the Deed relating to Lot 14 is in two parts, and the first part contains the conveyance of all of Lot 14 to the Council, and the second part contains an acknowledgement and declaration that the Council either holds all of Lot 14 on trust or, alternatively, part of Lot 14 (comprising the land reserved for a County road) on trust for the purposes and subject to the two conditions which follow in the Deed. The Council submits that the purpose and conditions of the trust are narrowed or delineated by the reference to the CCPSO, and emphasises that cl 1 of the second part of the Deed (the acknowledgment and declaration) provides that the Council "will hold the said land which is required for a County [r]oad under the [CCPSO], for that purpose and will make the same available without cost to the Commissioner for Main Roads" and, pending a proper request by

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- RMS to make the area reserved for a County road available to it for that purpose, the Council is not to use the land held on trust or permit it to be used for any purpose other than the purpose of a public park, public reserve or public recreation area. The Council points out that cl 2 of the second part of the Deed provides that it is a condition of the trust that the Council will not erect or permit to be erected any building on any part of Lot 14 without first obtaining the approval of the Cumberland County Council and will observe and comply with all conditions imposed in connection with any such approval.
- 32 The Council also made detailed submissions as to the means by which land was reserved for the purpose of a County road under the CCPSO and its relationship to the RLEP and SREP 33. The Council submits that the CCPSO was a prescribed scheme under the LGA 1919 and had statutory force. The Council also submits that, under the CCPSO, most land was zoned, but certain land was reserved for public purposes specified in the table in cl 10 of the CCPSO, to which I have referred above. The Council submits that the land reserved and the purpose for which it was reserved was defined by reference to markings on the scheme map associated with the CCPSO and that owner initiated acquisition rights were conferred by the CCPSO in some circumstances, and controls were imposed on the use of reserved land.
- 33 The Council submits that the reference to the CCPSO in the Deed was for the purpose of identifying the area of land reserved for RMS and the use for which it was reserved (i.e. new County roads and widening of existing County roads). The Council submits that, on a static or ambulatory approach to construction of the Deed, the parts of Lot 14 that the Council is required to make available to RMS at no cost are either the areas shown in white on the CCPSO scheme map (on a static construction), or the area identified as a Special Uses Zone to accommodate the M5 corridor and the development of a transport corridor by the Roads and Traffic Authority under SREP 33 (on an ambulatory construction). The Council submits that the determination of this issue will turn on whether the references to the CCPSO in the Deed and Declaration of Trust are given a static or ambulatory construction and, if the latter, whether SREP 33 is a successor instrument to the CCPSO. Given the view that I reach below as to the scope of the requirement under the Deed, namely that it is directed to the whole of Lot 14, it is not necessary to address the question of a static or ambulatory reading of the Deed.
- 34 I prefer RMS's construction of the Deed to that advanced by the Council for several overlapping reasons. It seems to me that the first matter that strongly supports the construction which RMS gives to the Deed in respect of Lot 14 is that the recitals record an agreement to convey the "said land", described (in parentheses) as land which is reserved under Division 2 of Part II of the CCPSO "for County [r]oad purposes", to be held by Council upon trust and subject to the conditions set out in the Deed, and then proceed to record the conveyance of the whole of the land and the creation of the trust. The fact that the reference to the CCPSO in the first recital is in parentheses suggests that it is descriptive of the "said land", not part of the identification of it, by contrast with an identification of the land as, for example, "that part of the land that is reserved under

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Division 2 of Part II of the CCPSO for County road purposes". That matter must in turn inform the use of the similar phrase, albeit without the parentheses, in paragraph 1 of the operative provisions of the Deed which creates the trust.

- 35 Second, it seems to me that the reference to the recitals to the land which was to be transferred and held in trust, and the reference in the operative provisions to the land which was in fact transferred and held on trust, should be understood to refer to the same land, being the whole of the relevant land. If that interpretation were not given to the Deed, then the relevant recitals would refer only to an agreement to deal with part of the land, being that reserved for County road purposes under the CCPSO, but not to the balance of the land that was not the subject of that reservation. That would in turn have the result that the operative provisions of the Deed would extend well beyond the recital of what the parties had agreed to do.
- 36 Third, it seems to me that the language "the said land (which land is reserved under Division 2 of Part II in the [CCPSO] for County [r]oad purposes)" in the recitals and the similar phrase in cl 1 of the operative provisions can properly be understood to refer to the whole of the land, as a matter of ordinary usage. As a matter of ordinary usage, a parcel of land can properly be described as reserved for County road purposes where a significant part of the land is reserved in that manner.
- 37 Fourth, RMS's reading of cl 1 of the Deed is supported by the fact that that clause uses the language "required" for a County road not the language "reserved" for a County road. The term "reserved" is defined, in the Shorter Oxford English Dictionary (2007) as "to [keep] for future use" whereas the term "require" is defined as, *inter alia*, "to need for a particular purpose", a concept that is directed to the present rather than the future. At the time the Deed was executed, the parts marked on the scheme map under the CCPSO were reserved, not required, for a County road, and it would have been natural, had the intent been to refer to those parts, to refer to those parts of the land which were "reserved" for that purpose. It seems to me that the language "required for a County [r]oad" contemplates the possibility of a future requirement for use of the land or parts of it, which were then unidentified but which would be identified at the point of that future requirement, as distinct from the "reservation" of parts of the land which were identified at an earlier point in time. Conversely, it seems to me that the Deed cannot be construed in a way that treats the relevant trusts as fixed by reference to the point at which land was reserved for a County road in the CCPSO, because the land which was then reserved for a County road was not then required for a County road. The relevant requirement would necessarily arise at a subsequent point when, as has now occurred, RMS (or its predecessors) indicated the land which was in fact required for the purposes of the construction of the County road, rather than the land which had previously been "reserved" for that purpose.
- 38 Fifth, as RMS points out, a further reason to read cl 1 of the operative provisions of the Deed as referring, by the term "said land", to the whole of the land is that, unless that term is read in that way, across the whole of the clause, then the restriction on use of the land binding the Council, pending the requirement of the land "for a County [r]oad" would bind only that part of the land which was then reserved for a County road under

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the CCPSO, and Council would be free to use other parts of the land for any purpose. That does not seem to me to be consistent with the likely objective intent of the parties to the clause.

- 39 Sixth, I am reinforced in the view which I take as to the construction of the Deed by the fact that, as Mr McDiarmid's evidence indicates, a reference to the scheme map under the CCPSO would have been a particularly imprecise way of identifying what part of the land could be required by RMS, given the scale of that scheme map, where parties which had wished to designate a particular part of the land for use for a road could readily have precisely identified the boundaries of that part of the land.
- 40 For completeness, I note that the reading which I would give to the Deed is consistent with the recitals to the deed under which the Council granted a lease of Lot 14 to the Club, to which I referred in paragraph 20 above, and with cl 23 of that deed which provides that the Club must yield up possession of the land to the Council, without any compensation or damages, upon written request by the Cumberland County Council, the Department of Main Roads or the Council. That requirement is directed to the whole of Lot 14, reflecting the requirement in the Deed as I would understand it, and not only that part of the land which the Council contends could be required for County road purposes. There may be a question, which I do not further address where the parties did not direct submissions to it, whether that recital and that clause would fall within the exception that permits reference to post-contractual conduct of the parties, not as an aid to interpretation of a contract, but so far as that conduct may constitute "an admission of the state of the parties' rights": *Johnston v Brightstars Holding Company Pty Ltd* [2014] NSWCA 150 at [79], [84] per Beazley P, at [121], [122] per Basten JA.
- 41 For these reasons, it seems to me that cl 1 of the Deed requires the Council to make the relevant land, which I have held to be the whole of Lot 14, (or, in this case, that part of it that is now required) available without cost to RMS, as the successor to the Commissioner for Main Roads, or any other body that may be the constructing authority for the County road, when required to do so by that body, and subject to the further issues that I address below. The trigger for the obligation to do so is the requirement of RMS, although the second line of that clause indicates that that requirement is to be "for a County road" under the CCPSO and the sixth line indicates it is to be for a "County road" without the specific reference to the CCPSO.

The construction of the Declaration of Trust relating to Lot 1

- 42 I now turn to the position in respect of Lot 1. On 27 March 1957, Cumberland County Council purchased Lot 1 from Mr George Soren Bang for £24,000 and, on 5 May 1958, the Cumberland County Council transferred Lot 1 to the Council. The transfer appears to have been made under cl 18 of the CCPSO which provided that the Cumberland County Council may transfer which it acquired, under cl 17 of the CCPSO, to a council. Clause 17 of the CCPSO, to which cl 18 referred, in turn permitted an owner of land which was reserved under Div 2 to require, relevantly, the Cumberland County Council to acquire the land.
- 43 Before that transfer occurred, on 14 April 1958, the Council made the Declaration of

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Trust. I set out the relevant parts below:

THE [COUNCIL] ... hereby ACKNOWLEDGES AND DECLARES that it holds and is seised of the land described in the Schedule hereto (which has been transferred to it pursuant to the provisions of Clause 18(1) of the [CCPSO]) UPON TRUST for the following purposes and subject to the following conditions, namely:-

1. AS TO PART of the said land that is as to so much thereof as is required for a County road under the [CCPSO] the Council holds the same for that purpose AND will make the same available without cost to the Commissioner for Main Roads or any other body that may be the constructing authority for the County road when required so to do by the said Commissioner or other body as aforesaid AND pending its requirement for a County Road the Council shall not use or permit to be used such part of the said land for any purpose other than the purpose of a public park, public reserve or public recreation area.
2. AS TO THE RESIDUE of the said land the Council holds the same for the purposes of a public park, public reserve or public recreation area and the Council will not use or permit to be used such residue of the land for any purpose other than the purpose of a public park, public reserve or public recreation area.
3. THE COUNCIL will not erect or permit to be erected on the said land or any part thereof any building without first obtaining the approval of The Cumberland County Council and will observe and comply with all conditions which The Cumberland County Council may impose in connection with any such approval.

THE SCHEDULE

ALL THAT piece or parcel of land situated in the Municipality of Rockdale Parish of St. George Cumberland County Council being part of the land in Certificate of Title registered volume 6580 folio 173 containing an area of 29 acres 3 roods 20¼ perches as shown on plan annexed to Notice of Acquisition dealing number F539934 also being the whole of the land comprised in memorandum of transfer registered number G684473.

- 44 Mr Hemmings accepted that the Court would begin the exercise of construction of the Declaration of Trust with the terms of the relevant instrument, and would only turn to the other documents to the extent that there was ambiguity in the instrument. He also took me, in submissions, to several documents by way of the background to the acquisition of Lot 1. It does not seem to me that I should give significant weight to the pre-contractual documents, both because of the principles in *Westfield Management* to which I have referred above and because it seems to me that those documents record the history of the acquisition of the land, to which I have referred above, but do not provide any illumination in respect of any question of the parties' objective intention that is relevant to the construction of the Declaration of Trust.
- 45 The Council subsequently made Lot 1 available to the Club pursuant to the deed dated 2 May 1961, to which I referred above in respect of Lot 14. The recitals to that deed record that Lot 1:

"is held by the Council upon trust for the purposes of a public park, public reserve and public recreation area and subject to conditions which are substantially to the same effect as those herein before recited with regard to [Lot 14]."

I have referred to the recitals to that deed in respect of Lot 14 above. As I noted above, the deed in turn provided for the lease of the relevant land to the Club for a 30 year period and provided, in cl 23 that:

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"Immediately upon receipt of a written request by the Cumberland County Council, the Department of Main Roads or the Council, the Club shall vacate and peacefully yield up possession to the Council without the payment of any compensation or damages whatsoever so much of the land shaded blue in the said plan as may be specified in the said written notice." (Ex K1, p 906)

As I also noted above, the parties did not make substantive submissions as to the extent of the land shaded blue in the plan attached to that deed.

- 46 The Declaration of Trust plainly applies to the whole of Lot 1, so the issue in respect of it relates to the purposes for which the land may be used under the Declaration of Trust. RMS pleads that Lot 1 was vested in the Council "on condition that the [Council] make [available] such part of Lot 1 as may be required by [RMS] for the purposes of a County road without cost to [RMS]" (Amended Statement of Claim [19]) and that it is a condition of the Declaration of Trust that such part of Lot 1 as RMS requires be made available without cost to the RMS on request (Amended Statement of Claim [53]). RMS makes substantially the same submissions in respect of the construction of cl 1 of the Declaration of Trust as it made in respect of cl 1 of the Deed. RMS's summary of the propositions for which it contended in respect of Lot 1 indicated its position that the relevant land is the whole of Lot 1; the hierarchy of purposes specified in the Declaration of Trust gives primacy to road purposes; relies on the phrase "which is required"; and submits that the phrase "make available" is not prescriptive as to process but envisages all necessary access to and occupation of the land. RMS also submits that the description of the land subject to the trust declared in clause 1 of the Declaration of Trust being "so much thereof as is required for a County road" describes the land actually required by the Commissioner for Main Roads (or its successor) at the time the land is required, and does not refer only to that part of Lot 1 which was at the date of the Declaration of Trust described as "County road" in the CCPSO, or that part of Lot 1 which was subject to the CCPSO at the time the request was made. In oral submissions, Mr Lancaster similarly submits that the words "so much thereof as is required" in the Declaration of Trust refer to a future requirement by the Commissioner for Main Roads or its successor for the use of land for a public road or a main road (T23).
- 47 In response, Mr Hemmings submits, first, that RMS is not entitled to the whole of Lot 1, but only to the land marked in white on the scheme map, being the land reserved for the purposes of a County road (T67). The Council points out that Lot 1 is marked on the CCPSO scheme map to be reserved partly as a "County road" (in white) and partly for either the purpose of "parks and recreation areas" or "foreshore reservations and places of natural beauty or advantage" (in green). The Council accepts that it is obliged under the Declaration of Trust to make available to RMS that part of Lot 1 which is marked white between broken black lines on the CCPSO scheme map, and accepted in oral submissions that that extended to the land represented by the broken black lines. The lack of textual guidance in the Declaration of Trust as to that matter is, as it was with the Deed in respect of Lot 14, a reason why the Council's construction of the Declaration of Trust should not be accepted.

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In its opening submissions, the Council submits that the Declaration of Trust provides that the Council holds Lot 1 upon trust for the purposes and subject to the conditions stated in cl 1, 2 and 3 of the Declaration of Trust. The Council submits that the trust created for Lot 1 has two purposes and to meet those purposes, separates Lot 1 into two parts. The Council points out that cl 1 refers to part "of the said land that is as to so much thereof as is required for a County road under the [CCPSO]" and provides, pending a proper request by RMS to make the area reserved for a County road available to it for a County road, the Council is not to use the land held on trust or permit it to be used for any purpose other than the purpose of a public park, public reserve or public recreation area; cl 2 provides that the residue of Lot 1 is held by the Council for the purposes of a public park, public reserve or public recreation area; and cl 3 provides that it is a condition of the trust that the Council will not erect or permit to be erected on any part of Lot 1 any building without first obtaining the approval of the Cumberland County Council and will observe and comply with all conditions imposed in connection with any such approval.

- 49 In oral submissions, Mr Hemmings submitted (T91) that Council's construction of the Declaration of Trust should be preferred because, on the construction adopted by RMS, any part of the land could at any time be required for the purposes of a County road, and the balance of the land would be held subject to the balance of cl 1, so that it would be used for a public park, public reserve or public recreation area where not required for a County road; and that cl 2 would in that event be superfluous. I do not accept that submission, because it seems to me that cl 1 specifies the nature of the requirement which may be made and the use of the land pending that requirement; and cl 2 is directed to the position as to the balance of the land after such a requirement has been made. The Council also adopted substantially the same line of reasoning as it adopted in respect of the Deed, to which I have referred above.
- 50 The Club also submits, consistently with the submission put by the Council, that the terms of the Declaration of Trust over Lot 1 created two purpose trusts, one being directed to that part of the land required for a County road, and the other being the residue of the land to be held for public recreation. The Club in turn contends that the construction adopted by RMS is unworkable because, until the relevant requirement was made, Council would not know whether it should hold a specific part of Lot 1 for County road purposes or for public recreation. I do not accept that submission because, on the proper construction of the Declaration of Trust, Council held the entirety of Lot 1 for the purposes of a public park, public reserve or public recreation area until the relevant requirement was made and then held the land required for a County road on trust for that purpose, and the residue on trust for a public park, public reserve or public recreation area.
- 51 It seems to me that RMS's construction of the Declaration of Trust should be accepted, for reasons which overlap with those applicable to similar language in the Deed. It seems to me that RMS's reading of cl 1 of the Declaration of Trust is supported by the fact that that deed uses the language "required for a County road under the [CCPSO]" not the language "reserved" for a County road under the CCPSO. At the time the

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Declaration of Trust was executed, the parts marked on the scheme map under the CCPSO were reserved, not required, for a County road, and it would have been natural, had the intent been to refer to those parts, to refer to the parts of the land that were "reserved" for that purpose. It also seems to me that the concept of land that is "required for a County [r]oad under the [CCPSO]" was necessarily future looking, and contemplated the possibility that the land that would in future be required would potentially be different from that which was then reserved under the CCPSO. The obligation to make "the same available without cost" to the Commissioner for Main Roads or any other constructing authority "when required to do so" also emphasises both that the clause is directed to a future requirement, and that what is required to be made available is the land that is in future required. The language of the last part of that clause, which limits Council's use of the land to a public park, public reserve or public recreation area "pending its requirement for a County [r]oad" also contemplates that that requirement will be made in the future. It seems to me that, as was the case with the similar language in the Deed, the language "required for a County [r]oad" contemplated the possibility of a future requirement for use of then unidentified parts of the land, as distinct from the "reservation" of identified parts of the land which did then exist. I am reinforced in that view by the fact that, as I noted above in respect of the Deed, and as Mr McDiarmid's evidence indicates, a reference to the scheme map under the CCPSO would have been an imprecise way of identifying what part of the land could be required by RMS, given the scale of that scheme map, where parties which had wished to designate a particular part of Lot 1 could readily have precisely identified the boundaries of that part of the land.

- 52 For these reasons, it seems to me that the Declaration of Trust also requires the Council to make that part of Lot 1 that is now required by RMS available without cost to RMS, subject to the further issues that I address below.

Whether the requisite land is required for the purposes permitted by the Deed and Declaration of Trust

- 53 RMS contended that its required use of parts of Lot 14 and Lot 1 was within the specified purposes set out in the Deed and the Declaration of Trust. The evidence is that RMS requires land on both a temporary and a permanent basis within Lot 14 and Lot 1 in connection with the New M5 Project (Reynolds 30.10.15 [25]–[26]). On part of Lot 14, RMS would place permanent facilities such as ventilation shafts, an electrical substation, site access, water treatment plant and sedimentation pond for tunnel operation and motorway infrastructure (Reynolds 30.10.15 [26(a)(i)]) and temporary facilities during construction such as a water treatment plant, sedimentation pond, electricity substation, spoil extraction shaft, spoil stockpile, acoustic shed, self-bunded fuel storage, offices and crib rooms, parking for light vehicles, ablutions blocks, laydown areas, noise wall and hoarding (Reynolds 30.10.15 [26(a)(ii)]). On part of Lot 1, RMS would place permanent facilities (Reynolds 30.10.15 [27]) and temporary facilities during construction such as a decline for tunneling machinery and equipment, temporary access roads and loops, spoil stockpile, acoustic shed, acoustic spoil shed, self-bunded fuel storage, sedimentation pond, parking for light vehicles, concrete

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testing station, noise wall and hoarding (Reynolds 30.10.15 [26(b)]). The land is therefore not to be used as the road in respect of the New M5 Project but for temporary facilities that will facilitate the construction of the road and permanent facilities that will facilitate the operation of the road.

- 54 RMS pleads that, on the proper construction of the Deed and the Declaration of Trust, the Council is obliged to make the required land available to RMS for the purposes of the construction, maintenance and use of the road works (Amended Statement of Claim [56]). In its summary of the propositions for which it contended, RMS submitted that the trusts for the purposes of holding and making available land required for the purposes of a road – in substance, trusts for road purposes – are not confined to making Lot 14 and Lot 1 available to the extent only of the vehicle carriageway, verges and any footpaths or the like comprising the finished roadway, but extend to making available other land required for or necessarily incidental to constructing, operating and maintaining the road.
- 55 RMS submits that the words “for that purpose” in cl 1 of the Deed relating to Lot 14 do not describe only the use of the lot for the physical area of a road, and the effect of the clause is to extend to land that encompasses necessary consequential uses for the purpose of constructing a road, such as plant, equipment, spoil, storage, and other such uses. It submits that the land is said to have been reserved for “County road purposes” and the obligation is to hold the land “which is required for a County [r]oad” and that neither the obligation nor the reservation contain any qualification or restriction to a specific purpose associated with the road, such as “constructing”, or “maintaining” or “widening”, and that suggests that all purposes associated with roads, and not only the immediate purpose of construction was intended on the words of the Deed and the Declaration of Trust.
- 56 RMS also submits that an analogous construction is applied to the identification of purpose in land acquisition cases, where acquisition for “road purposes” has been held to encompass all matters necessary for the carrying out of the activities involved in undertaking road construction or widening or maintenance, and relies on the High Court’s decision in *Marshall v Director General Department of Transport* [2001] HCA 37; (2001) 205 CLR 603 at [22]. In that case, the High Court considered the scope of a compensation power where land was resumed for “road purposes” under s 7 of the *Acquisition of Land Act 1967* (Qld). The plurality observed that the use of land as a site for the deposition of residue from road works, for the support of a batter or for drainage associated with road works or for future road-widenings, or as a passive buffer, was a use of that land for “road purposes”. I accept that, as Mr Hemmings points out, that case was concerned with the construction of the relevant statute and that the authorities relating to the purpose for which land is used must also be understood on the basis that the concepts of use and purpose each depend on their particular context: *Valuer General v Fivex Pty Ltd* [2015] NSWCA 53 at [37]. Nonetheless, it does seem to me to support the view that use for a road, or for the purposes of a road, may extend beyond use as a road. Mr Lancaster also draws attention to *Council of the City of Newcastle v Royal Newcastle Hospital* (1957) 96 CLR 493 at 515, where Taylor J

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treated land as used for the purposes of a hospital where it was used as a passive area of land surrounding the hospital. The Privy Council took the same view in *Council of the City of Newcastle v Royal Newcastle Hospital* (1959) 100 CLR 3. It seems to me that those decisions are of less assistance, so far as they appear primarily directed to characterisation of the relevant purpose on their particular facts. In *Ryde Municipal Council v Macquarie University* (1978) 139 CLR 633 at 649, Stephen J similarly held that land was used for the purposes of a university where it was made available for providing commercial and shopping facilities for staff and students.

- 57 The Council initially denied that the concept of "County road" used in the Deed and the Declaration of Trust extended to the roads in issue in these proceedings. In paragraphs 34 and 35 of its Defence, the Council pleaded that the concept of "County road" was not continued into subsequent planning instruments after the CCPSO, including the Rockdale Planning Scheme Ordinance and, in paragraphs 42–49 of the Defence, the Council accepted that subsequent planning instruments zoned parts of Lots 1 and 14 for "transport" or "special uses" but did not admit that those instruments permitted the use of Lots 1 and 14 for the purposes of a road. Those propositions were not pressed at the hearing and I need not address them further.

- 58 The Council instead relied on a second proposition, summarised in its summary of the propositions for which it contended as follows:

"Council is only required to make the Land Reserved available to RMS for new county roads and widening of existing county roads and not for the permanent facilities and 'construction compound' shown in Figure 1 of Annexure 'B' to the Affidavit of Glen Ian McDiarmid dated 16 November 2015 and as also shown at sub-tab 10 of Exhibit KJR-1 to the affidavit of Kenneth James Reynolds dated 30 October 2015, (Exhibit P2, Court Book 2, page 605)."

In oral submissions, Mr Hemmings similarly submitted that RMS was only entitled to land for the purposes of a road, or for the purposes of widening a road, and not for use as a construction compound or for construction purposes or for tunnelling (T67). For completeness, the Attorney General took no position on the factual question as to the use to which the required land is put (whether road, road widening or ancillary road works), albeit expressing the premise that that land is legitimately needed for road works.

- 59 The Council submits that RMS is not entitled to any part of Lot 14 and Lot 1 associated with the New M5 Project as it is not to be used for a County road or widening of existing County road. The Council submits, and it is common ground that the New M5 Compound Plan (Ex P2, tab 10), indicates that none of the land required for the New M5 Project is to be used as a County road or as the widened part of an existing Country road. In oral submissions, Mr Hemmings also pointed out (T79–80) that the balance of the land that was required within Lot 14, other than that part required for Marsh Street, was required for a construction compound, and the whole of the land required within Lot 1 was required for a construction compound.
- 60 As I noted above, the Deed in respect of Lot 14 uses, in cl 1, the language "required for a County [r]oad" and requires the land to be made available "when required to do so" by, relevantly, RMS as the successor to the Commissioner for Main Roads, implicitly in respect of that requirement "for a County [r]oad". I am conscious that the language used in the Deed does not expressly refer to "road purposes", by contrast with that

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considered by the High Court in *Marshall v Director General Department of Transport* above. Nonetheless, it seems to me that the concept of "for a County [r]oad" is wider than the concept of "as a County [r]oad", both as a matter of language, and reading the Deed as a whole and in its context. It seems to me that the use of part of Lot 14 as a temporary construction facility, where that use is proximate to and genuinely for the purpose of constructing a road, is properly described as use *for* that road, although it is not use *as* that road. It seems to me that use for permanent facilities required for a road is also properly described as use *for* that road, although not as use *as* that road, and that proposition extends to facilities such as ventilation shafts and electricity substations, which are necessary for the operation of a road, as it would also extend to drainage or a footpath or an emergency exit gate that was necessary to the operation of that road. That result is consistent with the reasoning in *Marshall v Director General Department of Transport* above, although I have reached it on the proper construction of the Deed.

- 61 Clause 1 of the Declaration of Trust in respect of Lot 1 similarly refers to the Council holding the land "required for a County road" and expressly states that the Council holds the land "for that purpose" and is required to make it available "for a County road". It seems to me that the language *for* a County road is again wider than the concept as a County road, and the express reference to purpose in this clause reinforces that conclusion. A use of Lot 1 for temporary facilities required in the construction of a road, and for permanent facilities necessary for the operation of that road, seems to me to be a use *for* that road, and for the specified purpose of a road, although it is not use *as* a road.
- 62 For these reasons, I do not accept the Council's second submission that the proposed uses of Lot 14 and Lot 1 do not fall within the scope of the Deed in respect of Lot 14, the Declaration of Trust in respect of Lot 1 or the trusts created by those documents.
- 63 The dispute as to whether the land is required by RMS for the requisite purpose was of narrower scope in respect of the widening of Marsh Street than in respect of the New M5 Project. It appears that Council had raised the possibility in July 2010 that part of Lot 14 should be dedicated as a public road in respect of Marsh Street. A letter dated 21 July 2010 from Roads and Traffic Authority, RMS's predecessor, to the Council (Ball 17.8.15, Annexure "B") responded that the area of Lot 14 that was currently in use as part of Marsh Street had not been formally dedicated as public road and observed that:

"As the subject property is partly within a County Road Reservation for the proposed Southern Freeway between Tempe and Loftus, the Roads and Traffic Authority (RTA) does not propose to undertake the necessary action for the dedication as public road and declaration as freeway of the appropriate areas of Lot 14 at this stage."

That letter went on to refer to the Deed relating to Lot 14 and to express the position, which RMS now presses, that:

"[T]he whole of this Lot is required to be held by Council for public purposes until such a time as it is required by the constructing authority when it is to be transferred at no cost. Once final boundaries are established the RTA will arrange for the removal of the covenant from the area of Lot 14 that is not required for road or freeway."

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RMS now requires, permanently, 10,910 m2 of land within Lot 14 for the purpose of widening Marsh Street (Ex P1, tab 14). RMS pleads that, after the completion of the widening of Marsh Street, RMS intends to cause or procure Marsh Street (as widened) to be dedicated as a public road pursuant to the *Roads Act 1993* (NSW) (Amended Statement of Claim [28]). RMS also requires, on a temporary basis, 4,010 m2 of land within Lot 14 for working facilities in connection with widening Marsh Street (Ex P1, tab 4 p 193).

- 65 In its opening submissions, the Council acknowledged that, subject to its obligations as trustee, it is willing to grant a leasehold interest for the term required by RMS in those parts of Lot 14 which comprise the land reserved for a County road (shown white on the CCPSO scheme map) to RMS for the widening of Marsh Street at no cost, upon request, and will take all necessary and lawful steps to seek to reclassify the land under the LGA 1993 for operational purposes to enable it lawfully to do so. Mr Hemmings drew attention in oral submissions to s 47F of the LGA 1993 which restricts the dedication of community land as public road for some purposes, but does not apply to a dedication of land for the purpose of widening an existing public road. Mr Hemmings submits, and I accept, that it would be open to Council first to dedicate Marsh Street as a public road, completing the process which it had raised but the predecessor to RMS had not pursued in 2010, then to dedicate the additional land required for the widening of that road under s 47F of the LGA 1993. Mr Hemmings noted that, although the widening of Marsh Street extended to land that was partly marked in green on the relevant CCPSO plan, that did not raise a difficulty so far as Marsh Street was already a road and there was no legal impediment to its transfer to RMS (T79). In any event, on the findings as to the construction of the Deed that I have reached above, the Council's obligations to make the land available where required for County road purposes extend to the whole of Lot 14, not only that part of it that was marked in white on the CCPSO scheme plan as reserved for County road purposes.
- 66 There may be a remaining dispute in respect of part of the land sought to be required in respect of the Marsh Street widening proposal, which is not to be used for the road itself but for ancillary works (T110). To the extent that a dispute remains in respect of that area, RMS is entitled to have that land made available to it at no cost for the same reasons as I have reached that conclusion in respect of land required for ancillary works in respect of the New M5 Project, as set out above.

The impact of the LGA 1993 and other instruments

- 67 A further issue in the proceedings is whether the Council is prevented from making the required land available to RMS on the proper construction of the Deed and the Declaration of Trust by reason of the LGA 1993, including those provisions in that Act which relate to local councils' ability to deal with land classified under that Act as "community land".
- 68 Paragraph 49 of the Council's Defence pleaded that none of the core objectives in ss 36E–36N of the LGA 1993 included road works or road construction purposes. That paragraph also pleaded that an estate in community land could be granted for the

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provision of a road, but only where that estate was consistent with one of the core objectives stated in ss 36E–36N of the LGA 1993, and paragraphs 49(b) and (c) of the Defence pleaded that, under ss 45(1)–(2) and 46(1)(b) of the LGA 1993, a lease, licence or other estate in respect of community land could not be granted unless it was expressly authorised under a plan of management. Paragraph 40 of the Council's Defence pleaded that a draft plan of management existed in relation to Lots 1 and 14, and if it were adopted, it would categorise each of those lots as a sportsground and would not authorise the grant of an estate to create a road. Paragraphs 55–60 of the Council's Defence relied on the restrictions imposed by the LGA 1993 to contend that those restrictions prevent the Council now making the required land available to RMS and pleaded that the Council was not able to implement a plan of management that would permit the use of Lots 1 and 14 for road works and that none of the land marked for use for parks and recreation areas in the scheme map for the CCPSO could be transferred to RMS for road works pursuant to the terms of the trusts, by reason of ss 45 and 46 of the LGA 1993.

- 69 In its opening outline of submissions, the Council submits that the LGA 1993 fetters Council's power to dispose of community land, within the meaning of the Act. The Council relies on s 45 of the LGA 1993 which provides that a council has no power to sell, exchange or otherwise dispose of community land. The Council accepts that it may grant a lease, licence or other estate in respect of community land but only in accordance with Division 2 of Part 2 of the LGA 1993, but submits that s 46 of the LGA 1993 provides that a lease, licence or other estate in respect of community land may be granted in accordance with an express authorisation in a plan of management, and that such a lease, licence or other estate in respect of community land may be granted only if the purpose for which it is granted is consistent with the core objectives prescribed by ss 36E–36N of the LGA 1993. The Council initially submitted that none of the core objectives for community land prescribed by ss 36E - 36N of the LGA 1993 include granting estates or interests in community land for road works or road construction purposes. The Council also submits that a plan of management is void to the extent that it purports to authorise the grant of a lease, licence or other estate in contravention of s 46 of the LGA 1993.
- 70 In its summary of its key propositions, RMS submits that, even if the general savings provision in the LGA 1993 (to which I will refer below) does not have the effect for which RMS contends, the LGA 1993 does not prevent the Council making the required land available to it. RMS submits that the classification of the land as community land and its proposed categorisation by the Council as a sportsground, to which I referred above, are not impediments to the Council making the required land available and a plan of management need not expressly authorise the use of the land for the widening of Marsh Street and the New M5 Project.
- 71 The Attorney General submits, with substantial force, that the effect of the LGA 1993, on which Council relies, would either prevent both the land required for a County road (marked in white in the scheme plan) and the land reserved for parks and recreation areas (marked in green in the scheme plan) being made available to RMS, or it would

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prevent neither class of land being made available to RMS. The Attorney General also points out, again with substantial force, that the prohibitions under ss 45 and 46 of the LGA 1993 apply to both classes of land and, if an interest can be granted in the land required for a County road under the LGA 1993, then it can also be granted in the land required for parks and recreation areas under that Act; that the provisions that apply for reclassification of the land required for a County road as operational land under s 30 of the LGA 1993 also apply to the reclassification of the land required for parks and recreation areas; and that both categories of land were proposed to be categorised as a sportsground in Council's draft plan of management so that, if that proposed zoning affects the Council's ability to perform the trusts, it does so in respect of both categories of land. It seems to me that those submissions must be accepted, and the Council is either able to perform the trusts in their entirety, in respect of both categories of land, or it is not able to perform the trusts at all.

- 72 Turning now to the terms of the LGA 1993, it is helpful to refer first to a note to Pt 2 of the LGA 1993 although, by reason of s 6 of the LGA 1993, it does not form part of the Act but is provided to assist understanding. That note records that Pt 2 of the LGA 1993 requires all land vested in a Council (except, relevantly, a road) to be classified as either "community" or "operational" land. That note indicates that:

"The purpose of classification is to identify clearly that land which should be kept for use by the general public (community) and that land which need not (operational). The major consequence of classification is that it determines the ease or difficulty with which land may be alienated by sale, leasing or some other means.

Community land must not be sold (except in the limited circumstances referred to in s 45(4)). Community land must not be leased or licensed for more than 21 years and may only be leased or licensed for more than 5 years if public notice of the proposed lease or license is given and, in the event that an objection is made to the proposed lease or license, the Minister's consent is obtained. No such restrictions apply to operational land."

- 73 Mr Hemmings also draws attention to the Council's charter, as set out in s 8 of the LGA 1993, which includes requirements to bear in mind that it is the custodian and trustee of public assets and to effectively plan for, account and manage the assets for which it is responsible. Part 2 Div 2 of the LGA 1993 in turn sets out the requirements for the use and management of community land. Section 35 provides that community land is required to be used and managed in accordance with the plan of management applying to the land, any law permitting the use of the land for a specified purpose or otherwise regulating its use and Pt 2 Div 2. Section 36 provides for preparation of a draft plan of management for community land which must identify specified matters, and which may apply to one or more areas of community land, except as provided by Pt 2 Div 2. Section 36(4) provides that community land is to be categorised as one or more of several categories in a draft plan of management, including permitting categorisation relevantly as a sportsground or for "general community use".
- 74 The Council relies, in support of the proposition that it cannot make the land available to RMS, consistent with the core objectives, upon s 36F of the LGA 1993 which sets out the core objectives for "management of community land categorised as a sportsground". The immediate difficulty with that proposition is that, as is common ground, the relevant land is not in fact categorised as a sportsground, because any

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such categorisation would arise from a plan of management, which Council has prepared in draft but not adopted. The Council submits that any lease and license of the land would depend upon the making of a plan of management, and that proposition is correct so far as such a lease or license relied on s 46(1)(b) and s 46(4) of the LGA 1993 but not, as I will note below, to the extent that it relied on s 46(1)(a) of the LGA 1993.

- 75 The Council submits that, when the land was to be categorised by a plan of management, as would be required in order to grant a lease or license of it, the relevant land would have to be categorised as a sportsground, which would then limit the purposes for which it could be used by s 36F of the LGA. Mr Hemmings refers to Pt 4 Div 1 of the Local Government Regulations 2005 (NSW), which sets out guidelines for the categorisation of community land, and in particular to reg 103 which provides that:

"Land should be categorised as a sports ground under s 36(4) of the [LGA 1993] if the land is used or proposed to be used primarily for active recreation involving organised sports or the playing of outdoor games."

Mr Hemmings also drew attention to what would be required for Council to take the specified matters into consideration: *Zhang v Canterbury City Council* [2001] NSWCA 167; (2001) 51 NSWLR 589 at [70]ff.

- 76 I do not accept the Council's submission that it would be obliged to categorise the relevant land as a sportsground on that basis. First, as Mr Hemmings accepted in oral submissions, reg 101 of the Local Government Regulations provides that Pt 4 Div 1 of the Regulations sets out "guidelines" for the categorisation of community land, and requires Council to "have regard" to those guidelines, rather than mandating a particular result. Second, it seems to me that any categorisation by the Council would have to have regard, not only to the use to which the Club is presently putting the land, but also to the terms of the trusts. To put that proposition another way, it could scarcely be said that Council, as trustee, would be entitled to disregard the requirements of the trusts as to the purposes for which the land must be used, in categorising it as a sportsground, because it was presently being used for another purpose, for example, for a subordinate purpose under the trust, or indeed in breach of trust. In making these observations, I proceed on the basis that the trusts were not extinguished by the LGA 1993, as was ultimately common ground between the parties.
- 77 I recognise that the Council is obliged to comply with its statutory obligations, including those arising under the LGA 1993, in conducting itself as trustee of the trusts, even if those obligations restrict steps which it might otherwise take to promote the purposes of the trust. However, it does not seem to me that that provides an answer to the difficulty which the Council, as trustee, would face, by way of conflict of duty and duty, if it is required in its capacity as a local council to have regard to specified considerations in declaring the land to be a sportsground, but its conduct in that regard would be inconsistent with its duties as trustee, so far as it would prevent its compliance with its obligations as trustee. In that situation, Council must resign as trustee, or would potentially be removed as trustee by the Court, where that would be necessary to allow compliance with its obligations in respect of categorisation of the land for the purposes of the LGA 1993 without breach of its obligations as trustee. The fundamental difficulty

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with the Council's submission in this respect is, it seems to me, that it contemplates that a trustee would, in undertaking the act of categorisation contemplated by the LGA 1993, act in a manner that would prevent its performance of the trust, rather than first resigning as trustee so as to comply with its statutory obligations without breach of trust. It is not necessary to read down the trust to accommodate the Council's statutory obligations in respect of the classification of the land under LGA 1993, where both a breach of those obligations and a breach of trust could be avoided by Council's resignation as or removal as trustee of the trusts.

78 Section 36I of the LGA 1993 in turn provides for the core objectives for management of community land categorised as general community use, which are to promote, encourage and provide for the use of the land, and to provide facilities on the land, to meet the current and future needs of the local community and of the wider public, including in relation to purposes for which a lease, license or other estate may be granted in respect of the land (other than the provision of public utilities and works associated with or ancillary to public utilities). The exclusion of land used for the provision of public utilities and works associated or ancillary to them is consistent with s 46(1)(a) of the LGA 1993, to which I refer below, so far as the use of community land for the provision of public utilities and works associated with them does not require authorisation under a plan of management. Section 46(4) of the LGA 1993 in turn specifies the purposes for which a lease, license or other estate in the land may be granted.

79 Mr Hemmings submitted (T107) that an approach which understood s 36I of the LGA 1993 as permitting a license or lease to be granted, where s 46(4) of the LGA 1993 specified the purposes for which that could occur, was circular. I do not accept that submission, although I accept that the LGA operates in a somewhat indirect manner, which contemplates (in s 46(2)) that a lease may only be granted within s 46(1)(b) if it is consistent with the core objectives; then, in s 46(4), specifies prescribed purposes for which such a lease or license may be granted; then, in s 36I(b) treats a lease, license or other estate granted for the relevant purposes as complying with the core objectives, in respect of land categorised as general community use. It seems to me that, in effect, s 36I treats as one of the core objectives the grant of a lease, license or other estate which s 46(1)(b) and s 46(4) would permit to be granted or, as Mr Lancaster put it in oral submissions, makes clear that the core objectives include the provision of leases to the extent that Council otherwise has power to grant leases under the LGA 1993 (T34). It also seems to me that the core objective in s 36I would be satisfied, so far as the relevant land were used for a facility that would facilitate the construction of the new M5, so far as that is a proper purpose for which a lease, license or other estate may be granted in respect of the land under ss 46(1)(b) and 46(4), if it were not otherwise properly characterised as a public utility or works associated with it under s 46(1)(a) of the LGA 1993. I will refer to those sections below.

80 Mr Lancaster also drew attention to s 37 of the LGA 1993 which provides that a plan of management for community land that is not "owned by the Council" must identify the owner of the land, and, inter alia, state whether the land is subject to any trust, and

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whether the use or management of the land is subject to any condition or restriction imposed by the owner. The scope of that section is by no means clear, so far as it raises a question when land that is not "owned by the Council" would properly be classified as "community land", and whether the concept of ownership referred to in that section is to legal or beneficial ownership. Subsection 37(d) in turn requires that a plan of management for community land falling within this category must not contain any provision inconsistent with anything required to be stated by s 37(b), relevantly, that the land is subject to the trust. It seems to me that this section must at least apply to land as to which Council is the registered owner where it holds it as trustee for a beneficial owner or under a charitable trust. Otherwise, the reference to land that is "subject to any trust" might well be otiose, since Council would commonly be the registered owner, but not the beneficial owner, of land that is subject to a trust. That is consistent with a reading of the phrase "not owned by the Council" in s 37 as referring, not to legal ownership, but both to legal and beneficial ownership. It seems to me that there is a strong argument that s 37 would be contravened by a plan of management that referred to the existence of the trust, but then contained provisions that were inconsistent with its terms. It is, however, not necessary to express a final view as to that question, given the findings that I reach on other grounds.

- 81 Section 45 of the LGA 1993 relevantly provides that a Council has no power to sell, exchange or otherwise dispose of community land, but may grant a lease or license of community land, only in accordance with Pt 2 Div 2, and may grant any other estate in community land to the extent permitted by that Division or under the provision or under the provisions of another Act. The combined effect of ss 26, 45(1) and cl 6(2)(b) of Sch 7 of the LGA 1993 was treated as being that land subject to a trust for a public purpose was taken to be classified as "community land", which a Council had no power to sell or otherwise dispose of in *Save Little Manly Beach Foreshore Inc v Manly Council (No 2)* [2013] NSWLEC 156 at [73]–[81], cited with approval in *Willoughby City Council v Roads and Maritime Services* [2014] NSWLEC 6; (2014) 201 LGERA 177 at [22]. That proposition was not, however, addressing the circumstances in which a Council would have power to lease or grant a license or other estate in the relevant land. Mr Lancaster points out (T29) that the limitation in s 45 of the LGA 1993 is in terms directed to Council, rather than to the land, and it seems to me at least arguable that it would not apply to a trustee of the trusts other than Council. In *Willoughby City Council v Roads and Maritime Services* above at [37], Biscoe J treated the legislative prohibition on the sale by a Council of "community land" as a matter which was peculiar to the owner, rather than of general application, for the purposes of valuing the land under the Just Terms Act, and that supports a view that, if the Council were unable to perform the trust, that inability would not attach to a replacement trustee. However, it is also not necessary to express a concluded view as to that issue given the views that I have reached below on other grounds.

- 82 Section 46(1)(a) of the LGA 1993, to which Mr Lancaster draws attention, in turn provides that a lease, license or other estate in respect of community land:

"may be granted for the provision of public utilities and works associated with or ancillary to public utilities."

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By contrast with s 46(1)(b) of the LGA 1993, to which I will refer below, s 46(1)(a) does not appear to require provision in a plan of management relating to the relevant grant and, by contrast with s 46(2) which restricts the grant of a lease, licence or other estate for a purpose mentioned in s 46(1)(b) to a purpose that is consistent with the core objectives described in Pt 2 of the LGA 1993, no such restriction is imposed on the grant of a lease, licence or other estate for the provision of public utilities and works associated or ancillary to them under s 46(1)(a) of the LGA 1993.

- 83 Mr Lancaster points out that the term "public utilities" is not defined in the dictionary to the LGA 1993, and might at least be regarded as including matters such as water and gas, electricity, garbage collection and the like. However, Mr Lancaster submits that that concept also includes public roads or that public roads are ancillary to public utilities. Mr Lancaster draws attention to the decision in *Telstra Corporation Ltd v Port Stephens Council* [2015] NSWLEC 1053, where Pearson C referred at [67] to the definition of "public utility" in the Oxford English Dictionary (online edition) as:

"A service or supply regarded as essential to the community, esp the supply of electricity, gas and water; (also) a company providing such a service or supply."

The Commissioner there noted that works contemplated by a telecommunications provider in the form of an upgraded accessway and the provision of cabling would fall within that section so that a lease or license could be granted.

- 84 It seems to me that some assistance may also be drawn, by way of analogy, from the use of that term "public utility" in other instruments to which Mr Lancaster drew attention. For example, in the Standard Instrument – Principal Local Environmental Plan and in the Sydney Regional Environmental Plan No 33 – Cooks Cove, which is applicable to the relevant area, the term "public utility undertaking" is defined as "any services or facilities" carried on by, or under the authority of, relevantly, a State Government Department or agency, or pursuant to a State Act, for the purposes of providing road transport or facilities, as well as for sewerage or drainage, water and telecommunication facilities. A similar definition appears in the Rockdale Local Environmental Plan 2011. These definitions contemplate that services or facilities carried on for the purpose of providing road transport fall within that concept.
- 85 It seems to me that the language used in those definitions is consistent with the result which would be reached as a matter of general usage. While a public road may not itself be a "public utility" for the purpose of s 46(1)(a) of the LGA 1993, because it is specifically addressed in s 46(4)(b), to which I will refer below, it seems to me that services or facilities carried on for the purpose of providing such a road do have the character of a "public utility". In particular, it seems to me that such services have an element of public benefit, so far as they permit the construction of roads that are beneficial to the community. For these reasons, it seems to me that the Council's submission that it is not able to provide the relevant lease, license or other estate in respect of Lots 1 and 14 fails at the threshold, because s 46(1)(a) of the LGA 1993 permits it to do so, and does not require an express authorisation in the plan of management for that purpose. I am reinforced in that view by the fact that it would be odd, in the extreme, if the LGA 1993 were to permit, by s 46(1)(b) and s 46(4) the provision of public roads, but not permit Council to make facilities available that are necessary for ancillary purposes in respect of such roads, for example, drainage or adjacent footpaths, or for the construction of such roads.

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- 86 Use of the relevant land for permanent facilities comprising ventilation shafts, an electrical substation, site access, water treatment plant and sedimentation pond for tunnel operation and motorway infrastructure also seems to me to fall within the concept of a "public utility" in its general usage. At the risk of stating the obvious, there seems to me to be little room for a suggestion the public generally, who are likely to be the users of the new M5, are not assisted by ventilation of the proposed tunnel, electricity for it, water treatment or the infrastructure necessary for the motorway to operate, in a similar way to which they are assisted by electricity substations and water supply within the ordinary concept of "public utility". These findings are sufficient, without more, to have the result that the Council may make the relevant land available to the RMS under the LGA 1993, notwithstanding its character as community land.
- 87 Section 46(1)(b) of the LGA 1993 in turn provides that a lease, license or other estate in respect of community land may be granted, in accordance with an express authorisation in a plan of management, for a purpose prescribed by s 46(4) of the LGA 1993 or for a purpose prescribed by ss 36E–36N as a core objective of the categorisation of the land concerned. However, s 46(2) provides that, despite s 46(1), a lease, license or other estate in respect of community land may be granted for a purpose specified in s 46(1)(b) only if the purpose for which it is granted is consistent with the core objectives, as prescribed in Pt 2, of its categorisation. Section 46(4) in turn specifies purposes falling within s 46(1)(b)(i) as including "the provision of public roads". The term "public roads" is in turn defined in the LGA 1993 as "a road which the public are entitled to use". Mr Hemmings accepted, in oral submissions, that the language of s 46(4) of the LGA 1993, referring to the provision of public roads, extended beyond the land which would be used for the road to additional land which may be required at the time of provision of the road, such as a works compound to build a road (T103). It seems to me that that proposition is correct, since otherwise that section could simply have referred to "public roads", rather than to the provision of such roads. It also seems to me that, additionally to the view which I have reached in respect of s 46(1)(a) of the LGA 1993, the provision of the relevant land to RMS would be permitted under s 46(1)(b)(i) and s 46(4) of the LGA 1993, so far as the land would be for the provision of public roads. I note, in this respect, that it seems to me that the language "the provision of public roads" in s 46(4)(b) extends beyond the use of the land itself as a public road, to steps involved in providing the public road, which would include steps involved in the construction of that road.
- 88 The Council relies, in contending that it is not able to provide the relevant land under s 46, on the absence of a draft plan of management for the relevant land which records a purpose of making it available for the provision of public roads, notwithstanding its obligation under the LGA 1993 to prepare a plan of management for the land, and notwithstanding its obligations under the trust. On the findings that I have reached above, the Council is obliged to provide the relevant land to RMS for the relevant purposes, and under the terms of the LGA 1993, it has for many years been obliged to prepare a plan of management. The fact that the Council has not prepared such a plan that is consistent with the requirements of the trusts does not seem to me to provide any basis for non-compliance with its obligations under the trusts.

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- 89 Mr Lancaster also raised, in reply, the possibility that a lease could be granted within s 46(1)(b) where there is no extant plan of management applying to the land, and that s 46(2) does not operate because there is no relevant categorisation of the land. It does not seem to me that the language, or structure, of the section support that reading of it. Section 47D of the LGA 1993 in turn prohibits the exclusive occupation or exclusive use by any person of community land other than in accordance with a lease, license or estate to which s 47 or s 47A applies. Mr Lancaster drew attention to the exceptions to that section, arising under the regulations. I do not consider it necessary to address that issue where, on the findings that I have made, the occupation of the land by RMS for a lease of a term of less than five years would be permitted under s 47A of the Act. In any event, it appears to be common ground that, as Mr Hemmings submitted in oral submissions (T96), it would also be open to Council to reclassify the land as operational land, and then convey it to RMS, to the extent that the Deed or the Declaration of Trust required it to do so; and a dispute which previously existed between the parties as to whether that course might defeat the trusts appears to have dissipated, with it now being common ground that that course could be taken in a manner that preserved the character of the land not required by RMS as subject to the trusts.
- 90 For completeness, I should note that an issue arose in Mr Hemmings' oral submissions as to whether the form of the lease proposed by RMS was in fact a lease for less than five years, or whether an offer by RMS to make good the land after the completion of the works had the result that it continued for a longer period (T122). It does not seem to me to be necessary to address that issue, where it involves matters of detailed drafting of a lease which has not yet been prepared, rather than an issue of substance as to the terms of the trust or RMS's ability to require the land to be made available under it.

RMS's reliance on the transitional provisions in the LGA 1993

- 91 In its summary of its key propositions, RMS also submits that, on the proper construction of the general savings provision of the LGA 1993, the provisions regulating community land in that Act do not prevent the Council making the required land available because the declaration and acceptance of the obligations of the trusts was a thing done under s 526 of the LGA 1919 and is an obligation preserved under cl 3 of Sch 7 of the LGA 1993. I should address this issue, which received detailed attention in submissions, although it is not strictly necessary to do so given the findings that I have reached above.
- 92 Broadly, RMS submits that the transitional provisions in cl 3 of Sch 7 of the LGA 1993 preserved the obligations on the Council to make the land in Lot 14 and Lot 1 available such that the regime under the LGA 1993 regulating dealings in community land does not apply to any grant required to give effect to the obligations. RMS also submits that, where the obligation of a trustee is one that imposes a personal requirement to deal with the land in accordance with the terms of the trust, a construction of the transitional

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- provisions that continued to recognize the effect of the trust, but which imposed stricter controls on the manner in which the purpose of the trust could be carried out, would be inconsistent with the scheme of the legislation, including its transitional provisions.
- 93 RMS submits that, under the LGA 1919 the Council was obliged as a matter of both public and private law to act so as to make the land available either permanently or by way of lease for the purposes of a County road. RMS submits that s 518 of the LGA 1919 permitted the Council, subject to the Act, to "sell or exchange any land or building or other real or personal property vested in or belonging to the council or under its care, control, and management" but did not "authorise the sale or exchange of any public reserve, public place, or cemetery, or any land subject to a trust" (s 518(2)(b)). Section 519 of LGA 1919 contained a power to lease land for two years without approval, or for a period not exceeding 21 years with the approval of the Governor. Section 526 of the LGA 1919 in turn empowered the Council "to act in the administration of such property for the purposes and according to the trusts for which the same may have been conveyed...". RMS submits that s 526 proceeded on an assumption that the legal incidents of a trust, including the remedies for breach, should attach to the Council's power to deal with Lot 14 and Lot 1 being the trust property. RMS submits that, as a specific power, s 526 supplemented the general powers of councils, which had the power to bind themselves to enforceable legal obligations under their general powers. RMS also points out that s 529 of the LGA 1919 gave a council the power to "do any acts, not otherwise unlawful, which may be necessary to the proper exercise and performance of its powers and duties." RMS submits that ss 518 and 519 appeared in Div 3 of Pt XXIV dealing with sale and lease, and s 526 appeared in Div 6 of Pt XXIV, which confers various specific ancillary powers on councils in respect of discrete subject matters.
- 94 RMS submits that, by reason of these provisions of the LGA 1919, the Council had the same powers as a trustee that was a private person, and would have to regulate the use of the land vested in such a trustee as to make its use accord with the trusts under which the land is held: *Ku-ring-gai Municipal Council v The Attorney-General* (1954) 55 SR (NSW) 65 at 72. RMS also submits that the Council was under an enforceable obligation to perform its functions only in a way that advanced the objects of the statutory trust and that it was not open to them to act otherwise, and refers to *Royal Botanic Gardens and Domain Trust v South Sydney City Council* above at [79], to which I referred above. RMS submits that, before the enactment of the LGA 1993, the Council was therefore under an obligation to give effect to the terms of the Deed and the Declaration of Trust and had power pursuant to ss 526 and 529 of the LGA 1919 (and in respect of Marsh Street, its road powers) to make Lot 14 and Lot 1 available, whether by granting a lease to RMS or otherwise.
- 95 RMS accepts that the enactment of the LGA 1993 reclassified the land comprising Lot 1 and Lot 14 as "community land", which is subject to the regime of control to which I have referred above, under ss 36 – 47F of the LGA 1993. However, RMS submits that the LGA 1993 specifically preserved the effect of things done under the LGA 1919 by means of a general saving in Sch 7 cl 3, which provides that:

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"(1) If anything done or commenced under a provision of an instrument repealed by the *Local Government (Consequential Provisions) Act 1993* has effect or is not completed immediately before the repeal of the provision and could have been done or commenced under a provision of an Act specified in clause 2(1) if the provisions of the Act had been in force when the thing was done or commenced:

(a) the thing done continues to have effect, or

(b) the thing commenced may be completed.

(2) This clause is subject to any express provision of this Act or the regulations on the matter."

The legislation repealed by the *Local Government (Consequential Provisions) Act 1993* (NSW) ("Consequential Provisions Act") included the LGA 1919, other than several Parts that are not presently relevant. The Acts specified in Sch 7 cl 2(1) are in turn, relevantly, the Consequential Provisions Act and the *Roads Act 1993*.

- 96 RMS submits that, if the Council's power to make a plan of management would otherwise be constrained by the LGA 1993 in a manner that is inconsistent with its obligations to perform the Deed and the Declaration of Trust, the general saving provision found in Sch 7 cl 3 of the LGA 1993 is applicable and the Council is empowered to perform the trusts under the Deed and the Declaration of Trust without regard to the LGA 1993. RMS submits, *inter alia*, that both the Deed and the Declaration of Trust were "things done" by the Council which "had effect" immediately before the repeal of the provision (in this case, s 526 of the LGA 1919); the thing done or commenced under a provision of an instrument repealed by the Consequential Provisions Act has effect or has not been completed before the repeal of the provision; and the thing could have been done or commenced under a provision of an Act specified in Sch 7 cl 2(1), if the provisions of that Act had been in force when the thing was done or commenced. RMS also submits that, pursuant to ss 22 and 23 of the LGA 1993, the Council would have had the power to enter into the Deed and the Declaration of Trust if those provisions had been in force when Council's entry into the Deed and the Declaration of Trust was "done or commenced". It was not entirely clear, from RMS's submissions, how the Consequential Provisions Act, in itself or combined with the LGA 1919, was said to have permitted the relevant acts to be done or commenced, since RMS focused on a submission that those acts would have been permitted under the LGA 1919, as distinct from under the Consequential Provisions Act. Given the other findings I reach below on other grounds, it is sufficient that I assume, without deciding, that the reference to the Consequential Provisions Act in Sch 7 cl 2(1) extended the operation of the savings provision in Sch 7 cl 3 to an act that could have been done under the LGA 1919.
- 97 RMS submits that the savings provision in Sch 7 cl 3 is beneficial or remedial in nature in that it guards against the consequence that would otherwise possibly flow from the repeal of the LGA 1919. It relies on the approach to be adopted in relation to the interpretation of remedial legislation as reflected in the dissenting judgment of Isaacs J in *Bull v Attorney-General (NSW)* (1913) 17 CLR 370 at 384, where his Honour observed that:

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"In the first place, this is a remedial Act, and therefore, if any ambiguity existed, like all such Acts should be construed beneficially ... This means, of course, not that the true signification of the provisions should be strained or exceeded, but that it should be construed so as to give the fullest relief which the fair meaning of its language will allow".

RMS also refers to observations in D C Pearce and R S Geddes, *Statutory Interpretation in Australia*, (8th ed, 2014, LexisNexis Butterworths at [9.2] and *IV v The City of Perth* (1997) 191 CLR 1 at 12 in this respect. I broadly accept that submission, although it does not substantially advance the question of the particular acts that could have been done under the Consequential Provisions Act or the LGA 1919.

- 98 The Council responds that, assuming that the LGA 1919 is an "instrument" repealed by the Consequential Provisions Act, Sch 7 cl 3 of the LGA 1993 provides, so far as is relevant, that, if anything done under s 526 of the LGA 1919 (relevantly, the establishment of a trust) has effect immediately before the repeal of that section and could have been done or commenced under a provision of an Act specified in cl 2(1) (which it contends refers to the LGA 1993 not the LGA 1919) if the provisions of the LGA 1993 had been in force when the thing was done (relevantly, the establishment of the trust), the thing done (the establishment of trust) continues to have effect and is subject to any express provision of the LGA 1993. It seems to me unlikely that a saving provision should be construed as saving only what complies with the LGA 1993, since a saving provision would not seem to be required for matters that already complied with the new Act without that provision; however, it is not necessary to express a final view as to that matter given the conclusions that I reach on other grounds. The Council submits that the restrictions imposed by ss 45 and 46 of the LGA 1993 therefore apply to the land held by the Council on trust. The Council submits that, if this interpretation is not accepted, and the LGA 1919 still has effect in respect of those matters, Pt XXIV Div 3 of the LGA 1919 contains similar restrictions on the Council's power when dealing with land held on trust to the restrictions contained in Ch 6, Pt 2 Div 2 of the LGA 1993.
- 99 As I noted above, I assume, without deciding, that the general saving provision in cl 3 of Sch 7 of LGA 1993 is capable of preserving the operation of the Deed and the Declaration of Trust, so far as they were created under the LGA 1919, so that the Deed and Declaration of Trust continue to have effect. There otherwise does not seem to me to be any other relevant act that was either done or commenced under a provision of either the Consequential Provisions Act or the LGA 1919 to which the saving provision could apply. In particular, the saving provision could not, in my view, apply to any requirement by RMS for the land, since no act of requiring the land had been done or commenced while the LGA 1919 was in effect. It also seems to me that, so far as ss 42–45 of the LGA 1993 would apply to matters done by the Council in respect of the trusts created by the Deed and Declaration of Trust, ss 36–47F of the LGA 1993 are express provisions of the LGA 1993 "on the matter" for the purposes of cl 3(2) of Sch 7 and the saving provision would in any event be subject to those provisions.

RMS's reliance on s 30 of the Interpretation Act 1987

- 100 RMS also submits that the trust obligations and the rights to enforce the terms of the Deed and the Declaration of Trust which had accrued to the Plaintiff (or to the Attorney General) at the time the LGA 1919 was repealed are preserved by s 30 of the

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Interpretation Act 1987 (NSW) ("Interpretation Act"). Section 30(1)(c) of the Interpretation Act provides that the amendment or repeal of an Act does not, relevantly, affect any right, privilege, obligation or liability acquired, approved or incurred under that Act.

- 101 RMS submits that s 30 of the Interpretation Act applies except in so far as the contrary intention appears in the Act or instrument concerned, and survives the enactment of legislation which would prevent giving effect to the accrued right: *Interpretation Act s 5 (2)*; *ADCO Constructions Pty Ltd v Goudappel* [2014] HCA 18; (2014) 308 ALR 213 at [12], [27]; *NSW Aboriginal Land Council v Minister Administering the Crown Lands (Consolidation) Act and the Western Lands Act* (1988) 14 NSWLR 685 at 696. RMS submits that section applies to the repeal of the LGA 1919 and the CCPSO (which was a statutory rule pursuant to s 21 of the Interpretation Act), and that upon entering into the Deed and the Declaration of Trust and becoming subject to the obligations to deal with the land consistently with the terms of the Deed and the Declaration of Trust under s 526 of the LGA 1919, the Council accrued an obligation to administer the land as a trustee and to make the land available to the RMS (or its predecessor, the Commissioner for Main Roads) for the purposes of a County road as and when required, and a concomitant right to enforce the terms of the Deed and the Declaration of Trust accrued to the Minister administering the EPA Act as successor to the Cumberland County Council.
- 102 The Council responds that s 30(1)(c) of the Interpretation Act provides that the amendment or repeal of an Act does not "affect any right, privilege, obligation or liability acquired, accrued or incurred under the Act or statutory rule"; the Deed and Declarations of Trust were made by the Council in exercise of the power conferred on it by s 526 of the LGA 1919; and the trusts were created by declarations contained in executed deeds. The Council submits that the existence of the trusts was not then dependent upon s 526 of the LGA 1919 and the repeal of the LGA 1919 did not affect the existence of the trusts. The Council also submits that, if the repeal of the LGA 1919 affected the existence of the trusts, then s 30 of the Interpretation Act preserved any acquired, accrued or incurred "right, privilege, obligation or liability" and that section did not displace or interfere with the restrictions on community land contained in the LGA 1993.
- 103 Again, I accept that the effect of s 30(1)(c) of the Interpretation Act would be to preserve the operation of the trusts, to the extent that they had been created under s 526 of the LGA 1919. However, it does not seem to me that that section goes further, so as to immunise the performance of any future obligation under the trusts from the requirements of ss 45–46 of the LGA 1993, or indeed any other relevant statutory provision. It seems to me that Council is correct in distinguishing the rights and obligations arising under s 526 of the LGA 1919, on the one hand, which are preserved by s 30(1)(c) of the Interpretation Act, from a right and obligation which a council might obtain or become liable to under an arrangement formed by a power conferred by the LGA 1919, which are not excluded from the effect of further statutory regulation by the Interpretation Act.

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Whether the trusts are charitable trusts

- 104 RMS submits that the trusts under the Deed and the Declaration of Trust are charitable trusts, on the basis that holding the land for road purposes, and for public recreation, are both purposes which are beneficial to the community within the fourth class of charities. The Attorney General similarly submits that the trusts created for the purposes of roads and road works and parks and public reserves by the Deed and Declaration of Trust are charitable trusts. The Attorney General summarises her position as that charitable trusts are a subset of trusts for public purposes; that the High Court's decision in *Bathurst City Council v PwC Properties Pty Ltd* above at [64] confirms the existence of a judicially recognised category of non-charitable trusts for public purposes, that would otherwise fail for certainty of object; and that both the trust in respect of land required for use for a County road and the trust for park and recreational purposes are charitable within the fourth head of *Special Commissioners of Income Tax v Pemsel* [1891] AC 531 and do not fall into the category of 'public purpose' trusts. The Attorney General submits that the *Statute of Charitable Uses* 1601 provides support for the characterisation of a trust relating to roads as charitable, so far as it expressly refers to the repair of, inter alia, highways and that the repair of highways has been held to be a charitable purpose in the case law: *Attorney General v Day* [1900] 1 Ch 31. The Attorney General also indicates her position that, even if the relevant trusts were public purpose trusts, the Council would still be under a duty to perform its duties as trustee.
- 105 In paragraphs 67–72 of its Defence, the Council pleads that the trusts are not charitable trusts but are trusts for "public" or "governmental" purposes in the sense addressed in *Bathurst City Council v PwC Properties Pty Ltd* above and that the Court's supervisory jurisdiction over charitable trusts is not available, and there is no power to order a cy-pres or administrative scheme, because the trusts are not charitable in character. That submission was qualified in the Council's opening written submissions to advance the proposition that the trusts "may not be a charitable trust" in respect of the land required for a County road, but may be charitable in respect of the land for park and recreational purposes and that, even if the trusts are charitable, they are subject to the provisions of the LGA 1919 and the LGA 1993.
- 106 The Council submits that, although the Crown can be a trustee of property, in public law the mere use of the word "trust" in relation to Crown or governmental property usually does not denote a trust enforceable in a court of equity: J D Heydon & M J Leeming, *Jacobs' Law of Trusts in Australia*, (7th ed, 2006, LexisNexis Butterworths) at [519]. The Council also notes that the High Court had reviewed the history of "public trusts" created by Crown grant or statute in *Bathurst City Council v PwC Properties Pty Ltd* above at [44]–[65]. The Council submits that those obligations may be enforceable at the suit of the Attorney General as a matter of public law, but do not give rise to a trust enforceable in equity. The Council accepts that trusts for the provision of means for public recreation, such as playing fields, parks, and gymnasiums, have been held to be charitable in character: *Re Hadden* [1932] 1 Ch 133; *Re Morgan* [1955] 2 All ER 632. However, the Council submits that a trust in the context of a complex statutory scheme,

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although not itself a statutory instrument, would not be intended to operate in any different way than the governmental trusts. On that basis, the Council submits that the relevant trusts, or at least the trusts providing for use of the land for a County road, "may not be a charitable trust".

107 The Council submits that the question whether it holds Lot 14 and Lot 1 on trust for the charitable purposes stated in the Deed and Declaration of Trust is a "vexed issue" and is not necessary to determine. The Council also submits that this issue does not need to be determined because, if RMS's submissions on the proper construction of the declarations of trust are accepted, RMS is entitled to any part of Lot 14 and Lot 1 that it requires in relation to any road works and, if Council's submissions on the proper construction of the declarations of trust are accepted, RMS is only entitled to the areas within Lot 14 and Lot 1 shown white on the CCPSO scheme map for a County road and widening of an existing County road. The Council submits that a need for an administrative scheme or a cy-pres scheme does not arise in either case.

108 It is also not strictly necessary to decide this question, given the conclusions that I have reached above, since no inability to perform the trusts has been established which could require a cy-pres scheme or relief under s 9 of the Charitable Trusts Act. I should nonetheless address this issue, in deference to the detailed submissions made by the parties, and against the contingency that an appellate Court may take a different view of the issues that I have determined above.

109 In *Special Commissioners of Income Tax v Pemsel* above at 583, Lord Macnaghten observed that charity in its legal sense comprised four principal divisions, being trusts for the relief of poverty, trusts for the advancement of education, trusts for the advancement of religion and "trusts for other purposes beneficial to the community, not falling under any of the preceding heads". The fourth limb of a charitable trust, in respect of "other purposes beneficial to the community", is described in G E Dal Pont, *The Law of Charity*, (2010, LexisNexis Butterworths) at [11.3], to which the Attorney General refers, as requiring that the purpose be beneficial to the community, and that it fall within the spirit of the Preamble to the *Statute of Charitable Uses*. In *Bathurst City Council v PwC Properties Pty Ltd* above at [34], the joint judgment of the High Court also observed, referring to *Brisbane City Council v Attorney-General (Qld)* [1979] AC 411, that:

"The spirit and intendment of the preamble to the Statute of Elizabeth should be given no narrow or archaic construction",

110 In *Monds v Stackhouse* (1948) 77 CLR 232 at 246, to which RMS refers, Dixon J observed that:

"... any bequest to be applied in the improvement of a city in accordance with the powers of the municipal corporation for the benefit of the inhabitants appears to be charitable ..."

In *Bathurst City Council v PwC Properties Pty Ltd* above at [35], the High Court observed, in obiter dicta, that a charitable purpose in respect of a highway may extend as far as the provision of a car park. The Court also referred (at [36]) to *Mareen Development Pty Ltd v Brisbane City Council* [1972] Qd R 203 for the proposition that a trust by which areas of land adjacent to a road were held for town planning purposes was charitable in character. In oral submissions, Mr Hemmings points out, and Mr

Mantziaris who appears for the Attorney General accepts, that the relevant areas of land in issue in *Mareen Development* were held for town planning purposes, rather than for the repair of highways, and that case did not, strictly, determine they were subject to a charitable trust. However, as Mr Mantziaris points out, the High Court in *Bathurst City Council v PwC Properties* above at [36] nonetheless treated that case as an example of a situation where a charitable trust could exist.

- 111 It seems to me that the construction of roads, and the ancillary works necessary for their construction, are purposes beneficial to the community, and that those purposes, including in respect of the ancillary works, fall within the spirit of the Preamble to the *Statute of Charitable Uses*, by analogy with the reference to "highways" in that statute. It also seems to me, to the extent that there was any residual dispute as to this issue, that the trusts providing for the land that is not required for a County road to be used for the purposes of a public park or public reserve is also charitable in character: *Brisbane City Council v Attorney-General (Qld)* above at 422ff; *City of Burnside v Attorney-General* (1993) 61 SASR 107 at 135. It also seems to me that, as the Attorney General points out, a trust will retain its charitable character even if it can also be classified as falling within the wider category of a trust for "public purposes". A trust in very similar terms to those in issue in this case seems to have been assumed, or decided, to be a charitable trust in *Willoughby City Council v Roads and Maritime Services* above, after the relevant land had become subject to the LGA 1993.
- 112 A further issue arose as to whether the effect of the LGA 1993 was in some way to extinguish or displace any charitable trusts created by the Deed and the Declaration of Trust. The Council submitted that the trusts were converted into public trusts by the LGA 1993, and that any private trust obligations attaching to the land are excluded by the prohibitions in ss 45–49 of the LGA 1993. The Attorney General responded that the trust obligations attaching to land bought under the LGA 1993, by means of LGA 1993 Sch 7 cl 6(2)(b), are not extinguished through the classification of that land as "community land". The Attorney General puts that proposition in what she describes as a 'strong' form, supporting RMS's position in reliance upon the transitional provisions; and submitting that the absence of any reference to trusts in the "community land" classification in the LGA 1993 is consistent with a scheme by which the Council's obligations, as trustee, would be performed without regard to the limitations on dealings imposed by ss 45–49 of the LGA 1993. I have not accepted RMS's submissions as to that matter, at least in the strong form, above.
- 113 The Attorney General also puts an alternative submission which she describes as a 'weak' form, namely that the trust obligations imposed on the Council co-exist with the obligations attaching to land reclassified as "community land" upon reception into the LGA 1993 system, in the absence of express extinguishment or textual indications of extinguishment in the statute. I accept that submission. I find it difficult to see any basis for a suggestion that a regime intended to limit the Council's dealings with community land, under the LGA 1993, was intended to displace trust principles, in effect by a sidewind. It seems to me that, as the Attorney General points out, the existence of the trusts continue beyond the introduction of the LGA 1993, where s 31(3)(b) of the LGA 1993 prohibits reclassification of land received as community land to operational land after 1 July 1993 if it would be inconsistent with the terms of any trust applying to the

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land, and s 186(3) of the LGA 1993 preserves trusts on community land vested in a Council which is subsequently acquired by a Council. Those sections indicate, first, that there is no intrinsic inconsistency between the existence of a trust and the classification of land as "community land" and, second, make it unlikely that trusts that existed prior to the introduction of the LGA 1993 would be extinguished by the classification of land as "community land", while trusts created after that date would be expressly preserved.

- 114 I accept, as the Attorney General points out and as I have noted in addressing the LGA 1993 above, that the obligations under ss 45–49 of the LGA 1993 may narrow the obligations arising under the trust, but only to the extent of an inconsistency, and that, as trustee, the Council must seek to perform the trusts to the extent that it may do so without breach of those prohibitions. I have also held, in addressing the LGA 1993 above, that the Council is not entitled to continue as trustee, in a conflict of duty and duty, if an exercise of classification of land which it is required to perform under the LGA 1993 would be inconsistent with its obligations as trustee or would defeat the purposes of the trusts, at least where it could readily avoid that conflict by resignation as trustee of the trusts.

Whether the Council has acted in breach of trust

- 115 A further issue was raised in the proceedings as to whether the Council has acted in breach of trust or threatened to breach the trusts. RMS and the Attorney General each identified several instances of conduct of the Council of which they contended preferred the interest in promoting a compulsory acquisition of the land for its fair value to the Council's obligations as trustee to deliver the land to RMS without cost, and characterising that conduct as a breach or threatened breach of trust. RMS did not press several allegations which it had originally advanced as to breach of trust and the Attorney General reformulated her allegations of breach of trust, to some extent, in the course of submissions. I will seek to identify that conduct within categories below.
- 116 The Council generally responds to these allegations by its submission that only part of the required land falls within Lot 14 and Lot 1 comprising land reserved for a County road, that RMS has not requested that the Council only make available to it those parts of Lot 14 and Lot 1 and the Council has not acted in breach of trust. The Council also relies, in response to the allegation of breach of trust, on the propositions that the land is community land which imposes restrictions on Council's power to dispose of, lease, licence or grant any other estate in community land under the LGA 1993, which I have addressed above. I have had regard, in dealing with these issues, to the fact that I have been informed that the Council sought and obtained a direction from the Court that it could, as trustee, properly defend these proceedings although the matters put before the Court in seeking that direction and the content of the direction given are not matters that are before me.
- 117 First, RMS pleads that the Council has acted in a manner that is inconsistent with its obligations under the Deed and Declaration of Trust by refusing to make the required land available to RMS and refusing to make the required land available to RMS at no cost (Amended Statement of Claim [60]) and that Council has breached and/or

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threatens to breach the terms of the Deed and the Declaration of Trust (Amended Statement of Claim [61]). In the course of oral submissions, Mr Lancaster indicated that RMS maintained its claim that the Council had acted in a manner which was inconsistent with its obligations under the Deed and Declaration of Trust by refusing to make the required land available to RMS, or refusing to do so at no cost. The Attorney General also submits that the Council has failed to perform the trusts and submits that, if RMS's construction of the trusts is correct (as I have found), then the Council has breached or threatened to breach the trusts by its failure to make the land available to RMS. For the reasons noted in paragraph 126 below, I do not consider that it is necessary for me now to express a view as to whether a breach of trust is established on that basis. It is still open to the Council to take steps to give effect to the trusts, as I will note below.

- 118 Second, RMS contends that the Council has breached or threatens to breach the trusts by claiming an entitlement to compensation under the Just Terms Act other than in its capacity as trustee of the land that RMS has required or in accordance with its obligations under the trusts. The Attorney General also submits that, by its correspondence and Defence, the Council asserts its entitlement, through its legal ownership of the land, to a compensation interest if the land were compulsorily acquired; that the necessary inference from the Council's pleaded Defence and the way it has conducted its case is that the Council has no objection to making the required land available for the road works, but only if that proceeded by way of compulsory acquisition for compensation at commercial value; that the Council has been advised, at least by the Attorney General, that a claim to compensation money and using it for community land generally and without reference to Lots 1 and 14 is not for a trust purpose and not in the trusts' interest; that the Council was invited prior to the hearing to disavow its compensation interest and has not done so; and that it was open to the Council as a trustee to bring a construction suit, and step aside, rather than putting itself in a position of conflict but it has not done so. The Attorney General also submits that Council has had a significant conflict of interest, so far as it has been promoting the alternative of an acquisition of the land under the Just Terms Act, instead of provision of the land to RMS under the terms of the trusts at no cost. It seems to me that the positions initially taken by the Council largely had a consistent consequence that performance of its obligations as trustee would either not be possible, or would only be possible with difficulty and over a time scale that would be inconsistent with RMS's needs in respect of the New M5 Project, with the potential result for the Council that RMS would be driven compulsorily to acquire, under the Just Terms Act, the land that, on the findings I have reached, the Council was obliged to deliver to RMS at no cost. In fairness, it should also be recognised that the Council significantly moderated many of those positions in the course of the hearing before me, advancing indications of what it could and would do as it understood its obligations.
- 119 Third, the Attorney General submits that the Council had not acquainted itself with the terms of the trusts and complains of Council's contention that it is "unnecessary to determine" whether the trusts are charitable trusts. The Attorney General criticises the

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Council's position that it is unnecessary to determine whether Lot 1 or Lot 14 are held on trust for charitable trusts as inconsistent with a trustee's obligation to ascertain the terms of the trust to which he or she has been appointed. It seems to me that there is little weight in this criticism, so far as Council was ultimately correct that it is not necessary to determine that question in these proceedings, given the conclusions that I have reached on other grounds.

- 120 Fourth, the Attorney General complains that Council refuses to consider a cy-pres application which she contends it was obliged to bring under s 11 of the Charitable Trusts Act. The Attorney General submits that, to the extent that the purposes of the trusts have failed, the Council was obliged under s 11 of the Charitable Trusts Act to secure the effective use of the property for charitable purposes by taking steps to enable it to be applied cy-pres, and that Council has failed to take that step. The premise of that failure is not established where I have held that it is possible for Council to perform the trusts and no need for a cy-pres scheme is established.
- 121 Fifth, the Attorney General submits that the Council has pleaded and argued a series of legal and practical impediments to the timely performance of its duty to transfer the land required for a County road to RMS and, but for the limited performance suggested in paragraph 74 of its Defence, the Council's Defence seeks to create a false legal impasse with the effect that the Council claims to be unable to perform the trusts. The Attorney General submits that impasse does not exist since at least four ways have been suggested by RMS and the Attorney General by which the Council could perform the trusts and transfer the land at no cost, but that the Council resists these options. The Attorney General here refers to ss 46(1)(b) and 46(4) of the LGA 1993 to which I have referred above, s 36(3A) of the LGA 1993 which provides for single area plans of management, which she contends would avoid the risk of delay on which the Council has relied; and complains that the Council does not adequately respond to her submission (which I have accepted above) that the difficulties on which Council relies would exist in respect of both the land for road purposes and parks and recreational areas in the CCPSO map or neither of them. The Attorney General also criticises the Council's previous denial of the possibility of a compulsory acquisition for nominal consideration under s 178(1) of the *Roads Act* or s 9(1) of the *EPA Act*, although the Council appears to have accepted that possibility, so far as it is required to make the land available under the trusts, at least in the course of oral submissions in the hearing.
- 122 Sixth, the Attorney General submits that Council relies on its own failure to publish a plan of management for the relevant land since the introduction of the LGA 1993, that Council failed to comply with s 36 of the LGA 1993 by publishing a plan of management that would have enabled land marked as required for a road on successive planning instruments to be used for that purpose and also submits that draft plan of management ultimately proposed by the Council would have classified the land as a sportsground in a manner that was inconsistent with the terms of the trusts. I have addressed the issue of classification of the land under the LGA 1993 above.

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Seventh, the Attorney General complains that the Council resists the argument that a lease is available so far as the land would be used for a public utility under the LGA 1993 and adopts RMS's submission in that regard. I have accepted RMS's submission as to that issue above, although it is by no means self-evident that the fact that Council took a different view as to that issue is properly characterised, at least in itself, as a breach of trust.

- 124 Eighth, the Attorney General complains that the Council has denied the possibility or the need for it to resign as trustee of the trusts, implicitly because of the conflicts of duty and duty or duty and interest which she submits it faces, or to appoint the Minister administering the EPA Act as a replacement trustee. The Attorney General submits that the Minister would not be subject to the prohibitions under ss 45 and 46 of the LGA 1993 (T63), although that submission is of less practical significance where I have held that those sections would also not prevent the Council's performance of the trusts. The Attorney General also submits that, if a trustee's trust duty conflicts with its statutory duty, including any prohibition on a dealing with land under the LGA 1993, it should remove itself from its position as trustee through transfer or compulsory acquisition by agreement for nominal consideration, and, if the trustee is confronted with the exercise of discretionary powers under the LGA 1993 regarding leasing and re-classification, it should only exercise those powers in a manner that promotes the interests of the trusts. I have addressed this issue in dealing with the classification of the land under the LGA 1993 above.
- 125 Ninth, the Attorney General submits that the Council's position cannot be explained by different views of the construction of the trusts and the Council cannot demonstrate that it has exhausted all avenues at making the land available to RMS at no cost. The Attorney General also referred to an issue, which was ultimately not pressed by RMS, as to whether the use of Lots 1 and 14 by the Club was consistent with the terms of the trusts, but it does not seem to me to be necessary to address that issue for the purposes of determining these proceedings.
- 126 It will be apparent from the above that numerous matters are relied upon, by RMS and even more expansively by the Attorney General, in respect of the allegations of breach of trust. Many of those matters relate to arguments advanced and positions taken by the Council prior to, and to a lesser extent in, these proceedings as to which it was not successful. Although I have made some observations as to these issues above, it does not seem to me to be necessary to express any final view as to the allegations of breach of trust at this stage, where no claim for compensation for breach of trust is made, and no party sought to remove the Council as trustee if it now performs its obligations as determined by the Court. Where it is not necessary to determine those matters, it is not appropriate to do so, given the serious character of the issues raised. It may be necessary to determine these issues if the Council does not now perform its obligations as trustee and it then becomes necessary to consider whether it should be removed as trustee of the trusts.

Whether cy-pres or other relief should be ordered

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- 127 RMS's and the Attorney General's submissions as to the impracticability of the trusts and the cy-pres application were primarily directed to the position if it was not possible to identify a "County road" or the trusts did not extend to the whole of the land required by RMS or the LGA 1993 prevented performance of the trusts. The Council did not press the former proposition and I have not accepted the latter propositions. It is therefore not strictly necessary to determine either the application for the cy-pres scheme, or for an administrative scheme, although I will make several comments as to this issue in deference to Counsels' detailed submissions.
- 128 I will first identify the nature of the relief sought and its legal basis and then turn to the particular matters that were identified as potentially requiring that relief. In *Dobrijevic v Free Serbian Orthodox Church* [2015] NSWSC 637 at [426]ff, White J observed that, at general law, if execution of the purposes of a charitable trust has become impossible or impractical, the Court has authority to direct a scheme for the promotion of objects that as nearly as possible give effect to the original trust purpose, having regard to the spirit of the trust. Section 9 of the Charitable Trusts Act widens the scope for altering the purposes of a charitable trust. That section relevantly provides:

"9 Extension of the occasions for applying trust property cy pres

(1) The circumstances in which the original purposes of a charitable trust can be altered to allow the trust property or any part of it to be applied cy pres include circumstances in which the original purposes, wholly or in part, have since they were laid down ceased to provide a suitable and effective method of using the trust property, having regard to the spirit of the trust.

(2) References in this section to the original purposes of a charitable trust are to be construed, if the application of the trust property or any part of it has been altered or regulated by a scheme or otherwise, as references to the purposes for which the trust property are for the time being applicable."

- 129 In *Attorney-General (NSW) v Fulham* [2002] NSWSC 629 at [16]–[17], Bryson J observed that:

"... s 9 of the Charitable Trusts Act 1993 has widened the grounds on which the Court may act, in that it is no longer necessary that actual compliance with the original terms should be impossible. It is now enough that they have ceased to provide a suitable and effective method of using the trust property. ...

The Court may alter the purposes of a charitable trust where the original purposes have ceased to provide a suitable and effective method of using the trust property; this is well short of a test requiring impossibility. [Section] 9(1) greatly widens the circumstances in which the Court may act and the influence which it may allow considerations of practicality to have."

- 130 RMS submits that the trusts are susceptible to the establishment of a cy-pres scheme to carry out the purposes of the Deed and the Declaration of Trust if their purposes become impossible or impracticable to carry out, and to the remedial provisions of the Charitable Trusts Act. RMS submits that a scheme to carry out the trusts under the Deed and the Declaration of Trust would require that a new trustee be appointed, and a vesting order made consequentially on that appointment to permit the trustee (which it submits would logically be the Minister administering the EPA Act) to make the grants necessary to make the land available for the road purposes the subject of the trusts under the Deed and the Declaration of Trust. RMS points out that s 11(1) and s 11(4) of the EPA Act provides for the Minister to hold land and to manage land vested in it.

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RMS submits that an administrative scheme would involve the administration of the terms of the trusts under the Deed and the Declaration of Trust as if they provided that the whole or such part of Lot 14 and such part of Lot 1 were required to be made available on request by RMS for the purpose of constructing a major road project. RMS submits that the settlement of an administrative scheme does not involve the variation of the trusts under the Deed and the Declaration of Trust, but involves directing its administration as if it contained certain provisions to overcome the hiatus created by supervening circumstances: *Ku-ring-gai Municipal Council v The Attorney-General* above at 74; *Burnside City Council v Attorney-General (SA)* [No 2]; *Athletics Association (SA) Inc (Intervener)* (1999) 76 LGRA 226 at 228. RMS submits that a vesting order would nevertheless still be required, even if the trusts were administered on the broadest construction of the Deed and the Declaration of Trust, if the Council would still be bound by the suggested constraints under the LGA 1993 if no accrued rights to have the trusts under the Deed and the Declaration of Trust performed could be identified. That issue does not arise given the findings I have reached as to the application of the LGA 1993 above.

132 The Council responds to this issue by repeating its submission that it is not, on the proper construction of the trusts, obliged to make available to the RMS all of the land required by RMS. I have not accepted that submission above. The Council also denies the availability of a cy-pres scheme on the basis that the trusts were not charitable trusts. I have also not accepted that submission above. The Council also submits that, in order for the court to order a cy-pres scheme, there must be a case of initial impossibility, and an intention to benefit charity or general charitable intention plus a possible mode of effectuating that intention; or a case of supervening impossibility (whether the intention be general or merely particular); or a case where a trust has exhausted its original purpose (whether the original purpose be particular or general in intent) and a surplus remains: *Jacobs' Law of Trusts in Australia* above [1070].

133 In its summary of the propositions for which it contended, the Council also denied that it was impossible or impracticable to perform the objects of the trusts on the basis that:

"... Council can and will make the land the court declares must be made available to the RMS (on the proper construction of the declarations of trust) as follows:

a *First*, by dedication of Marsh Street and the area required to widen Marsh Street (comprising 10,910 sqm of land) as a road pursuant to section 47F LGA 1993.

b *Second*, the reclassification of the land as operational land pursuant to section 30 LGA 1993; and/or

c *Third*, by an agreement to make the land available to RMS for nominal consideration pursuant to an (sic) pre-acquisition agreement under section 63 of the [Just Terms Act] upon the exercise of compulsory acquisition powers by the RMS under the *Roads Act* 1993."

134 It seems to me that none of the matters that might require an order for a cy-pres scheme or administrative scheme arise on the findings that I have reached above. The first situation in which such a scheme was sought by RMS was if it would be impracticable to perform the trusts if, on the proper interpretation of the Deed and the Declaration of Trust, the changes to the statutory scheme had the effect that it is no longer possible to identify a "County road", whether because the changes in the

planning instruments meant that the area actually designated for road purposes fluctuated over time or because the repeal of the CCPSO (or the Rockdale Planning Scheme Ordinance which varied it or succeeded it) meant that it was no longer possible to identify a "County road" to which the Deed or the Declaration of Trust could apply. While the Council had raised that possibility in its Defence, it did not press it at the hearing and that issue therefore does not give rise to any impracticability or impossibility in Council's performance of the trusts.

135 The second situation in which such a scheme was sought by RMS was if the purpose of the trusts was for required land to be made available to RMS, but the identification of the geographical area in the trusts was confined so as to be inapt for the RMS's proposed use. That issue does not arise since I have held that the terms of the Deed and the Declaration of Trust require the Council to make the land that RMS requires for the relevant purposes available to it at no cost.

136 The third situation in which such a scheme was sought by RMS was if, contrary to its submissions, the LGA 1993 prevented the Council from making the land available in accordance with the trusts. In that case, RMS submitted that either an order should be made to replace the Council with the Minister administering the EPA Act or a cy-pres scheme should be prepared for the application of the trust property to purposes as close as possible to the original purposes of the trusts and for the achievement of the trust purposes. RMS noted that the Council (at least initially) claimed that it was prevented from implementing the terms of the trusts under the Deed and the Declaration of Trust by the constraints on dealing with land pursuant to the LGA 1993. I have addressed those issues above. The findings that I have reached above have the result that the LGA 1993 does not prevent the Council's performance of the trusts and impracticability or impossibility of performance of the trusts does not arise on that basis.

137 The Attorney General submits that, where there is an allegation that the terms of the trusts are no longer a suitable and effective method of using the trust property, the Court is permitted by s 9 of the Charitable Trusts Act, to look at the more general purpose beneficial to the community of which the particular trust was a specific instance. The Attorney General also submits that the trusts' purpose could here be reformulated as to provide public land at no cost to the road constructing agency for important transport node effecting city-wide transport links, if a supervening event being the impracticability of building a satisfactory modern road on the area denoted on the CCPSO plan arises. Impracticability or impossibility of performance of the trusts does not arise on that basis, since I have held that the trusts for County road purposes extend to those parts of Lot 14 and Lot 1 that are now required by RMS. The Attorney General also submits that a supervening impossibility or impracticability to perform the trust purposes would arise if the area required for a County Road could no longer be defined, or the road works identified as necessary by RMS could not be performed within the terms laid out by the trusts for road purposes, so as to support a cy-pres order. Again, these situations do not arise on the position taken by Council and the findings that I have reached.

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RMS also raised the further possibility of replacement of the Council as trustee of the trusts, which remains open if, following the delivery of this judgment, the Council does not perform the trusts. RMS submits that s 6 of the *Trustee Act 1925* (NSW) ("Trustee Act") and the Court's jurisdiction and powers in respect of charities permit the appointment of a new trustee where, relevantly, a trustee "refuses or is unfit to act in such trusts or powers, or is incapable of acting therein". RMS submits that the Council's reliance on the constraints on dealing with the land brings it within the provisions because it is "incapable" of acting to carry out the trusts. RMS also submits that the Council has not demonstrated a willingness to act in the performance of the trusts under the Deed and the Declaration of Trust, and consistently with the principles applicable to remedying defaults by trustees of private trusts, the Court should exercise powers to enable the purposes of the trusts under the Deed and the Declaration of Trust to be carried out. The findings that I have reached above have the result that the Council is not incapable of carrying out the trusts. I do not consider that I should find that it is not willing to do so, without allowing it a further opportunity to do so.

139 The Council submits that the statutory provisions of the LGA 1993 are inconsistent with the replacement of Council as a land manager in a cy-pres scheme. The Council submits that Ch 6 Pt 2 of the LGA 1993 reposes control and management of community land in Council, and invites community consultation and public participation in decision-making concerning the future uses of community land: s 29 (public hearing into reclassification of community land), s 38 (draft plans of management must be publicly exhibited), s 40 (public submissions on the draft plan must be considered by council), s 40A (public hearings required for some plans) and s 43 (the plan must be available for public inspection). The Council submits that these provisions are inconsistent with judicially supervised management of community land, except to the extent that Council has acted or threatened to act in breach of the LGA 1993, for which remedies are available under s 674(1) of the LGA 1993 in the Land and Environment Court. The Council's submissions as to its role as council under the LGA 1993 do not seem to me to be to the point. No question arises of preventing the Council from performing its obligations under the LGA 1993, as land manager or otherwise. It does not follow that the Court would not, or should not, remove the Council as trustee of the trusts if (contrary to my findings) it could not perform its obligations under the trusts without breach of its duties as a local council under the LGA 1993, or, in the event, it is simply unwilling to perform those obligations.

140 RMS responds that the making of an order vesting the land in a replacement trustee is not inconsistent with the provisions of the LGA 1993, because the Trustee Act regulates the manner in which the trustee performs the obligations under the trusts, and the LGA 1993 provides for the manner in which the land vested in it may be dealt with. RMS submits that there is no inconsistency between the restrictions on the Council's power to deal with land and the exercise of the Court's power to appoint a new trustee and to vest the trust property in that trustee, where that vesting is the result of a determination by the Court of the manner in which the trust should be carried out. RMS submits that that course would not involve the Council in any contravention of the LGA

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1993 because Council would not then be dealing with the land. In any event, this question does not arise because I have held that the LGA 1993 does not prohibit the performance of the trusts.

- 141 I do not accept Council's submission that an order for a cy-pres scheme or its replacement as trustee would contradict the LGA 1993; however, on the findings which I have reached above, the former order is not required, because there is no obstacle to the performance of the Council's obligations as trustee under the LGA 1993. I will return to the possibility of the latter order below.

The Attorney General's resulting trust submissions

- 142 The Attorney General raised a question whether, if the trusts are non-charitable public trusts, as the Council contended, a resulting trust would arise upon the failure of those trusts. The Attorney General also submitted that, if the trusts were not charitable trusts, an inability to identify the relevant "County road" or the prohibition on alienation contained in ss 45 and 46 of the LGA 1993, if applicable, would cause the trust gift to fail, so that the Council would hold that gift on resulting trust for the benefit of the Minister responsible for the EPA Act, who would hold the land pursuant to ss 11(4)(g), (i) and 11(6) of the EPA Act. It is not necessary to determine that question given the conclusions that I have reached above.

Other claims by RMS

- 143 Paragraphs 58 and 59 of the Statement of Claim plead that the Council has failed to do such acts and things as would permit it to make the required land available in accordance with the terms of the Deed and the Declaration of Trust. Paragraph 63 pleads that any right of the Council to hold and remain as owner of the required land is, on the proper construction of the Deed and the Declaration of Trust, contingent upon performance by the Council of the condition to make the required land available without cost to RMS. Paragraph 65 of the Amended Statement of Claim pleads that, on the proper construction of the Declaration of Trust, the Council acquired Lot 1 upon a condition subsequent that the Council make available Lot 1, or so much of Lot 1 as is required, to RMS without cost when required to do so by RMS. It does not seem to me to be necessary to determine these claims, which were not abandoned but to which little attention was given in submissions, given the conclusions that I have reached on other grounds.

Form of relief claimed by RMS

- 144 RMS identifies a further issue, arising if the Court finds that the Council is obliged to make the required land available to it, as to the appropriate orders by which the land should be made available to RMS. RMS pleads that the Council is obliged to make the land required by RMS available by giving exclusive occupation of part of Lot 14 or such part of Lot 1 as may be required by RMS; giving possession of part of Lot 14 or such part of Lot 1 as may be required by RMS; or entering into a lease in respect of part of Lot 14 or such part of Lot 1 as may be required by RMS (Amended Statement of Claim

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[57]). RMS submits that the obligation imposed by the Deed and the Declaration of Trust is to make the required land available, and that the manner in which that land may be made available can include the entry into a lease of such parts of the Land as are required, or otherwise to confer a right of exclusive occupation on RMS. RMS notes that it has requested that the Council make the Land available by granting a lease of 4 years and 11 months. RMS also submits that the nature of the obligation to make land available depends on the interpretation of the instrument under which it arises, and that the term "making available" is not prescriptive, and the content of the obligation will depend on the circumstances and the activities for which the land is required, and the statutory powers of the relevant authority: *Council of the Shire of Sarina v Dalrymple Bay Coal Terminal P/L* [2001] QCA 146 at [21].

145 In closing submissions, and at my request, RMS identified the hierarchy of the relief it claimed as follows:

- 1 Declarations as set out in paragraphs 1 and 2 of the Further Amended Summons; a declaration that the [Council] (as trustee) may fulfil its trust obligations in respect of the land permanently required for the Marsh Street Proposal by dedication of that land as a public road under section 10 of the *Roads Act 1993*; and liberty to apply.
- 2 Declarations as set out in paragraphs 1 and 2 of the Further Amended Summons; an order vesting Lot 1 and Lot 14 (the trust property) in the [Minister administering the EPA Act] subject to the trust obligations as found and declared by the Court; and liberty to apply.
- 3 Declarations as set out in paragraphs 1 and 2 of the Further Amended Summons; a declaration that the [Council] may fulfil its trust obligations by entering into an agreement with [RMS] under ss 30 and 63 of the [Just Terms Act] for the acquisition by [RMS] of a fee simple interest in land required permanently and a leasehold interest for a term of 4 years and 11 months over the remainder of the land required by [RMS], such acquisition to be completed as soon as practicable and in any event before 31 March 2016, for nominal consideration; and liberty to apply.
- 4 Declarations as set out in paragraphs 1 and 2 of the Further Amended Summons; a declaration that the [Council] may fulfil its trust obligations in respect of the land required for the Marsh Street Proposal by dedication of that land as a public road under section 10 of the *Roads Act 1993*; a declaration that the [Council] may fulfil its trust obligations in respect of the other land required by [RMS] by the preparation of a Plan of Management pursuant to which a lease of the land required by [RMS] is provided for and authorised, for road and/or road purposes, so as to provide access to and possession of the land as soon as practicable and in any event before 31 March 2016; and liberty to apply.

146 RMS indicates that its claims assume that the Council as trustee of the land in Lot 1 and Lot 14 will comply with its obligations as declared by the Court and as may be explained in the reasons for decision of the Court. The relief sought by RMS contemplates that RMS is granted vacant possession of the required land on and from 1 April 2016. RMS also noted that the claims for relief in paragraph 1 above reflect its submissions that the LGA 1993 does not impose impediments on the performance by the Council of its trust obligations in respect of the land. RMS noted that the claim for relief in paragraph 3 above assumes that the Court determines that all or part of the required land must be made available to it at no cost; and that RMS cannot make the required land available due to impediments under the LGA 1993, so that the interests in the land must be compulsorily acquired for nominal consideration and within such a

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time as to permit possession of that land on or before 1 April 2016 to overcome those impediments. RMS indicated that each of the claims for relief assumed that the steps to be taken by the Council (as trustee) are taken at no cost to RMS.

- 147 Mr Lancaster accepted, in the course of oral submissions, that RMS's position would be sufficiently addressed by the Court allowing the Council an opportunity to transfer or lease the relevant land to RMS in accordance with its obligations as trustee, or confirm, by undertaking to RMS and to the Court, that it will do so and, if such an undertaking is not given or not performed, exercising its power to remove the Council as trustee of the trusts (T39–40). Mr Mantziaris, who (as I noted above) appeared for the Attorney General, similarly accepted in submissions that the Council could properly be allowed an opportunity to provide an undertaking that it would perform the obligations arising under the trusts in a manner consistent with the Court's determination, rather than proceeding to a cy-pres scheme, particularly if there was no necessity for such a scheme in the absence of supervening impossibility or circumstances which made the performance of the trusts impracticable for the purposes of s 9 of the Charitable Trusts Act (T45). Mr Mantziaris also accepted that the Court should not be placed in a position where it was required to make mandatory orders directed to a trustee, as to the performance of its obligations under the trusts, although Mr Mantziaris appeared to reserve the position that the Court might direct the trustee to perform those obligations, rather than removing the trustee if it failed to do so (T45).
- 148 The Council in turn submits that "subject to its obligations as trustee", it is willing lawfully to grant a leasehold interest for the term required by RMS in those parts of Lots 14 and 1 which comprise the land reserved for a County road to RMS for a new road and the widening of Marsh Street at no cost, upon request, and will take all necessary and lawful steps to seek to reclassify the land under the LGA 1993 for operational purposes to enable it lawfully to do so. I have dealt with its wider obligations as trustee in respect of the land required for the New M5 Project above.
- 149 It seems to me that, as I noted in the course of oral submissions, it is the trustee's role and not the Court's role to determine which of the available options it ought to take to comply with the trusts, although the Court may in a proper case give directions to a trustee that it would be justified in taking a particular course that it proposes. I have held above that the Council is obliged to comply with the trusts, in respect of the whole of the land required by RMS comprising parts of Lot 1 and Lot 14, and is not incapacitated from doing so by the LGA 1993. I do not consider that I should make any of the orders sought by RMS at this point, other than possibly declarations as to the Council's obligations under the trusts, where that would amount to the Court making decisions, as between alternatives that would each potentially comply with the trusts, that ought properly be made by the trustee. It seems to me that the Council should be allowed a short time in which to comply with the trusts or give an appropriate undertaking to the parties and to the Court in that regard. If the Council does not comply with the trusts or give such an undertaking within that short time, it will be necessary to consider whether that matter, combined with the issues as to conflict of duty and interest and conflict of interest which have been raised in the course of these

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proceedings, may require its removal as trustee of the trusts. If that situation arises, a possible outcome would be that the Minister administering the EPA Act could, as RMS and the Attorney General submit, be appointed as trustee of the trusts and a mandatory order made directing the transfer of Lot 1 and Lot 14 from the Council to the Minister. However, I would allow the parties a short further opportunity to be heard before any such orders were made.

Kogarah Golf Club's position

- 150 The Club took a relatively narrow role in the proceedings. It made limited submissions on the construction of the Deed and the Declaration of Trust (although I noted one such submission above), the effect of the LGA 1993 or the charitable trust matters, and recognised that its interests were generally protected by the position taken by Council in that respect. The Club's primary position is that any orders made in favour of RMS should be subject to specific conditions protecting, or considering, the Club's interests.
- 151 The Club relies on a letter dated 14 July 2015 from it to WDA, marked "without prejudice" but admitted without objection by any party, which set out the Club's proposal for compensation as a result of interruption to its business. The Club also relies on a letter dated 20 July 2015 from the WDA to the Club, which attached a draft information sheet for the review of the Club, and also stated that:

"WDA remains committed to compensating the Club for losses arising from the new nine-hole arrangement including the reasonable costs of hole relocation and loss of income. ..." (Ex K1, tab 49 p 975)

The draft information sheet in turn stated, under the heading "[h]ow will the Club's viability be maintained during construction?":

"[WDA] is working with Club management to agree a compensation mechanism for the construction period. The objective is to protect the Club from losses arising from the new nine-hole arrangement, including the reasonable costs of hole relocation and loss of income." (Ex K1, tab 49 p 977)

- 152 The Club also relies on a draft memorandum of understanding ("MOU") dated July 2015, to which, inter alia, WDA, RMS, the Club and Council would be parties which provided that:

"RMS (on behalf of WDA) will seek a lease or license for construction land from the relevant landholder ([Council]), and does not intend (sic) acquiring a freehold interest.

RMS will acquire a freehold interest from [the Council] and [the Club] for land permanently required for the widened Marsh Street and WestConnex operational facilities, consistent with previous discussions with [the Club's] advisers.

All land acquisition transactions will be undertaken in accordance with the [Just Terms Act] and, where relevant, the terms of the original trust arrangements between the State and [Council]." (Ex K1, tab 49 p 978)

That draft MOU also provided that:

"WDA agrees to pay reasonable compensation for [the Club's] losses as a result of construction activities, having regard to the principles set out in [the Club's] "without prejudice" letter dated 14 July 2015 and the [Just Terms Act]." (Ex K1, tab 49 p 979)

The draft document therefore included reference to the terms of the trust arrangements that are in issue in these proceedings as well as to the Just Terms Act.

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The Club also referred to an information sheet subsequently issued by WDA, which also contained a statement under the heading "[h]ow will the Club's viability be maintained during construction?", which indicated a further commitment to ensuring a nine-hole course was available during construction, and was otherwise in substantially the same terms as the draft information sheet to which I referred above. Finally, the Club relied on a letter dated 10 September 2015 from RMS's solicitor to the Club's solicitor, which referred to a letter from the Club's solicitor seeking confirmation whether the Club's costs in these proceedings were compensable under the Just Terms Act, and responded that:

"If RMS is successful in the Proceedings, it will not be necessary for RMS to compulsorily acquire interests in part of Lot 14 and part of Lot 1 ... and, therefore, the Just Terms Act will not apply."

It seems to me that that letter was plainly correct in that observation.

- 154 The Club submits that the Court would find that "promises" were made by WDA (which are taken to have been made by the RMS) to the Club, that the Club should be compensated for "losses associated with the new nine-hole arrangement including the reasonable costs of hole relocation and loss of income", and compensation should be paid having regard to the principles of the Just Terms Act. In submissions, the Club accepted that the draft MOU did not create contractual relations between WDA and the Club, but submitted that the "promises" made to the Club, some of which were also made outside that draft MOU, should be taken into account in the exercise of the Court's discretion if RMS is otherwise found to be entitled to relief. The Club submits that those promises have a direct connection with the equity sued for by RMS, being the delivery of land at no cost to the RMS; that there is impropriety in the RMS denying the Club the benefit of the promises; and that equity allows relief where none would be forthcoming at law.
- 155 In its opening submissions, the Club relied on equitable maxims, including principles of "unclean hands" and that "he who seeks equity must do equity", and referred to *Black Uhlands Inc v NSW Crime Commission* [2002] NSWSC 1060; (2002) 12 BPR 22,421 at [157]–[184] and *Carantinos v Magafas* [2008] NSWCA 304 at [50]–[61]. The decision in *Black Uhlands* was directed to misrepresentations to a lender which had funded the acquisition of relevant property, and Campbell J there referred (at [181]) to the requirements for the application of the "unclean hands" principle as including depravity in a legal as well as in a moral sense, which had an immediate and necessary relation to the equity sued for, and noted that those were a necessary but not sufficient condition for the application of the maxim. The decision in *Carantinos v Magafas* above was in turn directed to the provision of money pursuant to a scheme designed to defraud tax authorities.
- 156 The Club submits that the equity sought by RMS was to secure Lot 14 and Lot 1 at no cost to RMS, and the "promises" to pay compensation made by the WDA, which may be attributed to RMS, had an obvious relationship to the equity sued for by RMS. The Club also submits that, by these proceedings, RMS adopts a course "designed to prevent" any rights of compensation under the Just Terms Act accruing to the Club. That will, no doubt, be a consequence of RMS acquiring the land, in accordance with its

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rights under the Deed and the Declaration of Trust, that an acquisition of the land under the Just Terms Act would not be necessary. It does not follow, of course, that the Club would not then have rights of compensation, to the extent that it contends and can establish that WDA and RMS have made the promises on which it relies to support the conditions which it claims should be imposed on the relief granted to RMS.

- 157 RMS responds that the Club does not advance any claim capable of proper determination in the proceedings and the Court cannot and would not impose any condition on the grant of relief to the effect of the condition(s) proposed by the Club. By its submissions in reply, RMS also submits that no Cross-Claim had been filed by the Club and no cause of action had been identified by it. RMS submits that the Club's position is untenable on the facts and the law, where the Club entered into an exclusive license for the land under a promise to make the land available without cost if required to do so. RMS also submits that the Court would not impose a condition that RMS would provide compensation on the basis provided in the Just Terms Act if that Act does not in fact apply.
- 158 It seems to me that the Club's application cannot succeed. In *Black Uhlands* above, Campbell J observed (at [159]) that the unclean hands maxim "requires the Court to look at the conduct of the litigant who seeks the assistance of equity". That proposition highlights the difficulty in the Club's claim, namely the absence of any evidence that RMS has acted wrongfully or unconscionably in dealing with the Club, either at all, or in a manner that has any appropriate connection to the subject matter of the suit, namely an application to enforce the relevant trusts. The Club contends that WDA has made various representations, for which RMS is liable, as to the terms on which WDA will deal with the Club. The Club leads no evidence in these proceedings that RMS has sought to resile from any such representations. Mr To, who appeared for the Club, invited me to infer that RMS must have done so because the Club has appeared in the proceedings. I cannot draw that inference, where an equally available inference is that the Club is simply seeking to improve its position beyond any rights that it may have by reason of the representations on which it relies.
- 159 So far as the evidence goes, WDA appears to have adopted a constructive approach in dealing with the Club's wish to be compensated for loss which it may suffer and there is no evidence that RMS has resiled from that approach. I note, in that regard, that it does not seem to me that a previous indication to negotiate reasonable compensation arrangements with the Club requires RMS to submit to the application of the Just Terms Act, if that Act is in fact not applicable, because RMS is entitled to enforce the trust obligations, as distinct from seeking to progress a negotiated arrangement with the Club as the WDA had committed to do. In the absence of any evidence that RMS has sought to resile from any representations that WDA may have made to the Club, or of reliance by the Club on those representations, or of detriment that has to date been suffered by the Club, no basis for a claim for wrongful conduct or unconscionability on the part of RMS is established, and no basis is shown to impose a condition requiring that the State or RMS proceed in accordance with the Just Terms Act if that Act is not otherwise applicable.

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- 160 As Mr To properly accepted in submissions, the condition which the Club now seeks to have imposed, in substance, corresponds to the representations which it contends have already been made to it. It does not seem to me that the Court should seek to impose conditions on orders made in these proceedings, to give effect to existing charitable trusts, so as to promote the interests of a third party which has available to it other equitable remedies in respect of any representations on which it has relied to its detriment. The preferable course is to leave the Club to rely on such rights and remedies as it may have in respect of the promises or representations on which it relies.

Orders and Costs

- 161 It seems to me that, in the first instance, I should stand over the proceedings for a short time to allow the parties an opportunity to make submissions as to the form of any declaratory orders that should now be made and to allow the Council an opportunity to give effect to the trusts or give appropriate undertakings. If it is necessary to do so, any question of the removal and replacement of the Council as trustee of the trusts can then be addressed, whether before the end of the Court term in mid-December 2015 or in January or early February 2016.
- 162 RMS submits that the Council and the Golf Club should be ordered to pay its costs of the proceedings. It seems to me that RMS has been substantially successful in its claims against the Council which should, in the ordinary course, be required to pay its costs. It will also be necessary to hear the parties as to the position of the Attorney General in this regard. Although the Club was not successful in seeking relief in these proceedings, it seems to me that its involvement added little to the overall costs of the proceedings, where its written submissions were directed to limited issues and Mr To's oral submissions were appropriately brief. In those circumstances, it seems to me that there should be no order as to the Club's costs of the proceedings.
- 163 However, I should hear the parties generally as to costs once any remaining issues as to whether the Council remains as trustee of the trusts have been determined and orders have been made to give effect to my judgment.

Amendments

23 December 2015 - Para 6 - Attorney-General to Attorney General.
Para 97 - final sentence - "although does not" to "although it does not"
Para 103 - LGA 1993 to LGA 1919.
Para 117 - first sentence - "refusing make" to "refusing to make"

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Decision last updated: 23 December 2015

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Council Meeting

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General Report - Meeting Date: 20/01/2016

Public -

Item Number: ORD11

Subject: ROADS AND MARITIME SERVICES VS ROCKDALE CITY COUNCIL & ORS - SUPREME COURT OF NEW SOUTH WALES - EQUITY DIVISION, CASE 2015/240470

File Number: SF15/84

Report by: Acting Director - City Planning & Development (Michael McCabe)

Community Engagement: No

Financial Implications: Yes

Precis

Rockdale City Council own Lot 14 in DP 2133314 ('Lot 14') and Lot 1 in DP 108492 ('Lot 1') and both Lots are the subject of a Trust. Annexure 1 notes the location of Lot 14 (circa 8 acres) and Lot 1 (circa 29 acres). The Trusts centre around two aspects, namely making land available for a County Road at no cost and other land being held for recreational purposes.

In November 2015 the Supreme Court considered proceedings lodged by the Roads and Maritime Services (RMS) relating to the Trusts. Specifically the RMS sought to enforce an interpretation of the Trusts whereby all of the land within Lot 14 and Lot 1 is to be made available for the purposes of roads and ancillary road purposes, as is required by them. Council defended the matter by way of a differing interpretation in that the entitlement to the land for road was limited/defined by the corresponding planning maps at the point the Trust was established (Refer to Annexure 2 - County of Cumberland Planning Map). The remainder of the land was to be held for recreational purposes and not road.

The Supreme Court considered the matter and made a declaration that the Trust requires all of Lot 14 and Lot 1, as is required from time to time by the RMS, to be made available for a road or ancillary purposes. The declaration made, in simple terms, inhibits Council's ability to deal with the land as the Judgment notes a perpetual requirement over the land for road and ancillary purposes. Furthermore, the operation of the Trusts, as determined by the Supreme Court, inhibits investment in Lot 14 or Lot 1 for any purpose benefiting the community, other than for a road or ancillary purpose, as the RMS can request the land back at any time when required.

This report recommends Council appeal the Judgment for Lot 1 only, representing approximately 29 acres. A 'Prospects of Appeal' advice was drafted by Senior Counsel and tabled as part of a separate confidential report titled *Legal Advice - Roads and Maritime Services vs Rockdale City Council & Ors - Supreme Court of New South Wales, Equity Division, case 2015/240470*.

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Separate to the Prospects for Appeal Advice, commentary from a further Judgement made by the Court (Refer to Annexure 8) needs to be considered. In essence, the further Judgment considered the aspect of a "Stay" of the Judgement for Lot 1 pending the outcome of an appeal. In determining whether to grant a "Stay" the Court needs to be satisfied that there is a reasonable or appropriate case to warrant the exercise of this discretion. Paraphrasing the consideration of this point, the Court states *I am satisfied that the Council has a seriously arguable case on appeal, and that serious questions for the determination of the appellate Court, in respect of the construction of the declaration of trust in relation to Lot 1... Although I did not accept the submissions made by Rockdale City Council in that respect, it seems to me that they plainly raised a serious question of construction and an appellate court might reach a different view from this which I have reached.*

Council Resolution

NOTE:

Councillor Mickovski had previously declared a Pecuniary Interest in this item on the basis that he is employed by Transport of NSW and has dealings with Roads and Maritime Services, and left the Chamber for discussion and voting.

MOTION moved by Councillors Awada and O'Brien

That Council support the appeal of the Supreme Court Judgment in relation to case 2015/240470

DIVISION

DIVISION on the MOTION called for by Councillors Awada and Tsounis

FOR THE MOTION

Councillors Macdonald, O'Brien, Awada, Barlow, Ibrahim and Hanna

AGAINST THE MOTION

Councillors Bezic, P Sedrak, L Sedrak, Kalligas, Nagi, Tsounis, Poulos and Saravinovski

The MOTION was LOST 8 votes to 6.

SUBSEQUENT MOTION moved by Councillors Nagi and Tsounis

That the report be received and noted.

RECOMMENDATIONS

Officer Recommendation

That Council support the appeal of the Supreme Court Judgment in relation to case 2015/240470.

Background

Introduction

Council at their meeting of 4 November 2015 considered a report that addressed Supreme Court proceedings commenced by the Roads and Maritime Services (RMS) against Council.. The

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proceedings relate to land held by Council, namely Lot 14 in DP 213314 ('Lot 14') and Lot 1 in DP 108492 ('Lot 1'), which are the subject of a Trust registered on title. Annexure 1 notes the location of Lot 14 (circa 8 acres) and Lot 1 (circa 29 acres).

Copies of the Trust documents are tabled as Annexures 3 and 4. Whilst there are differences in wording of each Trust, in general they require:

- The land to be held in Trust by Council;
- Land which is required for a County Road be made available to the Commissioner of Main Roads (now RMS) when required at no cost; and
- Land not required for road be held for public recreational purposes.

Parties Position On Trust Requirements (Prior to Supreme Court Judgment)

The following recaps on relative party positions (in general terms) on the interpretation of the Trust over Lot 14 and Lot 1:

- **RMS** - Council is required to make available all of the land within Lots 14 and 1, as is required from time to time, for road and ancillary purposes.
- **Council** - The land is held for a dual purpose, being for a road and for public recreation. The delineation between and extent of land required for each purpose, being documented by the County of Cumberland County Planning Scheme, as is referred to in the Trust documents. In other words, on the original planning maps the area zoned for road shaded as white ('White Land') and the area zoned recreation shaded as green ('Green Land'). Refer to Annexure 2.

Steps Prior To Supreme Court Hearing

Prior to the Supreme Court Hearing two principle steps were undertaken, these were:

1. Formal Mediation Between Parties; and
2. Judicial Advice;

The formal mediation did not result with parties agreeing to a remedy for the proceedings.

Item two above, seeking Judicial Advice, was an important aspect prior to the proceedings in that it sought to determine whether Council (as Trustee), based on a defence submitted, was justified in defending the proceedings. Judicial Advice, in essence, is a separate proceeding at the Supreme Court whereby a Judgment is handed down in the form of advice. The Judicial Advice concluded, inter alia, that Council *the Plaintiff be advised that it would be justified in defending the claims made against it...and incurring costs in defending the proceedings.*

Supreme Court Judgment

The Supreme Court heard the matter on 12, 13 and 17 November 2015. A copy of the Judgment is attached as Annexure 5. A Court Declaration Order followed the Judgment and this is noted in the proceeding section below.

Court Declaration Order

The following notes the declaration of the court.

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The Court Declares:

1. On proper construction of the Deed made on 30 October 1957 between the Commonwealth of Australia, the Cumberland County Council and the First Defendant, the First Defendant must upon demand make available, at no cost, to the Plaintiff all or any part of the Land in Lot 14 in DP 213314 located at 19 Marsh Street, Arncliffe that from time to time is required by the Plaintiff either for road purposes or for purposes ancillary to road purposes.

2. On the proper construction of the Declaration of Trust made on 14 April 1958 by the First Defendant, the First Defendant must upon demand make available, at no cost, to the Plaintiff all or any part of the land in Lot 1 or DP 108492 located at 13 Marsh Street, Arncliffe that from time to time is required by the Plaintiff either for road purposes or for purposes ancillary to road purposes.

The Court notes:

3. The undertakings given to the Court by the First Defendant, which are set out in the Attachment to these orders.

The Court:

4. No order as to costs in relation to the Fourth Defendant, to the intent that it pays its own costs of the proceedings.

5. Grant liberty to apply on 2 business days' notice, specifying the relief sought.

6. Subject to further order, stays the declaration made in paragraph 2 and the undertaking given in paragraph 3 of the Attachment, up to the determination of any appeal to be instituted by the First Defendant in respect of the Judgment at first instance relating to the declaration of trust concerning Lot 1.

Item 6 of the Court Declaration stays (holds off) the application of the Judgment over Lot 1 subject to the outcome of an appeal. A similar provision does not exist for Lot 14 as the decision made by the Court regarding this Lot will not be appealed.

Responsibility For Party costs

The Supreme Court has not yet made a decision on the responsibility for the payment of costs for the proceedings, other than noting an intent that the fourth defendant (Kogarah Golf Club) will attend to their own costs. The costs matter is set down for the court to consider on 5 April 2016.

Matters that Have Occurred Post Judgment

Since the Judgment, and in line with the undertakings provided to the Supreme Court by parties, Council has granted a lease over Lot 14 to the RMS commencing 1 April 2016 and concluding on 28 February 2021. Additionally, a Deed of Variation is drafted to vary the existing Kogarah Golf Club Licence to exclude the area that is the subject to the lease to the RMS over Lot 14.

The lease over Lot 14 includes areas required permanently for road widening (Marsh Street), permanent facilities for the new M5 tunnel and land required temporarily for construction purposes. The transfer of land required for permanent purposes by the RMS will be formalised upon request during the course of the lease agreement.

A plan noting the proposed works relating to both Lot 14 and Lot 1 are annexed as Annexure 6. A plan noting the permanent facilities/occupation is tabled as Annexure 7.

Judgment Implications on Council and Future Land use

The Judgment and Court Declaration affirms a like position to that held by the RMS in that, Lot 14

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and Lot 1 are to be made available at any time for road purposes and at no cost to the RMS. Moreover, the Judgment further clarifies the Trust to include making the land available for a purpose ancillary to a road purpose. This means that the RMS can require any of Lot 14 or Lot 1 to be made available (via freehold, leasehold or similar) at any time for their operational purposes, providing it is ancillary to a road.

The Trust, in light of the Judgment, severely inhibits the ability of the Council and the community to deal with the land and redefines Council's understanding that the land served two purposes, to a lesser extent road and to a greater extent recreation. Specifically, the disadvantages for the community that arise from the interpretation of the Trust materialise as:

- An increased risk around the loss of any investment in the land or capital improvement, as the land is subject to being required by the RMS at any time in perpetuity.
- Further limitation to the community's ability to determine outcomes for its land now and into the future.
- The road dominant use (via the Trust) acting contrary to any planning recommendations for the land arising from the Cooks Cove Priority Precinct, currently being undertaken by the NSW Government - Planning and Environment.
- Costs to hold and maintain the land into the future until such time it is required by the RMS.

In extension of the first point noted above, any capital investment in recreation and community outcomes for Lot 14 and/or Lot 1 Council had envisaged are at risk on two parts, firstly that the RMS having an increased input on what improvements can be placed on the land and secondly the risk of Council losing these improvements at any time when the land is recalled by the RMS. A demonstration of this point is the treatment of the existing golf course improvements contained within Lot 14 and Lot 1. To date, the RMS have not provided Council with an undertaking that these improvements will be reinstated at the completion of their temporary tenure within these lots.

Matter Subject of the Appeal

Council was successful in seeking a "Stay" of the Judgment over Lot 1 to allow an appeal. In other words the Court agreed to hold off enforcing its decision on the Trust over Lot 1 until the matter can be considered on appeal. To this end, an appeal would purely focus on the interpretation of the Trust over Lot 1 and not Lot 14.

Rational for Appeal and the Prospects of Appeal

Lot 1 is over 29 acres (circa 117,000sqm) of land that is surrounded by an area that is to experience considerable built form change and will require the delivery of additional infrastructure and services for the community. To this end, the land associated with Lot 1 holds a significant strategic value to the community in securing the provision of services and infrastructure for the local area into the future.

The Judgment and Trust have an effect whereby the RMS have dominant proprietorship in Lot 1, in its entirety. An appeal would seek to challenge the interpretation of the Trust over Lot 1, based on the Council's argument that the Green Land is vested for the community and dominant proprietorship does not vest with the RMS for a road or ancillary purpose.

Senior Counsel was asked to compile a Prospects of Appeal Advice to guide a decision on whether to appeal and a copy of this advice is tabled in a confidential report titled *Legal Advice - Roads and Maritime Services vs Rockdale City Council & Ors - Supreme Court of New South Wales, Equity Division, case 2015/240470*.

Separate to the Prospects for Appeal Advice, commentary from a further Judgment made by the Court (Refer to Annexure 8) needs to be considered. In essence, the further Judgment considered the aspect of a "Stay" of the Judgment for Lot 1 pending the outcome of an appeal. In determining

whether to grant a "Stay" the Court needs to be satisfied that there is a reasonable or appropriate case to warrant the exercise of this discretion. Paraphrasing the consideration of this point, the Court states *I am satisfied that the Council has a seriously arguable case on appeal, and that serious questions for the determination of the appellate Court, in respect of the construction of the declaration of trust in relation to Lot 1... Although I did not accept the submissions made by Rockdale City Council in that respect, it seems to me that they plainly raised a serious question of construction and an appellate court might reach a different view from this which I have reached.*

Implications of Not Appealing

A decision not to appeal would provide certainty around the further accrual of costs, particularly if the appeal is unsuccessful. Council's estimated legal costs for appeal are circa \$150,000.

A risk of incurring additional costs for an appeal need to be viewed in consideration of the implications of not appealing, particularly if some or all of the 29 acres within Lot 1 needs to be replaced elsewhere for the community. Without accessing any value in Lot 1 or being able to utilise the land for recreational purposes or a combination of the both, the cost impost to the community to replace such land is cost prohibitive.

Aside from the above, if the Council does not appeal the decision is final and the RMS have the ability to demand possession or ownership of the whole of Lot 1 for road and ancillary purposes at no cost, whenever they require it in the future. Even once the M5 Project works have been concluded and the RMS no longer requires Lot 1 for those works, they would still have the ability to demand possession or ownership of the whole of Lot 1 at any time in the future.

The Appeal - NSW Court of Appeal

The scheduled date for the appeal is 16 February 2016. Given the expedited nature of the proceedings and in order to preserve Council rights, it was necessary set aside a court date for an appeal to be heard. The appeal would be considered by a bench of three judges.

Financial Implications

The costs to appeal a Supreme Court decision are often less than those incurred in-conjunction with the proceedings themselves. The costs of an appeal are estimated to be in the vicinity of \$150,000.

Community Engagement

The issues raised in this report do not require community consultation under Council's Community Engagement Policy.

Rockdale City Plan

Outcome:	Outcome 1 - Rockdale is a welcoming and creative City with active, healthy and safe communities.
Objective:	Objective 1.4 - Our City has quality and accessible services, and community and recreational facilities
Strategy:	1.4.2 - Provide parks, reserves and recreation areas which reflect the qualities of the City's social and environmental

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needs

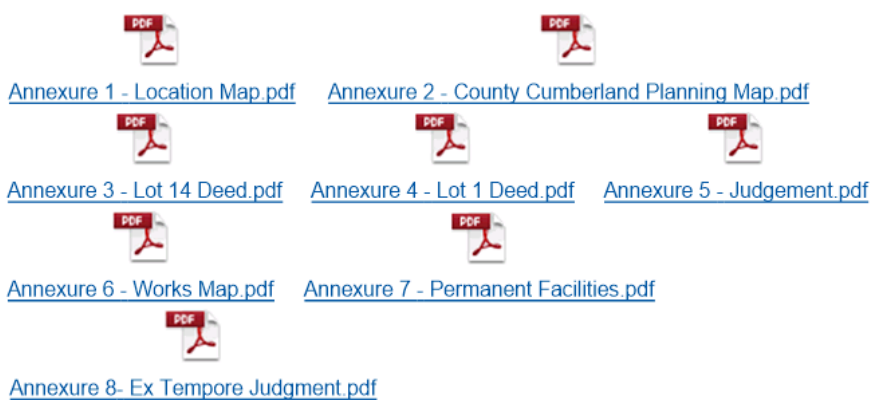
Delivery Program:

1.4.2.B - Ensure that the use of all parks, reserves and recreational areas are guided by Plans of Management which reflect the City's social and environmental needs. (DCO)

Operational Plan:

1.4.2.B.3 - Investigate opportunities for synthetic sports fields including maintenance and cost recovery options (MSAM)

Additional Comments:



<http://roc-a-a08.rockdale.nsw.gov.au/RBP+Suite/CBPapers.nsf/vwA1...> 05/09/2018

**EXTRACT FROM MINUTES OF THE ORDINARY MEETING OF ROCKDALE CITY COUNCIL HELD
IN THE COUNCIL CHAMBER, TOWN HALL, ROCKDALE ON WEDNESDAY, 7 OCTOBER 2015,
AT 6.33 PM**

116

ORD36C - CONFIDENTIAL - COOKS COVE - F08/387

NOTE:

A presentation was made by Gary Best from Clayton Utz as described in the report.

RESOLVED

- 1 That Council endorses the attached Governance Structure for the relocation of the Kogarah Golf Club.
- 2 That Council endorses the attached Decision Process for the relocation of the Kogarah Golf Club.
- 3 That Council endorses the Projection Definition outlined at Decision Point 1.
- 4 That both documents are publically accessible documents.
- 5 That a further report be submitted to Council at Decision Point 2 and the Cooks Cove Task Group be kept informed on the progress of this matter.
- 6 That a further report be submitted to Council regarding negotiations for the transfer of Crown Land to Council.

NOTE:

The General Manager reported the above decision, which was made in Closed Session of Council, to the public once the meeting resumed in Open Session.

1 October 2015

Rockdale City Council
Cooks Cove Golf Course Relocation
Governance Structure

1. Introduction

- 1.1 Rockdale City Council (**Council**) owns and manages certain land at Cooks Cove.
- 1.2 It is anticipated that UrbanGrowth NSW, and Crown Lands, will shortly transfer further land at Cooks Cove to the Council.
- 1.3 Council anticipates receiving a development proposal from Boyd Properties (and possibly Kogarah Golf Club) to develop land owned by Council for various purposes including for use as a Golf Club and Golf Course and for certain other public uses.

2. Council Interest

- 2.1 It is important for Council to recognise that it potentially has two interests in the Cooks Cove Project, namely:
 - (a) an interest as Consent Authority for the purposes of the Environmental Planning & Assessment Act 1979; and
 - (b) an interest as owner of some or all of the land the subject of the Planning Application.

3. Structure

- 3.1 Council intends to implement an arrangement which keeps the project team for the Cooks Cove Golf Course Relocation separate from its interests as a planning authority.
- 3.2 With the establishment of a project team having responsibility for Council's interests as a planning authority, the Cooks Cove Task Group might be dissolved.

This would be a preferable outcome in terms of maintaining probity for the preferred governance structure for the Cooks Cove Golf Course Relocation.
- 3.3 In the event this recommendation is not adopted, and the Cooks Cove Task Group is to continue, then:
 - (a) the responsibilities for the Task Group should not include planning related functions; and
 - (b) the members of the Task Group should not include those who are part of the planning team within Council with responsibility for Council's interests as planning authority.
- 3.4 From a planning perspective, the planning assessment and relevant Development Applications will be independently assessed.

The Director City Planning will be responsible for that independent assessment.

The Director will undertake all normal responsibilities in relation to the submission of those applications to the Joint Regional Planning Panel for consideration.

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- 3.5 The responsibility for Council's interests as landowner will be undertaken by:
- (a) The Project Manager (Cooks Cove), who will report to the Project Director (Cooks Cove).
 - (b) Both will report directly to the General Manager of the Council.
 - (c) In turn the General Manager will report to Council, as the ultimate decision making body.
- 3.6 This structure is shown diagrammatically in Schedule 1.

4. Planning Determinations

- 4.1 While the Environmental Planning & Assessment Act (Section 81) provides that Council issues a Notice of Determination, that notice must be issued in accordance with a minute of the decision of the Joint Regional Planning Panel. In that regard Council has no discretion.
- 4.2 On the better view, when Council issues the determination, it is doing so as agent of the Joint Regional Planning Panel.
- 4.3 On the basis Council has no legal discretion in relation to the determination, there is no conflict of interest between Council's interests as being the ultimate decision making body in relation to Council's land owning position, and Council's other interest in relation to the planning framework.
- 4.4 On the basis that some Councillors (and/or Council Officers) are members of the Joint Regional Planning Committee, those persons should not take part in any decision, or discussion (and should be absent from any meetings) relating to Council's interests as landowner at Cooks Cove.

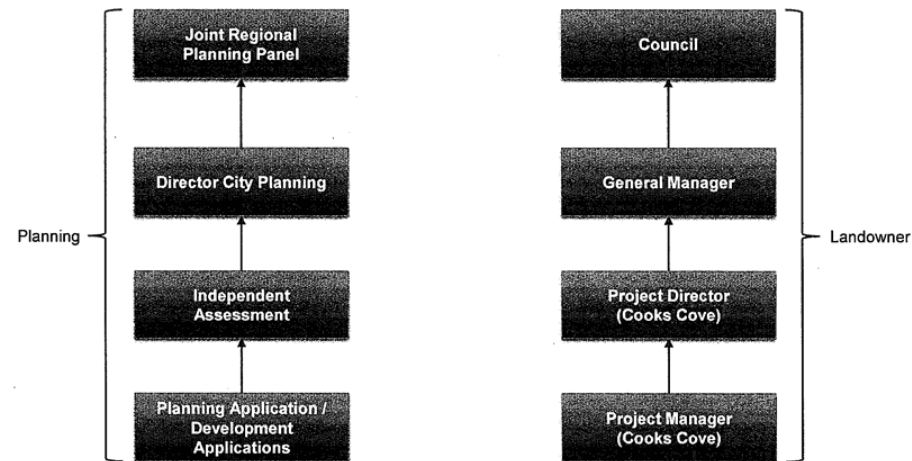
Schedule 1

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Rockdale City Council

Cooks Cove Golf Course Relocation - Governance Structure



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1 October 2015

Rockdale City Council
Cooks Cove Golf Course Relocation
Decision Process

-
- 1. Introduction**
- 1.1 Rockdale City Council (**Council**) owns and manages certain land at Cooks Cove.
- 1.2 It is anticipated that UrbanGrowth NSW, and Crown Lands, will shortly transfer further land at Cooks Cove to Council.
- 1.3 Council anticipates receiving a development proposal from Boyd Properties (and possibly Kogarah Golf Club) to develop land owned by Council for various purposes including for use as a Golf Club and Golf Course and for certain other public uses.
- 1.4 The purpose of this paper is to set out a decision process for Council in dealing with, and being involved in, the possible Cooks Cove Golf Course Relocation Project and related motions to be considered by Council in this regard.
- 1.5 A diagrammatical overview of the decision process is contained in Schedule 1.
-
- 2. Decision Points**
- 2.1 Four Decision Points are proposed.
- 2.2 They are:
- (a) Decision Point 1 - Project Definition - Cooks Cove Golf Course Relocation;
 - (b) Decision Point 2 - Proponent Engagement;
 - (c) Decision Point 3 - Proponent Negotiations; and
 - (d) Decision Point 4 - Proponent Agreement.
- 2.3 Certain events or triggers need to occur at each Decision Point in order to move forward to the next Decision Point.
-
- 3. Decision Point 1 - Project Definition - Cooks Cove Golf Course Relocation**
- 3.1 Council is to consider and confirm its Project Objectives for the Cooks Cove Golf Course Relocation Project. This is most likely as a resolution of Council.
- 3.2 The Project Objectives might include:
- (a) implementation of the current planning controls for use as a golf course (and ancillary uses) and other active and passive and recreational uses, as nominated in Sydney Regional Environmental Plan No. 33 - Cooks Cove;
 - (b) public interest;
 - (c) value for money;
 - (d) community; and
 - (e) transparency, accountability and probity.

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- 3.3 The process will be clarified and parameters set as to what steps need to be followed by Council having regard to its potential role as the Consent Authority on the one hand, and as landowner on the other hand.
- 3.4 This may also include an engagement framework with Boyd Properties and/or Kogarah Golf Club, as well as the Cooks Cove Task Group to guide the governance of any interactions, including the assessment parameters.
- 3.5 This process will include Boyd Properties and / or Kogarah Golf Club being invited to submit an indicative development proposal. It is not envisaged that this will constitute a planning proposal for the purposes of rezoning or a development application nor a commitment from Council as to any statutory or commercial outcomes.
- 3.6 Rather the indicative development proposal may outline the substantial components of the Project, the proposed commercial and legal structure, anticipated delivery times and indicative financial consideration to Council as landowner. While Boyd Properties (and Kogarah Golf Club) have provided Council with a "vision" document, further detail of the proposal is required.

4. Decision Point 2 - Proponent Engagement

- 4.1 Before considering direct negotiations with Boyd Properties and / or Kogarah Golf Club, Council will consider whether tenders for the Project are to be called (under section 55 of the Local Government Act) or whether the Project may be properly categorised as a PPP project (for the purposes of section 400B of the Local Government Act).
- 4.2 A Governance and Probity Plan is to be prepared. This will ensure Council's involvement in the Project is clearly defined and the roles of the various parties.
- 4.3 Because of the long history of the Cooks Cove Project, Council may consider preliminary discussions with a number of stakeholders including the Division of Local Government, the Department of Premier and Cabinet, UrbanGrowth NSW and perhaps other Government authorities or departments.
- 4.4 If Council prefers to negotiate directly with Boyd Properties and / or Kogarah Golf Club, Council should consider, and if thought fit, pass a resolution (under section 55(3) of the Local Government Act) resolving not to invite tenders for the Project. This decision would follow an assessment of the indicative development proposal by Council officers and advisers assigned to this role, including the justifications and reasons for dealing directly with Boyd Properties and / or Kogarah Golf Club.
- 4.5 Council will also determine whether the PPP provisions of the Local Government Act will have application to the Project, and consult with the Division of Local Government in that regard.

5. Decision Point 3 - Proponent Negotiations

- 5.1 Subject to the results at Decision Points 1 and 2, including an assessment as to whether Council's Project Objectives are likely to be achieved, and subject to appropriate resolutions being passed by Council, Council may undertake negotiations with Boyd Properties and / or Kogarah Golf Club.
- 5.2 Those negotiations may result in the preparation of a Heads of Agreement outlining the more significant parts of any agreement that may be entered into by Council, Boyd Properties and Kogarah Golf Club.
- 5.3 Council may consider that Heads of Agreement and if so resolved, may determine to enter into and sign the Heads of the Agreement.

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6. Decision Point 4 - Proponent Agreement

- 6.1 Following the execution of the Heads of Agreement, draft Transaction Documents may be prepared.
- 6.2 It is envisaged that the Transaction Documents will include a Project Delivery Agreement and other ancillary documents and side deeds.
- 6.3 Council, Boyd Properties and Kogarah Golf Club, advised by their respective legal advisers, may then negotiate those draft Transaction Documents with a view to reaching agreement and finalising those documents.
- 6.4 It may also involve other relevant Government Authorities depending on the current status and landholding arrangements at Cooks Cove.
- 6.5 Once the parties have agreed the terms of the Project Delivery Agreement and any other relevant Transaction Documents, a further Council meeting and resolution will be required in order for Council to enter into and execute the relevant Transaction Documents.
- 6.6 The Project Delivery Agreement and other Transaction Documents could then be executed by Council and the other parties.

7. Planning and Development Process

- 7.1 This process may include:
 - (a) rezoning;
 - (a) Development Consents;
 - (b) delivery of Works in Kind by Boyd Properties to Council;
 - (c) delivery of Works in Kind by Boyd Properties to Kogarah Golf Club;
 - (d) the grant of a long term Lease by Council to Kogarah Golf Club; and
 - (e) the transfer of freehold land by Kogarah Golf Club to Boyd Properties.

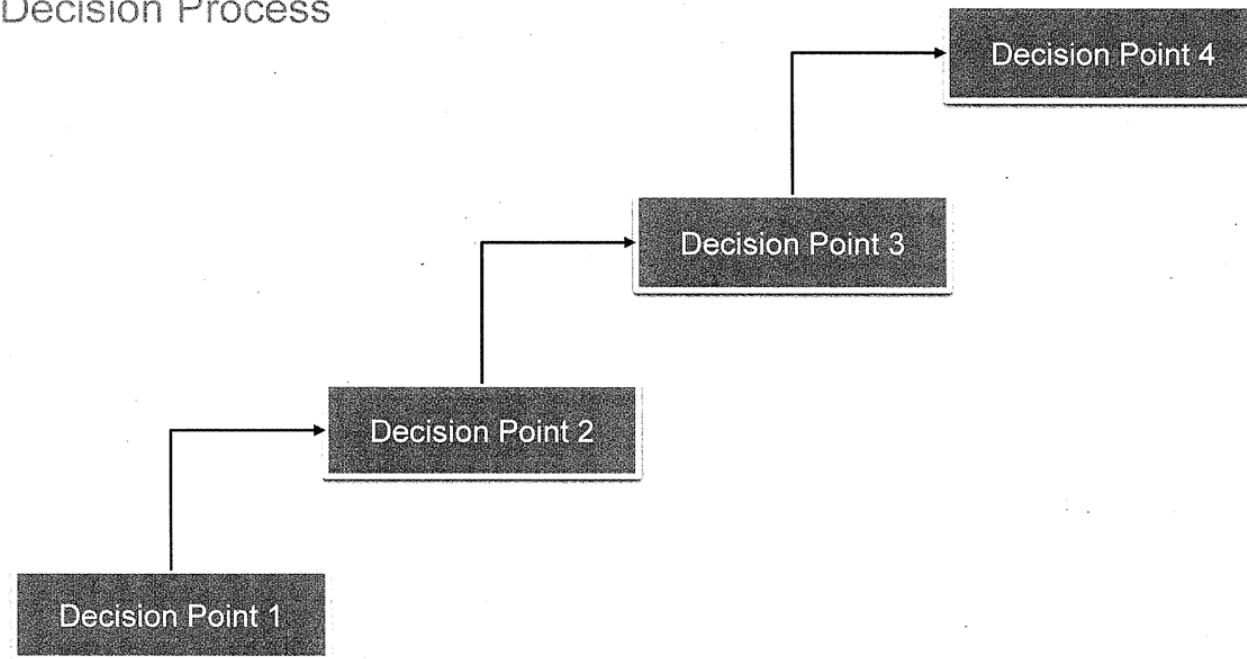
Schedule 1

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Rockdale City Council

Decision Process

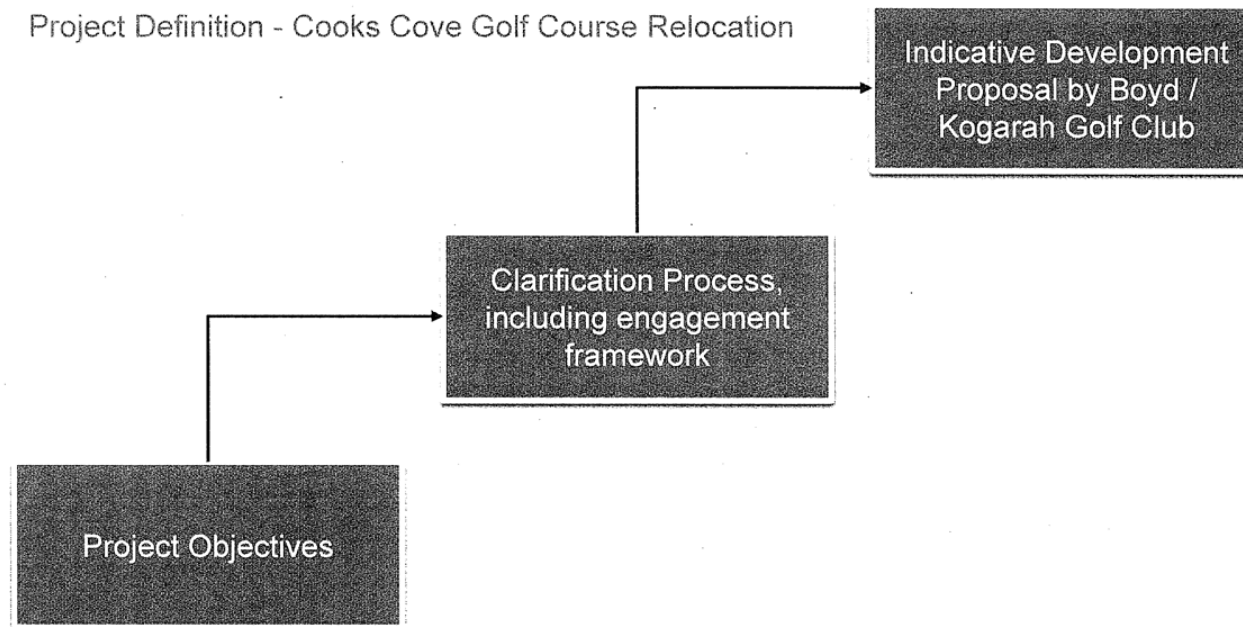


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Rockdale City Council

Decision Point 1

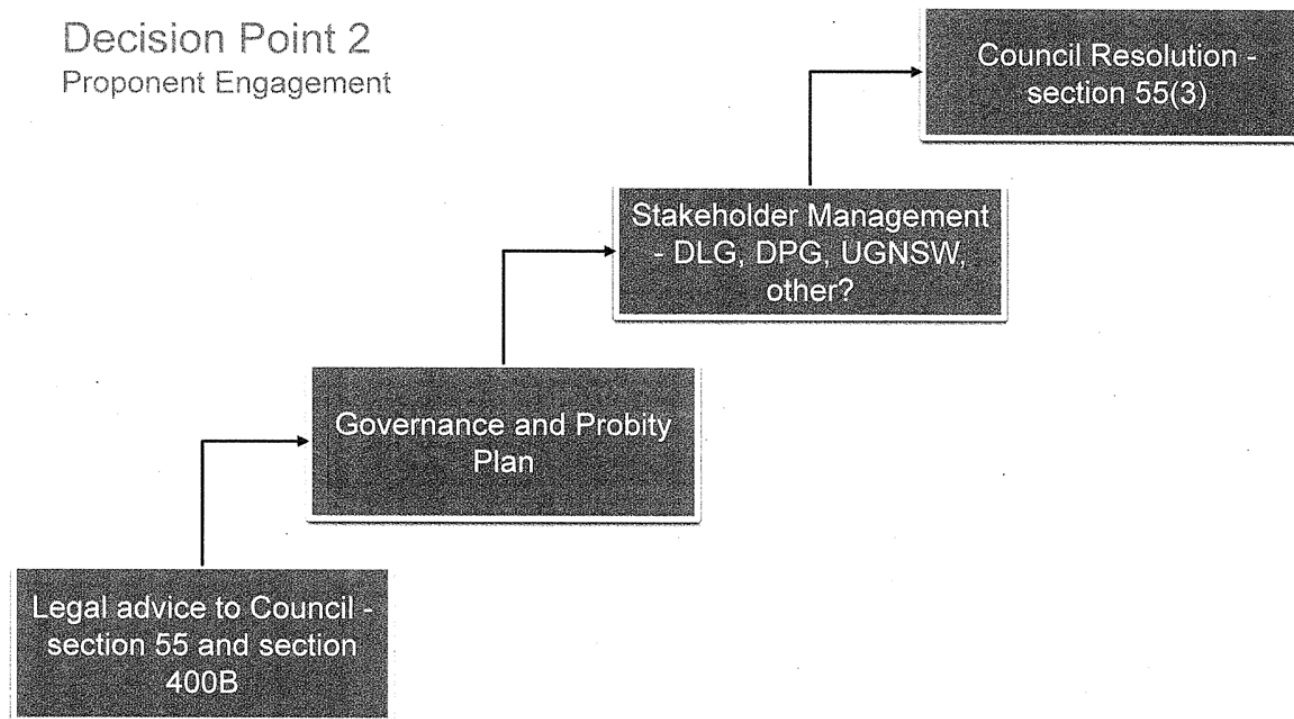
Project Definition - Cooks Cove Golf Course Relocation



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Rockdale City Council

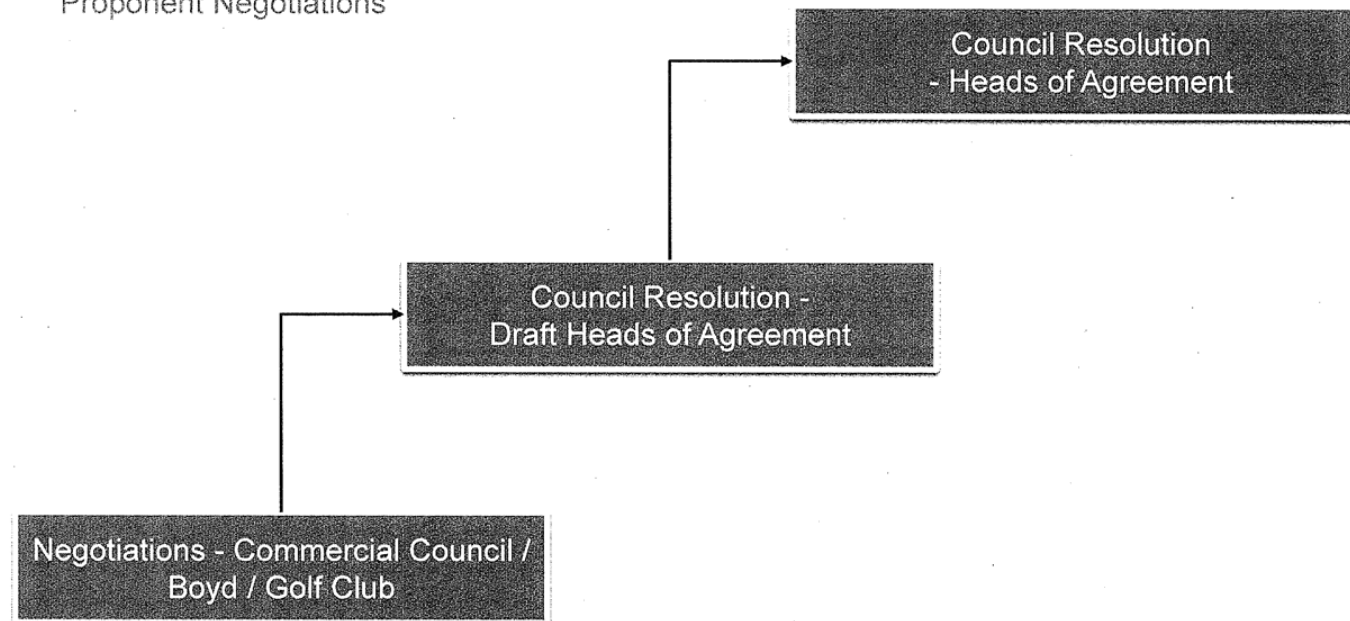
Decision Point 2
Proponent Engagement



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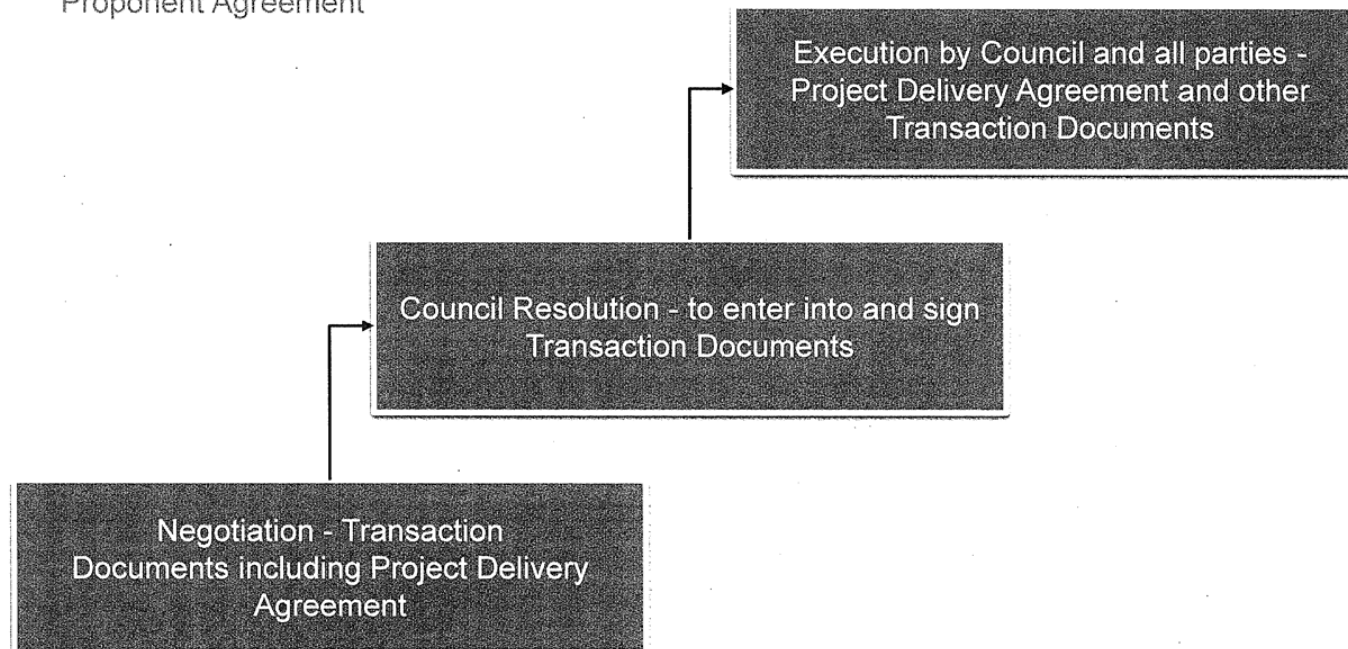
Decision Point 3
Proponent Negotiations



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Rockdale City Council

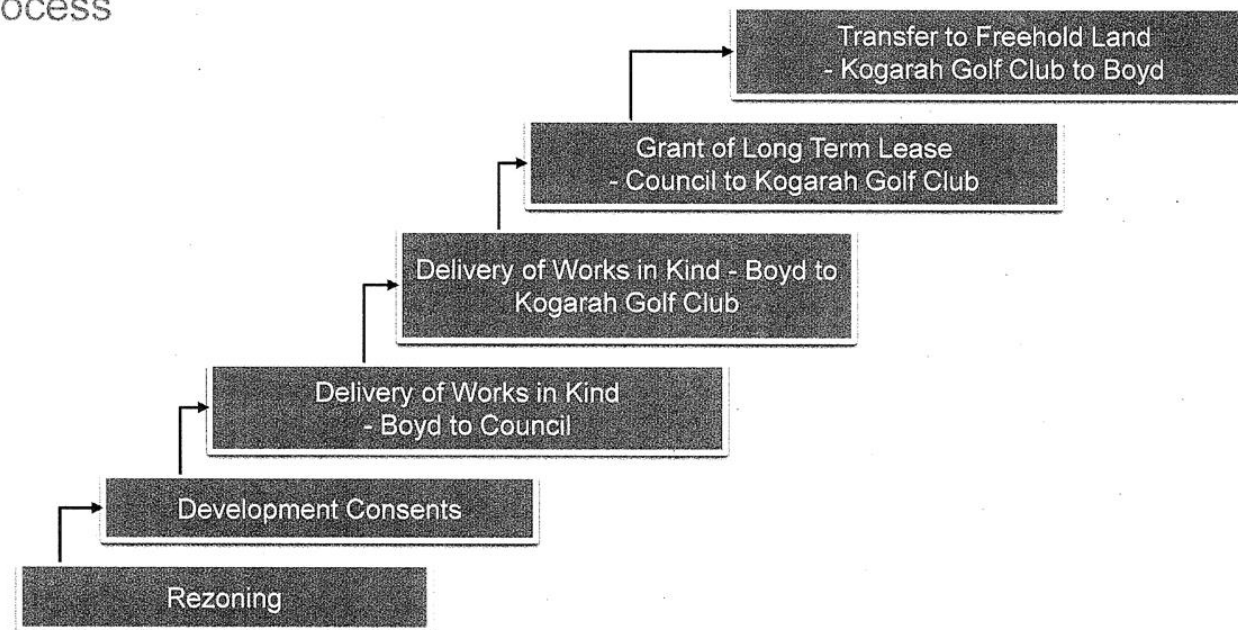
Decision Point 4 Proponent Agreement



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Rockdale City Council

Planning and Development Process



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Council Meeting

[Back](#)[Print](#)

General Report - Meeting Date: 18/05/2016

Confidential - That in accordance with Section 10A (2) (c) of the Local Government Act 1993, the Council resolves itself into closed session with the press and public excluded by reasons of information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business.

Item Number: ORD29C
Subject: COOKS COVE - INDICATIVE DEVELOPMENT PROPOSAL
File Number: F15/450
Report by: Acting Director - City Planning & Development (Michael McCabe)

Council Resolution

MOTION

- 1 That Council note the legal advice annexed to this report drafted by Clayton Utz.
- 2 That, pursuant to section 55(3)(i) of the Local Government Act 1993, Council resolves not to invite tenders for a proposed relocation of Kogarah Golf Course having regard to extenuating circumstances and the unavailability of competitive or reliable tenderers, by virtue of the exclusive arrangement between John Boyd Properties and Kogarah Golf Club.
- 3 That, further to resolution 2, Council endorse direct negotiations with the above mentioned Proponents.
- 4 That prior to entering into direct negotiations, Council resolve to prepare a probity plan in strict accordance with the project outcomes (Decision Point 1) endorsed by Council at their meeting of 7 October 2015.
- 5 That the direct negotiations are not binding on the Council and a further report will be provided to Council before any approval could be granted to enter into contracts (Decision Point 4).
- 6 That Council engage with the Division of Local Government Council for completeness and transparency.
- 7 That the Mayor and General Manager be authorised to sign any documents required to action the above resolutions.

DIVISION

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Business Paper authored by Acting Director - City Planning & Devel... Page 2 of 2

DIVISION on the MOTION called for by Councillors Ibrahim and Awada

FOR THE MOTION

Councillors Macdonald, Bezic, P Sedrak, Barlow, L Sedrak, Kalligas, Nagi, Mickovski, Hanna, Tsounis, Poulos and Saravinovski

AGAINST THE MOTION

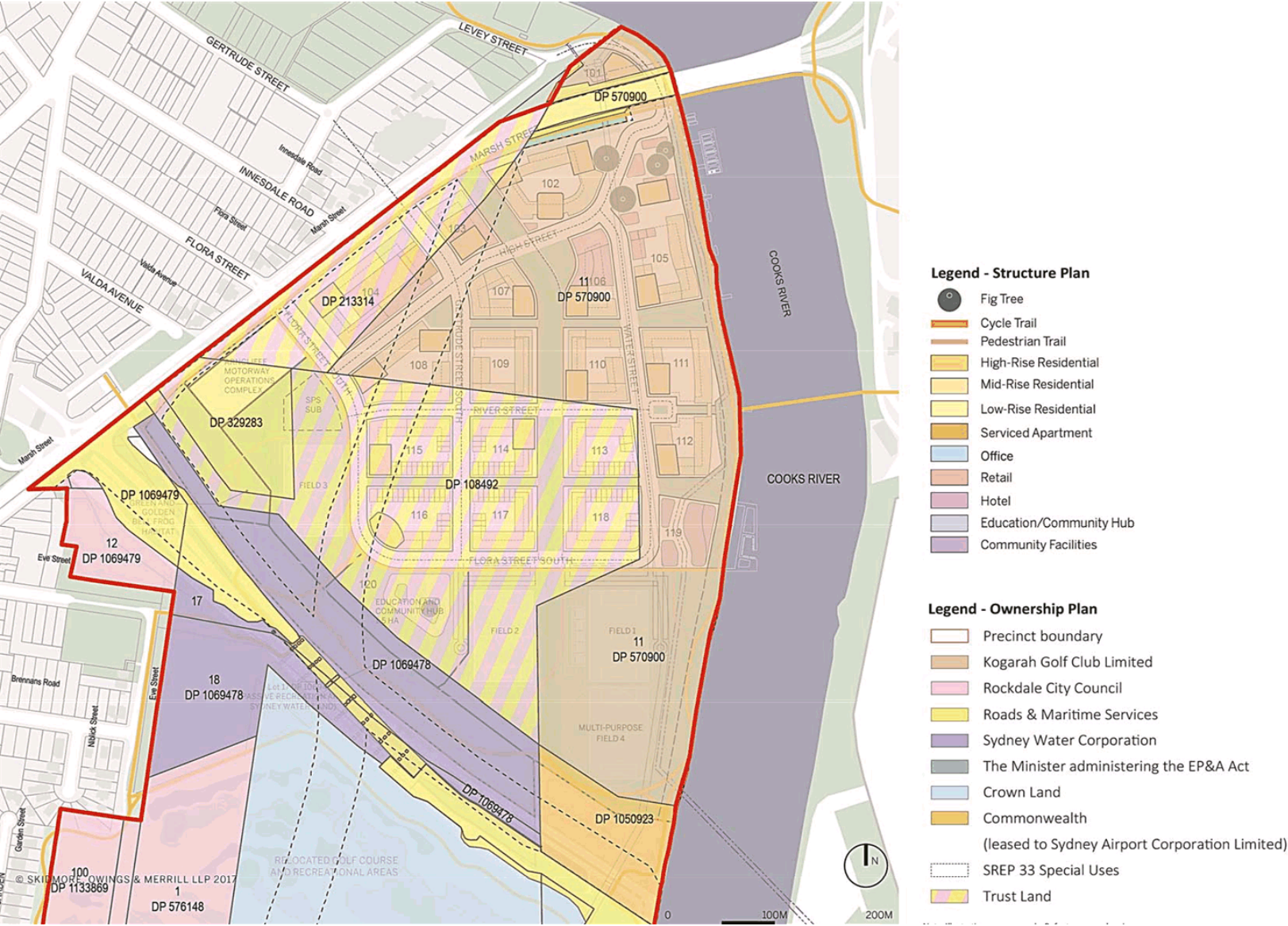
Councillors Awada and Ibrahim

The MOTION was ADOPTED 12 votes to 2.

NOTE:

The General Manager reported the above decision, which was made in Closed Session of Council, to the public once the meeting resumed in Open Session.

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Bayside Planning Panel**14/08/2018**

Item No	5.1
Subject	Assessment of Planning Proposal - Cook Cove Report by City Plan Strategy and Development (CPSD)
Report by	Clare Harley, Manager Strategic Planning
File	F14/308

Summary

Cook Cove Inlet Pty Ltd has submitted a draft Planning Proposal for the site known as Cook Cove, located in the suburb of Arncliffe.

The site comprises approximately 100 hectares and is currently zoned "Trade and Technology", "Special Use" and "Open Space", in accordance with the "Sydney Regional Environmental Plan No 33" (SREP).

The Planning Proposal proposes to repeal the SREP and insert new planning controls in the *Rockdale Local Environmental Plan 2011*, to allow for a high-density mixed-use development.

The proposed controls would allow the northern part of the precinct to be redeveloped to include:

- 515,500 sqm of residential GFA;
- 53,000 sqm of commercial, retail and short stay accommodation GFA; and
- 2,500 sqm of community and education GFA

Approximately 5,364 residential dwellings are proposed in a variety of building typologies ranging from 3 storey townhouses to 25 storey residential towers.

Given the proposal includes the reconfiguration of public open space within the site, between the Northern and Southern Precincts, the Planning Proposal also includes the reclassification of land from "community" land to "operational" land under the Local Government Act 1993. Should the Planning Proposal proceed, Council will need to undertake a public hearing, to provide interested parties from the community an opportunity to present their views to Council.

Cardno (NSW/ACT) was appointed to undertake an independent technical assessment of the Planning Proposal and accompanying supporting documentation.

Cardno's "Technical Assessment for Adequacy" has been appended to this report, which concludes that the Planning Proposal is either consistent or is capable of being consistent with the Section 117 Ministerial Directions and is therefore suitable for submission for a Gateway Determination with the Department of Planning and Environment (DPE).

A Gateway Determination would involve review by DPE and confirmation that the PP has sufficient strategic and site-specific merit to proceed to formal public exhibition and more detailed assessment.

Officer Recommendation

- 1 That the Bayside Planning Panel notes that the draft Planning Proposal has sufficient strategic merit to be referred for a Gateway Determination, subject to the following.
- 2 That the draft Planning Proposal is to be amended as follows in relation to the proposed land reclassification:
 - a The precise identification of each of the interests affecting each parcel of public land and the intended effect of the Planning Proposal regarding those interests (including any proposal to cease public reserves);
 - b The written consent of the Minister administering the Crown Lands Management Act 2016 to the proposed reclassification of Crown land to operational land;
 - c Details of the current view of the RMS regarding the proposed extinguishment of the trusts created when Lot 14 in DP 213314 and Lot 1 in DP 108492 were dedicated to Council.
 - d Confirmation from Council (in its capacity as landowner and Trustee) that its obligations under any trusts proposed to be extinguished do not prevent Council from adopting the Planning Proposal

These amendments should be made before the draft Planning Proposal is reported to Council under s.3.33 of the Environmental Planning and Assessment Act 1979
- 3 That Council (as landowner) obtain its own legal advice regarding the potential for claims for compensation under the Land Acquisition (Just Terms Compensation) Act 1991.
- 4 That the draft Planning Proposal be amended to address the items identified in the Technical Assessment by Cardno and as summarised in **Attachment 3**.
- 5 That the draft Planning Proposal be amended to specify the quantum of gross floor area and maximum building height for the 'registered club' within the southern precinct, prior to public exhibition.
- 6 That the draft Planning Proposal be amended to propose that consultation is undertaken with the following agencies before the broader community consultation:
 - i Roads and Maritime Services;
 - ii Transport for NSW;
 - iii Sydney Airport Corporation Limited (SACL), Civil Aviation Safety Authority (CASA) and Airservices Australia (AsA).
 - iv Department of Education; and
 - v Office of Environment and Heritage.
 - vi Office of Sport

Bayside Planning Panel

14/08/2018

The purpose of this consultation is to identify any modifications that may be required given the potential impacts on regional infrastructure, so these can be incorporated in the Planning Proposal before community consultation.

- 7 That a peer review of the Landscape Character and Visual Impact Assessment and independent commentary on the urban form be commissioned by Council and exhibited with the draft Planning Proposal to inform community consultation.
- 8 That a Voluntary Planning Agreement, which confirms the infrastructure to be provided in support of the proposed redevelopment of Cook Cove be exhibited with the Planning Proposal.

Background

1. Introduction

Cook Cove Inlet Pty Ltd has submitted a Planning Proposal (PP) to Bayside Council to rezone approximately 100 hectares of land in Arncliffe, known as Cook Cove, to facilitate the relocation of the existing Kogarah Golf Course and redevelopment for mixed-use purposes.

Bayside Council owns land within the area of the draft Planning Proposal and therefore commissioned Cardno (NSW/ACT) to undertake an independent technical assessment of the Planning Proposal and the accompanying consultant reports. Council also commissioned City Plan Strategy and Development (CPSD) to Project Manage the assessment of the Planning Proposal.

1.1 Purpose of Report

This report provides information and recommendations to the Bayside Planning Panel in relation to the draft Planning Proposal which, in summary, seeks to:

- replace the current zoning of 'Trade and Technology Zone', 'Special Uses Zone' and 'Open Space Zone' under *Sydney Regional Environmental Plan No.33 – Cook Cove* (SREP 33) with 'R4 High Density Residential', 'B4 Mixed Use', 'SP2 Infrastructure', 'RE1 Public Recreation' and 'RU4 Primary Production Small Lot' under the *Rockdale Local Environmental Plan 2011*;
- amend the *Rockdale Local Environmental Plan 2011* (RLEP 2011) to insert land use controls, development standards in relation to Floor Space Ratio, Height of Buildings, Flood Planning, Terrestrial Biodiversity, Wetlands, Heritage, Acid Sulphate Soils, Design Excellence and various other site-specific provisions for Cook Cove (Northern and Southern Precincts)
- reclassify "community" land to "operational" land to facilitate the redevelopment of the northern precinct for mixed used purposes and the long-term lease of the southern precinct for recreation purposes.

In particular the purpose of this report is to consider whether the Planning Proposal has sufficient strategic and site-specific merit for the purpose of requesting a Gateway Determination. A Gateway Determination specifies whether a Planning Proposal should proceed. It is a checkpoint before further resources are committed to carrying out investigative research, preparatory work and consultation with agencies and the community.

The figure below provides a summary of the Planning Proposal steps and where we are in the rezoning process. Because of the scale of the proposal and the potential regional impacts, it is recommended that agency consultation and community consultation occur sequentially, in case amendments are required.

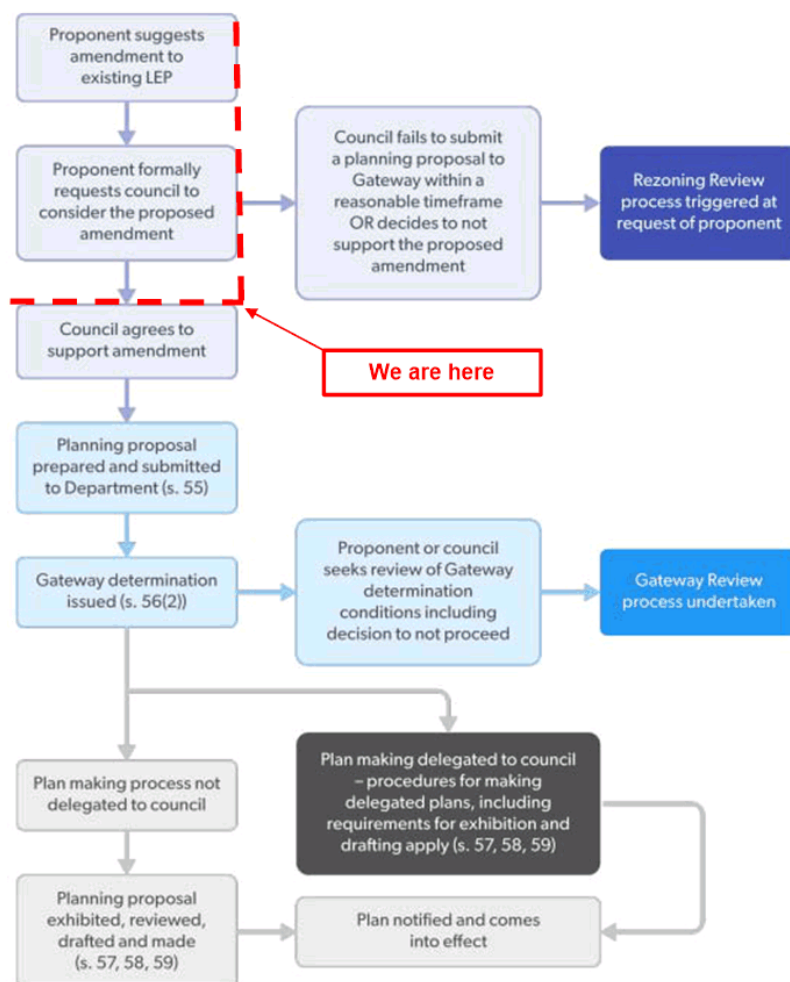


Figure 1: Planning Proposal Process (Source: Department of Planning and Environment)

1.2 Description of site

The land that this Planning Proposal applies to is known as Cook Cove, as illustrated in Figure 3.

Cook Cove is located adjacent to the western foreshore of the Cook River in the suburbs of Arncliffe and Banksia (refer to Figure 2). The entire Cook Cove site comprises approximately

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100 hectares of land and is currently occupied by Kogarah Golf Course located to the north of the M5 Motorway, and Barton and Riverine Parks, located to the south of the M5 Motorway. These two areas are described as the Cook Cove Northern and Southern Precincts (refer to Figure 3).

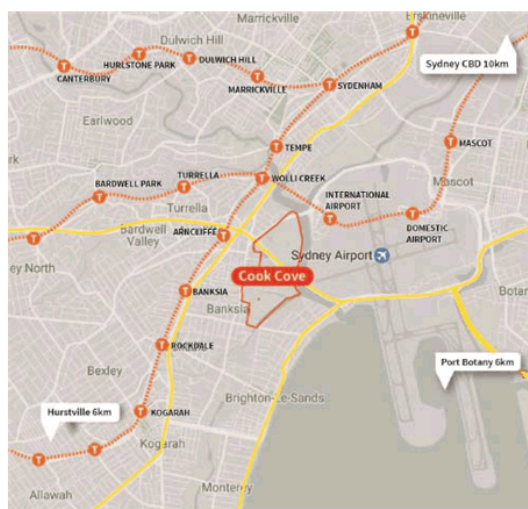


Figure 2: The Site and its Context (Source: Ethos Urban)

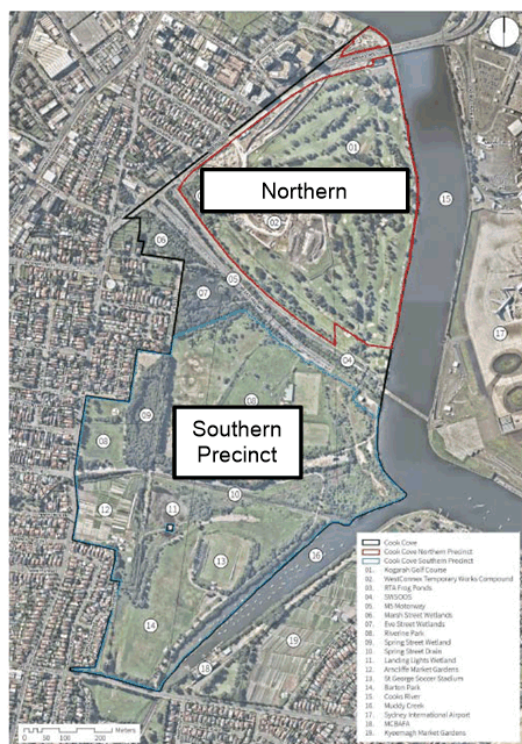


Figure 3: The Site (Source: Ethos Urban)

1.3 Intended Outcomes of the Draft Planning Proposal

The draft Planning Proposal seeks to amend *Rockdale Local Environmental Plan 2011* (RLEP) to allow the redevelopment of the northern precinct, to specifically include:

- 515,500 sqm of residential GFA;
- 53,000 sqm of commercial, retail and short stay accommodation GFA; and
- 2,500 sqm of community and education GFA5,346 residential dwellings in a variety of building typologies ranging from 3 storey townhouses to 25 storey residential towers.

The draft Planning Proposal also seeks to enable Council to grant a long-term lease for the use of the southern precinct for recreation purposes. Reclassification of all land owned by Bayside Council within the area of the Draft Planning Proposal from 'Community' to 'Operational' is required to enable it to be leased or transferred. The Draft Planning Proposal also seeks the extinguishment of all interests in the land including Trusts, caveats and covenants.

To facilitate the proposed redevelopment, the following amendments to the RLEP are required:

Table 1: Proposed RLEP Amendments

Land Application Map	To include the Cook Cove site within the boundary of the RLEP.
Land Zoning Map	<p>The following land use zones are proposed:</p> <ul style="list-style-type: none"> • B4 Mixed Use • R4 High Density Residential • RE1 Public Recreation • SP2 Infrastructure • RU4 Primary Production Small Lot
Height of Buildings Map	It is proposed to use Reduced Levels (RLs) instead of defining maximum building heights in metres. A maximum of RL 100 is proposed, which equates to approximately 25 storeys.
Floor Space Ratio Map	<p>It is proposed to restrict floor space within Cook Cove by maintaining the existing SREP 33 approach of restricting gross floor area (GFA) rather than FSR.</p> <p>The following controls are proposed via an amendment to Clause 4.4 Floor Space Ratio of the RLEP.</p> <ol style="list-style-type: none"> The maximum gross floor area on land in Area I (refer to figure below) on the Floor Space Ratio Map is 13,700 sqm. The maximum gross floor area on land in Area J (refer to figure below) on the Floor Space Ratio Map is 557,300 sqm. The minimum non-residential gross floor area on land in Area J (refer to figure below) on the Floor Space Ratio Map is 55,300 sqm. Notwithstanding clause 3(c), the maximum non-residential gross floor area on land zoned R4 in Area J (refer to figure below) on the Floor Space Ratio Map to be used for food and drink premises, business premises and shops is 2,500 square metres.

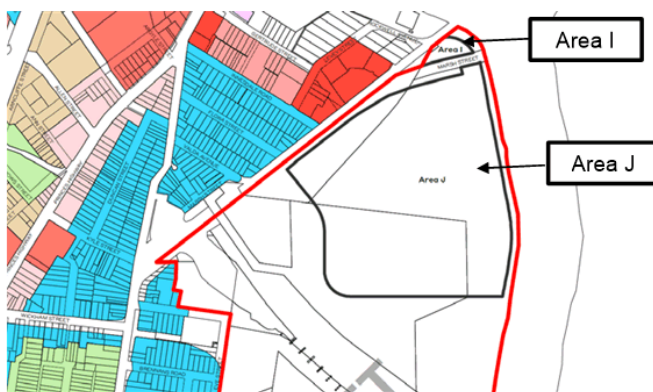


Figure 4: Proposed Floor Space Ratio Map (Source: Ethos Urban)

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Flood Planning Map	It is proposed to amend the RLEP Flood Planning Map to include the Cook Cove site (where necessary).
Terrestrial Biodiversity Map	It is proposed to amend the RLEP Terrestrial Biodiversity Map to include the Cook Cove site (where necessary).
Wetlands Map	It is proposed to amend the RLEP Wetlands Map to include the Cook Cove site (where necessary).
Heritage Map	The Planning Proposal seeks to amend the Heritage Map to: <ul style="list-style-type: none"> • Insert the existing extent of the Arncliffe Market Gardens (Item I93); and • Insert the extent of the state heritage listed Southern and Western Suburbs Ocean Outfall Sewer (SWSOOS) (Item I238) as it passes through the site.
Design Excellence Map	It is proposed to amend the RLEP Design Excellence Map and Clause 6.14 to include the Cook Cove Northern Precinct. The proponent however, proposes to implement a Cook Cove-specific design excellence guideline (to be approved by Council) rather than rely on the existing Council guidelines.
Acid Sulfate Soils Map	It is proposed to amend the RLEP Acid Sulfate Soils Map to include the Cook Cove site (where necessary).
Schedule 1 – Additional Permitted Uses	It is proposed to include additional permitted uses on the site, via an amendment to Schedule 1 of the RLEP. The proponent specifically proposes to introduce the following land uses: <ul style="list-style-type: none"> • RE1 Public Recreation: “educational establishments”, “food and drink premises”, “water recreation structures”. • R4 High Density Residential: “food and drink premises”, “business premises” and “shops”. • SP2 Infrastructure and RE1 Public Recreation: “advertising” and “advertising structures”. • SP2 Infrastructure: works within the “F6 Corridor” and “recreation areas”. • RE1 Public Recreation: “registered club”. It is proposed to introduce an Additional Permitted Uses Map to RLEP to identify the land to which Schedule 1 applies.
Part 6 – Additional Local Provisions	Clause 17 of the SREP 33 relates to the following environmental management plans: <ul style="list-style-type: none"> • A wetlands environmental plan of management; • A soil and water management plan; and • A Green and Golden Bell Frog management plan. It is proposed to transfer Clause 17 of the SREP 33 into Part 6 of the RLEP to ensure that the statutory significance of these plans is maintained.
Schedule 4 Classification and reclassification of public land	The Planning Proposal proposes to reclassify all Council owned lots within Cook Cove from “community” land to “operational” land and extinguish all interest in this land, with the exception of Lot 100 in DP 1133869.

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	The proposed outcome will be achieved by amending Schedule 4 of the RLEP.
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1.4 Supporting Documents

The report needs to be read together with the Planning Proposal (**Attachment 1**) prepared by Ethos Urban, the "Technical Assessment for Adequacy" (**Attachment 2**) and "Memorandum" (**Attachment 3**) prepared by Cardno (NSW/ACT), in addition to the following reports submitted by the proponent as (i) appendices to the Planning Proposal; or (ii) additional information (as outlined below):

Appendices included under Planning Proposal

- **Attachment 4** – Planning Proposal Council Template prepared by Ethos Urban (Appendix A);
- **Attachment 5** – Cook Cove Northern Precinct Masterplan prepared by Skidmore Owings & Merrill LLP (Identified as Volume 2 in Appendices to Planning Proposal);
- **Attachment 6** – Safety Management Study prepared by Arup (Appendix AA);
- **Attachment 7** – LEP Mapping prepared by Ethos Urban (Appendix B);
- **Attachment 8** – Air Quality Assessment prepared by Todoroski Air Sciences (Appendix BB);
- **Attachment 9** – Site Specific Development Control Plan prepared by Ethos Urban (Appendix C);
- **Attachment 10** – Landscape Character and Visual Impact Assessment prepared by Clouston Associates (Appendix CC);
- **Attachment 11** – Consultation and Stakeholder Engagement Strategy (Northern Precinct) prepared by KJA (Appendix D);
- **Attachment 12** – Indicative Staging Plans (Appendix DD)
- **Attachment 13** – Strategic Transport Plan (Northern Precinct) prepared by Arup (Appendix E);
- **Attachment 14** – Classification and Reclassification of Public Land Practice Note (Appendix EE)
- **Attachment 15** – Social Infrastructure Assessment prepared by Elton Consulting (Appendix F);
- **Attachment 16** – Land Use Demand and Supply Analysis (Northern Precinct) prepared by Location IQ (Appendix G);
- **Attachment 17** – Site Survey prepared by RPS (Appendix H);
- **Attachment 18** – Flood Impact Assessment (Northern Precinct) prepared by Arup (Appendix I);
- **Attachment 19** – Stormwater Management Concept Plan (Northern Precinct) prepared by Arup (Appendix J);
- **Attachment 20** – Assessment of Airspace Approvability (Northern Precinct) prepared by Strategic Airspace (Appendix K);
- **Attachment 21** – Wind Shear Assessment Report (Northern Precinct) prepared by CPP (Appendix L);

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- **Attachment 22** – Sustainability Strategy (Northern Precinct) prepared by Arup (Appendix M);
- **Attachment 23** – Environmental Site Assessment (Northern Precinct) prepared by Consulting Earth Scientists (Appendix N1);
- **Attachment 24** – Environmental Site Assessment Report (Phase 1) (Northern Precinct) prepared by Consulting Earth Scientists (Appendix N2);
- **Attachment 25** – Remediation Action Plan (Northern Precinct) prepared by Consulting Earth Scientists (Appendix O);
- **Attachment 26** – Erosion and Salinity Assessment (Northern Precinct) prepared by Consulting Earth Scientists (Appendix P);
- **Attachment 27** – Acid Sulfate Soils Management Plan (Northern Precinct) prepared by Consulting Earth Scientists (Appendix Q);
- **Attachment 28** – Servicing and Utilities Infrastructure Strategy Report (Northern Precinct) prepared by Arup (Appendix R);
- **Attachment 29** – Flora and Fauna Assessment (Northern Precinct) prepared by Cumberland Ecology (Appendix S);
- **Attachment 30** – Acoustic Report (Northern Precinct) prepared by Arup (Appendix T);
- **Attachment 31** – Archaeological Report (Northern Precinct) prepared by Biosis (Appendix U);
- **Attachment 32** – Property Information Sheets (Appendix V);
- **Attachment 33** – SREP 33 Transition of Provisions Table (Appendix W);
- **Attachment 34** – Detailed Design Remediation Action Plan (Southern Precinct) prepared by Consulting Earth Scientists (Appendix X);
- **Attachment 35** – Site Auditor Endorsement (Southern Precinct) prepared by Zoic (Appendix X2);
- **Attachment 36** – Acid Sulfate Soils Management Plan (Southern Precinct) prepared by Consulting Earth Scientists (Appendix Y);
- **Attachment 37** - Species Impact Statement (Southern Precinct) prepared by Cumberland Ecology (Appendix Z).

Additional Information not listed as Appendices in Planning Proposal

- **Attachment 38** - National Airports Safeguarding Framework
- **Attachment 39** – Additional Information Section 9.1 Ministerial Directions
- **Attachment 40** – List of Revisions to Planning Proposal
- **Attachment 41** – Southern Precinct Illustrative Concept Plan
- **Attachment 42** – Reclassification Comments
- **Attachment 43** – Technical Gap Analysis
- **Attachment 44** – Response to Preliminary Comments & Issues

2. Strategic Merit

2.1 Regional Plan - A Metropolis of Three Cities

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The Plan outlines the future vision for metropolitan Sydney and provides a strategy to manage the city's change and growth over the next 15 years. The Plan responds to Sydney's needs as a growing global city, establishing broad spatial principles for land use change, and sets out a framework to facilitate growth through coordination of planning and infrastructure delivery.

The Planning Proposal is generally consistent with the Plan as it provides additional housing in close proximity to several existing centres where employment and services can be accessed. Further discussion of the relationship of the Planning Proposal with the Regional Plan is provided in the following section.

2.2 District Plan – Eastern City District Plan

The Eastern City District Plan has been prepared by the Greater Sydney Commission (GSC) as a guide for implementing the Greater Sydney Region Plan – A Metropolis of Three Cities, at a district level. The Plan acts as a bridge between regional and local planning by informing Local Environmental Plans and Planning Proposals.

The proponent has provided an assessment against the Eastern City District Plan, and identifies that the draft Planning Proposal is consistent with some aspects of the Plan. It is noted however, that the assessment has not considered all of the Planning Priorities.

The table below outlines a summary of the priorities which are either key to note, or require further input, from the proponent, prior to being forwarded to the Department of Planning and Environment for a Gateway Determination.

Table 2: Eastern City District Plan Consistency

Planning Priority	Comment
E1: Planning for a city supported by infrastructure'	<p>The proponent proposes to deliver required local infrastructure, such as roads and open space, via a Voluntary Planning Agreement (VPA).</p> <p>It is noted that the VPA is to be negotiated and binding commitments provided. The VPA is to be exhibited concurrently with the Planning Proposal. Regional infrastructure requirements will be confirmed by various state agencies post Gateway and addressed via a State Infrastructure Contribution (SIC) levy or similar.</p>
E5: Providing housing supply, choice and affordability, with access to jobs and services	<p>The Planning Proposal proposes 5% of the "uplift floorspace" (approximately 140 dwellings) as affordable housing.</p> <p>Further discussions need to be undertaken with the GSC, DPE and Council to confirm an appropriate affordable housing target for the precinct, which it is recommended be included into the proposed LEP amendment.</p>
E9: Growing international trade gateways'	<p>It is noted that the site is located adjacent to Sydney Airport. However, the Greater Sydney Regional Plan – A Metropolis of Three Cities, does not identify Cook Cove as Employment or Urban Services Land. The Eastern City District Plan also does not propose that the land be retained for employment or urban service purposes.</p> <p>Consultation with Sydney Airport and other aviation agencies is required to confirm the suitability of the site for the proposed land</p>

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Planning Priority	Comment
	use controls.
E10: Delivering integrated land use and transport planning and a 30-minute city	The proposal includes the delivery of new housing, in close proximity to jobs and services located in surrounding centres such as the Sydney CBD and the Hurstville and Kogarah centres. A shuttle bus to Sydenham Station and a new connection to the International Airport Station is also proposed, which would improve connectivity to the precinct. These commitments need to be confirmed following agency consultation and before public exhibition.
E11: Growing investment, business opportunities and jobs in strategic centres	The Planning Proposal supports economic development by including approximately 53,000 sqm of non-residential floorspace (for commercial and retail development) and generating approximately \$11.3 billion of direct and indirect economic output.
E12: Retaining and managing industrial and urban services land	The District Plan requires that industrial and urban services land is planned, retained and managed. This, however, does not apply to the subject site as it is not mapped as industrial or employment land under the Department of Planning and Environment's Employment Lands Strategy.
E13: Supporting growth of targeted industry sectors	The site has also been identified as an "investigation" area for urban renewal (i.e. to accommodate mixed use purposes) under the Bayside West Land Use and Infrastructure Strategy.
E18: Delivering high quality open space	The Planning Proposal includes the delivery of new public open space and community facilities. Further information and analysis is required regarding active recreation, specifically a comparison of existing and proposed open space and whether there is sufficient open space in the vicinity to cater for the existing and proposed new community.

2.3 Local Strategy – Draft Bayside West Land Use and Infrastructure Strategy

The Draft Bayside West Land Use and Infrastructure Strategy has identified the site as an "investigation area" (refer to figure below). The Northern precinct of Cook Cove is currently occupied by the Kogarah Golf Course but is zoned for "Trade and Technology" pursuant to SREP 33. Since the commencement of the SREP in 2004, no redevelopment under this zoning has commenced. It is noted that the Strategy is a 'Draft' document and therefore is not established as a 'Strategy' for the purpose of consistency with s.117 Direction 1.1 as it has not been approved by the Secretary of the Department of Planning and environment.

The Draft Strategy outlines that the "investigation area", could act as a catalyst for a mixed-use development, incorporating both residential and employment land uses.

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Figure 5: Draft Land Use and Infrastructure Strategy (Source: Department of Planning and Environment)

Section 9 of the Draft Strategy outlines the key considerations and further investigations require to be undertaken for the redevelopment of the Cooks Cove precinct.

Consistency with Section 9 has been summarised in the table below.

Table 3: Section 9 of the Draft Land Use and Infrastructure Strategy

Study Requirement Key Issues to be Addressed	Key Issues to be Addressed	Comment
1. Detailed economic and social analysis	Undertake a market assessment to determine a viable mix of land uses in the short, medium and long term and identify key market drivers.	A Land Use Demand and Supply Analysis has been provided by the proponent.
	Analyse integration with nearby land uses including the high density residential suburbs of Wolli Creek and Arncliffe and the industrial land in Mascot and Botany	An Urban Design Analysis has been provided by the proponent.
	Investigate the potential to strengthen the precinct's relationship with Sydney Airport to complement its activities and maximise opportunities for success.	The proposed masterplan includes new key links to Sydney Airport, which will strengthen physical connectivity. A report prepared by Location IQ has considered the

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Study Requirement Key Issues to be Addressed	Key Issues to be Addressed	Comment
		precinct's economic relationship with Sydney airport in determining future land use demand.
	Include provision for new school infrastructure to meet the needs of the new population, in consultation with the Department of Education.	The Planning Proposal includes the dedication of land for a new school, to cater up to approximately 600 students. Initial consultation with the Department of Education, prior to public exhibition is recommended, to determine the suitability of the proposed location.
2. Urban design analysis	Prepare a detailed site and context analysis, including opportunities and constraints mapping.	An Urban Design Analysis has been provided by the proponent.
	Prepare a structure plan for the precinct and demonstrate how this addresses the key principles of the Bayside West, Land Use and Infrastructure Strategy	
	Provide a view corridor and visual assessment, with particular focus on significant view lines, as well as analysis of any visual impacts on surrounding areas and mitigation measures.	A Landscape Character and Visual Impact Assessment has been provided by the proponent. Refer to Section 5.2.3 of this report for further detail. A peer review of the assessment provided is recommended to give the public a frame of reference, when the application is placed on public exhibition.
	Provide a shadow analysis for the overall precinct and on adjoining land, including Winter Solstice and Equinox.	Additional information should be provided to illustrate the impacts of the tall buildings on solar access to other buildings and the

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Study Requirement Key Issues to be Addressed	Key Issues to be Addressed	Comment
		public domain. Shadow diagrams should be included to illustrate consistency with SEPP65 and the Apartment Design Guide.
	Provide an analysis of proposed distribution of gross floor area, development yields, building typologies, building envelopes and heights.	An Urban Design Analysis has been provided by the proponent, outlining the proposed layout of buildings and open space.
	Provide a Public Domain Plan identifying proposed open space, public domain and pedestrian/cycle links, including an accurate CAD set-out of streets, parks and open spaces.	
	Outline the proposed design excellence/integrity process to be adopted for the precinct.	The proponent proposes to implement a Cook Cove-specific design excellence guideline (to be approved by Council) rather than rely on the existing Council guidelines.
3. Traffic and transport assessment	Prepare a Strategic Transport Plan, in consultation with Transport for NSW.	A Strategic Transport Plan has been provided by the proponent. Initial consultation with the relevant transport agencies is recommended, prior to public exhibition, to determine whether the surrounding road network and public transport system can accommodate the proposed redevelopment. Refer to Section 5.3.2 of this report for further detail.
	Infrastructure requirements, including timing and commitments, outlined in the Bayside West Land Use and Infrastructure Strategy and how these influence the feasibility of development in the precinct.	
	Review of existing bus infrastructure and services and identify any need for additional bus infrastructure and service and identify any need for additional bus infrastructure and services within and adjoining the site.	
	Review of rail network capacity and committed Government investments in rail infrastructure and the ability of the network to accommodate the proposed growth.	
	Provide consideration of how both construction traffic and long term tenant traffic is going to be managed and the impacts on existing local roads and the wider road network.	
4. Detailed assessment of	Provide a flood risk assessment developed in consultation with Council, identifying and	A Flood Impact Assessment and

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Study Requirement Key Issues to be Addressed	Key Issues to be Addressed	Comment
flood mitigation and stormwater management	mapping the extent of potential flood events and outlining the suitability of the land for proposed uses, including consideration of the rate of rise of flood waters across the precinct.	Stormwater Management Plan has been provided by the proponent.
	Address the impact of flooding on future development proposed and any flood risk to people and properties for the full range of floods up to the probable maximum flood (PMF) event including potential long term cumulative impacts from staged development.	Cardno, as part of its technical assessment, has highlighted several deficiencies with the information provided.
	Provide concept level information on the impacts of future earthworks and filling of land within the proposal. This assessment should be based on an understanding of staging and cumulative flood impacts.	Additional information will need to be provided
	Provide concept level details of the drainage associated with the proposal, including stormwater drainage infrastructure and address the impact of stormwater flows on the site from other catchments, overland flow paths and mainstream flooding.	Refer to Section 5.1.4 of this report for further detail.
	Provide a concept emergency response plan for floods up to the PMF level. This should include an assessment of isolation possibility and the impacts from future development on the capacity or operation of existing local evacuation routes.	
	An assessment of possible impacts of the proposal on the flood behaviour (i.e levels, velocities and duration of flooding) and the impact of the proposal on adjacent, downstream and upstream areas.	
	Provide a concept Stormwater Management Plan outlining the general stormwater management measures for the proposal, with particular emphasis on possible Water Sensitive Urban Design (WSUD) options.	
5. Infrastructure and staging	Detailed investigation of infrastructure requirements ensure proposed structure plan can be accommodated. This should include an assessment of the impact of the proposal on State and regional infrastructure, and the estimated costs and timing of the works required.	The proponent proposes to deliver required local infrastructure, such as roads and open space, via a Voluntary Planning Agreement (VPA).
	Undertake consultation with relevant agencies to understand works proposed and timeframes for completion.	The VPA would also be exhibited
	Outline the proposed staging of the precinct	

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Study Requirement Key Issues to be Addressed	Key Issues to be Addressed	Comment
	redevelopment and trigger points for infrastructure provision. Scope and costs for inclusion in a future infrastructure funding strategy.	concurrently with the Planning Proposal. Regional infrastructure requirements will be confirmed by various state agencies post Gateway and addressed via a State Infrastructure Contribution (SIC) levy or similar.
6. Biodiversity and sustainability	Provide an ecological study including assessment of threatened species, populations and endangered ecological communities in accordance with the Office of Environment and Heritage (OEH) Threatened Species Survey and Assessment Guidelines and any relevant draft or final recovery plans.	Ecological Assessments for both the Northern and Southern Precincts have been provided by the proponent.
	Outline the proposed development of, and impact on ecological corridors that link flora and fauna on and adjoining the site	Initial consultation is recommended, prior to public exhibition, with the Office of Environment and Heritage, to confirm the suitability of the site to accommodate the proposed development. Refer to Section 5.1.1 of this report for further detail.
	Provide an assessment of ESD principles and demonstrate compliance with BASIX.	A Sustainability Strategy has been provided by the proponent. Refer to Section 5.1.2 of this report for further detail.
7. Heritage	Provide an archaeological and Aboriginal cultural heritage assessment including a landscape heritage assessment taking into consideration the cultural landscape of the precinct and the landscape master plan.	An Archaeological report has been provided by the proponent. Consultation with the Office of Environment and Heritage will be

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Study Requirement Key Issues to be Addressed	Key Issues to be Addressed	Comment
		required post Gateway.
8. Geotechnical and contamination	Provide an assessment of the local soil, outlining its suitability for the proposed uses with respect to erosion, salinity and acid sulphate soils. Provide an assessment of the proposed land uses in accordance with State Environmental Planning Policy No 55 – Remediation of Land (SEPP 55).	Contamination Assessments, Remediation Action Plans and Acid Sulfate Soils Management Plans have been provided by the proponent. Refer to Section 5.1.3 of this report for further detail.
9. Aeronautical	Provide an assessment of the impact of Sydney Airport operations including National Airports Safeguarding Framework affectations.	Refer to Section 5.2.2 of this report for further detail. Initial Consultation with the relevant aviation agencies, is recommended prior to public exhibition.
10. Consultation	Consult with key stakeholders and the community to discuss, evaluate and confirm the desired structure for the precinct.	Should the Planning Proposal proceed, consultation with the relevant state agencies and the community will be undertaken and any submission will be addressed and considered.

3. Site Specific Merit

3.1 Natural Environment

3.1.1 Flora and fauna

Northern Precinct

The Planning Proposal is accompanied by a Flora and Fauna Assessment (Northern Precinct) prepared by Cumberland Ecology.

The assessment outlines that the proposed avoidance, mitigation and compensatory measures will likely ameliorate the impacts of the proposal on flora and fauna, and that no EECs or threatened species are likely to become extinct as a result of the proposal. Furthermore, the long-term objective of these measures is to provide for a net benefit to flora and fauna within the Cook Cove site.

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Southern Precinct

The Planning Proposal is accompanied by a Species Impact Statement (Southern Precinct) prepared by Cumberland Ecology).

The report outlines that there are a small number of threatened species that have been recorded within the Southern Precinct these include amphibians, wading birds and bats. The Landing Lights Wetland also provides a small area of known habitat for various threatened or migratory waders.

The Green and Golden Bell Frog (vulnerable under the EPBC Act) is a long-established population historically centred on the Marsh and Eve Street Wetlands.

The proposal will require the clearance of mangroves within Spring Street Wetland and some Saltmarsh, Mangrove and Reedland vegetation around the Landing Lights Wetland. The Landing Lights Wetlands will be largely retained within the new golf course proposed.

The proponent outlines that the redevelopment will not have a significant impact on threatened fauna as the habitats present on the subject site represent low value or marginal habitat. Notwithstanding, the proposed development will include the creation of new Green and Golden Bell Frog ponds to supply additional habitat that will meet the objectives of SREP 33, as well as complement the offset works being undertaken for the adjacent WestConnex New M5 project.

Cardno has reviewed the documentation provided by the proponent and considers the information to be adequate for Gateway referral.

3.1.2 Sustainability strategy

The Planning Proposal is accompanied by a Sustainability Strategy (Northern Precinct) prepared by Arup.

The strategy outlines that the precinct will meet the minimum regulatory sustainability requirements and the pursuit of certification through voluntary benchmarks such as Green Star will be evaluated prior to exhibition of the Planning Proposal. There may also be opportunities for further commitments to exceed the minimum regulatory sustainability requirements.

The recommendations will be incorporated within the site-specific Development Control Plan which will be prepared by the proponent prior to public exhibition (should the Planning Proposal proceed).

3.1.3 Land contamination

The proponent has provided the following technical studies:

- Remediation Action Plan (Northern Precinct) by Consulting Earth Scientists;
- Acid Sulphate Soils Management Plan (Northern Precinct) by Consulting Earth Scientists;
- Detailed Design Remediation Action Plan (Southern Precinct) by Consulting Earth Scientists;
- Site Auditor Endorsement (Southern Precinct) by Zoic Environmental Pty Ltd; and

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- Acid Sulphate Soils Management Plan (Southern Precinct) by Consulting Earth Scientists.

Cardno has advised that the Southern Precinct is capable of being made suitable for the proposed land uses (public open space / golf course, with clubhouse and maintenance facility buildings), if the remediation action plan is implemented and the assessment of remediation is audited by an accredited site auditor.

A Site Audit Statement will be required to fully assess the Northern Precinct in order to ensure that the site is suitable for use. Cardno has advised that the Site Audit Statement can be prepared as part of future detailed Development Applications relating to the site.

3.1.4 Flood hazard

The proponent has provided the following technical studies:

- Flood Impact Assessment prepared by Arup; and
- Stormwater Management Concept Plan prepared by Arup.

Northern Precinct

The report prepared by Arup for the North Precinct concludes that the proposed redevelopment will:

- Not increase offsite effluxes in a 1% AEP event;
- Not increase the potential flood affectation on other development or properties, either individually or cumulatively;
- Not result in the diversion of flood waters to nearby catchments;
- Locate sensitive land uses including the education facility above the PMF;
- Provide flood refuge areas designated within all street blocks that will allow for safe vertical evacuation/ rest-in-place above the level of the PMF; and
- Provide accessible and safe flood evacuation routes.

Southern Precinct

The detailed design for the Cook Cove Southern Precinct includes works to raise the ground levels in order to remediate and contour the site for the proposed golf course.

The applicant outlines that the proposed redevelopment will provide a post-development terrain which will result in no significant impact on flooding for areas outside of the Cook Cove site or on the existing flooding from Spring Street Drain and Muddy Creek.

Cardno has identified the following deficiencies which need to be addressed prior to any future public exhibition of the Planning Proposal:

- Mainstream flooding in the Cook River has not been addressed including:
 - 1% AEP Cook River flood levels have not been reported or considered for impacts on the subject property or in consideration of flood planning levels; and
 - Impacts of land filling for the development on the Probable Maximum Flood levels upstream of Marsh Street have not been considered. Any significant changes to hazard or introduction of new high hazard flow paths would not be acceptable.

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- Climate Change has not been considered. Sea level rise coupled with an increased rainfall scenario and/or ocean tide/storm surge would likely have impacts on the site that may make the development in its proposed form unviable. Flood Planning Levels may need to consider Climate Change to account for future flood risk and therefore fill levels may need to increase and designated flow paths increased.
- The central greenway dimensions presented in the flood model do not appear to coordinate with the Masterplan of the Central Greenway. Confirmation is required that the Masterplan can accommodate the required flood cross-sectional area including any changes to flood modelling to address the above matters.
- Flood hazard compatibility with pedestrian use of the central greenway to be confirmed to be acceptable. This will be reliant on outlet arrangements for the central and perimeter greenways.

3.2 Surrounding Land Uses

3.2.1 Westconnex (air quality)

The Planning Proposal is accompanied by an Air Quality Assessment prepared by Todoroski Air Sciences.

The assessment outlined that the Arncliffe Ventilation Facility associated with the WestConnex New M5 Tunnel is located within the boundary of the site. The facility is currently under construction and will provide both air inlets and outlets for the Tunnel and potentially for the northbound Southern extension tunnel.

The Arncliffe Ventilation Facility consists of eight ventilation outlets in total, four of the outlets are associated with the New M5 tunnel and the other four outlets are associated with the M4-M5 Link projects. Each of the eight outlets are 35m high with a diameter of 4.4m.

The previous built form concept included building heights which exceeded the limiting building heights identified through the air dispersion modelling.

As such, the built form massing concept has been revised (Cook Cove Northern Precinct Master Plan May 2018) with consideration to these limiting heights. Residential buildings are now located below the recommended height limits in the vicinity of the ventilation facility. The revised concept does not include any naturally ventilated buildings within the air quality restricted height zone.

One commercial building, of 43m in height is proposed to protrude into the height zone, however this building would be sealed and not have any natural ventilation via ingress means (such as openable windows, doors or vents) within the height zone, and would use forced ventilation that draws clean air into the building from outside of the height zone.

3.2.2 Sydney Airport (noise, air quality, operations)

Air Quality

The Air Quality Assessment prepared by Todoroski Air Sciences outlines that the annual average NO₂ would not extend beyond the airport boundary and other pollutants are all expected to be below the relevant criterion.

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Noise

The Acoustic Assessment prepared by Arup outlines that there are no specific noise criteria for the assessment of airport ground operations.

Arup has therefore undertaken an assessment against the criteria stipulated for noise sensitive development near busy roads and rail infrastructure, outlined in the State Environmental Planning Policy (Infrastructure) 2007 (ISEPP).

The assessment revealed that with the mitigation measures required to comply with AS2021, internal noise levels within buildings would readily comply with the ISEPP criteria.

Operations

As a result of the site's proximity to Sydney Airport the development is subject to the Airports (Protection of Airspace) Regulations 1996, as amended (APAR), under the Commonwealth's Airport Act 1996.

Compliance with the Regulation is summarised below.

Table 4: Compliance with the Airports (Protection of Airspace) Regulation 1996

1. Obstacle Limitation Surfaces (OLS) Analysis	<p>The south-east corner of the precinct is subject by the OLS Transitional Surface RWY07. The proposal does not include any structures within this area.</p> <p>The development area to the north of the precinct is subject to the OLS Inner Horizontal Surface, at a height of 51m AHD. Many of the proposed buildings (and associated cranes) will penetrate this height. An airspace height application under APAR and approval from Commonwealth Department of Infrastructure and Regional Development (DIRD) will need to be obtained at Development Application stage.</p>
2. PANS-OPS Analysis	<p>The precinct is subject to a set of PANS-OPS surfaces. All buildings and structures (including cranes) must not penetrate the PANS-OPS surface. The masterplan and proposed height controls have been designed to comply with the relevant PANS-OPS surface heights.</p> <p>Approval under the Civil Aviation Buildings Control Regulations will also be required. Where any building or structure exceeds the relevant height, regardless of whether or not it exceeds the OLS, a specific approval would be required under these regulations. The majority of buildings and structures within the Northern Precinct will therefore likely require approval.</p>
3. Constraints on Lighting Intensity and Angles	<p>Consideration of lighting intensity and angles are important to ensure the safety of aircraft when operating close to runways on approach or take-off. This consideration constrains approximately the southern 60% of the precinct. Consultation will be undertaken with Sydney Airport and air traffic management at the airport prior to finalising lighting designs, to help assure that external lighting will not endanger the safety of aircraft operations.</p>
4. Wind Shear	<p>The Planning Proposal is accompanied by a Wind Shear Assessment prepared by CPP, which has been prepared in accordance with the National Airports Safeguarding Framework (NASF).</p>

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	<p>The assessment concludes that the proposed redevelopment exceeds the NASF wind shear criterion for the approach to the Sydney Airport Runway 07 and passes for the approach to Runway 16R.</p> <p>Given that the NASF guidelines do not account for the shielding effects that are likely present in the development scheme, the assessment recommends that wind tunnel testing be conducted to confirm the wind impacts of the proposed development. It is recommended that the additional modelling be undertaken Post Gateway.</p>
5. The National Airport Safeguarding Framework	<p>The National Airports Safeguarding Framework (NASF) is a national land use planning framework that aims to enhance the current and future safety, viability and growth of aviation operations at Australian airports.</p> <p>As required by the draft Bayside West Precincts Land Use Infrastructure Strategy, the Planning Proposal has considered the NASF Guidelines and the associated seven guidelines, as summarised below.</p> <p>Guideline A – Measures for managing impacts of aircraft noise</p> <p>The Planning Proposal is accompanied by an Acoustic Assessment prepared by Arup, in accordance with the Australian Noise Exposure Forecast (ANEF) System and Australian/New Zealand Standard 2021:2015.</p> <p>The Assessment only gives consideration to the NASF Guidelines, despite the Bayside West Precinct Land Use Infrastructure Strategy referring to the need to assess in accordance with the NASF guidelines.</p> <p>The proponent outlines that the proposed uses (including residential and commercial) are considered appropriate in accordance with AS 2021:2015, being identified as either “acceptable” or “conditional”.</p> <p>Consideration was also given to noise exposure from airport ground operations. The assessment revealed that with the mitigation measures required to comply with AS2021, internal noise levels within proposed buildings would readily comply with the ISEPP criteria.</p> <p>Guideline B – Managing the risk of building generated windshear and turbulence at airports</p> <p>Refer to Item 4 in this table for further detail.</p> <p>Guideline C – Managing the risk of wildlife strikes in the vicinity of airports</p> <p>This is a consideration due to the location of the Kogarah Golf Course, Landing Light Wetland and other water bodies within the site, which provide habitat for migratory wading birds and other species.</p> <p>The Planning Proposal outlines that the redevelopment will not result in an increased risk of wildlife strike, however there is an existing risk which</p>

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	<p>must be managed.</p> <p>Strategic Airspace has recommended a Bird Control Plan to be incorporated into the final Civil Works Plan (at Development Application stage) that documents measures for minimising bird activity in order to reduce risk to aircraft when flying overhead.</p> <p>Guideline D – Managing the risk of wind turbine farms as physical obstacles to air navigation</p> <p>Not applicable.</p> <p>Guideline E – Managing the risk of distractions to pilots from lighting in the vicinity of airports</p> <p>Refer to Item 3 in this table for further detail.</p> <p>Guideline F – Managing the risk of intrusions into the protected operational airspace of airports</p> <p>Refer to Items 1 and 2 in this table for further detail.</p> <p>Guideline G – Protecting aviation facilities – communications, navigation and surveillance (CNS)</p> <p>The Northern Precinct is located within Sydney Airport's Area of Interest for some CNS facilities. The proposal does not affect any Defence airports.</p> <p>The radar at Cecil Park is used as the primary radar source for Sydney Airport, for surveillance of approaches and departures to/from Sydney Airport. Strategic Airspace therefore considers that the redevelopment will not be constraining on proposed built form which remains below the PANS-OPS height limits.</p> <p>However, due to the site's location within the defined Areas of Interest for some facility types, the Planning Proposal and subsequent DAs will be referred to Airservices Australia for their technical analysis prior to final approval.</p>
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Initial consultation with the relevant aviation authorities is recommended prior to public exhibition, should the Planning Proposal proceed.

3.2.3 Visual impacts

The Planning Proposal is accompanied by a Landscape Character and Visual Impact Assessment prepared by Clouston Associates.

The assessment considered 12 views from key locations, looking towards the site (refer to the following figures).

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Figure 6: Cooks River Foreshore Path (Source: Clouston Associates)



Figure 7: Riverine Park along Firmstone Gardens (Source: Clouston Associates)



Figure 8: Public Space in Girrawheen Park (Source: Clouston Associates)



Figure 9: Cahill Park (Source: Clouston Associates)

As stated by Clouston Associates, several views are expected to have a moderate to high impact, with the highest visual impacts to be from closest to the site, with direct views towards the proposal.

The assessment also notes the following:

- The scale of the proposal will generally dominate the view by virtue of its scale and/or proximity to the viewer;
- The proposal will obscure long distance views currently available; and
- The proposal will obscure or substantially reduce views to the water such as the Cook River and Botany Bay.

Despite the proposal impacting on views currently available to the community, the proposal will not be the only high-rise development within the area and according to Clouston Associates, most views to the Cook River will generally not be affected.

Given the scale of the development, it is recommended that a review of the Landscape Character and Visual Impact Assessment be undertaken prior to public exhibition of the Planning Proposal.

The review should consider regional views, the environment of conditions at the ground plane, and a comparison of the development to other high-density precincts such as Victoria Park.

This will give the public a frame of reference, should the Planning Proposal proceed to public exhibition.

3.3 Services and Infrastructure

3.3.1 Water and sewer

The Planning Proposal is accompanied by a Servicing and Utilities Infrastructure Strategy Report prepared by Arup.

The table below provides a summary of the sewer and water infrastructure available to the site.

Table 5: Water and Sewer Capacity

Sewer	<p>The SWC Southern and Western Suburbs Outfall Sewer (SWSOOS) serves as the final discharge point for the existing sewerage system surrounding the Cook Cove site.</p> <p>If detailed modelling indicates that there is no spare capacity remaining within the SWSOOS, there is no alternative discharge point, presenting a risk to future redevelopment.</p>
Water	The site can be serviced by potable water infrastructure with the construction of some lead-in infrastructure.

Cardno has advised that the information provided is deemed to be adequate for a Gateway referral.

3.3.2 Local and regional roads

Proposed Street Network

The proposed local street network results in five primary streets (refer to Figure 10), being:

- Flora Street South (20 to 25 metre width);
- Gertrude Street South (20 to 25 metre width);
- Water Street (20m width to accommodate the Desalination Pipeline easement);
- High Street (20 metre width); and
- River Street (15 metre width).

Access

Vehicular access to the precinct is proposed at the following three locations (refer to Figure 10):

- A new intersection at Marsh Street and Flora Street;
- A new intersection at Marsh Street and Gertrude Street; and
- Augmentation of the existing entry road and driveway from Levey Street under the Giovanni Brunetti Bridge.

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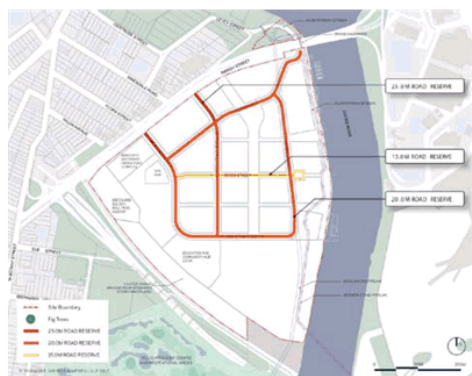


Figure 10: Proposed Street Network (Source: Ethos Urban)

Traffic Distribution

The redevelopment is expected to generate approximately 2,015 vehicle trips per hour during the AM peak and 2,118 trips per hour during the PM peak. Distribution of these vehicle movements is expected to occur primarily to the north and south-east via Marsh Street (14.4%), Princes Highway (19.3%) and M5 Motorway (29.9%).

Traffic Modelling

In accordance with the Bayside West Precinct Land Use and Infrastructure Strategy, the proponent commissioned Arup to develop a micro-simulation traffic model to assess the development's potential traffic impacts.

The modelling outlines that under the current scenario the existing road network can accommodate the expected traffic generation from the proposed development.

The transport plan includes modelling for forecast traffic generation for the AM and PM Peak Periods indicating that at worst case, the completed development would generate 2,336 vehicle movements per hour. Critical intersection performance against this modelling is included for the AM Peak Period only.

Cardno has concluded that the information provided is adequate for a Gateway Determination. Cardno has recommended additional information be provided, including intersection modelling for the PM Peak Period, prior to a Gateway Determination.

Parking

The proponent proposes to provide off-street car parking at a rate of approximately 1 space per dwelling, a total of 5,348 residential spaces.

Cardno has reviewed the documentation and have deemed the information provided to be adequate for Gateway referral. It is recommended however that following measures are examined and detailed post Gateway:

- Parking provisions for retail / commercial uses to be reviewed and constrained where necessary;
- Further analysis of the impact of increased field usage;

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- Explanation of why the AM calibration spreadsheet indicates 83% of turning movements to meet the GEH criteria, which is not in line with the required 85%;
- Explanation of why sections were omitted from the comparison between model and observed travel times;
- Intersection modelling for the PM Peak Period;
- Future development of the site should ensure the bus service remains free to Cook Cove residents, and that bus services are reviewed and monitored; and
- Use of a longer reduced speed area with very low speed instead of a signal as an end constrain for M5 motorway onramp.

3.3.3 Walking and cycling

Internal Network

A network of footpaths and shared pedestrian / bicycle paths are proposed within the precinct that follows the internal street network. The figure below shows the designation of paths within the precinct. The shared paths follow the periphery of the residential area as well as forming a north-south spine through the precinct either side of the linear green space. The shared paths also connect to the sporting fields in the southern part of the precinct as well as along the Cook River.

External Network

The following works are proposed:

- Pedestrian/cyclist connection on the southern side of the Giovanni Brunetti Bridge;
- Potential pedestrian and cyclist bridge over Cook River to Sydney Airport;
- Direct foreshore path along the Cook River;
- Investigate improved crossing facilities for pedestrians between Cahill Park and Brodie Spark Drive;
- Two additional signalised pedestrian crossings on Marsh Street;
- New connection between Alexandra Canal cycleway and Sydney Airport; and
- Shared use bridge across Muddy Creek.

The proponent proposes to deliver required local infrastructure via a Voluntary Planning Agreement (VPA). It is noted that the VPA is to be negotiated and binding commitments provided. The VPA is to also be exhibited concurrently with the Planning Proposal.

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Figure 11: Future Pedestrian and Cycling Network (Source: Arup)

3.3.4 Public transport

The Planning Proposal is accompanied by a Strategic Transport Plan by Arup. The Plan outlines a number of public transport initiatives to accommodate the proposed development, including:

- Improved pedestrian connectivity to Sydney International Airport Train Station;
- Removal of the International Airport station access fee for Cook Cove residents;
- A rail feeder shuttle bus to Sydenham Station (Sydney Metro services);
- Increased capacity of the T4 Illawarra Line; and
- Improved frequency, extension and rerouting of existing bus services; and
- Additional bus services.

The proposed rail feeder bus will be provided exclusively (and at no cost) for residents of Cook Cove. This initiative is proposed to distribute the public transport demand away from the T4 line at Wollsi Creek (which is approaching capacity) towards the proposed high frequency Sydney Metro service at Sydenham.

Details of the new bus service, including further consideration of pricing (given availability of integrated ticketing) should be clarified and confirmed during agency consultation and before exhibition.

3.3.5 Affordable housing

The Planning Proposal outlines that future development could include a mixture of one, two and three-bedroom apartments in a variety of building typologies such as low-rise residential townhouses to high-rise apartment buildings in a mixed-use setting. The proponent proposes 5% of the “uplift floorspace” (or approximately 140 dwellings), subject to feasibility, to be dedicated as affordable housing.

Further discussions need to be undertaken with the GSC, DPE and Council to confirm an appropriate affordable housing target for the precinct, which should then be included into the proposed LEP amendment.

3.3.6 Social infrastructure (schools, child care, community facilities)

The Planning Proposal is accompanied by a Social Infrastructure Assessment prepared by Elton Consulting.

The table below outlines a gap analysis for social infrastructure within the precinct.

Table 6: Social Infrastructure

	Gap	Proposed
Schools	Gaps exist in both primary and secondary education near the site, with existing schools near or at capacity.	The Planning Proposal includes the provision of 1.5 hectares of land for a future school, which will likely to accommodate approximately 600 students from kindergarten to year six and is planned for delivery within the next 10-15 years.
Childcare	The government's MyChild website states that some childcare centres in the area still have some vacancies.	The proposed masterplan will allow for child care centre provision, including possible co-location of a centre with the proposed primary school.
Community Facilities	Due to the likely demographic of the future Cook Cove population and the focus on apartment dwellings, function spaces are likely to be needed for events such as birthday parties, strata meetings and family celebrations.	The Proposal includes the provision of community facilities including a new community centre and Health and Wellness Hub.

3.3.7 Open space

Riverine and Barton Parks are located within the boundary of the Cook Cove site and are used by the St George Football Association, Primary Schools Sports Association and the general community throughout the week for sports such as soccer and baseball.

Riverine Park comprises 2 football fields and 1 field used for baseball. Barton Park comprises 5 fields used for football. This equates to a total of 8 fields for the existing community.

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The proposed development proposes 1 x 750 seat football stadium, 2 soccer fields and 1 multipurpose field, all of which will be constructed using synthetic grass. This equates to 4 fields for the existing and proposed community, which is a reduction of 4 fields (although it is acknowledged that synthetic fields allow greater utilisation).

From the information provided by the proponent, it is unclear as to whether the quantum of proposed open space (particularly active recreation) is sufficient to service the existing community, in addition to the additional 5,364 residential dwellings proposed by the proponent.

Prior to being considered by Council, it is recommended that the proponent provides additional information and justification for the quantum of open space being provided and whether it is sufficient to accommodate existing and future demands of the local community.

4. State Environmental Planning Policies and Ministerial Directions

4.1 State Environmental Planning Policies

Consistency with the State Environmental Planning Policies is outlined in Table 7.

Table 7: Consistency with State Environmental Planning Policies and

No.	Name	Consistency
1	Development Standards	Not applicable.
19	Bushland in Urban Areas	Not applicable.
21	Caravan Parks	Not applicable.
30	Intensive Agriculture	Not applicable.
33	Hazardous and Offensive Development	Not applicable.
36	Manufactured Home Estates	Not applicable.
44	Koala Habitat Protection	Not applicable.
50	Canal Estate Development	Not applicable.
52	Farms Dams and Other Works in Land and Water Management Plan Areas	Not applicable.
55	Remediation of Land	The site can be appropriately remediated. Refer to Section 5.1.3 for further detail.
62	Sustainable Aquaculture	Not applicable.
64	Advertising and Signage	Not applicable.
65	Design Quality of Residential Apartment Development	Development is capable of complying with SEPP 65. Detailed compliance will be demonstrated at DA stage.
70	Affordable Housing (Revised Schemes)	Not applicable.
	Affordable Rental Housing 2009	Not applicable.
	Building Sustainability	Detailed compliance will be demonstrated at DA stage.

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	Index: BASIX 2004	
	Coastal Management 2018	<p>The Cook Cove site is mapped as containing Coastal Environment and Coastal Use Areas extending along the foreshores of Cook River, Muddy Creek and along the Spring Street Drain. In addition, Coastal Wetlands are also mapped as occurring within the Southern Precinct.</p> <p>The Planning Proposal will transfer Clause 17 of SREP 33 into the RLEP to form a subclause of the proposed Part 6 Additional local provisions. This will ensure the preparation, adoption and consideration of three separate plans of management to specifically cover wetlands, soil and water and Green and Golden Bell Frogs.</p> <p>Future Development Applications will need demonstrate consistency with the provisions of the SEPP and LEP.</p>
	Educational Establishments and Child Care Facilities 2017	Not applicable.
	Exempt and Complying Development Codes 2008	Not applicable.
	Housing for Seniors or People with a Disability 2004	Not applicable.
	Infrastructure 2007	<p>The Planning Proposal has considered the following key pieces of infrastructure which run through the subject site:</p> <ul style="list-style-type: none"> • Moomba to Sydney Pipeline System; • Sydney Desalination Plant Pipeline; and • Southern and Western Suburbs Ocean Outfall Sewer. <p>In addition, the Planning Proposal has been prepared giving consideration to clause 100 of ISEPP 2007, "Development on proposed classified road" in respect to the existing F6 corridor reservation which passes through the site in a north-south direction. The Planning Proposal assumes that this corridor is no longer required (above ground).</p> <p>Initial consultation with the RMS, prior to public exhibition, is recommended, to confirm the status of the reservation.</p>
	Integration and Repeals 2016	Not applicable.
	Kosciuszko National Park	Not applicable.

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	– Alpine Resorts 2007	
	Kurnell Peninsula 1989	Not applicable.
	Mining, Petroleum Production and Extractive Industries 2007	Not applicable.
	Miscellaneous Consent Provisions 2007	Not applicable.
	Penrith Lakes Scheme 1989	Not applicable.
	Rural Lands 2008	Not applicable.
	State and Regional Development 2011	Not applicable.
	State Significant Precincts 2005	Not applicable.
	Sydney Drinking Water Catchment 2011	Not applicable.
	Sydney Regional Growth Centres 2006	Not applicable.
	Three Ports 2013	Not applicable.
	Urban Renewal 2010	Not applicable.
	Vegetation in Non-Rural Areas 2017	Not applicable.
	Western Sydney Employment Area 2009	Not applicable.
	Western Sydney Parklands 2009	Not applicable.

Consistency with the Sydney Regional Environmental Plans is outlined in Table 8.

Table 8: Consistency with Sydney Regional Environmental Plans

8	Central Coast Plateau Areas	Not applicable.
9	Extractive Industry (No 2 – 1995)	Not applicable.
16	Walsh Bay	Not applicable.
20	Hawkesbury-Nepean River (No 2 – 1997)	Not applicable.
24	Homebush Bay Area	Not applicable.
26	City West	Not applicable.
30	St Marys	Not applicable.
33	Cook Cove	SREP 33 is the principal environmental planning instrument applicable to Cook Cove. The Planning Proposal seeks to amend the boundary of the RLEP 2011 to include appropriate development

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		controls for the subject site.
		Should the Planning Proposal be gazetted, SREP 33 will be repealed.
	Sydney Harbour Catchment 2005	Not applicable.

4.2 Section 117 Ministerial Directions

Table 9: Consistency with Ministerial Directions

No.	Name	Consistency
1. Employment and Resources		
1.1	Business and Industrial Zones	<p>Under SREP 33 a portion of Cook Cove is zoned for Trade and Technology uses with a maximum permissible GFA of 270,000 sqm.</p> <p>However, it is noted that the Greater Sydney Regional Plan – A Metropolis of Three Cities, does not identify Cook Cove as Employment or Urban Services Land. The Eastern City District Plan does not propose that the land be retained for employment or urban service purposes.</p> <p>The Planning Proposal proposes to reduce the quantum of non-residential uses (e.g. commercial, retail and short-term accommodation) to 53,000 sqm, which is a reduction compared to the site's existing zoning.</p> <p>The proponent considers the reduction appropriate given the following reasons:</p> <ul style="list-style-type: none"> development of an employment precinct is unviable due to the costs of the relocation of Kogarah golf course and the remediation works required within the Southern Precinct; there is sufficient capacity within the surrounding employment lands (Mascot/ Botany) to accommodate projected demand for employment generating land uses; and the draft LUIS recognises a change in zoning and land use controls applying to Cook Cove, to facilitate residential and mixed-use development. <p>Cardno considers the justification provided by the proponent to be sufficient. Additional detail may however be required post Gateway.</p>
1.2	Rural Zones	Not applicable.
1.3	Mining, Petroleum Production and Extractive	Not applicable.

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	Industries	
1.4	Oyster Aquaculture	Not applicable.
1.5	Rural Lands	Not applicable.
2. Environment and Heritage		
2.1	Environment Protection Zones	Yes. The Planning Proposal includes provisions to protect the frog habitat that occurs on the land.
2.2	Coastal Management	<p>Under SEPP (Coastal Management) 2018, the Cook Cove site is mapped as containing Coastal Environment and Coastal Use Areas extending along the foreshores of Cook River, Muddy Creek and along the Spring Street Drain. In addition, Coastal Wetlands are also mapped as occurring within the Southern Precinct.</p> <p>The Planning Proposal will transfer Clause 17 of SREP 33 into Rockdale LEP to form a subclause of Part 6 Additional local provisions.</p> <p>Further, the extent of existing provisions within the Rockdale LEP such as Clause 6.10 Wetlands are sought to be amended to apply to the Cook Cove site.</p> <p>In addition, a Development Control Plan (DCP) will be prepared to cover the Northern and Southern Precincts. Specific objectives and principles will address all aspects of coastal enhancement and ongoing management for the whole site.</p> <p>Future Development Applications will therefore need to demonstrate consistency with the SEPP and LEP provisions to ensure no impacts are generated to the surrounding coastal environment.</p>
2.3	Heritage Conservation	<p>Yes. The site contains two State significant heritage items, the Southern and Western Sydney Ocean Outfall Sewer (SWSOOS) and the Arncliffe Market Gardens. Both of these items are listed as State Heritage items on the State Heritage Register under the NSW Heritage Act 1977 and are also listed within Schedule 5 of the Rockdale Local Environmental Plan 2011 (item I238 and item I93).</p> <p>The Planning Proposal does not seek any development of the SWSOOS or the Market Gardens and will retain them as heritage items within the amended LEP.</p> <p>Future development on the site will need to consider the impact on the boundary and curtilage zone of these items.</p>
2.4	Recreation Vehicle Areas	Not applicable.
2.5	Application of E2 and E3 Zones and Environmental	Not applicable.

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	Overlays in Far North Coast LEPs	
3. Housing, Infrastructure and Urban Development		
3.1	Residential Zones	Yes. The site is proposed to be rezoned to B4 Mixed Use and R4 High Density Residential, to facilitate residential development.
3.2	Caravan Parks and Manufactured Home Estates	Not applicable.
3.3	Home Occupations	The RLEP permits Home Occupations without consent in the proposed zones.
3.4	Integrating Land Use and Transport	<p>The proposal has addressed this direction as it will:</p> <ul style="list-style-type: none"> • improve access and connectivity to the existing public transport, through the provision of a pedestrian and cycle network connecting the precinct to Sydney Airport and Wolli Creek; • provide a rail feeder shuttle bus to Sydenham Station (Sydney Metro services); • facilitate connections between the site and Sydney Airport through a proposed bridge crossing which could accommodate public transport vehicles; and • provide a reduced parking supply to promote a reduction in car usage and ownership and reduce travel demand.
3.5	Development Near Licensed Aerodromes	<p>The PP currently incorporates heights of buildings that in some instances exceed the OLS as defined by the Commonwealth Department of the Infrastructure and Regional Development (DIRD).</p> <p>The Proponent intends to make a future airspace height application under the Airports (Protection of Airspace) Regulations 1996 (APAR) to permit these height controls. This approval would be required prior to gazettal of a new height map but it is considered that this could occur post Gateway submission.</p> <p>The PP is capable of consistency with this Direction subject to detailed assessment of maximum aircraft noise levels and incorporation of appropriate noise controls and due consideration and approval by the Commonwealth Department of Infrastructure and Regional Development.</p> <p>The final location of a school within the site would be subject to this approval.</p>
4. Hazard and Rise		
4.1	Acid Sulfate Soils	Yes. The site is identified as having a high probability of occurrence of acid sulfate soil materials within the soil profile. However, it is concluded that the site can be made suitable for the proposed mixed (residential,

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		public open space and commercial) uses.
4.2	Mine Subsidence and Unstable Land	Not applicable.
4.3	Flood Prone Land	<p>A Flood Impact Assessment has been prepared for both the Northern and Southern Precincts.</p> <p>The Planning Proposal:</p> <ul style="list-style-type: none"> • Will not result in increases in off-site effluxes in the critical 1% AEP event; • Will not increase the potential flood affectation on other development or properties, either individually or cumulatively; and • Will not result in the diversion of flood waters to nearby catchments. <p>Cardno has reviewed the information provided and have confirmed that it is adequate and satisfies this direction, subject to additional detail and information being provided post Gateway.</p>
4.4	Planning for Bushfire Protection	Not applicable.
5. Housing, Infrastructure and Urban Development		
5.1	Implementation of Regional Strategies	Not applicable.
5.2	Sydney Drinking Water Catchments	Not applicable.
5.3	Farmland of State and Regional Significance on the NSW Far North Coast	Not applicable.
5.4	Commercial and Retail Development along the Pacific Highway, North Coast	Not applicable.
5.5	Development and Retail Development along the Pacific Highway, North Coast	Not applicable.
5.6	Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA)	Not applicable.
5.7	Central Coast	Not applicable.
5.8	Sydney Second Airport: Badgerys Creek	Not applicable.
5.9	North West Rail Link Corridor Strategy	Not applicable.
5.10	Implementation of Regional Plans	Not applicable.

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6. Local Plan Making		
6.1	Approval and Referral Requirements	The Planning Proposal is capable of being consistent with this direction.
6.2	Reserving Land for Public Purposes	It is proposed to rezone land within the Northern precinct to RE1 Public Recreation. The Southern Precinct is also proposed to be zoned RE1 Public Recreation and will remain under the ownership of Bayside Council and leased to Kogarah Golf Club on a 99-year lease.
6.3	Site Specific Provisions	Yes. The Planning Proposal will not contain or refer to drawings that show details of the development proposal.
7. Local Plan Making		
7.1	Implementation of A Plan for Growing Sydney	It is noted that the proposal is generally consistent with the Greater Sydney Region Plan. Refer to Section 4.1 for further detail.
7.2	Implementation of Greater Macarthur Land Release Investigation	Not applicable.
7.3	Parramatta Road Corridor Urban Transformation Strategy	Not applicable.
7.4	Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	Not applicable.
7.5	Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	Not applicable.
7.6	Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	Not applicable.
7.7	Implementation of Glenfield to Macarthur Urban Renewal Corridor	Not applicable.

5. Reclassification of Public Land

It is proposed to reclassify eight individual parcels of land, six of which are owned by Council and two of which are Crown Land. These are identified in Table 3 of the Planning Proposal. The process for classifying and reclassifying public land is set out in Chapter 6, Part 2, Division 1 of the *Local Government Act, 1993*. (LG Act)

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Section 27 of the LG Act says that the reclassification of public land may be made by a local environmental plan. Hence the proposed reclassifications are included in this Planning Proposal.

Section 28 of the LG Act says that before a Planning Proposal which proposes to reclassify public land that is not owned by Council is forwarded to the Minister for Planning for a gateway determination, Council must obtain the consent of the owner of the land to the proposed reclassification.

There are two parcels of land proposed to be reclassified which are both owned by the Crown. Council is the Crown Land Manager of these parcels.

Section 3.21 of the *Crown Lands Management Act 2016* (CLM Act) authorises a council manager to classify and manage Crown Land as if it were public land within the meaning of the LG Act, however, Section 3.22(4) of the CLM Act prevents a council manager from classifying Crown Land as operational without the written consent of the Minister administering the CLM Act. We are not aware that written consent of the Minister has been obtained.

Section 29 of the LG Act requires that a public hearing is arranged in respect of a Planning Proposal to reclassify community land as operational land. A public hearing would be arranged during the statutory public exhibition of the planning proposal and following any gateway determination.

Section 30 of the LG Act enables a local environmental plan to make provision to discharge land proposed to be classified operational from any trusts, estates, interests, dedications, conditions, restrictions and covenants, as well as to cause land that is a public reserve to cease being a public reserve.

Table 3 in the planning proposal identifies that each of the parcels of land is affected by some type of interest which is required to be discharged to enable the intended outcomes of the planning proposal. The exact nature of the interests is not identified in Table 3. The Planning Proposal should be updated in this regard to ensure each interest is identified and it is clearly understood which interests are to be extinguished and which are to be retained. Two land parcels (Lot 14 in DP 213314 and Lot 1 in DP 108492), located in the northern precinct are known to be encumbered with Charitable Trusts. These Trusts were created when the two parcels were dedicated to Council as Trustee by a State agency for road and public recreation purposes.

LEP Practice Note PN 16-001 states that it is advisable for council to seek the views of the relevant agency (understood to be the RMS as beneficiary in this instance) prior to council commencing any planning proposal for that land. The RMS wrote to Council and the proponent in March 2018, stating they would not support the extinguishment of the 'Charitable Trusts' at this time. It is recommended that the current views of the RMS be sought.

It would also be advisable to seek confirmation from Council (in its capacity as landowner and Trustee) that its obligations under the Charitable Trusts do not prevent Council from adopting the Planning Proposal.

Finally, LEP Practice Note PN 16-001 observes that proposals to discharge interests may attract a claim for compensation under the Land Acquisition (Just Terms Compensation) Act 1991 and recommends that councils obtain their own advice in this regard.

6. Community Consultation

Should the Planning Proposal proceed through the Gateway determination stage, the Planning Proposal and proposed amendments to the Rockdale LEP 2011 will be subject to community consultation in accordance with Sections 56 (2)(c) and 57 of the Environmental Planning and Assessment Act 1979.

The specific requirements for community consultation would be listed in the Gateway determination, including any Government agencies that are to be consulted in relation to the Planning Proposal.

7. Project Timeline

The table below provides an indicative timeline of 18 months for the completion of an LEP amendment, in the event that a Gateway Determination is issued.

Table 10: Estimated Project Timeline

Task	Timing
Date of Gateway determination	1 September 2018 (assumed)
Anticipated timeframe for the completion of required technical information	1 October 2018 (2-months)
Timeframe for government agency consultation (pre and post exhibition as required by Gateway determination)	1 February 2019 (4-months)
Commencement and completion dates for public exhibition period	Given the scale of the proposed development, additional time has been allocated, for government agencies to provide comment and to consider the Christmas holiday period.
Dates for public hearing (if required)	1 March 2019 (1-month)
Timeframe for consideration of submissions	1 July 2019 (4-months)
Timeframe for the consideration of a PP following exhibition	
Consideration of PP by Council (Council Meeting)	1 September 2019 (2-months)
Date of submission to the department to finalise the LEP	September 2019
Anticipated date RPA will make the plan (if delegated) or Anticipated date RPA will forward to the department for notification	1 November 2019 (2-months)
Anticipated publication date	1 January 2020 (2-months)

Attachments

- 1 Planning Proposal
- 2 Technical Assessment for Adequacy
- 3 Memorandum
- 4 Planning Proposal Council Template
- 5 Cooks Cove Northern Precinct Masterplan

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- 6 Safety Management Study
- 7 Draft LEP Mapping
- 8 Cooks Cove Northern Precinct Air Quality Assessment
- 9 Draft Cooks Cove Development Control Plan
- 10 Landscape Character and Visual Impact Assessment
- 11 Consultant and Stakeholder Engagement Strategy
- 12 Indicative Staging Plans
- 13 Strategic Transport Plan (Northern Precinct)
- 14 Classification & Reclassification of Public Land Practice Note
- 15 Social Infrastructure Assessment
- 16 Land Use Demand and Supply Analysis
- 17 Site Surveys
- 18 Flood Impact Assessment
- 19 Stormwater Management Concept Plan
- 20 Assessment of Airspace Approvability
- 21 Wind Shear Assessment Report
- 22 Sustainability Strategy
- 23 Consolidated ESA
- 24 Phase 1 ESA
- 25 Remediation Action Plan
- 26 Erosion and Salinity Assessment Northern Precinct
- 27 Acid Sulfate Soils Management Plan Northern Precinct
- 28 Servicing and Utilities Infrastructure Assessment
- 29 Flora and Fauna Assessment
- 30 Acoustic Report
- 31 Archaeological Report
- 32 Property Information Sheets - Land Reclassification
- 33 SREP 33 Transition of Provisions Table
- 34 Southern Precinct Detailed Design Remediation Action Plan
- 35 Site Auditor Endorsement Southern Precinct DDRAP
- 36 Southern Precinct Acid Sulfate Soils Management Plan
- 37 Southern Precinct Species Impact Statement
- 38 NASF Response
- 39 Additional Information - Section 9.1 Directions
- 40 Revised Submission and Additional Information
- 41 Cook Cove Southern Precinct Illustrative Concept Plan
- 42 Reclassification Comments
- 43 Technical Gap Analysis
- 44 Response to Preliminary Comments & Issues

Item 5.1

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MINUTES

of a meeting of the
Bayside Planning Panel
held in the Committee Room, Botany Town Hall
Corner of Edward Street and Botany Road, Botany
on **Tuesday 14 August 2018 at 6.02 pm**

Present

Robert Montgomery, Chairperson
Jan Murrell, Independent Specialist Member
Ross Bonthorne, Independent Specialist Member
Thomass Wong, Community Representative

Also present

Michael McCabe, Director City Futures
Bruce Cooke, Acting Manager Governance & Risk
Clare Harley, Manager Strategic Planning
Samantha Urquhart, Manager Property
Josh Ford, Coordinator Statutory Planning
John McNally, Senior Urban Planner
Alison Phillips, Urban Designer
Stephen Kerr, Independent Planner from City Plan Services
Anthony Kazacos, Independent Planner from City Plan Services
John O'Grady, Independent Planner from Cardno
Bill Nikolovski, IT Technical Support Officer
Anne Suann, Governance Officer

The Chairperson opened the meeting in the Committee Room, Botany Town Hall, corner of Edward Street and Botany Road, Botany at 6.02 pm.

1 Acknowledgement of Traditional Owners

The Chairperson affirmed that Bayside Council respects the traditional custodians of the land, elders past and present and future leaders, on which this meeting takes place, and acknowledges the Gadigal and Bidjigal Clans of the Eora Nation.

2 Apologies

There were no apologies received.

3 Disclosures of Interest

Ross Bonthorne declared a Less than Significant Non-Pecuniary Interest in Items 5.1 and 5.2 on the basis that he had previously worked on a project with Mr Boyd but stated he had no ongoing relationship, professionally or otherwise, with Mr Boyd. The

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Chairperson agreed that it would be appropriate for Mr Bonthorne to remain in the meeting for consideration of the matters.

4 Minutes of Previous Meetings**4.1 Minutes of the Bayside Planning Panel Meeting - 24 July 2018****Decision**

That the Minutes of the Bayside Planning Panel meeting held on 24 July 2018 be confirmed as a true record of proceedings.

4.2 Minutes of the Bayside Planning Panel Meeting - 10 July 2018**Decision**

That the Minutes of the Bayside Planning Panel meeting held on 10 July 2018 be confirmed as a true record of proceedings.

5 Reports – Planning Proposals**5.1 Assessment of Planning Proposal - Cook Cove
Report by City Plan Strategy and Development (CPSD)**

A site inspection was held on Tuesday, 7 August 2018.

This recommendation was made public on 21 August 2018.

The following members of the public spoke:

- Mr Rasmus Torkel, interested resident, spoke against the report recommendation.
- Mr Brian Shaw, Chair of Botany Bay Catchment Alliance, spoke against the report recommendation.
- Ms Anna Angelakis, interested resident, spoke against the report recommendation and responded to the Panel's questions.
- Ms Greta Werner, interested resident, spoke to the proposal.
- Ms Wendy Aylward, interested resident, spoke against the report recommendation.
- Mr Ted Hamilton, interested citizen, spoke for the report recommendation and responded to the Panel's questions.
- Ms Kirin Lindop, from Cricket NSW, spoke for the report recommendation and responded to the Panel's questions.
- Mr Anthony Bouteris from Raine & Horne Commercial spoke for the report recommendation.
- Mr Anthony Rodgers, General Manager Kogarah Golf Club, spoke for the report recommendation and responded to the Panel's questions.
- Mrs Marilyn Melhuish, interested citizen and member of the Kogarah Golf Club, spoke for the report recommendation.
- Mr Stephen Law, President Kogarah Golf Club, spoke for the report recommendation and responded to the Panel's questions.

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- Mrs Maree Andrews, interested resident, spoke for the report recommendation and responded to the Panel's questions.
- Mr John Flowers, interested resident, spoke for the report recommendation.
- Mr Greg Glanville, Director St George Football Club, spoke for the report recommendation.
- Jeffery Evans, representing St George District Cricket Club and St George District Cricket Association, spoke for the report recommendation.

Bernard Gallagher from Ethos Urban, acting on behalf of the proponent Cook Cove Inlet Pty Ltd, made a 30 minute presentation to the Panel, and he and Mr John Milston, Transport Planner from Arup, responded to the Panel's questions.

Recommendation to the Council

- 1 That the Planning Proposal not proceed, for the reasons included in the Panel's Reasons for Recommendation below.
- 2 That, however, should Council be of a mind to proceed with the Planning Proposal at this time, the following is recommended:
 - a The matters below should be resolved prior to proceeding with the Planning Proposal:
 - i The precise identification of each of the interests affecting each parcel of public land and the intended effect of the Planning Proposal regarding those interests (including any proposal to cease public reserves);
 - ii The written consent of the Minister administering the Crown Lands Management Act 2016 to the proposed reclassification of Crown land to operational land;
 - iii Details of the current view of the Roads & Maritime Services regarding the proposed extinguishment of the trusts created when Lot 14 in DP 213314 and Lot 1 in DP 108492 were dedicated to Council;
 - iv Confirmation from Council (in its capacity as landowner and Trustee) that its obligations under any trusts proposed to be extinguished do not prevent Council from adopting the Planning Proposal.
 - b The proposal should be amended to provide for a much higher proportion of employment land floorspace and lower residential density in recognition of the strategic location, the constraints to residential development and the surrounding built form.
 - c The draft Planning Proposal be amended to address the items identified in the Technical Assessment by Cardno and as summarised in Attachment 3 to the report.

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- d The draft Planning Proposal be amended to specify and limit the quantum of gross floor area and maximum building height for the 'registered club' within the southern precinct, prior to public exhibition.
- e Consultation of the draft Planning Proposal be undertaken with the following agencies, and amendments made prior to public exhibition and broader community consultation:
 - i The Greater Sydney Commission
 - ii Roads and Maritime Services
 - iii Transport for NSW
 - iv Sydney Airport Corporation Limited (SACL), Civil Aviation Safety Authority (CASA) and Airservices Australia (AsA)
 - v Department of Education
 - vi Office of Environment and Heritage
 - vii Office of Sport.

The purpose of this consultation is to identify any conflicts or modifications that may be required, given the potential impacts on regional infrastructure, so these can be incorporated in the Planning Proposal before community consultation.
- f A peer review of the Landscape Character and Visual Impact Assessment and independent commentary on the urban form and densities compliance with the ADGs be commissioned by Council and exhibited with the draft Planning Proposal to inform community consultation.
- g A Voluntary Planning Agreement, which details the infrastructure to be provided in support of the proposed redevelopment of Cook Cove and the timing of provision, be exhibited with the Planning Proposal.

Name	For	Against
Robert Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Jan Murrell	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ross Bonthorne	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Thomass Wong	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Reasons for Recommendation

The panel notes that the land is identified in Sydney Regional Environmental Plan No. 33-Cooks Cove as Trade and Technology Zone (and public open space) based on its strategic location adjacent to Sydney Airport. The fundamental issue for consideration in progressing this Planning Proposal is whether there is strategic merit in changing the zone to allow a new suburb of some 12,000 population (estimated by proponent) by the establishment of significant residential development.

Should the proposal proceed in its current form, this strategic site would no longer be available for employment land uses associated with Sydney Airport or other large

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employment generating purposes in the future. This is notwithstanding that a smaller area of mixed use zone is proposed. The proponent suggests that there are no strategic documents which would preclude the change of use from employment activities to high density residential. It is suggested by the proponent that the Bayside West Draft Land Use and Infrastructure Strategy justifies the change. However, it is unclear if there has been consultation with the Greater Sydney Commission.

Nonetheless, the Panel is not satisfied with the justification put forward in support of the higher residential density proposed for the site. In particular, it is noted that the Bayside local government area (LGA) is more than meeting its residential targets and will continue to do so based on approvals issued and future developments which are in the pipeline. Information provided by the Council shows that the short-term housing target for the LGA 2016-2021 of 10,150 new dwellings has already been exceeded based on development approvals and completions to May 2018. Of the long-term target of 28,050 new dwellings by 2036, it is anticipated that 19,598, or 69.9%, will be reached based on existing approvals, identified new residential precincts and planning proposals (pre and post Gateway) excluding Cook Cove.

The area of the Planning Proposal is constrained by: trusts; community land classification; flooding; aircraft noise; odour; road reservations; air quality; contaminated land; and the Obstacle Limitation Surface for the Airport. These constraints raise a fundamental question as to whether or not the land is suitable for high density residential development given the LGA is already achieving its housing targets, and there are priority residential precincts in the LGA. The Panel considers that the Planning Proposal contains insufficient justification for reducing the employment lands future gross floor area (GFA) from 270,000m² to 53,000m², and increasing the overall GFA to 571,000m².

The proposed maximum building height of 25 storeys appears to be at odds with the surrounding highest permissible building height of 46 metres, which approximates 12 storeys. The Planning Proposal provides no justification for this significant increase compared to the surrounding locality, nor is there justification for the proposed overall density of development proposed.

The opportunity cost of rezoning this relatively large parcel of land in single ownership currently zoned for employment generating purposes must be considered in the planning and economic context of the medium and longer term. The Panel considers that it has not been demonstrated that the loss of employment lands is warranted for the LGA or Region in a strategic planning context.

The Panel heard from a number of residents who were concerned about the role of Barton Park and the shortfall of playing fields for the district which will be created should the proposal proceed. Concerns were also raised about the restriction of public access to the area of public open space which will be occupied by the relocated golf course. The Panel shares these concerns and notes that the Council is to prepare an LGA wide open space strategy. Therefore, at this time the full ramifications in respect of proposed changes to open space and playing fields at Cook Cove are unknown.

Specifically for the inclusion of public land, the Panel notes that the Planning Proposal relies on the successful reclassification of public land, which is either Crown land, community land owned by Council, or land held in trust by Council. The Panel considers that the reclassification of public land should occur separately prior to the

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rezoning of adjacent lands to ensure that the reclassification accords with the intent and spirit and Objects of the Environmental Planning & Assessment Act 1979, as amended. It is also considered that matters associated with land held in trust by Council must be resolved prior to any decision to reclassify or rezone.

The Panel is of the view that there is a need to retain the subject land for employment uses due to its strategic location and the constraints to residential development, apart from the issues associated with Crown Land and lands held in trust.

5.2 Cook Cove Planning Proposal - Reclassification - Additional information

A site inspection was held on Tuesday, 7 August 2018.

This recommendation was made public on 21 August 2018.

Recommendation to Council

That the Bayside Planning Panel receives and notes the content of this report.

Name	For	Against
Robert Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Jan Murrell	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ross Bonthorne	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Thomass Wong	<input checked="" type="checkbox"/>	<input type="checkbox"/>

6 Reports – Development Applications

Nil

The Chairperson closed the meeting at 9.05 pm.

Chairperson

Council Meeting

12/09/2018

Item No	8.2
Subject	Proposed Lease To Order of AHEPA NSW Inc - 72 Laycock Street, Bexley North
Report by	Michael McCabe, Director City Futures
File	F16/45

Summary

The former Rockdale City Council conducted a tender process for a property under its ownership, situated at 72 Laycock Street, Bexley North. The tender sought proposals from community groups to undertake rehabilitation/capital works to the site and subsequently enter into a lease. Post assessment of the tenders, the Council resolved to accept the tender submitted by The Order of AHEPA NSW Inc.

This matter has been the subject of number of decision points to date (listed in the body of the report) and the current decision relates to a revised proposal submitted by AHEPA.

The revised proposal from AHEPA is for the replacement of the existing building as opposed to the current proposal, being to refurbish the existing building. Other deliverables, previously approved, remain unchanged. Further, the costs associated with the replacement of the building vest with AHEPA.

The current decision is required as it forms a variation of tender.

Officer Recommendation

- 1 That Council, in its capacity as land owner, endorses the revised proposal for 72 Laycock Street, Bexley North, for the replacement of the existing building as outlined in Annexure 4 to this report.
 - 2 That a further report be submitted which tables the proposed lease terms and design documentation, including a detailed program, costings and demonstrating AHEPA's financial capacity to deliver the proposed works.
-

Background

Council owns the property situated at 72 Laycock Street, Bexley North (the Site), which was formally occupied by the Bexley Bowling and Recreation Club by way of an expired licence agreement.

In early 2016 the former Rockdale City Council conducted a tender process for the Site. The tender sought proposals from community organisations to undertake rehabilitation/capital works to the Site and to subsequently enter into a lease.

At the conclusion of the tender, the former Rockdale City Council resolved to accept the tender submitted by the Order of AHEPA NSW Inc, at their meeting of 20 April 2016.

Decisions to Date & Approvals

Table 1 below summarises the decisions and approvals to date for this matter.

Table 1 – Decisions

Decision Point	Timing
Tender	20 April 2016
Revised Proposal	14 December 2016
Plan of Management Amendment	25 May 2017
Council Approval to refer lease proposal to Minister of Local Government	25 May 2017
Approval from Minister of Local Government	6 March 2018

Tender Proposal (Works)

The schedule of works proposed by AHEPA in their original tender submission, as a general description, included:

- Refurbishment of the existing Bowling Club premises.
- Retention of one bowling green to accommodate and continue bowling functions;
- Delivery of at grade parking; and
- Development (within 18 months) of a multi-purpose community centre. Tabled as Annexure 1 is an extract from the original tender that outlines AHEPA's proposal.

Revised Proposal (14 December 2016)

Subsequent to the award of the tender, AHEPA submitted a revised proposal to Council centring on additional works (refer to Annexure 2). The works were to better accommodate the functions of the organisation and included:

- Extension of the existing building to accommodate offices, seminar rooms and cultural museum (level 1); and
- Sub-grade parking below the stage 2 multi-purpose community centre.

AHEPA did not seek any further commitment from Council and the additional works were to be funded by AHEPA, based on the same lease terms as per the original Tender.

The works were considered and endorsed at the Council meeting of 14 December 2016.

Current Proposal

On 6 March 2018 the Minister for Local Government approved the issue of a 21 year lease to AHEPA.

Upon approval to issue a lease AHEPA were required to compile and submit to Council (as landowner) a schedule of all works and associated specifications for Stage 1, to advance the proposed works from conceptual to full design.

This design package would in turn be the subject of a development application to be lodged. The same is to occur for the works that form Stage 2, post the completion of the Stage 1 works.

AHEPA secured consultancy reports in May for the existing building addressing BCA, electrical, mechanical and structural fabric. Survey works had been undertaken prior to this timeframe.

The Structural Report compiled by Lomford Engineers supplied by AHEPA (attached as Annexure 3), concludes: *“The works required to preserve the existing structure will be considerable and will not be viable, not only will the preservation of the existing structure be costly but may not well serve the proposed new alteration and addition to the building.”*

AHEPA have advised that the refurbishment and retention of the existing building is not viable. To this end, AHEPA have submitted a revised proposal for the Stage 1 works which centres on the replacement of the existing building as opposed to its refurbishment. Attached as Annexure 4 is a Preliminary Concept Design Proposal (PCDP) dated June 2018 which provides a conceptual outline of the revised proposal.

Observations of the PCDP are that the design concept remains the same, however the building footprint is marginally larger. Further, the PCDP provides a comparison of the proposed new building footprint as a comparison to the existing footprint.

Both the costs of the refurbishment of the existing building (minimum of \$950,000) and the cost of replacing the existing building vests with AHEPA. There are no proposed amendments to terms nor is it proposed that the Stage 1 works are to affect the commitments for Stage 2.

Next Steps

Upon approval to replace the existing building the next steps include:

- 1 Preparation of documentation for lodgement of the Development Application- **December 2018**.
- 2 Seek Resolution of Council to enter into an agreement to lease- **December 2018**, including:
 - a a detailed program;
 - b Costing; and
 - c AHEPA's financial capacity to deliver the proposed works.
- 3 Lodgement of Development Application- **February 2019**.

Subject to development approval, the construction of Stage 1 is likely to be completed mid-2020, with the completion of Stage 2, expected mid-2022.

Financial Implications

Not applicable	<input checked="" type="checkbox"/>	
Included in existing approved budget	<input type="checkbox"/>	<<Enter comment if required or delete>>
Additional funds required	<input type="checkbox"/>	<<Enter comment if required or delete>>

Community Engagement

Not applicable

Attachments

- 1 Annexure 1 - Tender Proposal Extract [↓](#)
- 2 Annexure 2 - Revised Proposal Approved 14 Dec 16 [↓](#)
- 3 Annexure 3 - Lomford Engineers Report 23 May 2018 [↓](#)
- 4 Annexure 4 - Preliminary Concept Design Proposal June 2018 [↓](#)

Tender No: F16/45 AHEPA NSW, Schedule 2: Tenderer's Proposal, AHEPA NSW Submission Strictly Confidential: 18/3/2016

1 CURRENT USE

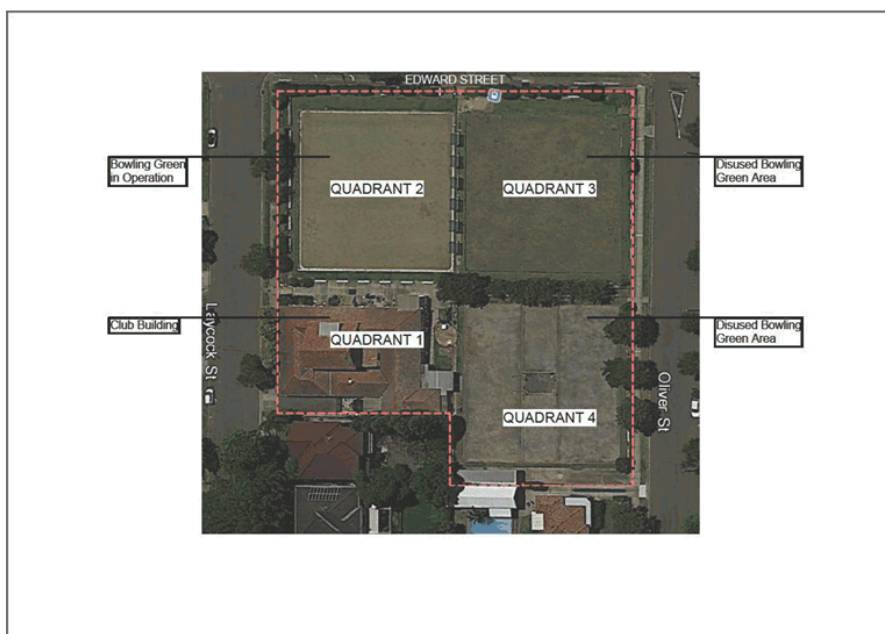
This proposal has been prepared by **ORDER OF AHEPA NSW INC (AHEPA NSW)** and forms part of our submission for Tender F16/45, to Lease property which is owned by Rockdale City Council, at 72 Laycock Street, Bexley North NSW. The site is currently occupied by the Bexley Bowling Club.

The site is approximately 7,200 square metres and is made of 4 quadrants, each capable of accommodating separate activities. Currently on the site is a two storey Building which is being used as a club and three bowling greens, of which, only one is in use.

As it stands currently, our observations are:

1. Quadrant 1 accommodates the Club-building
2. Quadrant 2 is an active bowling-green.
3. Quadrants 3 and 4 are not utilised.
4. There is no parking facilities on the site

Below is an aerial perspective of the plan showing the site in its "current utilisation".



AERIAL PLAN- CURRENT UTILISATION: 72 Laycock Street, Bexley North NSW

The Building is used by the Bowling club is in need of major refurbishment and repairs as it does not comply with the current Building Code of Australia and National Construction Code under a class 9, building classification .

The Bowling-green is occasionally used by the 32 current members of the Bexley Bowling Club.

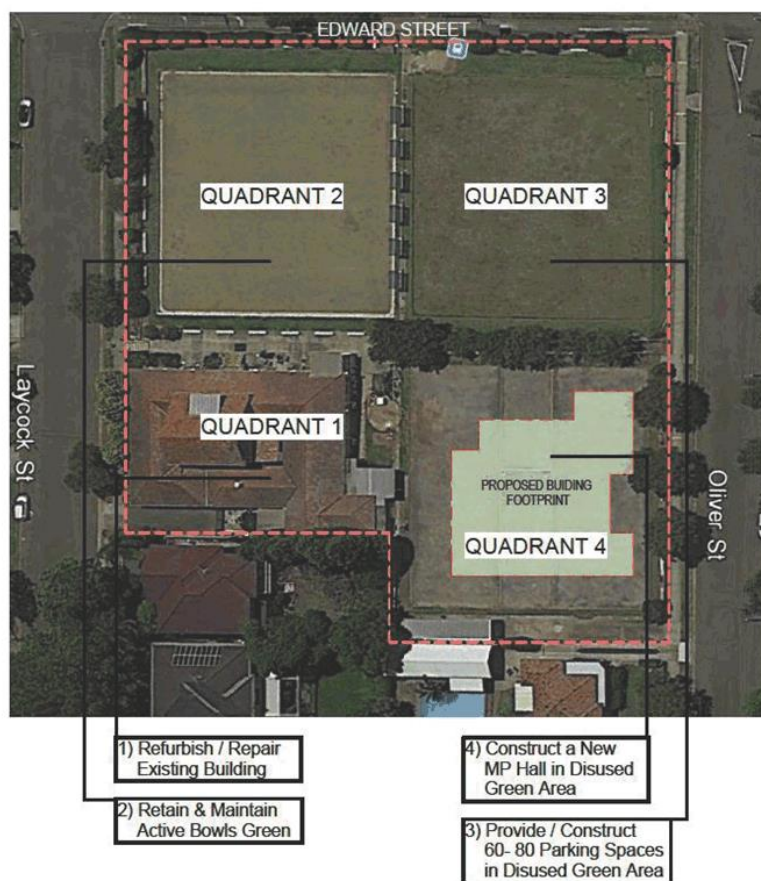
Tender No: F16/45 AHEPA NSW, Schedule 2: Tenderer's Proposal, AHEPA NSW Submission Strictly Confidential: 18/3/2016

2 PROPOSAL SUMMARY

AHEPA NSW's Tenderer's Proposal can be summarised as follows:

- 1) Refurbish and Repair the existing Building and infrastructure in Quadrant 1 to achieve compliance with relevant Australian standards applicable for the intended use of the building.
- 2) Retain and maintain the existing active Bowling green in Quadrant 2 for ongoing future use.
- 3) Provide/construct 60 to 80 new off-street parking spaces in Quadrant 3.
- 4) Upon completion of Above Works, AHEPA NSW will submit a DA to Rockdale City Council for the construction of a new "Multipurpose Hall" in Quadrant 4, which will be approximately 1,200 square metres over 2 levels.

A simplified pictorial representation of the **PROPOSED USES** is shown below:



PROPOSED MASTERPLAN: 72 Laycock Street, Bexley North NSW

Tender No: F16/45 AHEPA NSW, Schedule 2: Tenderer's Proposal, AHEPA NSW Submission Strictly Confidential: 18/3/2016

3 PROPOSAL DETAILS

3.1 REFURBISHMENT OF EXISTING BUILDING

AHEPA NSW will commit to invest approximately \$950,000 to refurbish and repair the current building and infrastructure on the site.

Extensive repairs will be carried out to the ground and first floors of the existing to ensure that the building will comply with all relevant Australian standards and legislation. The building details are itemised and costed in "Schedule 5: Itemised Works and Costings".

In brief, the main fabric of the building will need to be repaired renovated and upgraded to achieve required compliance, improve the quality of the building and enhance amenity to its occupiers and users. This will include:

- Ceilings
- Walls
- Floors
- Windows
- Doors
- Existing services and fixtures

We are planning to create a new coffee shop/cafe with a separate small kitchen in the section of the ground floor which overlooks the bowling-green currently in use. New windows will be installed to fully capture the view.

The main function room on the adjacent side of the ground floor will also be upgraded and modernised and a commercial-grade kitchen will be installed to cater for the needs of its users. It is anticipated that this will have the capacity for approximately 250 people.

Particular attention will be paid to the air conditioning, ventilation, lighting and audio-visual services throughout the building.

The bar area will be upgraded and modernised and all of the amenity rooms will be extensively renovated to a high standard of service and finishes.

It is envisaged that a new lift will be installed to serve the first floor which in turn will be refurbished to a high standard and used as offices and an administration area.

Once the repairs/refurbishments are completed, the building will be professionally managed and maintained to ensure that the building, furnishings and all services are kept in top condition at all times.

We believe that in carrying out these extensive works we will certainly be satisfying/exceeding the Council's minimum tender requirements of: "Asset refurbishment works to the existing building improvements at no cost to Council, and compliance with BCA for permitted use under the Lease, and maintenance during the term of the Lease"

3.2 BOWLING GREEN

The existing "active" Bowling-Green in Quadrant 2 (the only one currently in use) will be retained and will continue to operate. AHEPA NSW will maintain the Green which currently appears to be in good condition. This be undertaken in a professional manner and in accordance with the recommended practices and guidelines of "Bowls Australia".

We believe there are 32 current members in the Bexley Bowling Club and AHEPA has a number of member Bowlers who will also be using the facilities. The service will be promoted to the local community to invite increase patronage.

Tender No: F16/45 AHEPA NSW, Schedule 2: Tenderer's Proposal, AHEPA NSW Submission Strictly Confidential: 18/3/2016

Bowling is a low-impact exercise which can increase the fitness and physical coordination of players. It contributes to enhancing a person's physical and mental wellbeing; and because of its relaxed nature and light activity requirements it is a popular sport especially amongst older people. It can also offer potential therapeutic benefits.

Although there has been a significant decrease in the number of operational Bowling clubs in Sydney in recent years, AHEPA NSW will continue to operate the Bowling-Green and properly maintain it in the future for the benefit of the local Bexley and Rockdale communities.

3.3 OFF-STREET CAR PARKING

As noted above, the site currently does not offer any off-street parking.

The need for adequate parking is of paramount significance and is obviously a major consideration when buying or leasing any site. The significance of providing parking can't be stressed enough.

We observe that people are using their cars more frequently, even for the shortest trips and a lack of parking facilities causes stress, inconvenience and generally has an adverse effect on our community's well-being.

AHEPA NSW proposes to create a parking lot with approximately 60-80 parking spaces by converting the currently disused Bowling-green in Quadrant 3. The space is currently abandoned and it is totally unused and therefore presents an excellent opportunity to achieve more effective utilisation.

With professional planning and construction in terms of surface construction, drainage, access, acoustic screening and lighting, the area can be transformed into a very efficient parking lot which will have no negative effects to the surrounding area and obviously significant benefits for the occupiers and users of the site.

In brief, a sealed driveway will provide access to the 60 to 80 parking spaces which will be created on an unsealed surface of gravel /bluestone or similar bed.

Appropriate stormwater/surface water drainage facilities will be provided as required.

A row of carefully selected trees will be planted along the Oliver Street boundary which will aid to the acoustic comfort of the residents.

The ingress/egress driveway location will be selected based on a traffic study.

3.4 MULTI-PURPOSE COMMUNITY RECREATION & FUNCTION HALL

Once the building renovation and parking facilities have been completed AHEPA NSW will prepare and submit to Rockdale Council a Development Application for the construction of a Multipurpose Community Recreation and Function Hall on the site. It is proposed that the new hall is built on the second disused Bowling-Green in Quadrant 4.

Subject to Council Approval, AHEPA NSW will be investing between \$3M and \$4M for the construction of the new hall which will be approximately 1,200 sqm in total area. The proposed building will have two floors (ground and first floor).

A concept depicting how the site is **now** and is **envisaged** to be is shown below.

Tender No: F16/45 AHEPA NSW, Schedule 2: Tenderer's Proposal, AHEPA NSW Submission Strictly Confidential: 18/3/2016



BEFORE



AFTER

CONCEPT PLAN



Tender No: F16/45 AHEPA NSW, Schedule 2: Tenderer's Proposal, AHEPA NSW Submission Strictly Confidential: 18/3/2016

The final design and capacity of the Hall will be finalised closer the time. At this point, we anticipate that it will comprise the following:

- Reception Area / Administration Office(s)
- Disabled Access and circulation / seating area
- Main Hall Area for sport and social uses
- Stage area
- Spectator seating integrated into one wall
- Canteen, food and drink dispensing
- A minimum of 4 community rooms (2 small and 2 large)
- Gymnasium
- Showers and toilets with disabled provisions
- Locker room, store room and cleaner's store room
- First Aid room

The new multipurpose community recreation and function hall will be a quality building, architecturally designed, built to last, well maintained and a pleasure to use.

It will be professionally managed and will provide the local community with a modern social, sports and recreational facility for many-many years into the future. It will cater for the needs of the various community groups of all ages and interests.

We believe that the construction of such a facility is directly related to, and compatible with, the mandate of the Council in providing a high level of services to the community and manage its assets in a manner that will return positive tangible benefits to its residents.

Following are a selection of preliminary concept plans and perspectives for the proposed multipurpose hall which include the surrounding spaces and existing buildings.

Tender No: F16/45 AHEPA NSW, Schedule 2: Tenderer's Proposal, AHEPA NSW Submission Strictly Confidential. 18/3/2016



Tender No: F16/45 AHEPA NSW, Schedule 2: Tenderer's Proposal, AHEPA NSW Submission Strictly Confidential, 18/3/2016





Bexley Bowling & Recreation Club

Laycock Street, Bexley North

Design Proposal

September 2016

KATRIS ARCHITECTS



Page 3 of 6

Site Plan

QUADRANT 2

Retain and maintain active Bowls green.

QUADRANT 3

Provide a 60 - 80 car space parking area.

QUADRANT 1

Add an additional level and refurbish existing building. Approx. 400m² in floor area depending on structural constraints.

QUADRANT 4

Construct a new MP hall in disused green area. Including a lower ground carpark below proposed hall.



Detail Plan A

PROPOSED USES FOR FIRST FLOOR LEVEL:

- Disabled lift and access to first floor
- Offices for organisation
- Lecture and seminar room(s)
- Historical cultural museum
- Conference and meeting room(s)
- Outdoor balcony
- Area for cultural / ethnic activities

Balcony area approximately 45m²

Existing upper first floor area
approximately 130m²

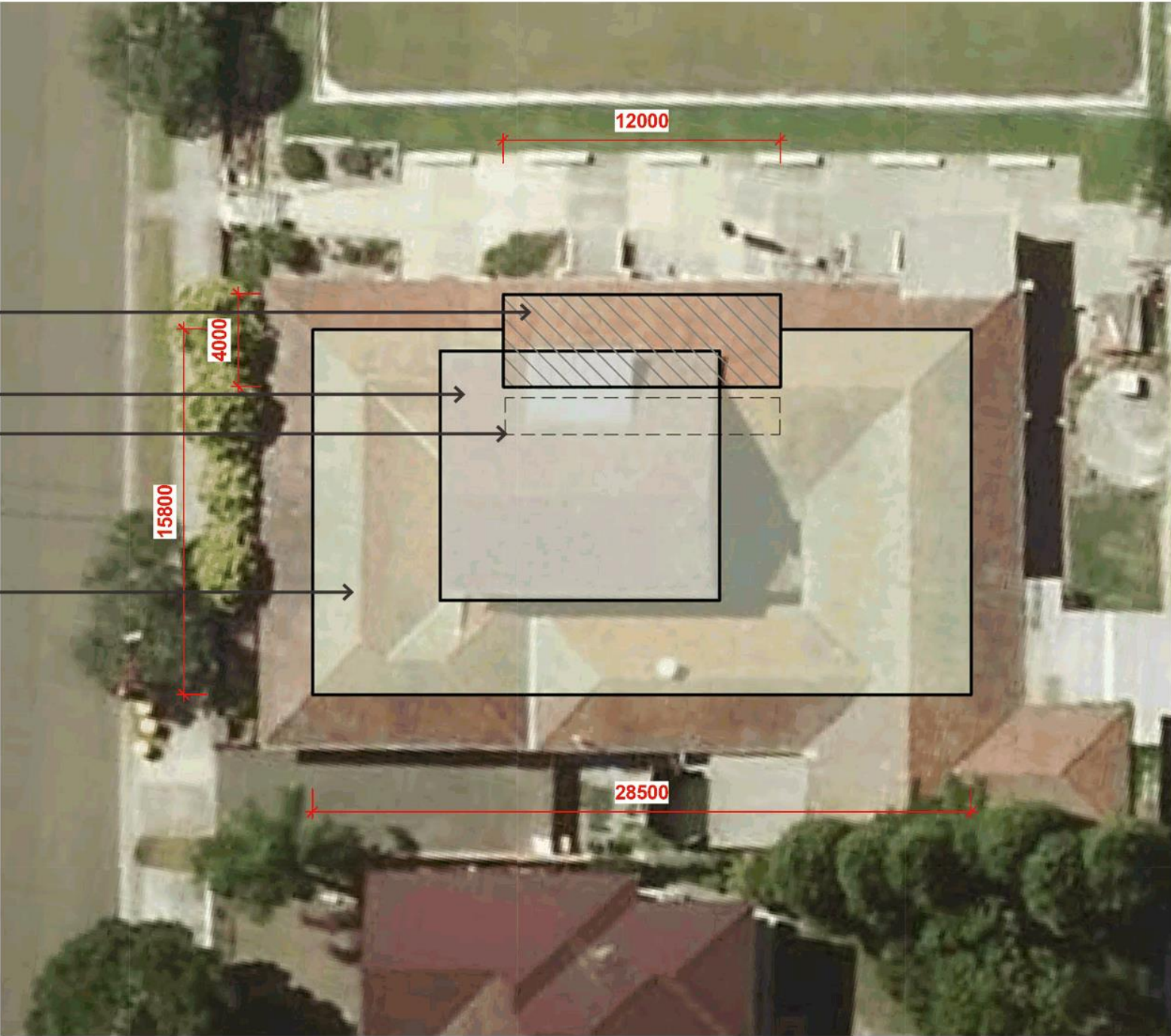
Skylight overhead

Proposed upper first floor area
excluding the balcony approxi-
mately 400m² in floor area de-
pending on structural constraints

NOTE: The original ground floor proposal will be implement-
ed and will ensure community access / use and activities. It will
also include an exhibition wall for the historical chattels for the
Bexley Bowling Club.

The actual sizes of the extension on the first floor will depend
on the following:

- The adequacy of the existing structure on the ground floor
- The merit based assessment for all the DA stages



Existing Site



Bexley Bowling & Recreation Club

Design Proposal

September 2016



Proposed Stage I (Extension to first floor and lower ground parking below new MP hall)

Bexley Bowling & Recreation Club Concept Design Photomontage



Lower Ground Parking Entry

Extension to First Floor

Bexley Bowling & Recreation Club

Design Proposal

September 2016



Proposed Stage I & 2

Photomontage



Bexley Bowling & Recreation Club

Design Proposal

September 2016



Proposed Stage I

Bexley Bowling & Recreation Club Concept Design Drawing



Bexley Bowling & Recreation Club

Design Proposal

September 2016



Proposed Stage 2

Proposed Multipurpose Hall Concept Design Drawing



Bexley Bowling & Recreation Club

Design Proposal

September 2016





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T/A/S LOMFORD ENGINEERS
ABN 16 069 480 860

Page | 1



**LOMFORD
ENGINEERS**

Structural Engineers Report

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STRUCTURAL ENGINEERING REPORT

Project Name	Bexley Bowling club			
Reference item	Existing 2 storey Building			
Name of Author	I, Millad Rouhana			
Qualifications and experience	B.E.(Hons.) Grad. Dip. (Civil) MIEAust. CPEng CONSULTING CIVIL /STRUCTURAL ENGINEER			
Name of firm	of, LOMFORD ENGINEERS (Lomford project developments t/as)			
Address of firm	situated at, 1 st Floor 673 Forest Road, BEXLEY, NSW			
Contact Details	Phone	9588 7050	Fax	9588 9350
	Mobile	0411 222 118	Email	millad@lomford.com.au



Pic 1.0 Existing Structure 2017



Pic 2.0 Proposed Artist impression of the proposal

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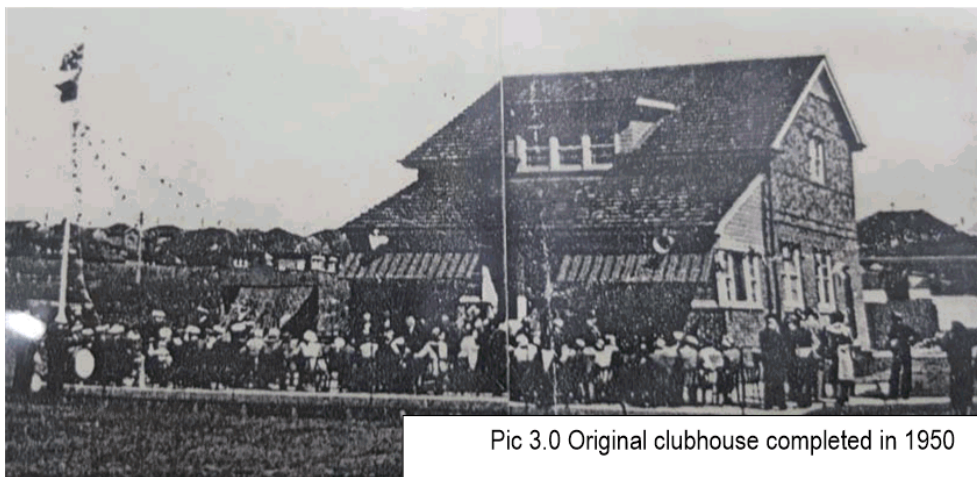


Introduction

1. I have been asked by AHEPA (NSW) to prepare a report about the proposed redevelopment of the Bexley Bowling Club, Club House.
 2. The Proposal is to redevelop the existing clubhouse into a community centre and associated facilities. The objective is to preserve the exiting character and structure to the extent that it also provides a functional space fit for the needs of the organisation
 3. This report will only refer to the existing structure and its structural viability to support the proposed additional loads.
 4. This report will outline
 - a. A brief history of the existing building.
 - b. The structural geometry of the existing structure.
 - c. The geometry of the proposed structure.
 - d. The additional loads expected from the new proposal.
 - e. The viability of the Existing Structure to be utilised in being integrated into the proposed building
 - f. Comment on existing services.
- a. The viability of the Existing Structure to be utilised in being integrated into the proposed building.

A brief History

The clubhouse was completed and opened in 1950. The structure comprised of timber framed floors and masonry walls.



Pic 3.0 Original clubhouse completed in 1950



The footings were designed to support a two storey with internal load bearing brick walls to transfer the loads to the foundations. From the site inspection the mortar appeared to be lime based (readily available at the time).

In 1959 the Clubhouse underwent further expansion and alterations. This included additions to the side and rear of the existing building.

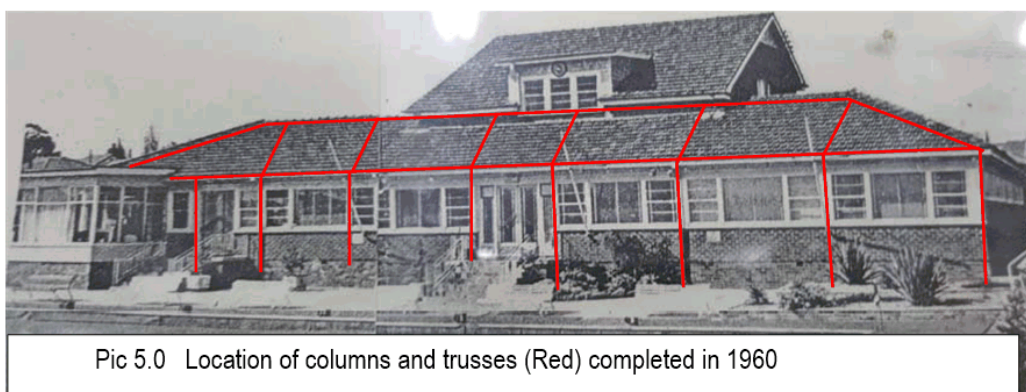
The works were completed in 1960 and involved the installation of steel roof trusses to provide support for the long spans. The works included the modification of the lower section of the existing club. These included the installation of structural beams for openings into the new areas.

Recent site investigation revealed that the alterations and additions were constructed from structural steel columns and steel roof trusses



Pic 4.0 Additions and alterations completed in 1960

b. The Structural Geometry of the existing structure



Pic 5.0 Location of columns and trusses (Red) completed in 1960





Figure 5.0 Location of columns and trusses inside roof cavity completed in 1960





Figure 6.0 Location of columns inside club house completed in 1960 note the exposed column and truss bottom plate of roof truss.



c. **The Structural Geometry of the proposed structure**

The proposed new floor area includes additional floor space over the majority of the existing building. The new area will cover the roof space as well as the interior corridors. The new floor frame will clash with the existing roof trusses, the later will need to be dismantled in order for the floor frame to be placed.

The proposed 1st floor is offset from the edge of the building; this is for providing a ceiling in line with the existing ceiling height

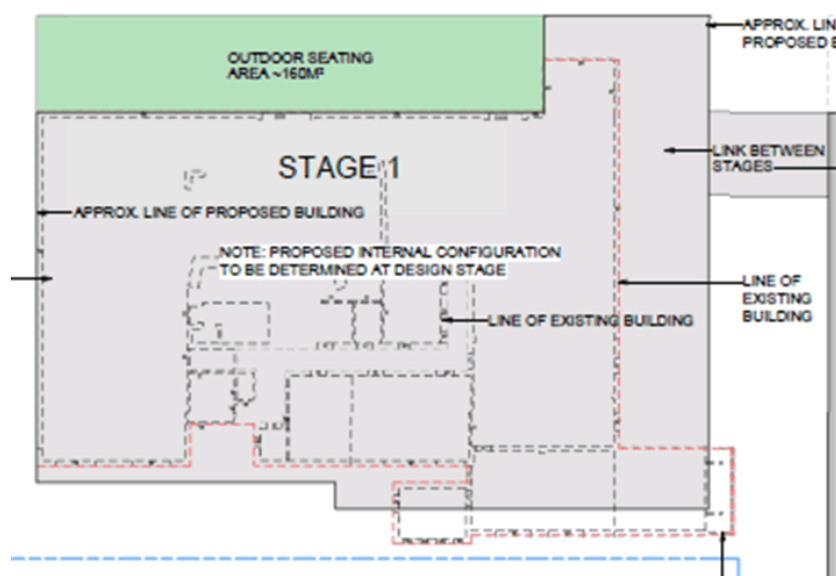
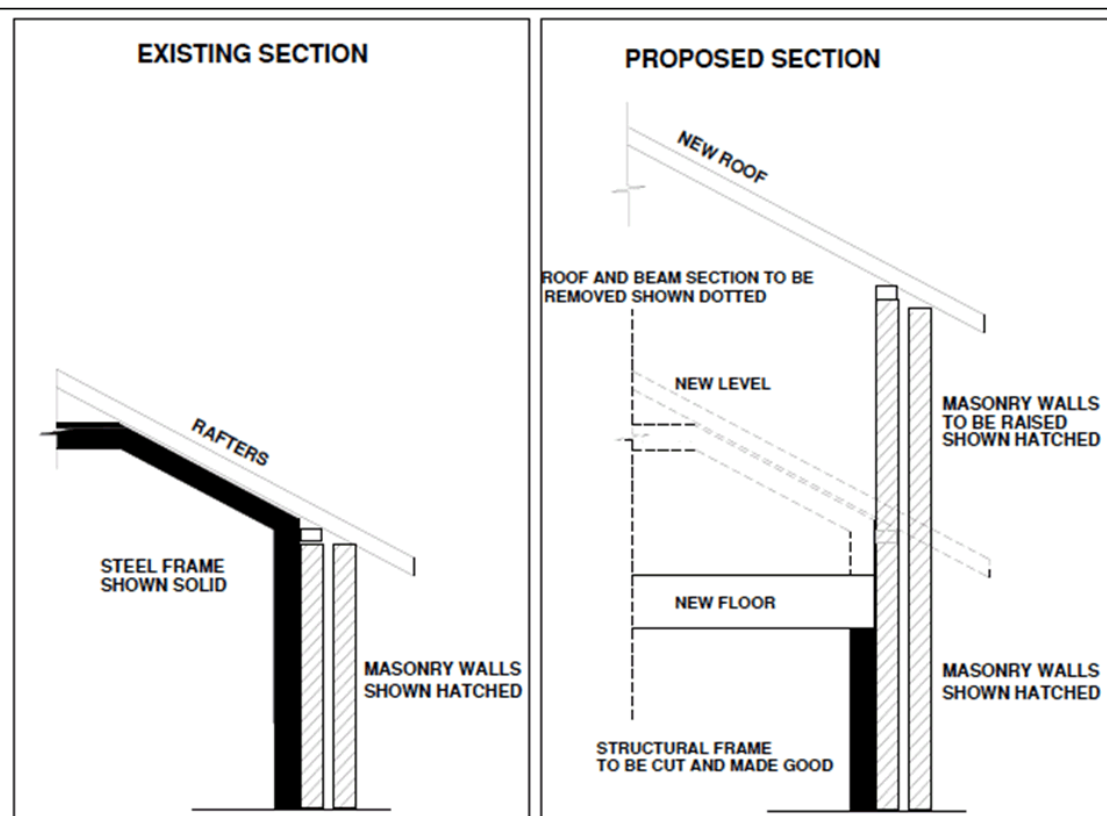


Figure 7.0 Site plan of proposed works, note the upper floor is offset from the outside ground floor walls

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**TYPICAL SCHEMATIC CROSS SECTION
STEEL ROOF BEAMS AND WALLS**
**NOTE SUBSTANTIAL REMOVAL OF STEEL FRAME FOR NEW WORKS
N.T.S**

Figure 8.0 Schematic representations of the proposed additions. Note: Steel frame to be substantially altered, this will require considerable on site fabrication



d. The additional loads expected from the proposal

The existing structure has a combination of dead loads and live loads. The live load is isolated to the upper floor 130 sqm. This floor also transfers the roof load above; the remainder is just roof load.

The proposed structure will have both live and dead loads as well as roof loads.

The current use for the existing upper floor is to support 3.0 Kpa plus a concentrated load of 6.7kN. (AS1170- 1981)

The proposed use is for an assembly building which requires a live load of 4.0 Kpa to be supported.

The proposed new works will be designed to withstand the new live load, dead loads and wind loads. These will be combined as per Australian Standards (2011) 1170 pt.1 and 2.

The proposed new works will create additional loads as well as additional design loads as determined by AS1170-2011.

It is most likely that the exiting footings will need to be modified to support the new loads. The existing columns will need to be modified to facilitate the new flooring above this will be likely to be by fabricating of site and cutting and welding on site. This is subject to these columns being certified as structurally adequate.

The steel roof truss will be dismantled to make way for the upper flooring frame. The flooring frame will be designed to transfer the loads to the lower column; the geometry of the members will be subject to the final floor plan.

e. The viability of the Existing Structure to be utilised in being integrated into the proposed building

The existing structure offers little structural provision for the proposed new building addition, it is likely that the existing footings will need underpinning or other amplification, the structural columns will need to be extended, this will create a joint that will require careful analysis.

The Steel roof truss will need to be dismantled offering no structural facility. Internal walls appear to be robust and may offer some structural provision, this is likely to be dismissed on the basis that the proposed ground floor is to be opened throughout the floor and these walls will need to be removed, should they be located strategically to be preserved, they will still need to be structurally certified.



f. Existing Stormwater system

A mention of the existing stormwater system is warranted at this stage, the clubs rainwater and reuse tank is damaged. Structurally the tanks do not serve its purpose and will need to be replaced.

Although the stormwater system is outside the scope of this report, it is prudent to comment on the existing service infrastructure in order to give a better understanding of the works required.

It is understood from interview from the previous occupants that the stormwater system has been faulty and has not been maintained for some time, the basement cellar is under a constant depth of seepage water and is not accessible. The stormwater reuse system not functional due to the rainwater tank being damaged.

Without further investigation into the other services it is unreasonable to expect the existing utilities to adequate for the proposed new building.

Conclusion

The amount of structural alteration required to tailor the building to facilitate the new addition is substantial, although the structural components may be modified, the works will be exhaustive and will lead to becoming not economical and not necessary. The works will entail-

- Manual demolition and removal of roof structure.
- Prolonged shoring and bracing of existing building.
- Underpinning of existing footings.
- Cutting and refabricating of existing steel structure.
- Replacing structural beams.
- Investigate and refit all services including hydraulic and electrical.

The works required to preserve the existing structure will be considerable and will not be viable, not only will the preservation of the existing structure be costly but may not well serve the proposed new alteration and addition to the building.

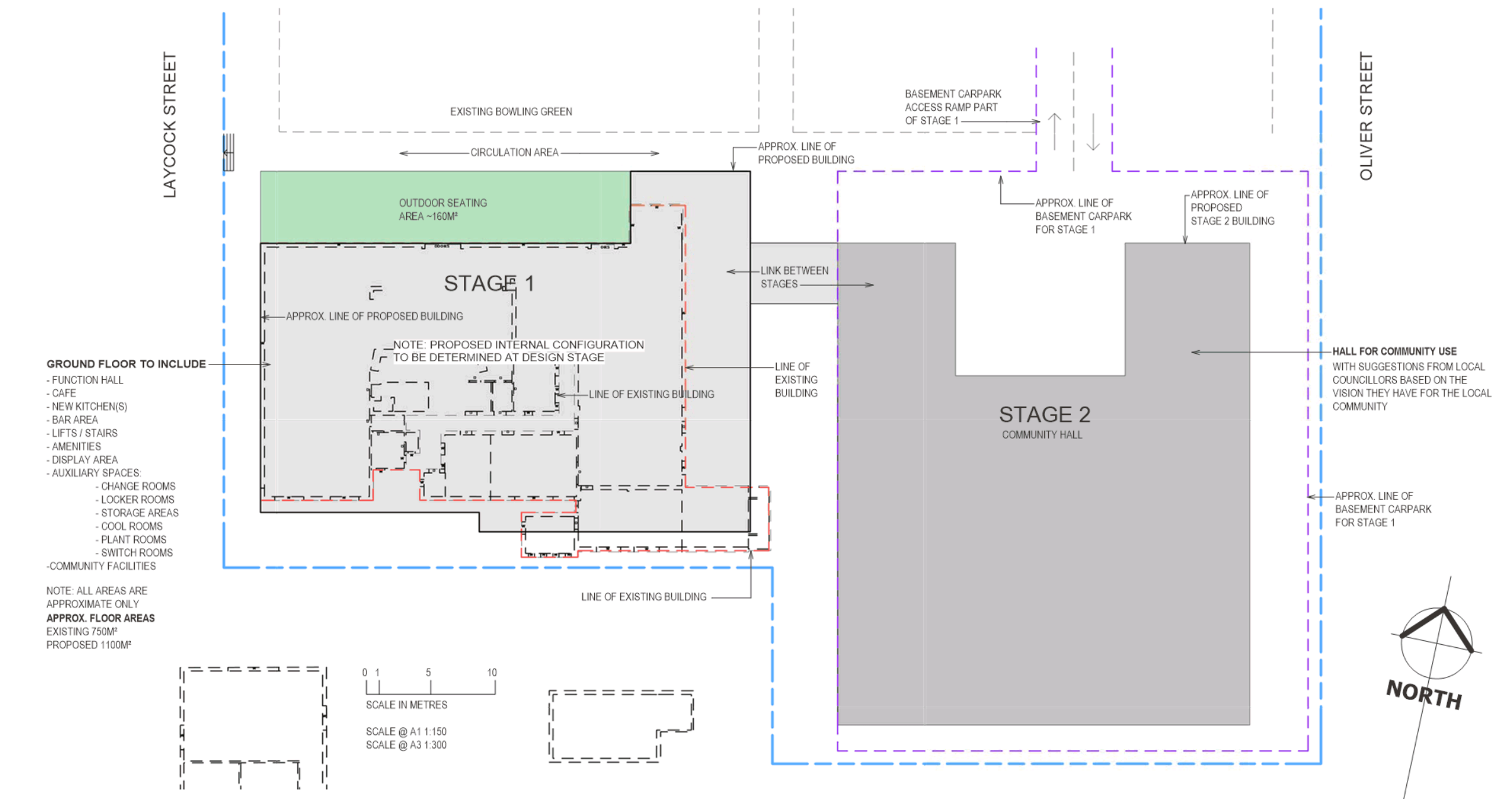
Signature: *Millad Rouhana*

Date: 23/05/2018

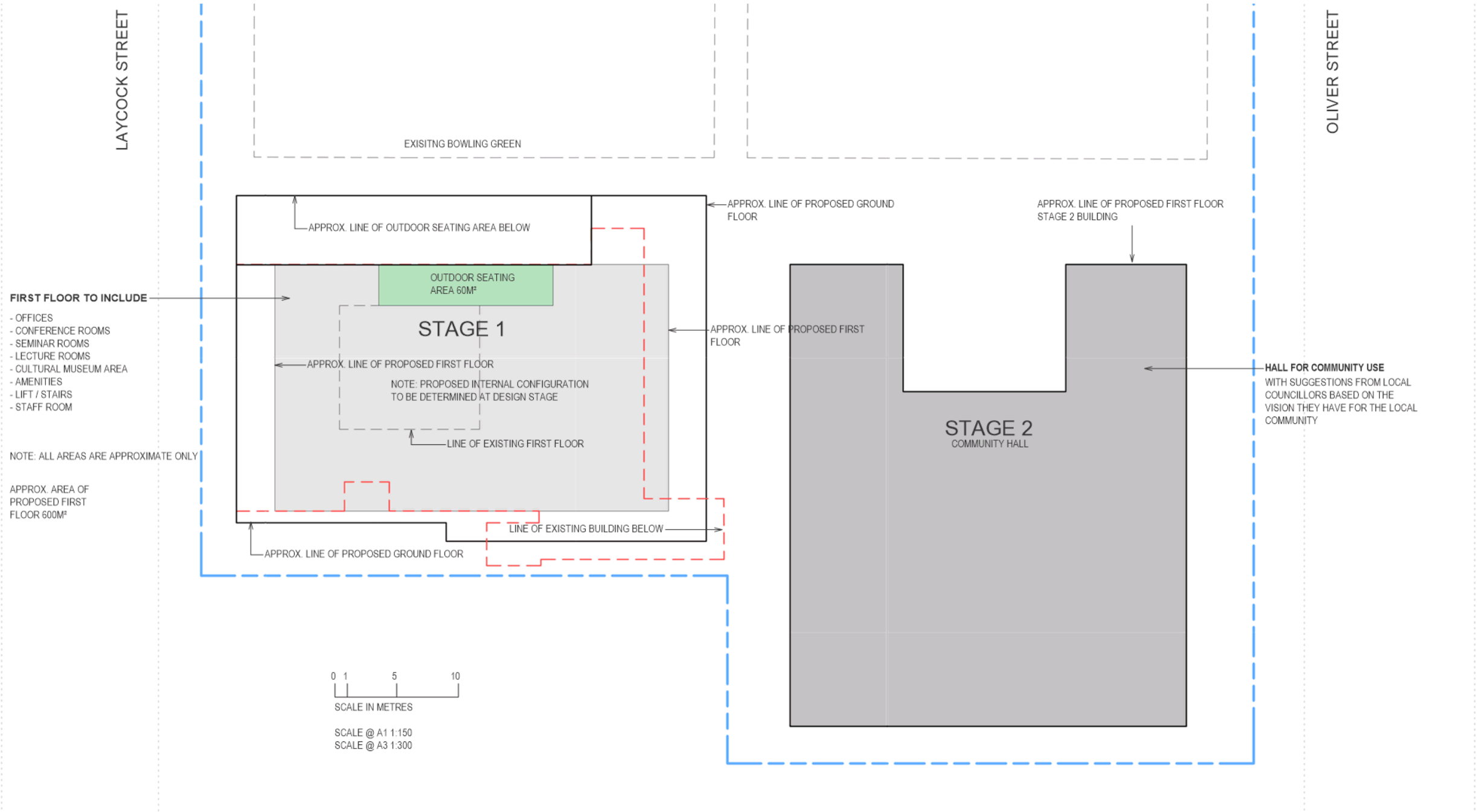




Ground Floor Plan



First Floor Plan



Existing Site



Bexley Bowling & Recreation Club

Concept Design Proposal

June 2018



Proposed Stage I



Lower ground parking entry as part of stage I

Stage I Concept Design



Proposed Stage I & 2

Photomontage



Bexley Bowling & Recreation Club

Concept Design Proposal
June 2018



Proposed Stage I

Bexley Bowling & Recreation Club Concept Design Drawing



Bexley Bowling & Recreation Club

Concept Design Proposal

June 2018



Proposed Stage 2

Proposed Multipurpose Hall Concept Design Drawing



Bexley Bowling & Recreation Club

Concept Design Proposal

June 2018





Council Meeting

12/09/2018

Item No	8.3
Subject	Lease matter - 9 Ador Avenue Rockdale
Report by	Michael McCabe, Director City Futures
File	F16/46

Summary

The former Rockdale City Council conducted a tender process to find a new operator for the premises situated at 9 Ador Avenue, Rockdale. This premise was operated by the Police & Community Youth Clubs NSW Ltd under an expired lease agreement (continuing in hold over).

At their meeting of 18 May 2016, the former Rockdale City Council resolved:

- 1 *That Council authorise the lease of 9 Ador Ave Rockdale to St Marks Coptic Orthodox Church (Lighthouse) subject to Section 47 of the Local Government Act.*
- 2 *That the General Manager be authorised to negotiate the lease terms and conditions having regard to the original tender specifications, the response to tender and the supplementary information submitted by St Marks Coptic Orthodox Church (Lighthouse).*

Despite the best efforts of parties, discussions for a proposed lease have not materialised. In particular, the current offer for upfront expenditure on the building is not deemed to be adequate to address the current condition and does not align with the original offer submitted as part of the tender process.

This report seeks to conclude current discussions with St Mark Coptic Orthodox Church for a proposed lease and seek endorsement to undertake further work to develop options for the site.

Officer Recommendation

- 1 That the attachments to this report be withheld from the press and public as they are confidential for the following reason:

With reference to Section 10A(2)(d)(i) of the Local Government Act 1993, the attachment contains commercial information of a confidential nature that would, if disclosed, prejudice the commercial position of the person who supplied it. It is considered that if the matter were discussed in an open Council Meeting it would, on balance, be contrary to the public interest due to the issue it deals with.

- 2 That Council reject the current offer to lease 9 Ador Ave, Rockdale, (tabled at Annexure 3) proposed by St Mark Coptic Orthodox Church and to discontinue discussions for a lease with St Mark Coptic Orthodox Church over the subject site;
 - 3 That Council notify St Mark Coptic Orthodox Church that Council has rejected their
-

current lease proposal for 9 Ador Avenue, Rockdale;

- 4 That a further report be submitted to Council by no later than December 2018 tabling options for the site, informed by comprehensive condition reports and associated cost plans.

Background

Council is the owner of the reserve that is bound by West Botany Street, Ador Avenue and Bay Street. Within the reserve is an indoor recreation/community facility that is the subject of an expired lease (continuing in hold over) with the Police & Community Youth Clubs NSW Ltd.

The former Rockdale City Council at their meeting of 2 December 2015 resolved to offer the indoor recreation/community facility out to tender. The tender principally sought proposals from community organisations to undertake rehabilitation/capital works and subsequently enter into a lease.

Council, at their meeting of 20 April 2016 considered the tender responses received and resolved to reject all tenders and to '*enter into negotiations with both the Police Citizens Youth Clubs Inc. and St Mark Coptic Orthodox Church including a presentation to Councillors.*' Subsequently, Council further considered the matter at their meeting of 18 May 2016, whereby it was resolved:

- 1 *That Council authorise the lease of 9 Ador Ave Rockdale to St Marks Coptic Orthodox Church (Lighthouse) subject to Section 47 of the Local Government Act.*
- 2 *That the General Manager be authorised to negotiate the lease terms and conditions having regard to the original tender specifications, the response to tender and the supplementary information submitted by St Marks Coptic Orthodox Church (Lighthouse).*

Tender Response & Presentation

The tender submission lodged by St Mark Coptic Orthodox Church (St Marks) and the subsequent presentation (post the 20 April 2016 Council report and prior to the 18 May 2016 Council report) are tabled as Annexures 1 & 2 respectively.

Draft Terms & Discussions

Representatives from St Marks were in discussions with PCYC to explore options for co-use and/or management options for the facility. Council was advised on 5 March 2018 by St Marks that negotiations with the PCYC had stalled. Post receipt of this advice, Council staff issued a draft heads of agreement that outlined proposed terms that would inform a future agreement, subject to approval. The terms and conditions were compiled in line with the Council resolution dated 18 May 2016, in that they had regard to the original tender and subsequent presentation.

Over the intervening period an impasse arose on the proposed terms, culminating in a request by Council for St Marks to outline their current proposal/position, including works and associated costings. Council received a response by way of correspondence dated 10 August 2018 and this is tabled as Annexure 3. Whilst the response was submitted under the

premise of confidentiality, the observation is that impasse on proposed terms remained, particularly around proposed upfront capital expenditure. Attached as Annexure 4 is a copy of the GM Briefing Session presentation dated 22 August 2018.

Asset Condition & Options

The overall condition of the building remains as being fair to poor, with aspects requiring immediate attention. Section 1.3 of the document that comprised the original Invitation for Tender noted, in part, that *Council requires any successful Tenderer to undertake, as a minimum, asset refurbishment works to the existing building improvements at no cost to Council, ensure BCA compliance as regards the permitted use under the Lease and maintain and repair the improvements during the term of the Lease.*

The (now) current position of St Marks, as outlined in the correspondence dated 10 August 2018, is viewed as not being of an adequate quantum to address current asset condition, amongst other works that may also be required.

Whilst the services contemplated at the site by St Marks are noted, a resolution needs to be secured which addresses the current condition of the building. It is therefore proposed that the current offer to lease be rejected and that discussions for a lease with St Marks over the subject site be discontinued and now deemed to be at an end.

To advance improvements within the reserve and to address asset condition, it is proposed that Council staff undertake further work to:

- Commission a current comprehensive detailed inspection of the asset and associated services;
- Develop a preliminary cost plan for minimum works identified from the comprehensive inspections and/or options for asset refurbishment;
- Identify and assess options for the site which consider both short and long term use;
- Inform the Sport and Recreation Committee on the progress of the above points (at appropriate intervals), with a further submitted to Council by no later than December 2018.

Financial Implications

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

Community Engagement

Not required in conjunction with the current report.

Attachments

- 1 Annexure 1 - Tender Response Coptic Orthodox Church St Mark (confidential)

- 2 Annexure 2 - Light House Presentation May 16 (confidential)
- 3 Annexure 3 - St Mark Submission 10 August 2018 (confidential)
- 4 Annexure 4 - GM Briefing Presentation (confidential)

Council Meeting

12/09/2018

Item No	8.4
Subject	Lease matter - Kyeemagh RSL & Community Club, St George & Randwick Hockey Club
Report by	Michael McCabe, Director City Futures
File	F08/379P06

Summary

The Kyeemagh RSL and Community Club licence an area within 110 General Holmes Drive, Kyeemagh (Kyeemagh Boat Ramp Reserve), via an agreement that expired in 2013, and has continued in hold over since. Within the licensed area is a synthetic hockey facility that is in turn sub-licensed to St George Randwick Hockey Club.

The hockey facility requires replacement of the playing surface and likely replacement of the shock pad underneath. As part of the negotiations of a renewed agreement it had been proposed that the Kyeemagh RSL and Community Club would facilitate the replacement.

Council has now been advised that the Kyeemagh RSL and Community Club has ceased to trade. Council are advised that the Kyeemagh RSL and Community Club is not formally wound up nor is it in receivership at this time. However we are advised that the Kyeemagh RSL and Community Club is to be wound up in the future.

The St George Randwick Hockey Club seek to continue with a lease over the site, however relinquish the clubhouse premises, apart from a small area at the southern end of the building, as shown hatched red on the site plan at Attachment 3. The Kyeemagh RSL and Community Club support the proposed lease to the Hockey Club.

This report proposes a grant of a lease to St George Randwick Hockey Club (subject to s47 of the Local Government Act 1993) and conducting an Expressions of Interest Campaign to allow community groups to submit proposals for use of the clubhouse building.

Officer Recommendation

- 1 That Attachments 1 and 2 to this report be withheld from the press and public as they are confidential for the following reason:

With reference to Section 10A(2)(d)(i) of the Local Government Act 1993, the attachment contains commercial information of a confidential nature that would, if disclosed, prejudice the commercial position of the person who supplied it. It is considered that if the matter were discussed in an open Council Meeting it would, on balance, be contrary to the public interest due to the issue it deals with.

- 2 That Council endorses a lease agreement to the St George Randwick Hockey Club over the Hockey Facility within the former licensed area of the Kyeemagh RSL and Community Club, subject to Section 47 of the Local Government Act 1993
 - 3 That Council endorses an Expressions of Interest campaign for the remainder of the area formerly licensed to the Kyeemagh RSL and Community Club, namely the club
-

house.

- 4 That a further report be submitted to Council post the Expressions of Interest campaign.

Background

The Kyeemagh RSL & Community Club occupies land situated at 110 General Holmes Drive, Kyeemagh (Kyeemagh Boat Ramp Reserve), by way of a 10 year licence that expired on 30 June 2013 and continued in hold over thereafter. Within the licensed area were two former bowling greens that were re-developed around 2004 into a synthetic hockey field. The hockey facility is in turn sub-licensed to St George Randwick Hockey Club (SGRHC).

The playing surface has reached the end of its life and requires replacement. Given the age, it is likely that the shock pad (underneath) the surface will also require replacement.

Council had reached a heads of agreement with the Kyeemagh RSL and Community Club to enter into a renewed lease, however the Club has now ceased to operate, with the Kyeemagh RSL and Community Club no longer wanting to lease the premise.

Discussions with the SGRHC (existing Sub-licensee) have continued, centring on a renewed agreement over the hockey facility. The SGRHC, apart from a small area at the southern end of the building, do not wish to pursue an agreement that covers the former clubhouse, due to cost and as they do not have a need for it to support the operation of the hockey facilities.

Kyeemagh RSL and Community Club (via the Vice President) has advised that they are agreeable with Council granting a lease to SGRHC. It must be noted that the RSL board is largely made up of representatives of the SGRHC. Further since closure, SGRHC had met the obligations of the Kyeemagh RSL and Community Club up to around April.

Directors

Table 1 below outlines the composition of the board, as advised to Council.

Table 1 – Director List

Kyeemagh RSL	St George Hockey Club
Steve Williams (President)	Ben Hardy (President)
Greg Howard (Vice President)	Tony Furner (Vice President)
Ian Soraes	Ian Strasse (Vice President)
Anthony Roberts	Steve Williams (Club Captain)
Colin Chapman	Sue Flemming (Administrator)
Andrew Jones	Andrew Jones (Treasurer)
David Wells	
Mick McDonald	
Tony Furner	

Proposed Lease Terms

Table 2 below outlines the key terms that are proposed to form the basis of a new agreement. Whilst a heads of agreement is yet to be formally signed, based on discussions and correspondence to date with SGRHC have been in line with the key terms outlined below.

Table 2 – Propose Licence Terms

Term	Condition
Length of Term	13.5 Years*
Option	Nil
Market Rent	Indicative \$53,106 subject to final survey & updated valuation*
Rental Subsidy	86%
Commencement Rent	Indicative \$7,435 subject to final survey & final assessment*
Annual Increase	3%
Outgoings	100% Licensee
Special Conditions	<p>Sub-letting, Assignment and Parting Possession</p> <p>The Licensee may not sublet, assign this license or part possession of the Premises or any part of them without the consent of the Licensor.</p> <p>Synthetic Playing Surface Replacement</p> <ul style="list-style-type: none"> The Licensee is required within twelve (12) months of the commencement date of the licence to replace the synthetic field surface to a standard as agreed by the licensor. Where the cost of works reduce, the parties are to negotiate a lesser licence term. <p>Sinking Fund</p> <p>Parties are to negotiate a sinking fund to recognise and account for the future replacement of the assets, including playing surface.</p>

* Indicative rent does not include small area within existing Club House, and rent subject to final survey.

The proposed length of term, this is addressed further in the following section titled "Finance & Works."

Council secured a valuation from Southern Alliance Valuation Services (dated 3 November 2016) which assessed a rent for the entire area under occupation and separated by use (playing surface, clubhouse etc.). Whilst SGRHC propose to relinquish the use of the clubhouse, they do seek to retain a small section at the southern end of the building for both a sports development area and as it integrates into their external canteen.

The final rent is subject to confirmation of re-adjusted areas, by way of survey. Upon securing the final survey, this will be supplied to Southern Alliance Valuation Services, to obtain an updated valuation.

Finance & Works

SGRHC has secured advice and a quotation for the replacement of the playing surface and shock pad (refer to Annexure 1).

Based on the level of expenditure required for the replacement, SGRHC will require finance to fund the replacement. To secure finance, the lease would form the security for the loan. To this end, SGRHC (would require a term length of 13.5 years, based on the cost of works, to meet the loan security requirements and to discharge the loan. A shorter term could be explored (circa 10 years) however this would require Council to be nominated as guarantor (as it had for the loan to fund the initial works). It is not proposed that Council would be guarantor for the loan.

In terms of loan serviceability SGRHC had previously secured in principle approval and this is tabled as Annexure 2.

Clubhouse

As foreshadowed earlier in the report, the SGRHC lease proposal does not include the substantive Club House facility. Whilst, community groups have made representations for the space, for equity and transparency it is proposed that the space is offered by way of an Expressions of Interest (EOI) process.

It would be proposed that the EOI would seek proposals from community groups to occupy the space. The proposals received would be tabled at a future Council meeting, including responses on any works proposed. It is however proposed that, Council will secure a full condition assessment of the building to assist with the EOI process and assessment.

Local Government Act 1993

The Site is classified as Community Land. The proposed lease to the SGRHC will first be advertised in accordance with s47 of the Local Government Act 1993.

S47 of the Local Government states in regards to Community Land that, *A lease or licence for a term exceeding 5 years may be granted only by tender in accordance with Division 1 of Part 3, unless it is granted to a non-profit organisation.*

Given that it is proposed that the EOI will be for (not for profit) community groups, Council would have the flexibility to consider proposals that exceed 5 years. However, the proposal that is accepted by Council (post the EOI) will also be required to be advertised in accordance with s47, noted above.

Financial Implications

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

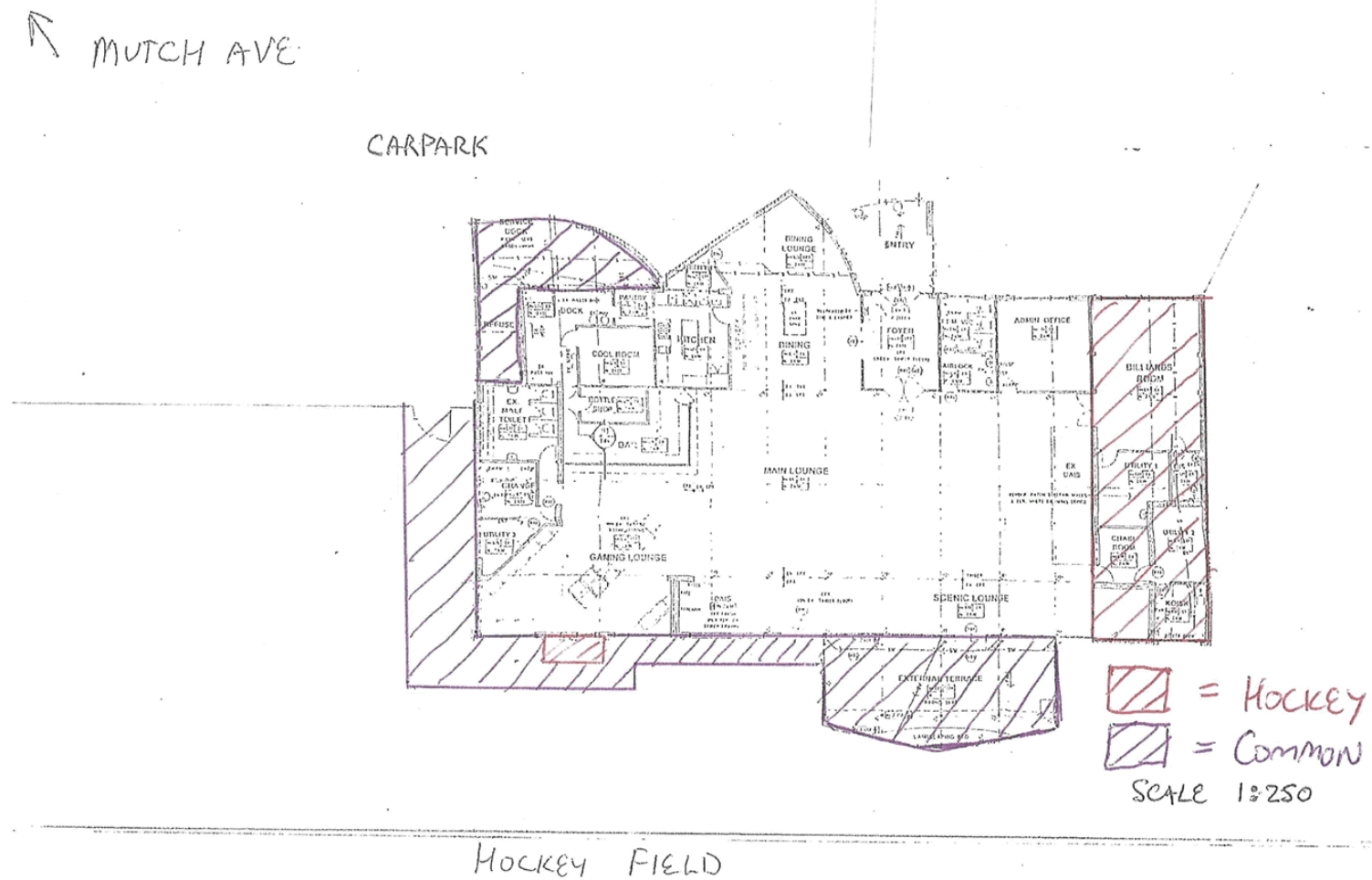
Community Engagement

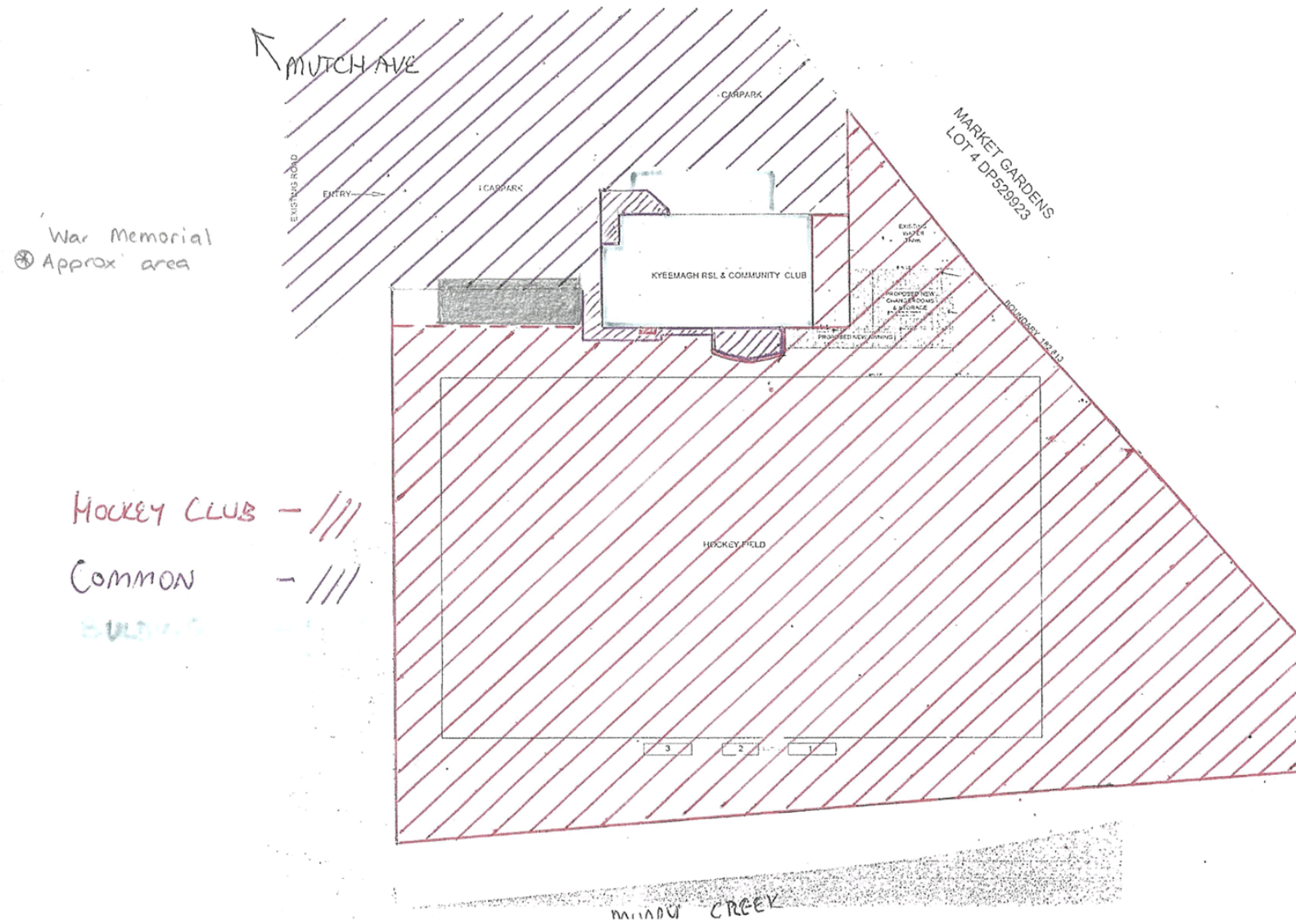
Community engagement arising from this report centres on:

- Advertising the lease proposal to the SGRHC; and
 - The proposed EOI for the Club house.
-

Attachments

- 1 Annexure 1 - Playing Surface Quote (confidential)
- 2 Annexure 2 - Pre Finance Approval (confidential)
- 3 Annexure 3 - Site Plan [↓](#)





Council Meeting

12/09/2018

Item No	8.5
Subject	Bayside Local Environmental Plan and Development Control Plan - Community Engagement Framework
Report by	Michael McCabe, Director City Futures
File	SC18/1021

Summary

In response to changes to the *Environmental Planning and Assessment Act 1979* (the Act) and the introduction of the Eastern City District Plan, Council is required to prepare a new Local Environmental Plan and Development Control Plan.

The changes to the *Environmental Planning and Assessment Act 1979* also require that Council prepare a Housing Strategy and Local Strategic Planning Statements (LSPS).

The NSW Department of Planning and Environment has stipulated the LSPS is to be a succinct and easy to understand document that will allow community members to contribute to and understand the future direction of land use in their area. To facilitate this Council has engaged University of Technology Sydney – Centre for Local Government to develop and assist in implementing a community engagement plan.

A draft community engagement plan has been developed and is attached to this report for Council approval.

Officer Recommendation

That Council endorses the draft Community Engagement plan for the development of Bayside's Local Strategic Planning Statement, Local Environment Plan and Development Control Plan.

Background

As reported at the 11 July 2018 Council Meeting (Item 8.1) in response to changes to the *Environmental Planning and Assessment Act 1979* (the Act) and the introduction of the Eastern City District Plan, Council is required to prepare a new Local Environmental Plan and Development Control Plan.

The changes to the *Environmental Planning and Assessment Act 1979* also require that Council prepare a Housing Strategy and Local Strategic Planning Statements (LSPS). The purpose of the Local Housing Strategy is to establish a strategic framework to guide and provide for Bayside's current and future housing needs including identifying locations for housing growth and dwelling types.

The LSPS will set out:

- The 20 year vision for land use in the local area

- The special characteristics which contribute to local identity
- Shared community values to be maintained and enhanced
- How growth and change will be managed into the future

In developing the LSPS Bayside Council will undertake a number of issue specific studies (e.g. flooding, heritage, land use limitations, transport) in addition to the local housing strategy to increase Council's understanding of the current environmental, economic and social context and the area's future needs and priorities. These studies will be critical in creating the evidence base for developing Bayside's Local Environmental Plan, Local Strategic Planning Statements and Development Control Plan

The NSW Department of Planning and Environment has also stipulated the LSPS is to be a succinct and easy to understand document that will allow community members to contribute to and understand the future direction of land use in their area. To facilitate this Council has engaged University of Technology Sydney – Centre for Local Government to develop and assist in implementing a community engagement plan. This will ensure the community viewpoint is a key consideration in the development of these strategic planning documents.

A draft community engagement plan has been developed and is attached to this report for Council's endorsement.

The Plan provides

- Overview of the purpose of the engagement
- Findings from recent community engagement activities, including the development of the Community Strategic Plan
- Demographic and Stakeholder Analysis, and
- Methodology and Timing of the Community Engagement

The engagement is divided into four distinct stages:

- Finalisation of the community engagement plan
- Preparation of the Local Strategic Planning Statement
- Public exhibition of the Local Strategic Planning Statement
- Public exhibition of Local Environmental Plan and Development Control Plan

The engagement includes a range of activities including:

- Stakeholder interviews,
- On line surveys,
- Information stations,
- Workshops and
- Deliberative panels.

There is a diverse range of groups between targeted for the engagement, in addition to the wider community including:

- NSW Ports
- Bayside Business Enterprise Centre,
- Chamber of Commerce,
- Councillors,
- Council staff,
- Sporting Groups and
- Sydney Multi-cultural Community Services.

This engagement is in addition to the engagement that will be undertaken through the development of the technical studies. The engagement for the technical studies will focus on government agencies (e.g. Transport for NSW) and community and industry groups (e.g. Botany Historical Society),

This plan ensures and provides a detailed roadmap for Council's engagement to ensure the resulting planning documents are developed collaboratively and reflect the wider community vision for Bayside.

Financial Implications

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

Community Engagement

Community engagement is a critical component in developing these strategic planning documents. In recognition of this Council has engaged University of Technology Sydney – Centre for Local Government to develop and assist in implementing a community engagement plan. The draft community engagement plan is attached to this report.

Attachments

Draft Community Engagement Plan [↓](#)

Bayside Council – Development and Implementation of Community Engagement Plan



UTS Centre for Local Government

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Executive Summary

Bayside Council is commencing a process to prepare a new Local Environmental Plan (LEP) and Development Control Plan (DCP), as well as a new Local Strategic Planning Statement (LSPS). These documents are to be informed by community engagement and Bayside Council has therefore commissioned University of Technology Sydney (UTS) to prepare a Community Engagement Plan (the Plan).

The purpose of this document is to outline the proposed community engagement strategy to inform and guide the preparation of the three policy documents.

This Plan will assist Council in engaging with the community and relevant stakeholders during the development of the LSPS, LEP, and DCP.

This Plan includes two stages:

- Stage 1 – Finalisation: Providing advice during the finalisation of the Community Engagement Plan, including internal and external engagement, and determining a vision for the engagement
- Stage 2 – Engagement: Preparation of the LSPS
- Stage 3 – Engagement: Exhibition of the LSPS
- Stage 4 – Engagement: Exhibition of the LEP/DCP and final report.

Specifically, this document contains the following elements.

Section 1

Provides an overview of the purpose of the engagement process, how the process aligns with new legislative requirements and Council's Community Engagement Principles, an assessment of potential risks and mitigation measures, and initial considerations on engaging during the review of policy documents.

Section 2

Analyses previous engagement activities undertaken by Council, as well as former Botany Bay and Rockdale councils.

Section 3

Contains findings of the demographic and stakeholder analysis prepared by UTS.

Section 4

Provides a detailed methodology by stages, including engagement techniques and reporting methods.

Section 5

Is a detailed action plan describing all activities for the duration of the Plan.

Appendix A

Contains the detailed demographic data which have informed this Plan.

Appendix B

Contains the detailed list of stakeholders which will be engaged with as part of this project.

1 Introduction

This Community Engagement Plan has been informed by the review of:

- The strategic and regulatory context, including:
 - Greater Sydney Region Plan
 - Eastern City District Plan
 - The Rockdale Local Environmental Plan 2011
 - The Botany Bay Local Environmental Plan 2013, with the Botany Local Environmental Plan (1995) still relevant and used for some landholdings
 - Botany Bay Development Control Plan (2013), which applies to most land in the Local Government Area (LGA)
 - Rockdale Development Control Plan (2011), which applies to all land covered by Rockdale LEP
- State Government community participation principles
- Bayside Council's engagement strategies and policies
- Outcomes of prior community engagement processes
- Demographic and Stakeholder Analysis prepared by UTS
- Interviews with key stakeholders.

1.1 Purpose of this process

Bayside Council was formed through amalgamation of the former Botany Bay and Rockdale Councils in 2016. The LGA still functions with two different sets of Local Environmental Plans (LEP) and Development Control Plans (DCP). Following amalgamation and the new *Environmental Planning and Assessment Act 1979* (the Act), Council is required to prepare a new harmonised LEP and DCP, as well as a new Local Strategic Planning Statement (LSPS).

The LSPS will guide the preparation of the new LEP and DCP and is required by recent amendments to the Act. It is a strategic document which will guide a 20 year vision for land use in the LGA and ensure specific values and characteristics can be preserved, and how change will be managed in the future. The LEP is a planning instrument with controls and zones that manage development in the LGA. The DCP supports the LEP with more detailed development controls focusing on built form and design.

All three documents are to be informed by community and stakeholder engagement.

Council is therefore required to undertake a community and stakeholder engagement process to provide an early opportunity for the community and stakeholders to articulate their vision on future land uses and policy.

This Plan describes how Council will engage the community and stakeholders during two key Stages:

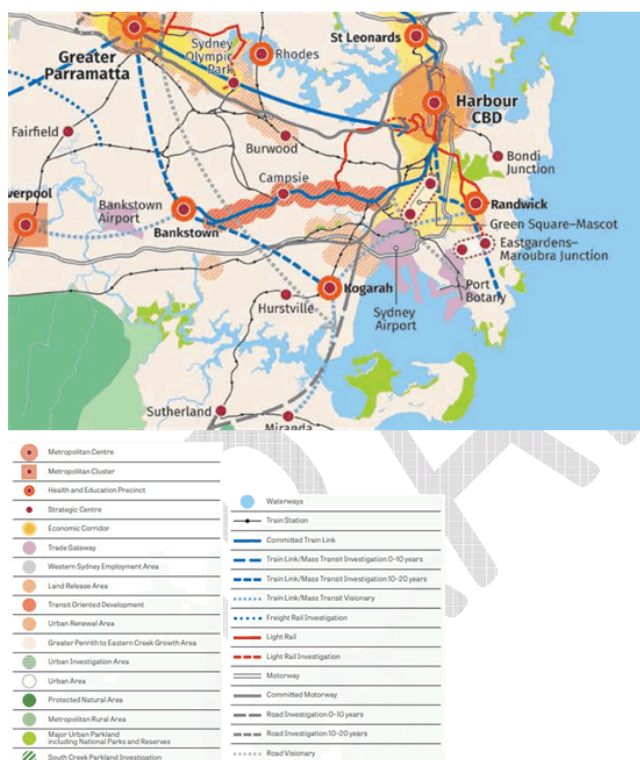
- Stage 1 – Finalisation and Scoping: Providing advice during the finalisation of the Community Engagement Plan, including internal and external engagement, and determining a vision for the engagement
- Stage 2 – Engagement: Preparation of the Local Strategic Planning Statement
- Stage 3 – Engagement: Exhibition of the Local Strategic Planning Statement
- Stage 4 – Engagement: Exhibition of the LEP/DCP.

1.2 Regional Context

1.2.1 Greater Sydney Regional Plan

The Greater Sydney Regional Plan "A Metropolis of Three Cities" details the 40 year vision for the city. Its four directions (infrastructure, liveability, productivity and sustainability) underpin the objectives and strategies of the plan as a whole. The regional plan has five district plans (Western, Northern, Central Eastern and Southern), which explore these directions in greater detail.

Figure 1 Greater Sydney Region Plan



Key directions of the Plan include:

- Increased 30-minute access to a metropolitan centre/cluster (i.e. CBD) with a focus on the percentage of dwellings located within 30 minutes by public transport
- Percentage of dwellings located within 30 minutes by public transport of a strategic centre
- Increased use of public resources such as open space and community facilities
- Increased walkable access to local centres
- Increased housing completions (by type) including affordable housing
- Increased jobs in metropolitan and strategic centres
- Increased access to open space
- Increased urban tree canopy

- Reduced transport related greenhouse gas emissions
- Number of councils with standardised State-wide natural hazard information

One of the purposes of the LSPS, LEP and DCP will be to achieve these directions.

1.2.1.1 Eastern Economic Corridor

As shown by Figure 1 below, State Government's Greater Sydney Region Plan incorporates Bayside in the Eastern Economic Corridor which goes from Macquarie Park to the Airport, and encompasses the strategic centres of Green Square, Mascot and Eastgardens.

This Corridor is defined as "the State's greatest economic asset – contributing two-thirds of NSW's economic growth in the 2015-16 financial year. It will build on its credentials and leverage its strong financial, professional, health, education and innovation sectors".

Bayside is also identified as a 'Trade Gateway', due to the airport and port facilities that are located within the LGA. This is to be "supported by industrial land on site in their surrounding environs, connecting Greater Sydney's economy to the world".

1.2.2 Eastern District

The Plan divides the Greater Sydney Region into districts, with Bayside incorporated within the Eastern City District.

The Eastern District Plan refines the regional directions, including:

- 0-5 year housing supply target: 10,150 dwellings in Bayside
- Green Grid Priorities, including Botany wetlands open space corridor
- Transport investigation to the South East via Eastgardens
- Specific provisions in relation to Port Botany, Sydney Airport, Eastgardens, Mascot, as per Table 1 below
- In relation to industrial land: *Retain and manage industrial and urban services land, in line with the Principles for managing industrial and urban services land in the Eastern City District by safeguarding all industrial zoned land from conversion to residential development, including conversion to mixed use zones. In updating local environmental plans, councils are to conduct a strategic review of industrial land.*

Table 1 Eastern District Plan site-specific directions

Port Botany	Sydney Airport	Eastgardens-Maroubra Junction	Green Square – Mascot
<p><i>a. retaining industrial zoned land in and near Port Botany precinct</i></p> <p><i>b. protecting Port Botany's function as an international gateway for freight and logistics and supporting port-related land uses and infrastructure in the area around the port</i></p> <p><i>c. supporting the land use needs of freight movement to increase the proportion of container freight transported by rail</i></p>	<p><i>i. identifying and retaining strategically important employment and urban services land in and near Sydney Airport precinct</i></p> <p><i>j. protecting Sydney Airport's function as an international gateway for passengers and freight, and support airport-related land uses and infrastructure in the area around the Airport</i></p>	<p><i>Protect capacity for job targets and a diverse mix of uses to strengthen and reinforce the economic role of the centre</i></p> <p><i>Extend and investigate additional economic activities</i></p> <p><i>Leverage future public transport connections</i></p> <p><i>Encourage affordable housing</i></p> <p><i>Promote public spaces, public</i></p>	<p><i>49. Strengthen Green-Square Mascot through approaches that:</i></p> <p><i>a. protect capacity for job targets and a diverse mix of uses to strengthen and reinforce the economic role of the centre</i></p> <p><i>b. retain and manage surrounding employment, industrial and urban services lands and their role in supporting the Harbour CBD, trade gateways and other strategic centres</i></p>

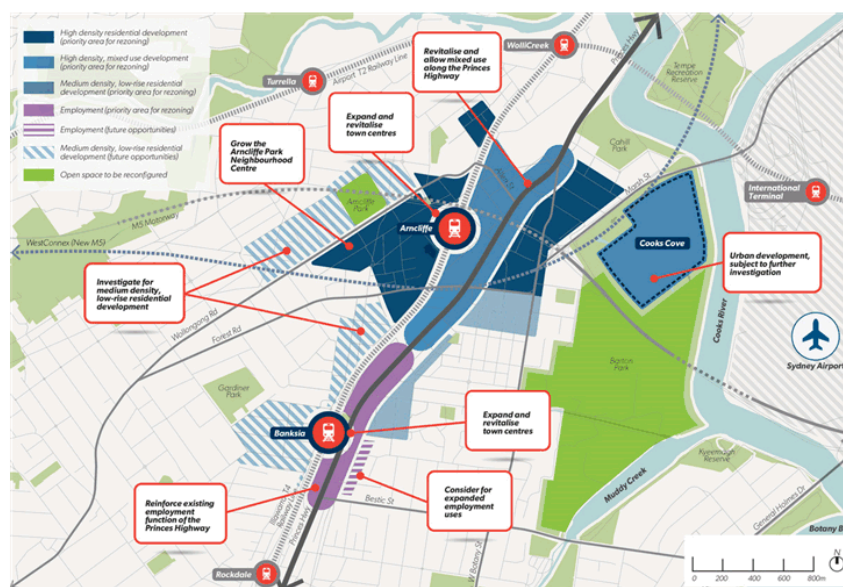
<p><i>d. investigating a corridor for an enhanced road link from Port Botany to WestConnex</i></p> <p><i>e. investigating duplication of Port Botany freight line</i></p> <p><i>f. improving management of land use conflicts</i></p> <p><i>g. managing the biosecurity risk for primary industries</i></p> <p><i>h. creating safe cycling and walking connections.</i></p>	<p><i>k. facilitating road planning to connect Sydney Airport to WestConnex</i></p> <p><i>l. managing the biosecurity risk for primary industries.</i></p> <p><i>m. providing safe cycling and walking connections, particularly to Mascot Station</i></p>	<p><i>transport, walking, cycling, integration with the Green Grid</i></p>	<p><i>c. continue to address road and public transport network congestion and avoid development that generates high road traffic volumes such as large-scale retail</i></p> <p><i>d. continue reviews to remove barriers to cultural and creative uses</i></p> <p><i>e. provide for safe walking and cycling throughout the centre and from Mascot Station to Sydney Airport</i></p> <p><i>f. plan for the provision of social infrastructure within Mascot</i></p> <p><i>g. Council of the City of Sydney and Bayside Council work together to strengthen and diversify the centre.</i></p>
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It will be important to ensure that the community understands that their feedback will not be used to change the above directions, but will inform and guide the delivery of these directions.

Portion of Bayside is also undergoing strategic planning by the Department of Planning and Environment (DPE), identified as Bayside West Precincts, which are located to the west of the airport and include the Arncliffe, Banksia and Cooks Cove precincts (refer Figure 2). The Eastern City District Plan identifies that new housing will be concentrated in the Bayside West Precincts.

A draft Land Use and Infrastructure Strategy (LUIS) has been prepared and was subject to public exhibition in 2017. This Strategy also considers the ongoing Communities Plus program in Arncliffe which seeks to redevelop 142 existing social housing units into a mix of approximately 600 social, affordable and private dwellings. Feedback from the community in relation to this LUIS is discussed in Section 2 of this Plan.

Figure 2 Bayside West Precincts



The DPE is also undertaking work in Bardwell Park and Turrella, with investigations concentrated around the train stations. The DPE is in the process of developing draft plans which will be placed on public exhibition in late 2018. It will be relevant to incorporate feedback received during exhibition in the technical studies and/or LSPS.

1.2.2.1 South District

Broadly, the South District plan, as relevant to Bayside seeks to expand infrastructure and collaboration opportunities. It has done this by identifying the Kogarah Health and Education Precinct as a 'Collaboration Area' to expand on its potential as a knowledge and health based hub. The anticipated outcomes of this area are detailed in Table 2 below.

Table 2 Kogarah Health and Education Precinct

Kogarah Health and Education Precinct Outcomes
<ul style="list-style-type: none"> • Collaborative planning to encourage complementary land uses and services • Providing a range of housing choices are available to support the success of the area, particularly for students • Increase knowledge and health based employment opportunities • Improve accessibility and public transport connections

1.3 Local Context

The Council Area is comprised of five wards, namely Bexley, Botany Bay, Mascot, Port Botany and Rockdale.

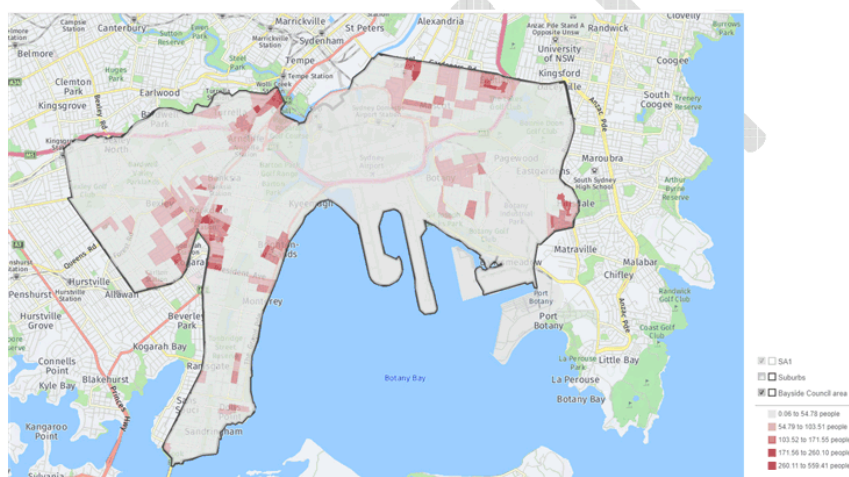
The LGA has a significant frontage to Botany Bay, and is traversed by the Cooks River, both elements forming an important part of the local character. It is also traversed by the T4 Eastern Suburbs & Illawarra (including Wolli Creek, Arncliffe, Banksia, Rockdale, Kogarah, Carlton stations) and the T8 Airport & South (including Mascot, Domestic Airport, International Airport, Wolli Creek, Turrella, Bardwell Park, Bexley North, Kingsgrove stations) train lines.

Those stations, with the exception of the airport stations, may represent adequate locations for future engagement during peak commute times. They are also the location of high population densities, in addition to Brighton-le-Sands, Eastlakes, Hillsdale, Ramsgate Beach, Dalls Point, and the Banksia St/Botany Road area, as shown by Figure 3 below.

The newly amalgamated Bayside Council encompasses a range of strategic sites such as the Sydney Domestic and International Airports, the Botany Industrial Park and portion of Port Botany. All these key land uses have potential implications on land use planning in Bayside, and represent key stakeholders that should be engaged with.

A large proportion of the LGA is also used as golf courses and parklands, which would likely be an important part of the character definition of the LGA.

Figure 3 Population densities



In terms of local strategic context, former Councils of Botany Bay and Rockdale prepared strategic plans which identified the key themes identified in Table 2.

Table 3 Former strategic context

	Botany Bay Community Strategic Plan 2013-2023	Botany Bay 2040 Directions Paper	Rockdale City Plan 2013-2025
Key themes	<p>A City Built on Trust and Community Engagement</p> <p>An inclusive Community</p> <p>A liveable City</p>	<p>Housing for a diverse community</p> <p>Connected not congested</p> <p>Staying active</p> <p>Great local streets</p>	<p>Outcome 1 – Rockdale is a welcoming and creative City with active, healthy and safe communities.</p> <p>Outcome 2 – Rockdale is a City with a high quality natural and built environment and valued</p>

		High value jobs Everyone belongs	heritage in liveable neighbourhoods. A City that is easy to get around and has good links and connections to other parts of Sydney and beyond. Outcome 3 – Rockdale is a City with a thriving economy that provides jobs for local people and opportunities for lifelong learning. Outcome 4 – Rockdale is a City with engaged communities, effective leadership and access to decision making.
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1.4 Preliminary issues and considerations

In considering the brief, a preliminary risk assessment has been undertaken.

Table 3 below outlines potential risks for the process, as well as mitigation strategies for how these risks will be addressed should they arise.

Table 4 Risk and mitigation assessment

Nature of Risk	Level of Risk	Mitigation Strategy
> Highly active sections of the community mobilising in support of, or against, particular outcomes, or feeling shut-out of the process	> Medium	> Proactively seek out and explicitly invite the views of these community members into the process > Establish a way to educate these community members of the sectional nature of their interests > Ensure all off and online communications encourage contributions and include links to the open access haveyoursaybayside website > Explain where, how and when the community can get involved
> Perceptions of pre-determined outcomes relating to areas highly valued by sections of the community	> Medium	> Ensure capacity to influence is clearly articulated throughout the process (i.e. participants are providing advice to Council), but also that Council is not bound to accept any of the advice
> Consultation fatigue, and lack of awareness of engagement process	> Medium	> Process supported by robust and highly visual online, offline media and outdoors communications strategy, and engagement techniques that seek out the views of community members as they go about their day-to-day activities (i.e. information stations)

> Unrepresentative and sectional interests capturing the process	> Medium	> Ensure a breadth and depth of engagement techniques that use demographic and random sampling techniques to seek out the views of more representative community members not traditionally engaged in strategic planning > Ensure engagement methods reach all ages, abilities and groups, in part through large-scale, statistically-representative phone surveys.
> Unable to engage with the hard to reach groups	> Medium	> Ensure the engagement techniques identify hard to reach groups early in the process in consultation with relevant stakeholders > Identify multiple on and offline methods to reach these groups
> Low engagement level of the community	> Medium	> Ensure a diverse range of techniques, and efficient, easy to understand instructions, short ways to engage for those community members with little time
> Anti-growth views regarding the future of the LGA	> Medium	> Explain the benefits and impacts of growth / no growth, and managed / unmanaged growth

1.4.1 Key legislative provisions

The 2017 amendments to the *Environmental Planning and Assessment Act 1979* (the Act) require Council to prepare a Community Participation Plan (CPP).

The CPP outlines when and how planning authorities such as Council will engage communities and stakeholders across all planning functions, including strategic planning and development assessment.

The outcomes of this engagement process will inform the CPP, which has not been prepared and which Council is preparing separately. A range of statutory principles guide the preparation of CPPs and should also be considered in this engagement process:

- (a) *The community has a right to be informed about planning matters that affect it.*
- (b) *Planning authorities should encourage effective and on-going partnerships with the community to provide meaningful opportunities for community participation in planning.*
- (c) *Planning information should be in plain language, easily accessible and in a form that facilitates community participation in planning.*
- (d) *The community should be given opportunities to participate in strategic planning as early as possible to enable community views to be genuinely considered.*
- (e) *Community participation should be inclusive and planning authorities should actively seek views that are representative of the community.*
- (f) *Members of the community who are affected by proposed major development should be consulted by the proponent before an application for planning approval is made.*
- (g) *Planning decisions should be made in an open and transparent way and the community should be provided with reasons for those decisions (including how community views have been taken into account).*
- (h) *Community participation methods (and the reasons given for planning decisions) should be appropriate having regard to the significance and likely impact of the proposed development.*

In addition, Schedule 1 of the Act requires a public exhibition period of a minimum of 28 days the following documents:

9

- Draft LSPSs
- LEP matters
- Draft DCPs.

1.4.1.1 Local Strategic Planning Statements

The 2017 Act amendments require local councils to prepare LSPSs. These are 20-year visions for land use in the area to ensure specific values and characteristics of an area can be preserved whilst at the same time managing future land use change.

LSPSs are intended to be simple documents that allow community members to contribute to and understand the future direction of land use in their area. LSPSs must align with the NSW Government's regional and district plans, and identify local planning priorities including how these are to be delivered, monitored and reported upon. Guidelines prepared by the NSW Government recommend that LSPSs adopt a thematic structure with key themes (e.g. land use, transport, social, environmental) and sub-themes (e.g. climate change, biodiversity).

Local councillors have a strategic role in the preparation of the LSPS to ensure it is representative of local community views. For councils divided into wards, each Councillor is to be given the opportunity to engage and participate in the shaping of the planning priorities and actions relevant to their ward. This requires both appropriate engagement with Councillors, and building Councillor capacity to engage with community members in their wards to represent their interests with respect to future land use change.

Specifically, LSPSs should:

- Demonstrate what the planning priorities and actions are, how they fit within a local context and where they are located
- Where future strategic planning work and potential change may occur.

It will therefore be important to understand from the community:

- How they consider their local areas and what they consider to be key characteristics, and which characteristics they would like to see retained
- Where they think future development can occur.

In addition to the findings of this engagement process, the LSPS will be informed by a range of technical studies on issues such as housing, environment, heritage, employment, open space, and transport in the local area.

In terms of consultation, NSW Government guidelines indicate that consultation should occur during the stages identified in Table 4. Table 4 links these stages to the stages of this Plan, noting that the scope of this Plan also incorporates engagement on the LEP and DCP.

Table 5 Consultation stages for LSPS

Stage	Purpose	Details
Scoping	Vision Setting	<p>This should draw on the knowledge and views of councillors, community leaders and stakeholders to directly inform the community vision and key priorities during the scoping stage. Councils should plan and if possible, commence the community consultation and engagement activities needed to develop the vision and LGA planning priorities.</p> <p>As part of this, councils should consult with the Local Aboriginal Land Council to understand and incorporate relevant future strategic land use planning outlined in the Community Land and Business Plan.</p>
Testing	Test and refine the preliminary findings	<p>Testing preliminary findings, assumptions and options with the community and a broad range of stakeholders. This may include seeking specific feedback on targeted priorities and actions, such as options to identify possible future growth areas or options for revitalisation in key localities.</p> <p>Incorporate feedback in draft LSPS</p>

Exhibition	Minimum exhibition time of 28 days. Councils may choose to increase the exhibition period depending on the complexity of the proposed changes and other associated studies / timeframes.
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1.4.2 Bayside Council's Community Engagement Principles

We understand the purpose of this project is for Council to:

- Prepare a Local Environmental Plan based on evidence collated from background strategies
- Appropriately reflect the values of the community members and stakeholders in the Plan
- Provide guidance and certainty to the community in relation to long term land use change.

Council has prepared an organisation-wide Communications & Community Engagement Strategy to foster 'A city built on trust – with engaged communities, effective leadership and access to decision making'. This Strategy articulates the following principles that all Council engagement processes must align with:

- *Community engagement will be only be undertaken where there is an opportunity for the community to influence Council's decision or action.*
- *Community engagement will contribute to and inform the development and enhancement of Council's plans and policies as well as the delivery of Council's services and infrastructure assets.*
- *An accessible and inclusive program of engagement that includes 'hard to reach' groups will be supported by an appropriate, and up to date range of engagement tools.*
- *Community engagement will be open and accountable.*
- *Council will close the loop on any engagement conducted - letting participants and the community know the outcomes of the engagement activity.*

The Strategy also identifies a range of stakeholders to be consulted which has been used during our stakeholder analysis (refer Section 3).

The Strategy is supported by:

- Draft Bayside Council Social Media Policy
- Draft Bayside Council Community Engagement Policy and Toolkit
- Draft Bayside Council Communication policy.

1.5 Bayside Council's Planning Framework

1.1 Local Environmental Plans

As previous mentioned, Bayside Council is a new Council formed by the amalgamation of former Botany Bay and Rockdale councils. It is therefore governed by the two former LEPs, being:

- Rockdale Local Environmental Plan 2011
- Botany Bay Local Environmental Plan 2013, with the Botany Local Environmental Plan (1995) still relevant and used for some landholdings.

The content of the two LEPs are significantly different given the different natures of the two amalgamated areas, including:

- Aims (refer Table 5): It will be crucial to engage with the community on those differences
- Zoning (refer Table 5): Communities will need to be informed of new zones being introduced that may not have existed in their previous Council area, such as a number of business, special purpose or environment protection zones. This will ensure that the community understands the purpose of each Zone
- Objectives and permitted uses in zones are also significantly different in the two LEPs
- Development standards, with different exceptions
- Miscellaneous and additional local provisions

- Various schedules, in particular Schedule 2 Exempt developments.

Table 6 Comparison of Existing LEPs

	Botany Bay LEP 2013	Rockdale LEP 2011
Aims	<p>(a) to recognise the importance of Botany Bay as a gateway to Sydney, given its proximity to Sydney (Kingsford Smith) Airport and Port Botany,</p> <p>(b) to encourage sustainable economic growth and development,</p> <p>(c) to provide direction concerning growth and change in Botany Bay,</p> <p>(d) to identify and conserve those items and localities that contribute to the local built form and the environmental and cultural heritage of Botany Bay,</p> <p>(e) to protect and enhance the natural and cultural landscapes in Botany Bay,</p> <p>(f) to create a highly liveable urban place through the promotion of design excellence in all elements of the built environment and public domain,</p> <p>(g) to protect residential amenity</p>	<p>(a) to provide a vibrant area in which Rockdale residents can live, work and play,</p> <p>(b) to conserve the environmental heritage of Rockdale,</p> <p>(c) to maintain and improve residential amenity and encourage a diversity of housing to meet the needs of Rockdale residents,</p> <p>(d) to promote economic activity within Rockdale through the facilitation of commercial, employment-generating and tourism opportunities,</p> <p>(e) to provide high quality open space and a range of recreational facilities to meet the demands of Rockdale and its visitors,</p> <p>(f) to promote and enhance Rockdale's foreshores,</p> <p>(g) to encourage residential and employment densities around transport nodes in order to provide sustainable transport options,</p> <p>(h) to minimise impacts on land subject to environmental hazards, particularly flooding.</p>
Zones	<p>R2, R3, R4 residential zones</p> <p>B1, B2, B4, B6, B5, B7 business zones</p> <p>IN1 and IN2 industrial zones</p> <p>SP1 Special Activities and SP2 Infrastructure</p> <p>RE1 Public Recreation and RE2 Private Recreation</p> <p>W3 Working Waterways</p>	<p>RU4 Primary Production Small Lots</p> <p>R2, R3, R4 residential zones</p> <p>B1, B2, B4, B6 business zones</p> <p>IN2 Light Industrial</p> <p>SP2 Infrastructure and SP3 Tourist</p> <p>RE1 Public Recreation and RE2 Private Recreation</p> <p>E1 National Parks/Nature Reserves</p>

It is also noted that Sydney Airport is subject to both the Botany Bay and Rockdale LEPs, noting however that Council is not the planning authority for this area (development is subject to the provision of the Airports Act 1996, airport regulations and Sydney Airport's Master Plan 2033). It will therefore be important to remind the community that their feedback cannot guide the future development of port and airport facilities.

Other landholdings are also subject to different planning instruments:

- State Environmental Planning Policy (Three Ports) 2013
- Sydney Regional Environmental Plan No. 33 - Cooks Cove.

Harmonisation of the LEPs will therefore also require engagement with the DPE, as a key stakeholder for the areas governed by State policy.

1.2 Development Control Plans

Similarly, two main DCPs set controls in Bayside Council:

- Botany Bay Development Control Plan (2013), which applies to all land in the LGA, with the exception of:
 - Land identified within the State Environmental Planning Policy (Three Ports) 2013
 - 26 Tupia Street, Botany
 - 2, 4, 10, 12, 16 and 18 Macintosh Street and 862, 864, 866 and 868 Botany Road, Mascot.
- Rockdale Development Control Plan (2011), which applies to all land covered by Rockdale LEP.

There are also a number of other DCPs still active to support the land areas not covered by the two key LEPs, which apply to land zoned under the Botany LEP 1995.

1.3 Reviewing the controls

The purpose of this Plan is to support a two-fold process: engaging the community and stakeholders in developing the LSPS, and harmonising the LEPs and DCPs.

It is essential to ensure that the community understands the different purposes of these documents, and the objectives and controls they contain, as they form the basis (to different extents) for assessing future development proposals. This will have a number of implications for this engagement process, including the type of community information required, and the nature of discussions with the community and stakeholders.

- **Developing the LSPS**, focusing on a vision for the area, key characteristics of places, what people 'like' and 'dislike' about certain areas, housing targets, employment and economic growth, general transport issues, social and community services and cohesion, environmental concerns. This will need to be consistent with the directions of the Greater Sydney Region Plan and Eastern District Plan, as identified in Section 1.2.

Types of questions will include:

- Focus on character, big ideas
- What do people value about the place where they live
- What are the unique characteristics
- Where do you see growth occurring, and in what form

- **Harmonising the existing two sets of LEPs and DCPs**, which will form the basis for future development assessment and decisions.

The LEP and DCP will be considered by planning authorities when assessing applications. Planning authorities include Council staff, the Local Planning Panel or the relevant Joint Regional Planning Panel depending on the nature of the application.

It will be important to remind the community that a DCP is not a planning instrument, does not have the binding role that the LEP has, and that LEP controls prevail in the case of inconsistencies.

Questions to inform the LEP will have a focus on zones, objectives and controls for each zone.

Questions to inform the DCP will be focused on more detailed built form, design and scale expectations, including height, FSR, interface, open space, car parking.

2 Previous Engagement Activities and Outcomes

A review of previous engagement findings has been undertaken to inform the preparation of this Plan.

2.1 Objectives

Engagement was previously undertaken during the preparation of strategic documents, and it is important to review community and stakeholder feedback received. This feedback needs to be verified and tested as part of the engagement process for the LSPS, LEP and DCP.

This Plan will identify engagement techniques which will deliver the following outcomes:

- Consistency with how the community was previously engaged with
- Acknowledge and verify what the community said during the preparation of previous documents.

Bayside Council have provided UTS with a series of engagement reports run on the Have Your Say website, focused on strategic planning projects.

The LSPS, LEP and DCP projects would benefit from increased engagement from the local community

The following objectives have therefore been identified:

- Develop and improve Council resources to better inform participants
- Transform informed participants into engaged participants (i.e. who take part in proposed engagement actions, such as participating in a survey or contributing on a forum or a post)
- Undertake outdoor activities, to reach the community directly with face to face activities
- Identify groups that are hard to reach, and techniques to reach them.

2.2 Previous engagement activities: 2018- 2030 Community Strategic Plan

The development of a Bayside LEP needs to be consistent with key themes in the Bayside Community Strategic Plan (CSP), which was developed through a series of community engagement strategies over a number of months.

The purpose of this engagement was to inform the CSP by asking four key questions:

- What is Bayside like now?
- What do you want Bayside to be like in 2030?
- How are we going to get there?
- How will we know we've arrived?

The engagement activities focussed on four themes: place, people, environment and economy and sought to capture the input of a wide range of community members. These included local residents, older community members, businesses, ATSI groups, youth, and environment groups. It also include input from Councillors and Council employees. A variety of engagement strategies were employed to gather community input, including:

- Sending 'postcards from the future
- Online survey
- Workshops with targeted community groups

- One on one interviews
- Information and surveys at key community events such as the Spring Fair, local markets and Australia Day celebrations

	What is Bayside Like Now	What do you want Bayside to be like in 2030	How will we get there?	How will we know we've arrived?
Place	<p>Lacks public art that reflects the community</p> <p>Poor quality developments</p> <p>Rapidly changing</p> <p>Culturally safe place</p>	<p>Desirable and trendy</p> <p>Vibrant street life</p> <p>Open, green spaces</p> <p>Quality design</p>	<p>Transparency of processes</p> <p>Collaboration</p> <p>Emphasis on sustainability</p>	<p>Safe, connected and accessible public spaces.</p> <p>High and active use of public space</p> <p>High liveability index</p> <p>Infrastructure and facilities match needs</p> <p>Accessible and connected active transport options.</p>
People	<p>Diverse culture is valued and celebrated, however different communities are disconnected</p>	<p>Connected and united community</p> <p>Cultural diversity continue to be celebrated</p> <p>Support available for those who need it</p> <p>Strong youth leadership presence</p>	<p>Work collaboratively.</p> <p>Community events</p> <p>Build trust and strong governance</p> <p>Increase opportunities to build leadership capacity</p>	<p>Connected and engaged community</p> <p>Trusted and transparent processes</p>
Environment	<p>Home to some important habitats that need to be protected</p> <p>Littered</p> <p>Contaminated</p> <p>Fragmented natural areas</p>	<p>Protected environmental areas that can be used by residents</p> <p>Natural environment integrated into built environment.</p> <p>Renewable</p>	<p>Leverage urban redevelopment opportunities to upgrade and improve environmental outcomes (e.g. stormwater)</p> <p>Monitor and respond to changes</p> <p>Educate</p>	<p>Strong political and financial commitment to addressing environmental issues.</p> <p>Clean and green spaces throughout the whole Council</p> <p>Sustainable energy use</p> <p>Wetlands are a valued asset that draws in eco-tourism opportunities</p>
Economy	<p>Natural environment is</p>	<p>Open for business</p>	<p>Responsive to changes in trends</p>	<p>Local businesses are supported</p>

important to bayside economy Airport drives a lot of business.	Wide range of job opportunities Leverage niche cultural tourism opportunities with proximity to airport	Promote job opportunities and safeguards	Successful cultural tourism market is established
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2.3 Other previous engagement activities

Preparation of a consolidated LEP needs to test community findings that emerged from the former Rockdale and Botany Councils' Community Strategic Plans. These are described in Table 6.

It is also relevant to note the feedback received during the exhibition of the Draft LUIS prepared by the DPE in relation to the Bayside West Precincts (which also included a draft Rezoning Proposal for Arncliffe and Banksia precincts and a DCP).

Table 7 Previous Engagement Activities

	Botany Bay Community Strategic Plan 2013- 2023	Botany Bay 2040 Directions Paper	Rockdale City Plan 2013-2025	Draft LUIS – Bayside West Precincts
Engagement tools	<p>A community survey in 2012</p> <p>Consultation in respect of the new LEP</p> <p>Councillor street meetings and community days</p> <p>Consultative and Advisory Committees</p> <p>Representations received by the Mayor and Councillors</p> <p>Various "Have your say" promotions in respect of a wide range of community issues</p> <p>Consultation in respect of the 2013 "Our City – Our Plan", Delivery Program, Operation Plan and Resourcing Strategy</p>	<p>Community Survey</p> <p>Online survey</p> <p>Call for residents' ideas</p> <p>Publication of community survey results (online Newsletter) and report</p> <p>Community workshops (week days and weekends)</p>	<p>Have Your Say</p> <p>Online and hard copy survey (Council's libraries, Customer Service Centre, special meeting groups, Information Booths and Community Forums)</p> <p>Competitions to engage with school-aged children</p> <p>Community forums</p> <p>Consultation with senior citizens groups</p> <p>Information booths in each of five wards with Councillors' attendance + Council staff and community organisations</p> <p>Attendance at community events to promote the Plan</p> <p>Partnership with State Government and relevant government and community organisations</p>	<p>Exhibition period</p> <p>Online survey</p> <p>Pop up information events</p> <p>3 community workshops</p> <p>Media releases and advertisements</p> <p>Mail-out</p> <p>Community postcards, brochures</p> <p>Social media</p>

Example of questions asked		"what they love about living in Botany Bay" "what you think needs to improve" "what are the priorities for Council facilities "	'What are the top 3 things you like about the City of Rockdale?' What are the top 3 improvements you would like to see happen across the City of Rockdale?' Specific feedback was asked in relation to safety matters.	How do you feel about changes to Banksia Precinct. Reaction to cafes, shops, restaurants below residential apartments Height of residential buildings Adding more trees How would you like land to be used in the future
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Findings both from these consultation processes, and the 2018-2030 community strategic plan consultation is summarised in Table 7, and are categorised depending on their relevance to the LSPS, LEP and DCP.

Table 8 Summary of previous community engagement findings of relevance to LSPS, LEP and DCP

LSPS	LEP	DCP
<ul style="list-style-type: none"> Environmental/ contamination issues Changing environment/ demographic profile/ urban renewal from former industrial character Strategic location – airport, port water CBD. Place to live and work Transport networks. Address traffic in the suburbs. Improved public transport, with trains servicing Arncliffe/Banksia full at peak. Parking. Transport hubs, connections between suburbs, to city, airport and beaches Celebrate cultural diversity. Protect and celebrate all our heritage Install public art. Plan for elderly and provide aged housing Address pollution particularly around waterways and from trucks. Reduce waste and increase use of renewable energy. Plant more trees. 	<ul style="list-style-type: none"> Quality cafes and restaurants. More shops and greater variety of shops. Markets across the City Upgrade local parks and playgrounds. Services and activities for young people e.g. basketball court. Business parks to attract more diverse employment market Outdoor gyms in western parks. There is insufficient open space to support an increase in population Public spaces for people to get together. Fix up facilities in community centres. Well designed parks and sports fields. Community gardens. Beach activities – sports The height and density of new development proposed by the rezoning at Bayside West is too high and should be reduced. 	<ul style="list-style-type: none"> Feedback in relation to safety may inform DCP controls in relation to lighting, passive surveillance, walking connections, shared paths Better lighting at bus stops Parking to support development. More parking at train stations Better connected cycleways. There needs to be improved pedestrian and cyclist facilities including links to Barton Park, to schools, across the Princes Highway and to railway stations Improvement and maintenance of footpaths.

<ul style="list-style-type: none">• Like clean streets and attractive streetscapes.• Bushcare regeneration programs.• Diverse experience for tourists.• Create a 'modern' City with modern places to attract more talent (e.g. free WIFI).• Housing options for different types of people• Higher value jobs – transition from heavy industry. Leverage proximity to airport• Building standards agreed to with the community• Schools in the Bayside West area would be unable to cope with the additional enrolments from the increased population• Quality of life for existing and new residents (high quality residential development matched with green space and infrastructure). Ensuring high quality developments.	New buildings would impact views and local character of area	
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3 Demographic and Stakeholder Analysis

Quality engagement begins with understanding the aim and purpose of the project, as well as with which key stakeholders need to be engaged. We have prepared a demographic and stakeholder analysis to inform the design and implementation of the engagement process.

Given that the LSPS, LEP and DCP cover the entire Council, the spatial focus of this analysis has been at the LGA level.

The analysis will also inform the recruiting framework for a phone survey and focus groups, identify hard to reach groups that need to be sought out to engage in the process, assess representativeness of engagement outcomes, and assist the engagement team educate participants.

3.1 Demographic Analysis

The demographic profile is based on data from NSW Planning and Environment's population projections Profile.id and the Australian Bureau of Statistics 2016 Census data. Demographic information for Bayside has been collected from profile ID, and census data has been used for comparison statistical areas. NSW Government data has been used for population projections.

It compares demographic characteristics of the LGA to the Inner South West SA4, City and Inner South SA4 (as Bayside LGA is split between the two SA4s), and Greater Sydney (Greater Capital City Statistical Area).

Full data tables and figures informing these implications can be found at Appendix A.

3.1.1 Overall population

Bayside LGA had a population of 156,058 people in 2016 based on data compiled by Profile.id, with an average household size of 2.65 people. The Estimated Resident Population as at 30th June 2017 was 170,279.

3.1.2 Age profile

- Bayside LGA has a smaller proportion of children and youth aged 0-19 years (21.4%) than Inner South West (24.7%) and Greater Sydney (24.6%), however it is significantly larger than that of City and Inner South (13.60%).
- The proportion of 20-44 years old is larger in Bayside LGA (42%) than Inner South West (37.5%) and Greater Sydney (37.6%), however is smaller than that of City and Inner South (57.5%);
- The proportion of people aged 75 and over is smaller in Bayside LGA (7.10%) than Inner South West (7.1%) and Greater Sydney (6.2%), however is larger than that of City and Inner South (4%);
- The median age across the areas is 35 years, with the exception of City and Inner South which is slightly younger (33 years).

3.1.3 Cultural and Linguistic Diversity

- Approximately 1% of the Bayside population is comprised of Aboriginal and Torres Strait Islands people (1,559 persons).
- Approximately 46% of the Bayside population was born overseas, which is higher than Greater Sydney (36.7%) but smaller compared to Inner South West (51.1%), the City and the Inner South (55.4%) regions of Sydney

- The proportion of persons with English or Australian ancestry is smaller in Bayside LGA (29.8%) than Greater Sydney (46.8%) and City and Inner South (31.2%), but is larger than Inner South West (22.9%).
- Between 2011 and 2016, Bayside has seen a change in their CALD community. For residents born overseas, China and Nepal represented the biggest growth with an increase of approximately 3,600 and 1,700 people respectively. Simultaneously, there was decrease in people born in Greece (-150), Lebanon (-250) and the Former Yugoslav Republic of Macedonia (-250) by approximately
- The proportion of residents of Chinese and Greek ancestries is larger in Bayside LGA (13.8% and 9% respectively) than Greater Sydney (10.1% and 2.4% respectively), Inner South West (13.2% and 6.3% respectively) and City and Inner South (11.2% and 2.4% respectively).
- In English proficiency, Bayside LGA has a lower proportion of people who spoke English only (41.1%) than Greater Sydney (58.4%) and City and Inner South (53.5%) but higher than Inner South West (36.5%).
- Overall, the proportion of people who speak only English at home, or speak English well or very well is 85.5% in Bayside LGA as compared to 82.3% in Inner South West, 82.8% in City and Inner South (and 87.7% in Greater Sydney).
- The most common languages spoken other than English at home were:
 - Greek (7.1% as compared to 1.6% in Greater Sydney)
 - Mandarin (6.7% as compared to 4.7% in Greater Sydney)
 - Arabic (5.8% as compared to 4% in Greater Sydney)
 - Cantonese (3.8% as compared to 2.9% in Greater Sydney)
 - Macedonian (3.0% as compared to 0.4% in Greater Sydney).

3.1.4 Household Composition

- The average household size is smaller in Bayside LGA (2.65) than Greater Sydney (2.72) and Inner South West (2.9) but higher than City and Inner South (2.2).
- The proportion of couples with children is smaller in Bayside LGA (31.7%) than Greater Sydney (35.3%) and Inner South West (39%), and nearly twice higher than that of City and Inner South (16.3%).
- 41.8% of the Bayside LGA population consists of families with children compared to 45.7% in Greater Sydney, 51.1% in Inner South West, and 22.5% in City and Inner South.
- The proportion of one parent families is higher in Bayside LGA (10.1%) than Inner South West (12.5%), higher than City and Inner West (6.2%) and relatively similar to Greater Sydney (10.4%).
- The proportion of group and lone households is higher in Bayside LGA (5.9% and 21.7%) than Inner South West (respectively 4.1% and 20%) and Greater Sydney (respectively 4.5% and 20.4%), but significantly lower than City and Inner South (respectively 13.9% and 33%).

3.1.5 Housing

- Just over half (54.6%) of the population in Bayside LGA own their dwellings (outright or with a mortgage), which is less than Greater Sydney (59.2%) and Inner South West (61%) but significantly more than City and Inner South (39.4%).
- The proportion of social housing is smaller in Bayside LGA (4.2%) than Inner South West (5.2%) and City Inner West (6.8%) and relatively similar to Greater Sydney (4.6%).
- Internet is not accessed from 14% of occupied private dwellings in Bayside LGA, which is higher than Greater Sydney (11.2%) and City and Inner South (10.6%), but less than Inner South West (15.2%).

3.1.6 Population and Housing Projections

The population of Bayside LGA is forecast to grow significantly, with an increase of 65,250 residents (40%) between 2016 and 2036¹.

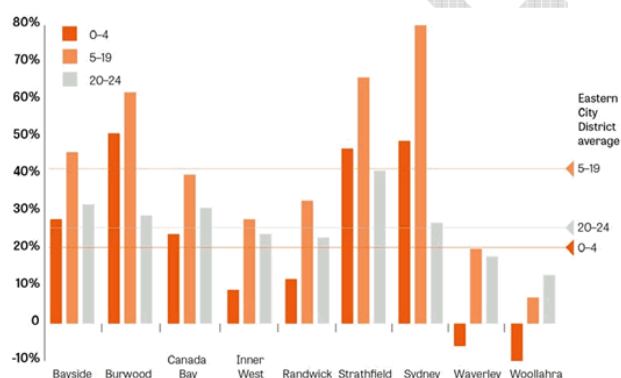
¹ These figures combine Botany Bay and Rockdale LGA projection figures.

- The age groups that are forecast to grow the most in proportion are the 50-54 age group (+55.77%), and all age groups over 70, as well as the 10-14 and 15-19 age groups (respectively +52.8% and +48.1%).
- The largest contributors to the overall population growth are forecast to be the 50-54 group (8.3% of the growth) and 45-49 (8% of the growth), 55-59 (6.4%), as well as the 10-14 and 15-19 age groups (respectively 6.6% and 6%).
- The smallest contributors are forecast to be the 25-29 group (3.1%) and 30-34 group (2%). These age groups are still forecast to grow in number, with a combined growth of 3,300 persons to 2036.
- In terms of household types, the largest contributors to the forecast growth are lone person households (30.7%) and couples with children (29.7%).
- The groups that are forecast to grow the most in proportion are non-family households (+51.5%).

The Eastern City District Plan further identifies (refer Figures 4 and 5):

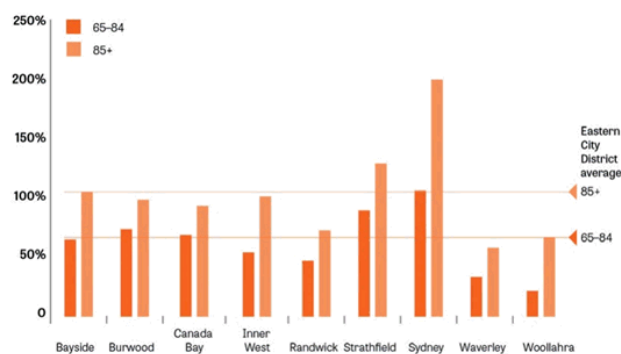
- Projections to 2036 show a 20% increase in the number of children four years and younger in the District, with 25% of this growth anticipated in Bayside.
- The Bayside LGA will take up 22 per cent of the District's increase in school-aged children (approximately 9,500 children).
- Bayside is projected to see some of the largest growth in people aged 20–24 years across the District (32%) between 2016 and 2036.

Figure 4 Eastern City District projected population change 2016-36 by LGA: 0-4, 5-19 and 20-24 years



Source: NSW Department of Planning and Environment, 2016 New South Wales State and Local Government Area Household Projections and Implied Dwelling Requirements 2016 to 2036, NSW Government, Sydney

Figure 5 Eastern City District projected population change 2016-36 by LGA: 65-84 and 85 years and over



Source: NSW Department of Planning and Environment, 2016 New South Wales State and Local Government Area Household Projections and Implied Dwelling Requirements 2016 to 2036, NSW Government, Sydney

3.1.7 Education and Qualifications

- The proportion of people with a bachelor degree or higher is relatively similar in Bayside LGA (27.5%) and Greater Sydney (28.3%) and to some extent Inner South West (23.9%), but it is significantly higher in City and Inner South (40%).
- The proportion of people with no qualification is relatively similar in Bayside LGA (39.1%) and Greater Sydney (37.7%), however it is higher than City and Inner South (28%).
- The proportion of children who attend pre-school is similar (1.5-1.7%) in Bayside LGA, Greater Sydney and Inner South West, however is small in City and Inner South (0.9%).
- The proportion of children who attend primary school and secondary school is smaller in Bayside LGA (respectively 6.7% and 5.1%) than Greater Sydney (respectively 8.1% and 6.3%) and Inner South West (respectively 7.8% and 6.3%), but higher than that of City and Inner South (respectively 3.5% and 2.6%).
- The proportion of youth attending a tertiary or further education establishment is higher in Bayside LGA (9.4%) than Greater Sydney (8%) and Inner South West (8.4%), but smaller than City and Inner South (14.5%).

3.1.8 Employment

- The unemployment rate in Bayside LGA is similar to Greater Sydney (6%), which is lower than Inner South West (7.4%) and City and Inner South (5.7%).
- In all areas, the majority of people employed is as professionals (over 20% in all areas). However, the second largest category in Bayside LGA is Clerical and Administrative Workers, as opposed to Managers in Greater Sydney and City and Inner South. Managers are the third largest category in Bayside LGA, along with Technicians and Trades Workers.
- Overall, the proportion of 'white collars' is relatively similar in Bayside LGA (69.9%) and Inner South West (67.7%), slightly smaller than Greater Sydney (73.2%) and smaller than City and Inner South (81.4%).
- The three most popular industry sectors in Bayside LGA were Health Care and Social Assistance (10.9%), Retail Trade (9.9%) and Accommodation and Food Services (9.1%).

- The majority of people in Bayside LGA use the train as their main method of travel to work (25.3%), which is higher than in other areas.

3.1.9 Income

- The median weekly household income is lower in Bayside LGA (\$1,596) and Inner South West (\$1,431) than Greater Sydney (\$1,745) and City and Inner South (\$1,894).
- Median weekly mortgage repayments are similar in Bayside LGA and Greater Sydney (respectively \$502 and \$495), and smaller than Inner South West (\$500) and City and Inner South (\$550).
- Median weekly rent, however, is higher in Bayside LGA (\$475) than Greater Sydney (\$447) and Inner South West (\$415), but smaller than City and Inner South (\$550).

3.1.10 Assistance

- There is a larger proportion of people in need for assistance in Bayside LGA (5.3%) than Greater Sydney (4.9%) and City and Inner South (3.3%).
- The proportion of people between 65 and 84 years in need for assistance is significantly higher in Bayside LGA than all other areas. 24.1% of the 65-74 age group in Bayside LGA is in need of assistance, as compared to 20.3% in Greater Sydney, 13.3% in Inner South West and 10.1% in City and Inner South. 57% of the 75-84 age group is in need of assistance in Bayside LGA, as compared to 48.6% in Greater Sydney, 29.2% in Inner South West and 25.9% in City and Inner South.

3.2 Implications of the Demographic Profile

Throughout the analysis, it appears evident that Bayside LGA acts as a middle point between the 'Inner South West' and 'City and Inner South' areas, with results typically situated in between these two areas.

Inner South West results tend to be more consistent with Greater Sydney data.

The analysis also identifies a strong cultural diversity within the LGA.

Engagement planning needs to understand and respond to the needs of all communities, as well as those who are harder to reach. Many of Bayside's community characteristics will inform the development and implementation of the Plan, namely:

- A considerably higher proportion of the 'young workforce' demographic, which can be best reached by outdoor, efficient, discrete and direct activities, such as information stations installed in well frequented areas. It is relevant to note that in excess of 25% of the Bayside population uses train transportation to travel to work. This may create opportunities for the location of engagement activities, for example within or outside busy stations, during weekday peak times.
- A somewhat higher proportion of seniors and fewer primary and secondary school-aged children, with a significant forecast population and housing growth, a forecast growth in older age groups (50-54 and ages groups over 70) as well as young age groups (children under 4, school aged children, and people aged 20-24). There will therefore be a need to engage with both youth and older aged groups.
 - Engaging with youth may be achieved by partnering with service providers and educational establishments (as Rockdale Council did when preparing their latest City Plan), and by engaging in key social/public facilities or spaces.
 - Engaging with older age groups requires engagement with those who wish to retire in the area together with seeking the views of aged care and other service providers who may need to expand their services to cater to the needs of the ageing population.
- A significant culturally and linguistically diverse population, with a high proportion of people from a non-English speaking background, and a slightly higher proportion (8.5%) than Greater Sydney of those who speak English 'not well or not at all'. It may be important to consider translating and publishing communication materials in some of the key languages, and/or conduct dedicated participation activities with representatives of these communities (for example, in-depth interviews with service providers that specialise in particular cultural segments of the community). Similarly, it will be important that the process considers the different ways in which these cultures experience the area. Consideration should be given to the changing diversity of the Bayside CALD community, with a recent increase in the Chinese and Nepalese community, amongst others.

- Those who do not have internet connection at home (14% in Bayside). Outdoor engagement activities and hard copies are crucial to reach this segment.
- Those who need assistance for everyday tasks (5.3% in Bayside). Online activities can target this group, as well as engagement through professional service providers or non-professional service providers such as family members.

3.3 Stakeholder Analysis

The stakeholder analysis is based on the review of prior consultation outcomes and desktop research into the range of groups with known interests in land use planning across the area.

The following key groups have been identified for this engagement process. A full list of stakeholders is included at Appendix B.

3.3.1 Government Agencies

Given the number of strategic and economic sites in the LGA, the preparation of the LSPS and technical studies requires engaging with a range of NSW Government Departments. It is recommended to undertake in-depth interviews with the DPE early in the process of this project, particularly to identify relevant documentation and stakeholders for the implementation stage, and discuss State policies that are active in the LGA, as well as ongoing strategic planning work.

Transport for NSW is also a key stakeholder given the extent of transport infrastructure, number of stations and future investigation work as identified by the Greater Sydney Plan. The agency may also help to identify the best transport stations to establish information stations.

Engagement should also include the Local Aboriginal Land Councils, which is a requirement specifically listed in the DPE Guidelines for the preparation of the LSPS, as well as NSW Health, Sydney Water, the Department of Infrastructure, Regional Development and Cities, the Office of Sport, the Department of Education, the Office of Open Space and Parklands, the Office of the NSW Government Architect.

3.3.2 Significant Activities/Areas

There are a number of key strategic, economic and employment areas in Bayside that are operated by a range of stakeholders, including:

- Sydney Airport
- Port Botany/NSW Ports
- Botany Industrial Park.

It is recommended that in-depth interviews occur with these stakeholders.

A range of landholdings operating recreational uses exist, including a number of golf courses, which form a significant proportion of land in the LGA.

It is noted that Bayside contains a number of former industrial contaminated sites, which may require consultation with the NSW Environment Protection Authority regarding the implications of ground and groundwater contamination, and mercury remediation at Orica Botany (within the Botany Industrial Park).

In relation to the Cooks River, the Cooks River Alliance is a partnership of Bayside, Canterbury-Bankstown, Inner West and Strathfield Councils, which has been in place since 1997. The Alliance works with communities for a healthy Cooks River catchment. In 2018, the Alliance, with funding from the NSW Government, is to begin a scoping study for the first Cooks River Catchment Coastal Management Plan. It will be important to engage with the Alliance.

3.3.3 Community services

The future location and provision of community services and social infrastructure requires a thorough understanding of potential existing gaps or oversupplies of services, from both an operational (e.g. provider) and user point of view. As such, it is important to engage with:

- Senior associations, such as the Council Senior Citizens Centre, aged care facilities; facilities, representatives aged care forums

- Community centres
- Schools, child care centres, tertiary educational establishments (TAFE)
- Community and private service providers, such as Sunny Haven Disability Services.

There is a potentially large number of users of Council's existing community services, as well as a range of other community service providers. Given the depth of community service provision across the LGA, it may not be possible to seek out the views of all users and service providers. It is recommended that in-depth interviews be undertaken with key service providers. Static displays with feedback forms and directing participants to the haveyoursaybayside website will be established at the various libraries and key community facilities/centres.

There are also a number of groups representing various cultural backgrounds which should be included in engagement activities.

3.3.4 Businesses and Business groups

It is recommended to hold interviews with Rockdale, Bexley and Bayside Chambers of Commerce, as well as with the Botany Industrial Park and Bayside Business Enterprise Centre.

3.3.5 Advisory Committees

There are a number of existing Council committees that specifically deal with a range of matters which are relevant to the preparation of the LSPS, LEP and DCP:

- Sport and Recreation Committee
- Community Services & Library Committee
- Arncliffe Youth Centre Sub-committee
- Planning Committee.

It is recommended that representatives from these Committees attend workshops with Council staff.

Former Council staff who coordinated community engagement for Bayside Community Strategic Plan should also be engaged with.

3.3.6 Neighbouring Councils

Engagement should occur with neighbouring Councils, to identify and collaborate particularly on shared boundaries or within shared suburbs/centres.

3.3.7 Resident and Interest Groups

A number of groups exist which represent diverse interests, for example:

- HERAG – local resident group with specialist community knowledge of transportation of dangerous goods.
- Cultural groups representing ethnic communities
- Heritage groups, such as St George Historical Society and Botany Historical Trust.
- Local Environmental Groups, such as Cooks River Valley Association, Wolli Creek Preservation Society
- Clubs, such as Kingsgrove RSL.

Representatives from these groups should be invited to workshops to provide opinions that are representative of a wider group.

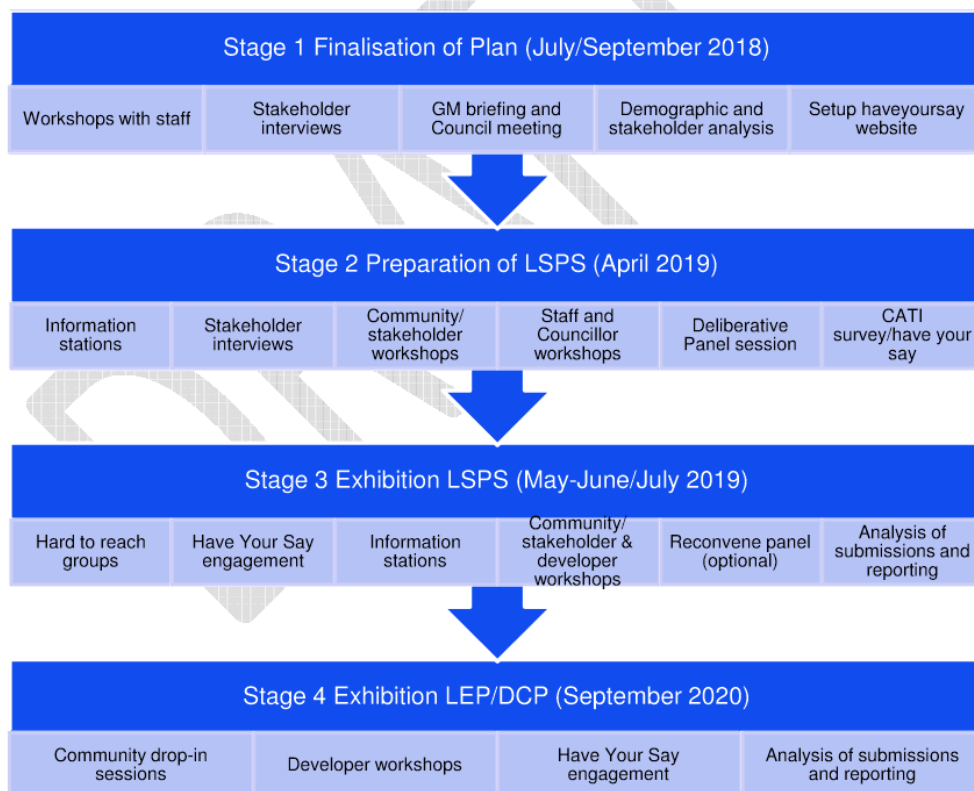
4 Methodology

This section provides an overview of the methodology used to develop and implement the engagement process.

An action plan to mobilise the methodology, including key next steps, critical path dates and responsibilities is outlined in Section 5.

As previously described, there are 4 key stages to this Plan:

- Stage 1 – Finalisation: Providing advice during the finalisation of the Community Engagement Plan, including internal and external engagement, and determining a vision for the engagement
- Stage 2 – Engagement: Preparation of the LSPS
- Stage 3 – Engagement: Exhibition of the LSPS
- Stage 4 – Engagement: Exhibition of the LEP/DCP and final report.



4.1 Stage 1 – Finalisation of Plan

This phase is the finalisation of the Plan.

This finalisation stage included a number of activities to assist in developing a process that will ensure a comprehensive and robust engagement with the Bayside community.

This stage also sought to identify key issues and priorities to consult with the communities on.

This will be achieved through both internal and external engagement.

4.1.1 Internal Engagement

4.1.1.1 Council Staff

A meeting with senior Council staff informed the finalisation of the Plan.

The workshop helped to refine and confirm:

- The aims and scope of the engagement process, including desired outcomes that are needed to inform Council's development of the LSPS, LEP and DCP
- Any particular challenges anticipated during the engagement
- Potential key issues or themes that they would already be aware of.

The Plan will be presented at Council's Executive Committee on 30 August.

4.1.1.2 Workshop with Councillors

The Plan will be presented to Councillors during Council's General Manager briefing on 5 September.

UTS will present to Councillors at this session. Feedback will be incorporated in the Plan.

4.1.2 External Engagement

4.1.2.1 Interviews with key stakeholders

Phone interviews with external stakeholders were undertaken to understand their expectations of the engagement process (i.e. how they would like to be engaged with), request relevant documentation or which groups that they represent or interact with should be engaged with during the implementation stage.

These stakeholders have also identified key issues that they will want to be engaged on or that they will want the community to be engaged on. Feedback will help to reinforce the draft vision for the LGA which will guide the engagement process.

Based on the stakeholder analysis (refer Section 3), key stakeholders recommended for interviews have included:

- Former Council staff who coordinated the community engagement for Bayside Community Strategic Plan
- Sydney Airport
- NSW Ports
- Botany Industrial Park
- Department of Planning and Environment
- Transport for NSW/Roads and Maritime Services
- NSW Health (South East Local Health District)
- NSW Family and Community Services

- Department of Education
- Housing NSW
- Community Housing providers
- NSW Government Architect
- Neighbouring Councils, including Inner West, Randwick, City of Sydney and Georges River Council.

These stakeholders were informed of the process and explained the purpose of the process and different stages. They were also asked semi-structured questions. Their feedback included:

- Best methods to engage with them
- Suggested key groups and networks, and how to best engage with them
- Documents to review
- Key land use and policy issues (high level) to consider
- Key ongoing or future strategic work.

This feedback was used to finalise the Plan and will be used in later stages.

4.1.3 Final Plan

The Final draft plan will be presented at Council's meeting of 12 September 2018.

4.2 Stage 2 – Preparation of the LSPS

Upon finalisation of the Plan and delineation of a vision, implementation phases will seek to test preliminary findings and seek more detailed feedback from the wider community and a broad range of stakeholders.

The preparation of the LSPS requires the gathering of evidence through technical studies to educate the community and stakeholders and inform their aspirations and vision for the future of the area.

Given the LGA-wide scope of the LSPS, LEP and DCP, it is important that the process reaches a large and representative portion of Bayside community and stakeholders.

4.2.1 Council's communications and media activities

Council will deploy a communication and media strategy in order to inform the public of the process. The following techniques are useful as they help to publicise and build awareness of the engagement process as communication devices, and are LGA-wide in scope. They are capable of reaching a large audience at a low cost and are popular information resources.

In terms of distribution the objective is to reach as wide and diverse an audience as possible. This will be achieved through:

- Publication of the communication material in several different languages as well as ensuring the content is accessible for people with disabilities.
- The use of various types of media to disseminate information about the project including, print, social media, information stands and flyers.

Suggested activities:

- Press release: describing the aims and objectives of the engagement process together with details of how stakeholders and residents can input into the process will be released from the council website and sent to English and non-English language newspapers.
- Newspaper advertisement
- Council's website: throughout the engagement process and link to the dedicated webpage and Have Your Say for specific engagement activities

- Articles and information on Bayside Council Newsletter (hard copies and e-newsletter): throughout the engagement process, release information on the objectives of the community engagement process, how residents and other stakeholders can get involved, and updates
- Social media: throughout the engagement process, update Council's social media platforms (Facebook, twitter, Instagram, youtube, google+) to include information on the engagement process and how stakeholders can get involved with links through to the dedicated webpage on Council's website and Have Your Say
- The Have Your Say website will be a platform to upload:
 - Press releases and newspaper advertisements
 - Articles and information in Council's hard-copy and e-newsletters
 - All project material, including technical studies, LSPS, LEP, DCP during exhibition.
- Notices and information will be put on display at council facilities including libraries, community centres, aquatic centres, sports grounds, child care centres + Westfield, train stations, high pedestrian traffic areas, Cook Park and beach front.

UTS will assist Bayside Council by drafting key messages for the above tools.

Specific messages which need to be conveyed in this communications strategy include:

- The importance and purpose of the various land use planning instruments which are being developed, e.g. the Local Environmental Plan (LEP) and Development Control Plan (DCP), as well as a new Local Strategic Planning Statement (LSPS).
- The process of the community engagement plan (objectives and activities).
- Clarity on what the community/residents are able to influence and what will not change for example the community will not be able to change the directions set out in the Eastern District Plan but their input will inform and guide the delivery of these directions.
- How stakeholders and residents can contribute to the process.

Key messages have been prepared and communicated to Council.

As identified in the demographic analysis, there will be a need to translate the available information in the key languages spoken in the LGA besides English:

- Greek
- Mandarin
- Arabic
- Cantonese
- Macedonian.

4.2.2 In-depth key stakeholder interviews

UTS will undertake one-on-one interviews of up to 45 minutes with up to 10 key identified stakeholders.

Internal workshops and interviews undertaken during Stage 1 – Finalisation of the Plan will help to identify relevant stakeholders to interview.

Recommended stakeholders are identified below:

- Sydney Airport
- NSW Ports
- Botany Industrial Park
- Department of Planning and Environment
- Transport for NSW/RMS
- NSW Health

- Department of Education
- NSW Government Architect
- Neighbouring Councils, including Inner West, Randwick, City of Sydney and Georges River Council.
- Sydney Water
- Crown land
- Department of Infrastructure, Regional Development and Cities
- Office of Sport
- Office of Open Space and Parklands
- Botany Industrial park
- HERAG – local resident group with specialist community knowledge of transportation of dangerous goods
- Greater Sydney Commission (identify relevant officer)
- Local Aboriginal Councils X2
- Rockdale, Bexley and Bayside Chambers of Commerce
- Bayside Business Enterprise Centre
- Housing NSW
- Family and Community Services
- Community Housing providers

These interviews will provide information in relation to existing and future land uses, future land requirements, existing issues with services, existing environmental or local issues that the LSPS, LEP and DCP should consider and address. Questions to stakeholders will include:

- Values and aspirations for the area
- Potential strategic plans for expansion or relocation – land use needs, and potential design plans
- Known issues or concerns with services provided, issues in the community, service gaps

Potential support on engagement activities will also be refined.

4.2.3 Council workshops

Workshops will be held with key council staff including the development application, library and customer service teams. These workshops will help identify Council aspirations for Bayside, land use opportunities and constraints and how to best provide services in line with community need.

4.2.4 Have Your Say and broad based statistically representative telephone and online community survey

This project is a LGA-wide engagement process. An online survey will be run on Have Your Say and will allow anyone who wishes to participate to do so.

However in order to ensure a statistically representative process, we will also undertake telephone surveys, to establish a statistically robust evidence-base of community values and aspirations for the future character of the area and land use needs.

The phone survey will include up to 120 respondents demographically matched to the census profile for the area, and use random dial techniques with both landline and mobile phone numbers to ensure a truly representative sample.

This will enable us to gather information from people who might not attend meetings or complete the survey, and ensure the results have more credibility as they are statistically representative.

The phone survey will also be used as the recruiting mechanism for the deliberative panel (see Section 4.2.6).

Draft questions have been distributed with Council staff who are currently reviewing them.

4.2.5 Stakeholder/community deliberative workshops

Given the scale of this project, the six workshops be organised throughout stages 2 and 3 of the project. Specifically, two will be held in the second half of Stage 2 (after the Christmas break) and four will be held in Stage 3. This will have allowed UTS to conduct the above components of the engagement process and review key findings, and identify key issues and 'big ideas' that will be discussed and refined during these workshops.

A World Café approach will allow us to speak with a large group of people to discuss one element of the broader issue at each table. All participants except one scribe per table move from table to table throughout the session, allowing time for reflection, conversation and a diversity of views to be expressed in a respectful way.

In terms of structure, workshops will identify five/six themes (housing, employment, community/services, open space/environment, transport). It is recommended that consultants who will be undertaking technical studies should also attend these workshops.

In terms of attendance to workshops, the list of participants will be finalised with Council staff. However it will be necessary to ensure that all groups are represented, including age groups, cultural groups, hard to reach people, to ensure a diversity of backgrounds and opinions. It is useful to invite representatives of cultural, resident or interest groups as they can voice the opinion of a number of persons.

4.2.6 Technical Studies

The LSPS will be informed by technical studies to be prepared by Council staff and consultants. These technical studies will be prepared during Stage 2. Engagement will therefore be undertaken during the preparation of these studies, and findings from the above engagement activities will inform these technical studies.

Further, these studies will result in discussion papers which are anticipated to be used to guide key stakeholders workshops/engagement. Feedback will be sought from these organisations. It has been indicatively advised by Bayside Council that consultation will occur in March 2019.

UTS will assist Council's engagement on these technical studies. As advised in 4.2.4, it is recommended that consultants who will be preparing these studies attend the stakeholder/community workshops. These workshops will be structured around key issues and preliminary findings from earlier engagement.

Attending these workshops will therefore enable them to incorporate engagement findings in their discussion papers. However this needs to be clarified during the workshop with Council staff. Findings from these technical studies will be incorporated into the LSPS.

4.2.7 Deliberative Panel Session

The process aims to bring together community members with different perspectives and values on a public problem, provide them with all the evidence that would have been gathered by then, and ask community members to provide non-binding recommendations to Council on key issues, considerations, topics.

This empowers community members by simulating government decision-making conditions and, in doing so, provides elected representatives with a greater level of confidence in the decisions they make.

Participants are provided with all the information and outputs of the previous engagement activities.

The benefits are:

- Engaging communities in an active and deliberative way, where conventional formal methods such as public meetings and exhibitions have not attracted a large or particularly representative response
- Foster reflection, consensus and a respectful dialogue based on careful deliberation

- The opportunity to incorporate a larger or more representative portion of the community, who may be outside of the professional, activist spheres or personality types that may be less likely to participate in current systems of governance and local government advocacy
- Fostering knowledge of the Council and its democratic processes by word of mouth
- Assembling a forum that is enhanced by the narrow-scoped but significant nature of the issue at hand.

The recruiting process will occur during telephone surveys. The process could also include the registered Talking Bayside Group members.

The session will include a presentation of findings to date and a moderated discussion on key issues and findings to be put forward during the reporting, and how Council should proceed in next stages.

4.2.8 Engagement with Councillors

A workshop will be organised with Councillors following interviews and CATI survey, but before stakeholder/community workshops are held.

4.2.9 Reporting – draft

A draft report will be prepared. This report will include an executive summary of the engagement, questions, methodology and key findings. This will include findings from the consultation undertaken on discussion papers.

The report will clearly and concisely present what the different views were across the stakeholder spectrum toward the matters being engaged on, and why these views were held. It will also highlight where there were different views based on respondent characteristics or engagement technique, and potential reasons for these differences.

The report will also include a selection of quotes and participant-produced outputs to provide decision-makers with an understanding of how the community and stakeholders articulate their views. It will include descriptive statistics on the number and demographics of people engaged, what techniques they were engaged through, an assessment of overall process representativeness, and any methodological limitations.

Appendices would be used to transparently display the discussion structures, survey instruments and other information used to support or inform the engagement process.

A separate update will be provided to Councillors by Council staff at the end of Stage 2

4.3 Stage 3 – LSPS Public Exhibition

The second component of the community and stakeholder engagement will involve public exhibition of the LSPS. This will involve the community as well as stakeholders listed in Appendix B.

Council will administer the exhibition of the LSPS as required.

4.3.1 Have Your Say

This project is a LGA-wide engagement process. The draft Plan will be available on Council's Have Your Say website. An online survey will be run on Have Your Say and will allow anyone who wishes to participate to do so.

4.3.2 Partner with community groups to engage with hard to reach groups

Partnering with community groups will ensure that 'hard to reach' groups, as identified in the demographic analysis, are engaged with:

- People in need of assistance and people with disabilities: partnering with professional or non-professional (e.g. family members) can help to identify those community members who cannot readily engage.

Generally, working with service providers can help to identify hard to reach groups and ways to engage with them. In order to reach 'hard to reach' groups, a workshop will be organised with service providers, service users, community workers and those persons who work or engage with 'hard to reach' groups on a regular basis.

This workshop will be facilitated by UTS. Attendees will be briefed about the process and asked for feedback on key issues, and will also be provided with material to distribute within their networks

- People who do not speak English or do not speak English well: translated documents will be best suited for this group. Potentially interpreters could be commissioned to assist during outdoor activities should the need be identified. Working with multicultural organisations will be another solution to reach ethnic groups. Representatives of these organisations should be invited to the workshop described above. Translated material can be provided at identified location for example at information stations.
- People who do not have an Internet connection at home: outdoor offline activities will be best suited for this group. It will be the role and purpose of Council's media and advertisement campaign to ensure that awareness of this project is maximised

4.3.3 Engagement with Aboriginal and Torres Strait Islander Communities

Bayside Council recognises the importance of engagement with the Aboriginal and Torres Strait Islander communities. To ensure this occurs engagement will commence early on in the process with interviews with Local Aboriginal Councils to provide guidance as to the best way to undertake this engagement process.

4.3.4 Information stations

As identified in the demographic analysis, a large proportion of Bayside population uses public transport to get to work. This creates opportunities for engagement outreach to full time professionals that may be time poor and unable to fully participate in the process.

Information stations will provide an opportunity for the community to find out more about the engagement process, ask questions and share their ideas, and fill out survey forms.

Stations will be set up for a number of consecutive days to improve engagement opportunities. The stations will include information similar to the below, however this will be refined as part of the consultation process:

- 1 or 2 'introductory' poster to explain the process, next stages, forecast population/housing growth, include contacts at Council and UTS and encourage to fill out survey.
- One poster (maybe 2 for some) per theme/topic/priority (suggest at this stage (to be refined) 1 for housing, 1 for employment/centres, 1 for transport/traffic, 1 for environment/open space, 1 for social infrastructure/services, 1 for design/height)
- Each poster to include maps, photos and questions (for example, 'should there be more retail next to stations?' or 'do you like this type of design' against a particular density type) (put a dot in the 'agree' or 'disagree' box) and post it notes dots to detail directly on map.
- Each poster to display known information (= key characteristics/places/ landmarks/ facilities, key land use directions from Eastern District Plan and Community Strategic Plan, ongoing or known projects + some variation depending on theme (= transport poster to have transport infrastructure, etc) + include a brief summary of "what you have already told us" to set the scene based on Eastern District Plan and Community Strategic Plan. Alternatively all the known information can be included on context posters
- Staffed stations can have ipads so people can fill it out that day.

Stations will need to be spread out across LGA including Eastgardens/eastern area of Botany.

These stations are the best opportunity to use maps and get spatial feedback as opposed to online feedback.

Questions will test the draft LSPS and findings from technical studies, stakeholder engagement and findings from Stage 2 engagement. They can touch on LEP/DCP matters (zoning, objectives of zones).

Prior to finalising the questions, Council staff is to provide findings from previous engagement on Strategic plan to check that we are not duplicating anything.

4.3.5 Stakeholder/community deliberative workshops

Given the scale of this project, it is recommended that these six workshops (two workshops Stage 2 and 4 workshops Stage 3) This will have allowed UTS to conduct the above components of the engagement process and review key findings, and identify key issues and 'big ideas' that will be discussed and refined during these workshops.

A World Café approach will allow us to speak with a large group of people to discuss one element of the broader issue at each table. All participants except one scribe per table move from table to table throughout the session, allowing time for reflection, conversation and a diversity of views to be expressed in a respectful way.

In terms of structure, workshops will identify five/six themes (housing, employment, community/services, open space/environment, transport). It is recommended that consultants who will be undertaking technical studies should also attend these workshops.

In terms of attendance to workshops, the list of participants will be finalised with Council staff. However it will be necessary to ensure that all groups are represented, including age groups, cultural groups, hard to reach people, to ensure a diversity of backgrounds and opinions. It is useful to invite representatives of cultural, resident or interest groups as they can voice the opinion of a number of persons.

4.3.6 Engagement with Councillors

A workshop will be organised with Councillors following interviews and CATI survey, but before stakeholder/community workshops are held.

4.3.7 Developer workshops

Separate workshops with developers will be facilitated by UTS. Participants should include developers actively involved in the LGA, such as Meriton, John Boyd, Mirvac, Urban Growth, as well as smaller and medium sized development companies. Participants will be confirmed at a later stage.

These workshops will focus on big picture elements, key policy issues and themes, and will also touch on more detailed zoning and planning controls to inform the next stage.

4.3.8 Review submissions

UTS will be provided with copies and summaries of all submissions. We will analyse these submissions thematically and spatially and update our draft report.

4.3.9 Deliberative Panel Session

The Deliberative Panel may be reconvened should the need be identified through the review of submissions.

4.4 Stage 4 – LEP/DCP Public Exhibition

This stage is the public exhibition of the LEP and DCP.

Council will administer the exhibition as required.

UTS will then be provided with copies and summaries of all submissions. We will analyse these submissions thematically and spatially.

4.4.1 Have Your Say

This project is a LGA-wide engagement process. The draft Plan will be available on Council's Have Your Say website. An online survey will be run on Have Your Say and will allow anyone who wishes to participate to do so.

4.4.2 Developer workshops

Separate workshops with developers will be facilitated by UTS. Participants should include developers actively involved in the LGA, such as Meriton, John Boyd, Mirvac, Urban Growth. Participants will be confirmed at a later stage.

These workshops will focus on refining, if required, zoning and planning controls as presented in the draft LEP/DCP.

4.4.3 Community drop-in sessions

Council may organise drop-in sessions during the exhibition period.

4.4.4 Review submissions and final report

UTS will be provided with copies and summaries of all submissions. We will analyse these submissions thematically and spatially.

At the conclusion of Stage 4, we will prepare a consolidated Community Participation Report. The Community Participation Report will build upon the previous draft reports.

UTS will present the final Community Participation Report to key Council personnel. It is envisaged this presentation will be two hours.

5 Action Plan

This section outlines an Action Plan to mobilise the methodology, including critical path dates and roles and responsibilities of UTS and Council.

Table 9: Stage 1 Timeline

Project item	Responsibility	2018																															
		July				August				September				October				November				December											
Stage 1 Finalisation - Scoping																																	
Demographic and Stakeholder analysis	UTS																																
Develop in-depth interview schedule and questions	UTS																																
Workshop with key Council staff 25 July	Council staff, UTS																																
Interviews with key stakeholders	UTS																																
Develop key messages	UTS to prepare words, Council to develop public material incl website																																
Public launch (webpage)	Council staff																																
Executive Committee 30 August	Council staff																																
General Manager briefing with Councillors (5 September)	UTS/Council staff																																
Final Community Engagement Plan	UTS																																
Council meeting 12 September	Council staff																																

Table 10: Stage 2 Timeline

Project Item		Responsibility	2018												2019																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																											
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Table 12 Project Item Responsibility

Project item	Responsibility	2019															2020											
		July	August	September	October	November	December	January	February	March	April	May	June	July	August	September	October	November	December	January	February	March	April	May	June	July	August	September
LEP/DCP																												
Prepare LEP/DCP	Council staff																											
Draft LEP to Gateway	UTS																											
UTS to provide words for exhibition material	Council staff																											
Community drop-in sessions (optional – Council staff to confirm)	UTS/Council staff																											
Developer workshop	UTS/Council staff																											
Have your say	Council staff																											
Review submissions	UTS																											
Final report	UTS																											
Presentation to key Council staff	UTS																											

6 Conclusion

This Community Engagement Plan provides Bayside Council with an approach that maximises opportunities for more representative engagement.

It will build the capacity of Council to undertake effective community participation that aligns with principles of Council's strategy and the recent State Government community participation principles.

DRAFT

Appendix A – Demographic Analysis

DRAFT

Demographic Analysis

1. Age profile

Table 1 outlines the age distribution for the Bayside LGA, compared with the Inner South West and City and Inner South areas (between which the Bayside LGA is divided), and Greater Sydney.

Table 13 Age groups

	Bayside LGA	Inner South West SA4	City and Inner South SA4	Greater Sydney
0-4 years	6.1%	6.7%	4.1%	6.4%
5-14 years	10.1%	12%	5.4%	12.2%
15-19 years	5.2%	6%	4.1%	6%
20-24 years	7.6%	7.3%	11.8%	7.1%
25-34 years	19.7%	16.6%	29.2%	16%
35-44 years	14.7%	13.6%	16.5%	14.5%
45-54 years	12.2%	12.8%	11.2%	13%
55-64 years	10.1%	10.7%	8.3%	10.8%
65-74 years	7.5%	7.5%	5.4%	7.7%
75-84 years	4.8%	4.8%	2.9%	4.2%
85 years and over	2.3%	2.3%	1.1%	2%
Total population	156,058	571,416	315,551	
Median age	35	35	33	36

Based on the above table, the following key characteristics can be identified:

- Bayside LGA has a smaller proportion of children and youth aged 0-19 years (21.4%) than Inner South West (24.7%) and Greater Sydney (24.6%), however it is significantly larger than that of City and Inner South (13.60%);
- The proportion of 20-44 years old is larger in Bayside LGA (42%) than Inner South West (37.5%) and Greater Sydney (37.6%), however is smaller than that of City and Inner South (57.5%);
- The proportion of people aged 75 and over is smaller in Bayside LGA (7.10%) than Inner South West (7.1%) and Greater Sydney (6.2%), however is larger than that of City and Inner South (4%);
- The median age across the areas is 35 years, with the exception of City and Inner South which is slightly younger (33 years).

Bayside LGA can be characterised as a balanced profile between Inner South West and City and Inner South, with smaller proportions of children and larger proportions of persons aged 20 to 45 years than Inner South West, but larger proportions of seniors and smaller proportions of persons aged 20-45, than City and Inner South.

2. Cultural and Linguistic Diversity

An analysis of the ancestry responses of the population in Bayside LGA in 2016 shows the top five ancestries nominated in Table 2.

Table 14 Cultural and linguistic diversity

	Bayside LGA	Inner South West SA4	City and Inner South SA4	Greater Sydney
Total overseas born	46%	51.1%	55.4%	36.7%
Ancestry				
English	15%	11.1%	18%	25.3%
Australian	14.8%	11.8%	13.2%	23.5%
Chinese	13.8%	13.2%	11.2%	10.1%
Greek	9%	6.3%	2.4%	2.4%
Irish	6.1%	3.8%	8.1%	8.6%
English only spoken at home	41.1%	36.5%	53.5%	58.4%
Speaks another language at home, and English well or very well	44.1%	45.8%	29.3%	29.3%
Speaks another language at home, and English not well or not at all	8.5%	11.7%	6.3%	6.5%

Based on the above table, the following key characteristics can be identified:

- Approximately 46% of the Bayside population was born overseas, which is more important than Greater Sydney (36.7%) but a smaller proportion than Inner South West (51.1%) or City and Inner South (55.4%).
- The proportion of persons with English or Australian ancestry is smaller in Bayside LGA (29.8%) than Greater Sydney (46.8%) and City and Inner South (31.2%), it is larger than Inner South West (22.9%).
- The proportion of residents of Chinese and Greek ancestries is larger in Bayside LGA (respectively 13.8% and 9%) than Greater Sydney (respectively 10.1% and 2.4%), Inner South West (respectively 13.2% and 6.3%) and City and Inner South (respectively 11.2% and 2.4%).
- In English proficiency, Bayside LGA has a lower proportion of people who spoke English only (41.1%) than Greater Sydney (58.4%) and City and Inner South (53.5%) but higher than Inner South West (36.5%).
- However overall, the proportion of people of speak only English at home, or speak English well or very well is 85.5% in Bayside LGA as compared to 82.3% in Inner South West, 82.8% in City and Inner South (and 87.7% in Greater Sydney).
- The most common languages spoken other than English at home were:
 - Greek (7.1% as compared to 1.6% in Greater Sydney)
 - Mandarin (6.7% as compared to 4.7% in Greater Sydney)
 - Arabic (5.8% as compared to 4% in Greater Sydney)
 - Cantonese (3.8% as compared to 2.9% in Greater Sydney)
 - Macedonian (3.0% as compared to 0.4% in Greater Sydney)

Overall, the 2016 Census depicts a diverse mix of cultures including Australian, Chinese, Greek and Irish, amongst an array of others. It is important that future engagement activities takes into consideration this diversity.

3. Household Composition

Table 3 below provides an overview of the predominant household structures within Bayside LGA, Inner South west, City and Inner South and Greater Sydney.

Table 15 Household composition

	Bayside LGA	Inner South West SA4	City and Inner South SA4	Greater Sydney
Average people per household	2.65	2.9	2.2	2.72
Couples with children	31.7%	39%	16.3%	35.3%
Couples without children	23%	21.9%	28%	22.4%
One parent families	10.1%	12.5%	6.2%	10.4%
Group household	5.9%	4.1%	13.9%	4.5%
Lone person	21.7%	20.0%	33%	20.4%

Based on the above table, the following key characteristics can be identified:

- The average household size is smaller in Bayside LGA (2.65) than Greater Sydney (2.72) and Inner South West (2.9) but higher than City and Inner South (2.2).
- The proportion of couples with children is smaller in Bayside LGA (31.7%) than Greater Sydney (35.3%) and Inner South West (39%), and nearly twice higher than that of City and Inner South (16.3%).
- 41.8% of the Bayside LGA population consists in families with children, as compared to 45.7% in Greater Sydney, 51.1% in Inner South West, and 22.5% in City and Inner South.
- The proportion of one parent families is higher in Bayside LGA (10.1%) than Inner South West (12.5%), higher than City and Inner West (6.2%) and relatively similar to Greater Sydney (10.4%).
- The proportion of group and lone households is higher in Bayside LGA (5.9% and 21.7%) than Inner South West (respectively 4.1% and 20%) and Greater Sydney (respectively 4.5% and 20.4%), but significantly lower than City and Inner South (respectively 13.9% and 33%).

4. Housing

Table 4 below provides an overview of the housing characteristics within Bayside LGA, Inner South west, City and Inner South and Greater Sydney.

Table 16 Housing

	Bayside LGA	Inner South West SA4	City and Inner South SA4	Greater Sydney
Occupied private dwellings	92.9%	93.3%	89.4%	92.5%
Tenure				
Owned (outright or mortgage)	54.6%	61%	39.4%	59.2%
Rented	37%	35.3%	56.8%	32.6%
Social housing	4.2%	5.2%	6.8%	4.6%
Internet connection at home (occupied private dwellings)				
No internet connection	14%	15.2%	10.6%	11.2%

Based on the above table, the following key characteristics can be identified:

- Just over half (54.6%) of the population in Bayside LGA own their dwellings (outright or with a mortgage), which is less than Greater Sydney (59.2%) and Inner South West (61%) but significantly more than City and Inner South (39.4%).
- The proportion of social housing is smaller in Bayside LGA (4.2%) than Inner South West (5.2%) and City Inner West (6.8%) and relatively similar to Greater Sydney (4.6%).
- Internet is not accessed from 14% of occupied private dwellings in Bayside LGA, which is higher than Greater Sydney (11.2%) and City and Inner South (10.6%), but less than Inner South West (15.2%).

5. Population and Housing Projections

The Department of Planning and Environment (DPE) has prepared population forecasts up to 2036, shown in Table 5 below. The population of Bayside LGA is forecast to grow significantly, with an increase of 65,250 residents (+40%) between 2016 and 2036.²

Table 17 Combined Botany Bay and Rockdale LGA total population and household projection figures

Botany Bay and Rockdale Projections (Main Series)	2016	2021	2026	2031	2036
Total Population	162,900	185,350	200,200	214,600	228,150
Total Households	61,750	70,250	76,200	82,200	88,150
Average Dwelling Size	2.61	2.60	2.59	2.57	2.54
Implied Dwellings	65,600	74,650	80,950	87,300	93,650

Source: Department of Planning and Environment (2016)

Table 6 below provides additional details on projected age and household groups.

Table 18 Combined Botany Bay and Rockdale LGA age and household projection figures

Botany Bay and Rockdale Projections (Main Series)	2016	2021	2026	2031	2036	% change 2016-2036	Contribution to growth
Botany Bay and Rockdale Projections (Main Series)							
AGE GROUPS:	2016	2021	2026	2031	2036	% change 2016-2036	Contribution to growth
0-4	11,200	13,000	14,050	14,100	14,300	27.7%	4.7%
5-9	9,350	11,050	12,100	13,000	13,050	39.6%	5.7%
10-14	8,150	9,550	10,750	11,700	12,450	52.8%	6.6%
15-19	8,100	9,000	10,000	11,150	12,000	48.1%	6.0%
20-24	10,350	11,200	11,550	12,600	13,700	32.4%	5.1%
25-29	13,950	14,600	14,450	14,950	15,950	14.3%	3.1%
30-34	15,250	16,550	16,000	16,050	16,550	8.5%	2.0%
35-39	13,200	16,300	16,600	16,200	16,300	23.5%	4.7%
40-44	11,850	13,750	15,900	16,250	15,900	34.2%	6.2%
45-49	10,550	12,100	13,450	15,450	15,800	49.8%	8.0%
50-54	9,700	10,800	12,000	13,200	15,100	55.7%	8.3%

² These figures combine Botany Bay and Rockdale LGAs projection figures.

55-59	8,750	9,850	10,700	11,850	12,900	47.4%	6.4%
60-64	7,800	8,900	9,800	10,550	11,650	49.4%	5.9%
65-69	7,050	7,750	8,750	9,600	10,400	47.5%	5.1%
70-74	5,650	6,950	7,550	8,550	9,400	66.4%	5.7%
75-79	4,600	5,400	6,550	7,200	8,200	78.3%	5.5%
80-84	3,450	4,000	4,750	5,850	6,500	88.4%	4.7%
85+	3,950	4,550	5,250	6,350	8,050	103.8%	6.3%
HOUSEHOLD TYPE:	2016	2021	2026	2031	2036	% change 2016-2036	Contribution to growth
Couple only	13,600	15,250	16,250	17,500	19,050	40.1%	20.6%
Couple with children	21,400	24,550	26,500	28,050	29,250	36.7%	29.7%
Single parent	6,800	7,900	8,750	9,550	10,250	50.7%	13.1%
Other family households	1,150	1,200	1,250	1,300	1,400	21.7%	0.9%
Multiple-family households	1,600	1,800	1,950	2,100	2,200	37.5%	2.3%
<i>Total family households</i>	44,550	50,750	54,700	58,500	62,100	39.4%	66.5%
Lone person	14,550	16,650	18,450	20,500	22,650	55.7%	30.7%
Group	2,650	2,900	3,050	3,150	3,350	26.4%	2.7%
<i>Total non-family households</i>	17,200	19,550	21,500	23,650	26,050	51.5%	33.5%
Total	61,750	70,250	76,200	82,200	88,150	42.8%	

Based on the above table, the following key characteristics can be identified:

- The age groups that are forecast to grow the most in proportion are the 50-54 age group (+55.77%), and all age groups over 70, as well as the 10-14 and 15-19 age groups (respectively +52.8% and +48.1%).
- The largest contributors to the overall population growth are forecast to be the 50-54 group (8.3% of the growth) and 45-49 (8% of the growth), 55-59 (6.4%), as well as the 10-14 and 15-19 age groups (respectively 6.6% and 6%).
- The smallest contributors are forecast to be the 25-29 group (3.1%) and 30-34 group (2%). These age groups are still forecast to grow in number, with a combined growth of 3,300 persons to 2036.
- In terms of household types, the largest contributors to the forecast growth are lone person households (30.7%) and couples with children (29.7%).
- The groups that are forecast to grow the most in proportion are non-family households (+51.5%).

6. Education and Qualifications

Table 7 below provides an overview of the education and qualification categories within Bayside LGA, Inner South west, City and Inner South and Greater Sydney.

Table 19 Education and Qualifications

	Bayside LGA	Inner South West SA4	City and Inner South SA4	Greater Sydney
Qualifications				
Bachelor or higher degree	27.5%	23.9%	40%	28.3%
Advanced diploma or diploma	9.5%	9%	8%	9.3%
No qualification	39.1%	44%	28%	37.7%

Educational institution				
Pre-school	1.5%	1.5%	0.9%	1.7%
Primary	6.7%	7.8%	3.5%	8.1%
Secondary	5.1%	6.3%	2.6%	6.3%
TAFE/University	9.4%	8.4%	14.5%	8%

Based on the above table, the following key characteristics can be identified:

- The proportion of people with a bachelor degree or higher is relatively similar in Bayside LGA (27.5%) and Greater Sydney (28.3%) and to some extent Inner South West (23.9%), but it is significantly higher in City and Inner South (40%).
- The proportion of people with no qualification is relatively similar in Bayside LGA (39.1%) and Greater Sydney (37.7%), however it is higher than City and Inner South (28%).
- The proportion of children who attend pre-school is similar (1.5-1.7%) in Bayside LGA, Greater Sydney and Inner South West, however is small in City and Inner South (0.9%).
- The proportion of children who attend primary school and secondary school is smaller in Bayside LGA (respectively 6.7% and 5.1%) than Greater Sydney (respectively 8.1% and 6.3%) and Inner South West (respectively 7.8% and 6.3%), but higher than that of City and Inner South (respectively 3.5% and 2.6%).
- The proportion of youth attending a tertiary or further education establishment is higher in Bayside LGA (9.4%) than Greater Sydney (8%) and Inner South West (8.4%), but smaller than City and Inner South (14.5%).

7. Employment

Table 8 below provides an overview of the key occupations and sectors of employment, as well as rates of unemployment, within Bayside LGA, Inner South west, City and Inner South and Greater Sydney.

Table 20 Employment

	Bayside LGA	Inner South West SA4	City and Inner South SA4	Greater Sydney
Rate of unemployment	6%	7.4%	5.7%	6%
Occupations				
Managers	12%	10.9%	15.9%	13.7%
Professionals	22.5%	21.3%	35.6%	26.3%
Technicians and Trades Workers	12%	12.9%	8.8%	11.7%
Community and Personal Service Workers	10.3%	10.2%	10.1%	9.6%
Clerical and Administrative Workers	15.1%	15.2%	12%	14.6%
Sales Workers	10%	10.1%	7.8%	9%
Machinery Operators And Drivers	6.3%	7.1%	2.4%	5.6%
Labourers	9.8%	9.9%	5.6%	7.5%
Top Industries				
Health Care and Social Assistance	10.9%	11.2%	9%	11.6%
Retail Trade	9.9%	10.3%	7.5%	9.3%

Accommodation and Food Services	9.1%	8.1%	10.6%	6.7%
Transport, Postal and Warehousing	8.6%	7.5%	3.9%	5%
Professional, Scientific and Technical Services	8.5%	7.6%	14.8%	9.8%
Method of travel to work				
Train	25.3%	18.3%	18.3%	16.2%

Based on the above table, the following key characteristics can be identified:

- The unemployment rate in Bayside LGA is similar to Greater Sydney (6%), which is lower than Inner South West (7.4%) and City and Inner South (5.7%).
- In all areas, the majority of people employed is as professionals (over 20% in all areas). However, the second largest category in Bayside LGA is Clerical and Administrative Workers, as opposed to Managers in Greater Sydney and City and Inner South. Managers are the third largest category in Bayside LGA, along with Technicians and Trades Workers.
- Overall, the proportion of 'white collars' is relatively similar in Bayside LGA (69.9%) and Inner South West (67.7%), slightly smaller than Greater Sydney (73.2%) and smaller than City and Inner South (81.4%).
- The three most popular industry sectors in Bayside LGA were Health Care and Social Assistance (10.9%), Retail Trade (9.9%) and Accommodation and Food Services (9.1%).
- A majority of people in Bayside LGA use the train as their main method of travel to work (25.3%), which is a more important proportion than in the other areas.

8. Income

Table 9 below illustrates the median weekly household income, as well as weekly rents or repayments, within Bayside LGA, Inner South west, City and Inner South and Greater Sydney.

Table 21 Income and Weekly Expenditure

	Bayside LGA	Inner South West SA4	City and Inner South SA4	Greater Sydney
Median weekly household income	\$1,586	\$1,431	\$1,894	\$1,745
Median weekly mortgage repayment	\$502	\$500	\$576	\$495
Median weekly rent	\$475	\$415	\$550	\$447

Based on the above table, the following key characteristics can be identified:

- The median weekly household income is smaller in Bayside LGA (\$1,596) and Inner South West (\$1,431) than Greater Sydney (\$1,745) and City and Inner South (\$1,894).
- Median weekly mortgage repayments are similar in Bayside LGA and Greater Sydney (respectively \$502 and \$495), and smaller than Inner South West (\$500) and City and Inner South (\$550).
- Median weekly rent, however, is higher in Bayside LGA (\$475) than Greater Sydney (\$447) and Inner South West (\$415), but smaller than City and Inner South (\$550).

9. Assistance

Table 10 below provides an overview of people in need for assistance within Bayside LGA, Inner South west, City and Inner South and Greater Sydney, as well as the proportion of people who provided unpaid assistance.

Table 22 Assistance

	Bayside LGA	Inner South West SA4	City and Inner South SA4	Greater Sydney
Provided unpaid assistance to a person with a disability (last two weeks before Census)	10.7%	11.9%	7.3%	11.1%
Need for assistance				
0 to 4 years	1%	1.4%	0.6%	1.1%
5 to 19 years	4.3%	4.6%	3.5%	5.3%
20 to 64 years	9.6%	16.4%	10.8%	8.9%
65 to 74 years	24.1%	13.3%	10.1%	20.3%
75 to 84 years	57%	29.2%	25.9%	48.6%
85 years and over	50.6%	53%	52.5%	50.4%
Total persons needing assistance	5.3%	6%	3.3%	4.9%

Based on the above table, the following key characteristics can be identified:

- There is a larger proportion of people in need for assistance in Bayside LGA (5.3%) than Greater Sydney (4.9%) and City and Inner South (3.3%).
- The proportion of people between 65 and 84 years in need for assistance is significantly higher in Bayside LGA than all other areas. 24.1% of the 65-74 age group in Bayside LGA is in need of assistance, as compared to 20.3% in Greater Sydney, 13.3% in Inner South West and 10.1% in City and Inner South. 57% of the 75-84 age group is in need of assistance in Bayside LGA, as compared to 48.6% in Greater Sydney, 29.2% in Inner South West and 25.9% in City and Inner South.

Appendix B – Stakeholder Analysis

Council	Timeframe/method of engagement
Strategic Planning	workshop Stage 2 technical studies
Development Assessment	workshop Stage 2
Compliance	workshop Stage 2
City Infrastructure	technical studies
Certification	technical studies
Parks & Open Space	technical studies
Major Projects	workshop Stage 2 technical studies
Communications and Events	workshop Stage 2
Community Capacity Building and Engagement	workshop Stage 2 technical studies, throughout project
Property	technical studies
Recreation and Community Services	workshop Stage 2 technical studies
Executive	briefing
Councillors	briefing
Add member from Bayside Design review panel (recommendation from Government Architect office)?	workshop Stage 2
Government Agencies	
Government Architect Office	UTS interviews Stage 1 – Council to engage during preparation LEP/DCP – Design excellence clauses
Greater Sydney Commission	UTS interviews Stage 2
NSW Department of Planning and Environment	UTS interviews Stage 1 and 2, advice on policy or process - informal consultation as needed, attend technical workshops
Transport for NSW	technical studies
Environmental Protection Authority	technical studies
Roads and Maritime	technical studies
Crown Land	technical studies UTS interviews Stage 2
Heritage Council	technical studies
NSW Ports	UTS interviews Stage 1 and 2
Ports Authority NSW	
NSW Department of Industry	technical studies
Office of Water technical studies	
Neighbouring Councils	UTS interviews Stage 1 and 2 – Council to organise separate workshops with Council staff from each Council to talk through key issues particularly shared boundaries/centres/suburbs

NSW Department of Education	technical studies, more engagement on key issues as identified through work. Reach parent associations through schools if needed
NSW Department of Health	UTS interviews Stage 1 and 2, opportunities to use Health engagement platforms + direct reach to hospital GPs to redistribute to employee networks
Sydney Water	technical studies UTS interviews Stage 2
Ausgrid	technical studies
Housing NSW / Land and Housing Corporation	technical studies
Department of Environment and Energy	technical studies
Civil Aviation Safety Authority	technical studies
Department of Infrastructure, Regional Development and Cities	technical studies UTS interviews Stage 2
Air Services Australia	technical studies
NSW Department of Primary Industry	technical studies
Office of Environment and Heritage	technical studies
Metropolitan Local Aboriginal Land Council	UTS interviews Stage 2/to be determined
La Perouse Local Aboriginal Land Council	UTS interviews Stage 2/to be determined
NSW National Parks and Wildlife Service	technical studies
Tourism NSW	technical studies
Office of Sport technical studies	UTS interviews Stage 2
Office of Open Space and Parklands technical studies	UTS interviews Stage 2
District Council eg Eastern Economic Corridor	technical studies
State Emergency Services	technical studies
Key Groups	
Developer Industry Groups	workshops
Bayside Business Enterprise Centre	technical studies workshops
Community Housing group	workshops
Botany Historical Society	technical studies
St George and District Historical Society	technical studies
Local Heritage Groups	technical studies
Sporting Groups	technical studies workshops, surveys,
Environment Groups	technical studies workshops, surveys,
Community Services Groups	hard to reach session? workshops
Advance Diversity Services	hard to reach session? workshops
Sydney Multicultural Community Services	workshops
Educational establishments	technical studies workshops
Sydney Airport	UTS interviews Stage 1 and 2 workshops
Botany Industrial Park	UTS interviews Stage 1 and 2 workshops
APA Group (Gasline)	technical studies

Property Council Australia	technical studies workshops
Urban Development Institute of Australia (UDIA)	technical studies workshops
Planning Institute of Australia (NSW)	technical studies
Institute of Architects (NSW)	LEP/DCP prep
Australian Rail Track Corporation	technical studies
Sydney Motorway Corporation	technical studies
St George BUG	technical studies
Bike NSW	technical studies
Chamber of Commerce	UTS interviews Stage 2 workshops
Caltex	technical studies
Submitters to former Rockdale Heritage Conservation Area Discussion Paper	technical studies, surveys,
Advance Diversity Services	hard to reach session? Workshops
HERAG	UTS interviews Stage 2
Additional	
Residents community	community workshops, surveys, information stations
Landowners	community workshops, surveys, information stations
Developers	Developer workshops
Business owners	community workshops, surveys, information stations
Consultants	technical studies
Local members	UTS/Council staff workshops

Council Meeting

12/09/2018

Item No	8.6
Subject	Post-Exhibition Report: Planning Proposal - 3 Macquarie Street & 3A Maloney Street, Rosebery (The Lakes Hotel)
Report by	Michael McCabe, Director City Futures
File	F11/216

Summary

On 14 March 2018, Council resolved to support a Planning Proposal for land at 3 Macquarie Street and 3A Maloney Street, Rosebery. The Planning Proposal seeks to amend the Botany Bay Local Environmental Plan 2013 to allow an Additional Permitted Use to permit additional carparking in association with The Lakes Hotel.

On 8 May 2018, the NSW Department of Planning & Environment (the DPE) issued a Gateway Determination to enable exhibition of the Planning Proposal for a minimum of 14 days. The Planning Proposal was publicly exhibited for 16 days from Wednesday 13 June 2018 to Friday 29 June 2018. No submissions were received during the public exhibition period.

On 21 August 2018, a post-exhibition report was presented to the Bayside Local Planning Panel, which informed the Panel of the outcomes of public exhibition.

The purpose of this report is to now inform Council of the Bayside Local Planning Panel's recommendation, following public exhibition.

Officer Recommendation

- 1 That Council acknowledges that no submissions were received during the public exhibition process.
 - 2 That Council, in accordance with Section 3.36(2) of the Environmental Planning & Assessment Act 1979, exercises its delegation and makes the Local Environmental Plan amendment, as exhibited, for 3 Macquarie Street and 3A Maloney Street, Rosebery.
-

Background

On 14 March 2018, Council resolved to support a Planning Proposal for land at 3 Macquarie Street and 3A Maloney Street, Rosebery to amend the Botany Bay Local Environmental Plan 2013 to allow an Additional Permitted Use permitting additional carparking in association with The Lakes Hotel. **Figure 1** below shows the location of the subject site.



Figure 1 – Aerial photograph of the subject site and adjoining Lakes Hotel

On 8 May 2018, the NSW Department of Planning and Environment (the DPE) issued a Gateway Determination to enable the public exhibition of the Planning Proposal. In accordance with the Gateway Determination (see **Attachment 1**), the Planning Proposal was publicly exhibited for 16 days from Wednesday 13 June 2018 to Friday 29 June 2018. This was two days longer than the minimum 14 day exhibition period stipulated in the Gateway Determination. Details of the community engagement actions that occurred in relation to this Planning Proposal are included later in this report.

On 21 August 2018, a post-exhibition report was presented to the Bayside Local Planning Panel (the Panel) which confirmed that no submissions were received during the public exhibition period. The Panel confirmed its satisfaction that the impacts of the additional use of car parking for the adjoining hotel could be adequately managed. The Panel thereby recommended to Council that the LEP Amendment be made.

The purpose of this report is to confirm to Council that the public exhibition was undertaken in accordance with the conditions of the Gateway Determination, and that no submissions were received during the exhibition period. The recommendation to Council is, therefore, that, in accordance with Section 3.36(2) of the Environmental Planning & Assessment Act 1979, Council exercises its delegation in this matter and makes the Local Environmental Plan amendment, as exhibited.

Next Step

In the event that Council resolves to endorse the notification of the Planning Proposal, it will be forwarded to the Department of Planning and Environment so that the LEP amendment

can be drafted, subject to any amendments resolved by Council. Council has delegation from the Minister to make this LEP amendment.

Conclusion

The Planning Proposal has been exhibited in accordance with the requirements of the Gateway Determination. There were no submissions received during the exhibition process. In accordance with Section 3.36(2) of the Environmental Planning and Assessment Act 1979, Council can now exercise its delegation and make the Local Environmental Plan amendment, as exhibited, for 3 Macquarie Street and 3A Maloney Street, Rosebery.

Financial Implications

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

Community Engagement

The community engagement actions in relation to this Planning Proposal were:

- Publicly exhibiting the Planning Proposal for 16 days from Wednesday 13 June 2018 to Friday 29 June 2018;
- Sending notification letters to surrounding landowners;
- Providing hard copies of all materials for inspection at both the Eastgardens and Mascot libraries; and
- Advertising the Planning Proposal in the Southern Courier, providing notification of the exhibition period and where exhibition materials could be viewed, including on Council's 'Have Your Say' web page.

Attachments

Attachment 1 - Gateway Determination [↓](#)



Planning & Environment

Gateway Determination

Planning proposal (Department Ref: PP_2018_BSIDE_001_00): to amend Clause 17 Schedule 1 of the Botany LEP 2013 to permit car parking as an additional permitted use at 3 Macquarie Street and 3A Maloney Street, Rosebery in association with the Lakes Hotel.

I, the Director, Sydney Region East at the Department of Planning and Environment, as delegate of the Greater Sydney Commission, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the Botany Bay Local Environmental Plan (LEP) 2013 to amend Clause 17 Schedule 1 to permit car parking as an additional permitted use at 3 Macquarie Street and 3A Maloney Street, Rosebery in association with the Lakes Hotel should proceed subject to the following conditions:

1. Community consultation is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:
 - (a) the planning proposal is classified as low impact as described in *A guide to preparing local environmental plans* (Department of Planning and Environment 2016) and must be made publicly available for a minimum of **14 days**; and
 - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of *A guide to preparing local environmental plans* (Department of Planning and Environment 2016).
2. Consultation is to include any current occupiers of the subject sites.
3. No consultation is required with the following public authorities / organisations under section 3.34(2)(d) of the Act.
4. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
5. The planning proposal authority is authorised as the local plan-making authority to exercise the functions under section 3.36(2) of the Act subject to the following:
 - a. the planning proposal authority has satisfied all the conditions of the Gateway determination;


PP_2018_BSIDE_001_00 (IRF 18/2186)



Planning & Environment

- b. the planning proposal is consistent with section 9.1 Directions or the Secretary has agreed that any inconsistencies are justified; and
 - c. there are no outstanding written objections from public authorities.
6. The time frame for completing the LEP is to be **9 months** following the date of the Gateway determination.

Dated *8th* day of *May* 2018.


Amanda Harvey
Director, Sydney Region East
Planning Services
Department of Planning and Environment
Delegate of the Greater Sydney Commission

PP_2018_BSIDE_001_00 (IRF 18/2186)

Council Meeting

12/09/2018

Item No	8.7
Subject	Planning Proposal - 8 Princess St, Brighton Le Sands
Report by	Michael McCabe, Director City Futures
File	F18/395

Summary

Council received a draft Planning Proposal in relation to land at 8 Princess Street, Brighton-Le-Sands (subject site). The site is currently zoned SP3 – Tourist and is located immediately to the north-west of the Novotel Hotel and was formerly part of the Novotel landholdings. The properties to the north-west and south of the site are zoned B4 Mixed Use.

On the 28th August 2018, the Bayside Local Planning Panel considered the draft Planning Proposal and additional information requested by Council at the Council meeting of 8th August 2018. The recommendation of the Bayside Local Planning Panel from 28 August 2018 is included below, being the same recommendation as made by the Bayside Local Planning Panel at its meeting of 26 June 2018 for the same matter:

- 1 *That Bayside Local Planning Panel recommends to Council that, pursuant to Section 3.34 of the Environmental Planning & Assessment Act 1979 (EPAA), the draft Planning Proposal for land known as 8 Princess Street, Brighton-Le-Sands be submitted to the Department of Planning & Environment (DPE) for a Gateway determination.*
- 2 *That Bayside Local Planning Panel recommends to Council that, should a Gateway determination be issued, a further report be presented to Council following the public exhibition period to demonstrate compliance with the Gateway determination and to provide details of any submissions received throughout that process.*

The Panel's reason for the recommendation was:

The Panel is satisfied that, with the benefit of having reviewed the assessment report for the existing development approved for the site, this does not change the circumstances. The Panel's position remains the same as previously indicated: that is, it recommends to the Council that it may proceed with the planning proposal.

The draft Planning Proposal seeks to rezone the land from SP3 Tourist to B4 Mixed Use. Subsequent to the development of the hotel the site was developed for residential apartments, however, the zoning of the subject site was not amended to B4 Mixed Use. In order for the apartment building to accommodate residential apartments on the ground floor and be consistent with the adjacent residential flat buildings a change in zone to B4 Mixed Use is sought. No other changes to the development standards in the Rockdale Local Environmental Plan 2011 are sought.

The intended outcome of the draft Planning Proposal is to enable three inactive commercial tenancies located at the ground floor of an existing 9-storey shop top housing development to be used for the purposes of residential apartments. A review of why the tenancies have remained vacant indicates that it has relatively poor locational attributes, in summary:

- Competition from existing food-based retailing;
- Minimal levels of pedestrian traffic and no direct sight lines to highly trafficked areas;
- Visibility to passing traffic given the low levels of vehicle traffic in Princess Street;
- There are no other significant attractors to the subject site; and
- The site is located a block north of Bay Street and derives no benefit from the activity levels and visitation generated from the Brighton-Le-Sands activity centre.

On the 26 June 2018, the draft Planning Proposal was considered by the Bayside Planning Panel (Panel). The Panel made the following recommendation to Council:

- "1 That pursuant to section 3.34 of the Environmental Planning & Assessment Act 1979 (EPAA) the draft Planning Proposal for land known as 8 Princess Street, Brighton-Le-Sands be submitted to the Department of Planning & Environment (DPE) for a Gateway determination; and*
- 2 That should a Gateway determination be issued, a further report be presented to Council following the public exhibition period to demonstrate compliance with the Gateway determination and to provide details of any submissions received throughout that process."*

The Panel noted the following reason for their recommendation:

"The Panel is satisfied that the adjoining B4 zone could be extended over the subject site and this is not contrary to the strategic planning for the area."

At the Council meeting of 8th August 2018, Council considered the draft Planning Proposal, including the Panel's recommendations, and resolved:

"That this matter be referred back to the Bayside Planning Panel and all the information pertaining to the previous Development Application for this property be made available to the Panel; including the breach of height and FSR controls that required a Clause 4.6 Variation."

Council noted that DA-2012/325 was supported by:

- two written requests under Clause 4.6 Exceptions to development standards of the *Rockdale Local Environmental Plan 2011* (Rockdale LEP) to vary the height of buildings and floor space ratio (FSR) development standards; and
- written justification to reduce the provision of retail floor space required by the Rockdale DCP 2011.

In accordance with Council's resolution of 8th August 2018, all the information pertaining to the previous development application DA-2012/325, is contained in **Attachment 1** and includes:

- The development assessment report and attachments presented to the ordinary meeting of Council on 5th December 2012;
- The clause 4.6 written requests in relation to building height and floor space ratio (FSR); and
- The applicant's justification for the variation to the amount of retail floor space required under the Rockdale DCP 2011.

A summary of the Clause 4.6 Exceptions to development standards and the justification for the reduced retail floor space is provided under the heading 'Planning History' of this report.

Officer Recommendation

- 1 That, pursuant to section 3.34 of the *Environmental Planning & Assessment Act 1979* (EPAA), the draft Planning Proposal for land known as 8 Princess Street, Brighton-Le-Sands be submitted to the Department of Planning & Environment (DPE) for a Gateway determination.
- 2 That, should a Gateway determination be issued by the NSW Department of Planning & Environment, a further report be presented to Council following the public exhibition period to demonstrate compliance with the Gateway determination and to provide details of any submissions received throughout that process.

Background

Applicant:

Lumex Property Group.

Site description:

Lots subject to the draft Planning Proposal are shown in **Table 1**, below:

Table 1: Lots subject to draft Planning Proposal

Lot	SP	Address	Current zoning
4	92060	8 Princess Street, Brighton-Le-Sands	SP3 Tourist
5	92060	8 Princess Street, Brighton-Le-Sands	SP3 Tourist
70	92060	8 Princess Street, Brighton-Le-Sands	SP3 Tourist

The subject site has a total area of approximately 1505sqm and is bounded by Princess Street to the north; and a service laneway to the south; residential development to the west and by a hotel development (Novotel) to the east. The site currently contains a 9-storey shop top housing development (refer to aerial photograph at **Figure 1** (subject site outlined in red); and google street view image at **Figure 2**).

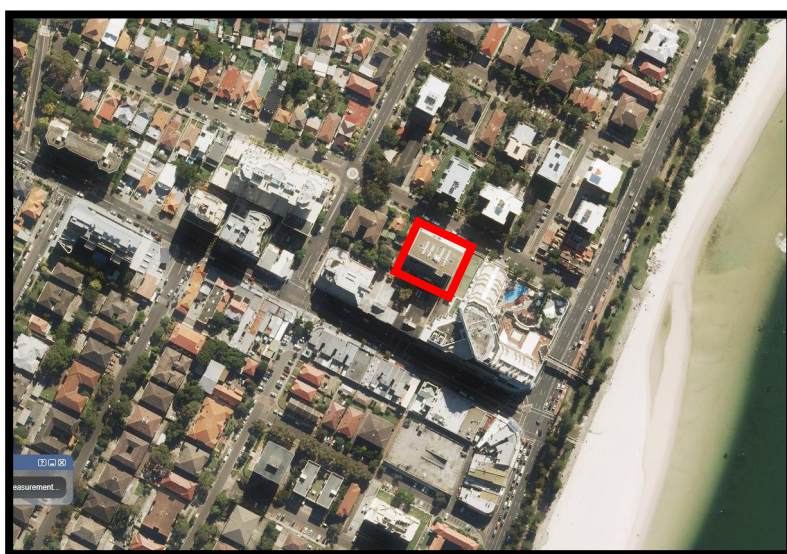


Figure 1 – Aerial photograph
(Source: www.maps.six.nsw.gov.au)



Figure 2: Subject site with ground floor commercial tenancies outlined in yellow
(Source: www.google/maps - Street view - image capture October 2017)

Site Context:

The site is located on the southern side of Princess Street and forms part of the Brighton-Le-Sands local centre.

A context map for the site is provided in **Figure 3**, below:



Figure 3: Site context map
(Source: Land & Property Information www.maps.six.nsw.gov.au)

Surrounding land use zones:

Land use zones surrounding the site comprise SP3 Tourist zoned land to the east; B4 Mixed Use zoned land to the south and west, and R4 High Density Residential zoned land to the north (Refer to **Figure 4**, overleaf).

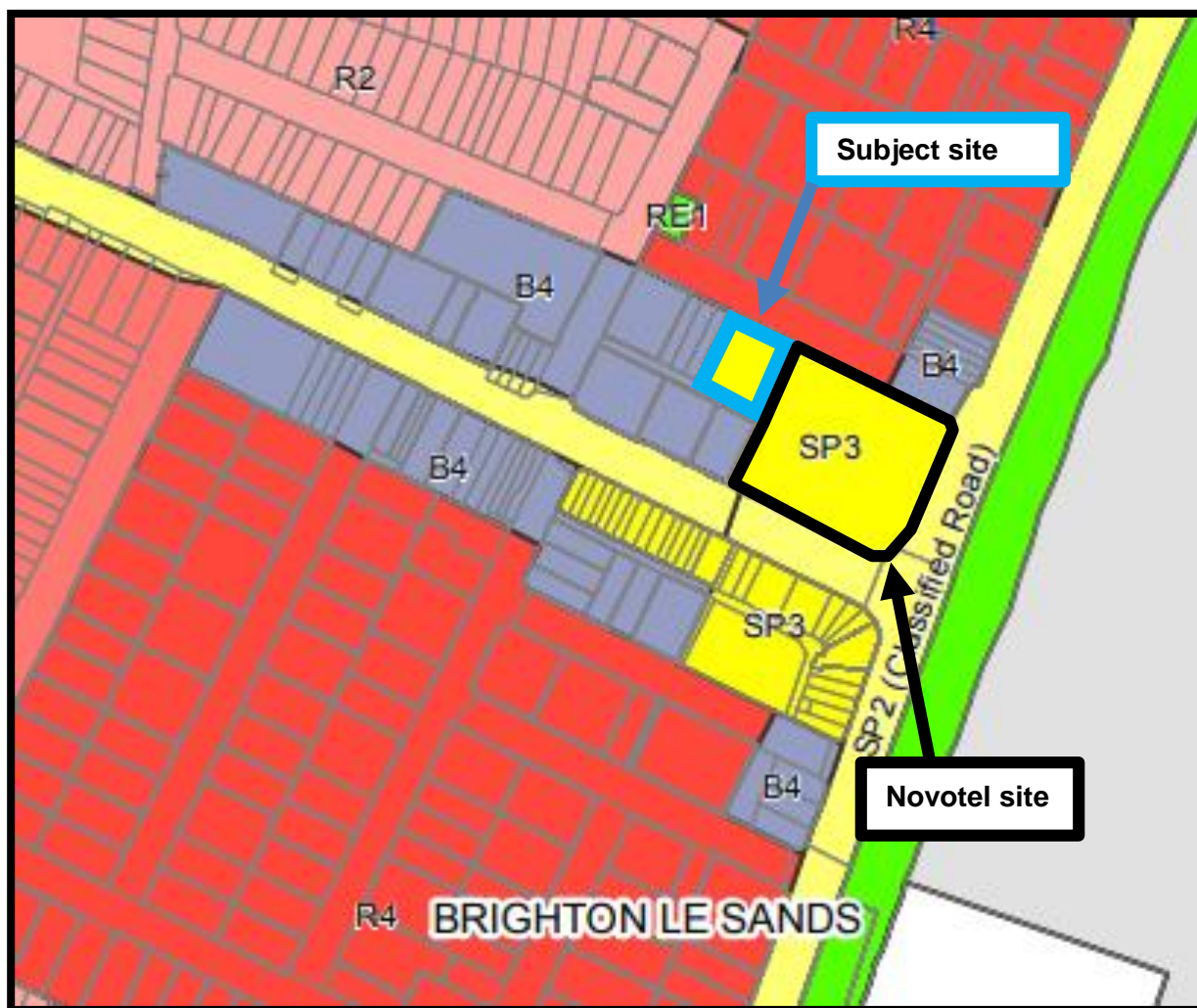


Figure 4 – Rockdale LEP 2011 Land Zoning Map LZN_004 (Subject site – SP3 - Tourist)
(Source: www.legislation.nsw.gov.au)

Planning History

In 1988, Council granted consent to the construction of the 15 storey Novotel Hotel Brighton Le Sands Parade, Brighton Le Sands adjacent to the subject site. In 2007, the owners of the Novotel Hotel purchased Nos 8-14 Princess Street (commonly known as 8 Princess Street, Brighton Le Sands).

Between early 2008 and early 2011, the owners of the site held a series of meeting with the former Rockdale City Council to discuss a possible extension of the existing Novotel Hotel onto the adjoining Princess Street site. During this time, discussions were also held with the then Department of Planning and Infrastructure (now the Department of Planning and Environment) and Council regarding the proposed lodgement of a Part 3A Concept Plan for the refurbishment of the existing hotel and its extension onto the subject site. In January 2009, the proposed hotel expansion project was declared to be project to which the former Part 3A of the *Environmental Planning and Assessment Act 1979* (EPAA) applied, and the then Minister for Planning authorised the preparation of a Concept Plan.

A major development application (MP08_0239 – Tourism (Hotel) Development) under the former Part 3A of the *Environmental Planning Assessment Act 1979* (EPAA) was lodged with the then Department of Planning for refurbishment works and hotel extension to the Novotel Hotel (Novotel site), and included the subject site as part of the major application. However,

the proposed hotel expansion did not proceed and the Part 3A declaration for the project was revoked.

In September 2011, a formal Pre-DA Meeting was held at Council to discuss the proposed redevelopment at the subject site for a mixed use development. At this time, Rockdale Local Environmental Plan 2000 was still in force and the proposed 'shop-top housing' development was prohibited in the 2(c) zone that applied to the site. However, the development concept for the site had been prepared based on the provision of draft Rockdale Local Environmental Plan 2011 and draft Rockdale Development Control Plan 2011, under which 'shop-top housing' would be permissible.

As part of the major application consultation and assessment process; and in the preparation of the Rockdale LEP 2011, the site was rezoned from Residential 2(c) to SP3 Tourist so as to be consistent with the concept plan.

The subject site has since been redeveloped for the purposes of a 9-storey shop top housing development, including 3 non-residential tenancies at ground floor, under DA2012/325, which was approved by the former Rockdale Council at its ordinary meeting of 5th December 2012.

As part of the development application, the applicant sought Clause 4.6 variations to the *Rockdale Local Environmental Plan 2011* (Rockdale LEP 2011) in relation to height of building and floor space ratio (FSR).

In relation to the variation to the height of buildings development standard, the development application sought a 1.05 metre variation to the 28 metre maximum height standard with a proposed maximum height of 29.05 metres. The variation was supported given that the non-compliance is contained wholly to the two (2) lift overruns positioned centrally on the roof of the building.

In relation to the variation to the floor space ratio development standard, the applicant sought a floor space ratio of 3.17:1, which exceeds the 3:1 statutory maximum by 262m² (5.1%). The variation was supported given that the development outcome was considered consistent with the established character of the areas, and meets the underlying FSR and height objectives and which preserve the amenity of existing surrounding residents and future occupants to the building.

The Development Application also sought to vary the retail floor space controls set out in the *Rockdale Development Control Plan 2011* (Rockdale DCP). The DCP requires a minimum 10% of the gross floor area of mixed use developments to be provided for retail and/ or commercial uses. The development did not achieve the minimum 10% retail floor space required, providing only 5.2%. The variation to the control was considered to result in an acceptable outcome as it was considered the proposal would still be able to satisfy the overarching objectives for Mixed Use Development:

- It will foster growth and improvement in the existing centre by providing a new high quality retail product that represents a viable leasing option for a wider section of the retail market;
- It will promote a range of employment uses and increase retail diversity;
- It will better contribute to the vitality and economic viability of Brighton Le Sands by providing a retail product that has a wider market appeal and is more likely to be occupied by tenants in the short term;
- It supports the creation of a safe and amenable public domain through the creation of a continuous active façade for the full width of the site;

- It supports the creation of an active interface between ground floor level of the site and Princess Street;
- It helps clearly define the extent of the public domain; and
- It maximises the flexibility and adaptability of the building to meet current and future demands.

Despite extensive marketing campaigns conducted over a period of several years, the owner was unable to lease the commercial tenancies for a variety of reasons, as detailed in the supporting Sales and Marketing Overview Letter (refer **Attachment 2**) and Shop Tenancy Assessment (refer **Attachment 3**) submitted with the Planning Proposal.

DRAFT PLANNING PROPOSAL ASSESSMENT

Summary of draft Planning Proposal

The draft Planning Proposal seeks to:

- 1 Rezone the land from SP3 Tourist to B4 Mixed Use.

The intended outcome of the draft Planning Proposal is to enable three inactive commercial tenancies located at the ground floor of an existing shop top housing development to be used for the purposes residential dwellings.

The proposed zoning will allow for residential uses at ground floor and provide a land use zone compatible with the Brighton-Le-Sands local centre.

A copy of the draft Planning Proposal is included at **Attachment 4**.

Assessment of draft provisions

Proposed Zoning

The proposed B4 Mixed Use zoning permits residential flat buildings with consent and will enable the conversion of the ground floor tenancies to residential. The proposed B4 Mixed use zoning will be consistent with the functioning of the existing local centre and form a logical extension to the existing B4 Mixed Use zone. The site is not subject to *Rockdale Local Environmental Plan 2011* clause 6.11 Active Street Frontage and Residential Flat Buildings are permitted with consent in the B4 Zone.

Urban Context & Evaluation

The Planning Proposal indicates that the retail tenancies at ground floor are not able to be leased despite several leasing campaigns as summarised in the supporting Sales and Marketing Overview Letter (refer **Attachment 2**). As identified in the submitted Shop Tenancy Assessment prepared by Essential Economics (refer **Attachment 3**), the site has relatively poor overall locational attributes, in summary:

- i) Competition from existing food-based retailing;
- ii) Minimal levels of pedestrian traffic and no direct sight lines to highly trafficked areas;
- iii) Visibility to passing traffic given the low levels of vehicle traffic in Princess Street;
- iv) There are no other significant attractors to the subject site; and
- v) The site is located a block north of Bay Street and derives no benefit from the activity levels and visitation generated from the Brighton-Le-Sands activity centre.

Council staff have reviewed the Planning Proposal and supporting Design Report (refer **Attachment 5**) and the following comments are provided:

- *The Eastern City District Plan, Planning Priority E6 – Creating and renewing Great Places and Local Centres* refers to streets as places that function in response to street typology and local conditions. The vacant tenancies at ground floor are not desirable for the performance or the safety of the local street, and do not contribute to the vitality or life of the street. Without any activation or passive surveillance at ground floor an inactive frontage has arisen from the above listed contributing factors, generating concerns around how the development is responding to *Crime Prevention Through Environmental Design* (CPTED) principles.
- The rezoning of the site to allow for ground floor residential tenancies will provide the passive surveillance required. The public and private interface will also allow for casual interaction and contribute to the vitality and life of the street.
- To improve the existing urban condition the Planning Proposal for 8 Princess Street, Brighton-Le-Sands, to be rezoned from SP3 Tourist to B4 Mixed Use, is supported on the grounds of addressing *Planning Priority E6* of the *Eastern City District Plan*, *CPTED* principles and universal urban design principles in relation to street activation.

Justification

Environmental Planning & Assessment Act 1979 (EPAA)

The NSW Department of Planning & Environment's *A Guide to Preparing Planning Proposals* - issued under s3.33 (3) of the EPAA - provides guidance and information on the process for preparing Planning Proposals. The assessment of the submitted Planning Proposal by Council staff has been undertaken in accordance with the latest version of this *Guide* (dated August 2016).

Section 9.1 Directions by the Minister

Section 9.1 Directions by the Minister (s9.1 directions) set out what a Relevant Planning Authority (RPA) must do if a s9.1 direction applies to a Planning Proposal, and provides details on how inconsistencies with the terms of a direction *may* be justified.

An assessment of the draft Planning Proposal against the applicable s9.1 directions is provided in **Table 2** below:

Table 2: Planning Proposal consistency with s9.1 directions.

Direction	Planning Proposal consistency with terms of direction	Consistent: Yes/ No (If No, is the inconsistency adequately justified?)
1.1 Business and Industrial Zones	<p>What a RPA must do: A RPA must ensure that a Planning Proposal:</p> <ul style="list-style-type: none"> (a) Give effect to the objectives of this direction, (i.e. encourage employment growth in suitable locations, protect employment land in business and industrial zones, and support the viability of identified centres), (b) Retain the areas and locations of existing business and industrial zones, 	YES

	<p>(c) Not reduce the total potential floor space area for employment uses and related public services in business zones,</p> <p>(d) Not reduce the total potential floor space area for industrial uses in industrial zones, and</p> <p>(e) n/ a.</p> <p><u>Comment:</u> The Planning Proposal provides additional B4 mixed use zoned land in close proximity to an existing business zone, supporting the viability of the Brighton-Le-Sands local centre.</p>	
2.3 Heritage Conservation	<p>What a RPA must do: A RPA must ensure that a Planning Proposal contains provisions that facilitate the conservation of heritage items, places, building works or precincts of environmental heritage significance to an area.</p> <p><u>Comment:</u> The site is not within a conservation area, does not contain a heritage item and is not in the vicinity of a heritage item.</p> <p>No inconsistencies with the terms of the direction were identified.</p>	YES
3.3 Home Occupations	<p>What a RPA must do: A Planning Proposal must permit home occupations to be carried out in dwelling houses without the need for development consent.</p> <p><u>Comment:</u> The B4 Mixed Use zone in the Rockdale LEP 2011 includes home occupations as development that may be carried out in dwelling houses without the need for development consent.</p> <p>No inconsistencies with the terms of the direction were identified.</p>	YES
3.4 Integrating Land Use and Transport	<p>What a RPA must do: A Planning Proposal must locate zones for urban purposes and include provisions that give effect to and are consistent with the aims, objectives and principles of <i>Improving Transport Choice – Guidelines for planning and development (DUAP 2001)</i> (guidelines).</p> <p><u>Comment:</u> The Planning Proposal is considered consistent with the guidelines as the Planning Proposal enables residential development in close proximity to frequent public transport and a mix of uses including shops and services.</p> <p>No inconsistencies with the terms of the direction were identified.</p>	YES
3.5 Development Near Licensed Aerodromes	<p>No alteration to controls in relation to building height are proposed and the site is not affected by the Australian Noise Exposure Forecast. Therefore, no inconsistencies with the terms of the direction were identified.</p>	YES
4.1 Acid Sulfate Soils	<p>What a RPA must do: The direction requires that a RPA must consider an acid sulfate soils study assessing the appropriateness of the change of land use given the presence of acid sulfate soils.</p> <p><u>Comment:</u> The Rockdale LEP 2011 Acid Sulfate Soils Map identifies the site as having Class 4 acid sulfate soils.</p>	NO - Inconsistency justified.

	<p>Consistency <i>A Planning Proposal may be inconsistent with the terms of the direction if the inconsistency is justified by a study prepared in support of the Planning Proposal.</i></p> <p><u>Comment:</u> Clause 6.1 of the Rockdale LEP 2011 requires an acid sulfate soils management plan at DA stage, before carrying out any development on the land. The inconsistency with this direction is therefore considered minor and justifiable.</p>	
<p>5.10 Implementation of Regional Plans</p>	<p>What a RPA must do: Planning proposals must be consistent with a Regional Plan released by the Minister for Planning.</p> <p><u>Comment:</u> <i>A Metropolis of Three Cities</i> is the Region Plan that applies to the five districts that make up the Greater Sydney Region.</p> <p>The Planning Proposal is consistent with the following objectives in the Region Plan:</p> <ul style="list-style-type: none"> • Objective 10: Greater housing supply The Planning Proposal increases the supply of housing. • Objective 14: integrated land use and transport creates walkable and 30-minute cities. The Planning Proposal increases housing within a walkable catchment of Brighton-Le-Sands local centre and transport links that support this objective. 	<p>YES</p>
<p>7.1 Implementation of A Plan for Growing Sydney</p>	<p>What a RPA must do: A RPA must ensure that a Planning Proposal is consistent with A Plan for Growing Sydney.</p> <p><u>Comment:</u> The draft Planning Proposal is consistent with the following directions and priorities contained in <i>A Plan for Growing Sydney</i>:</p> <ul style="list-style-type: none"> • Direction 2.1: Accelerate housing supply across Sydney. The delivery of new housing must be accelerated to meet the need for a bigger population and to satisfy a growing demand of different types of housing. • Direction 2.2: Accelerate urban renewal across Sydney – providing homes closer to jobs. New urban renewal locations will be selected in or near centres on the public transport network. Locating new housing here will make it easier for people to get to jobs and services and take pressure off congested roads. • Direction 2.3: Improve housing choice to suit different needs and lifestyles. • Direction 3.1: Revitalise existing suburbs. Provision of new housing within Sydney's established suburbs bring real benefits to communities and make good social and economic sense. Directing new housing to the existing urban areas will reduce the impact of development on the environment and protect productive rural land on the urban fringe. <p>No inconsistencies with the terms of the direction were identified.</p>	<p>YES</p>

- **State Environmental Planning Policies (SEPPs)**

An assessment of the Planning Proposal against the relevant SEPPs is provided in **Table 3**, below.

Table 3: Relevant SEPPs

Name of SEPP	Compliance of Planning Proposal with SEPP	Complies Y/ N
SEPP No 65—Design Quality of Residential Apartment Development (SEPP 65)	The Planning Proposal was referred to Council's Urban Designer, who raised no objection to the proposal in terms of its consistency with SEPP 65, noting that any future DA, should the Planning Proposal be supported, would be required to comply with SEPP 65 and accompanying Apartment Design Guide.	YES

There are no other SEPPs applicable to the Planning Proposal.

- **Sydney Regional Environmental Plans (SREPs)**

There are no SREPs applicable to the Planning Proposal.

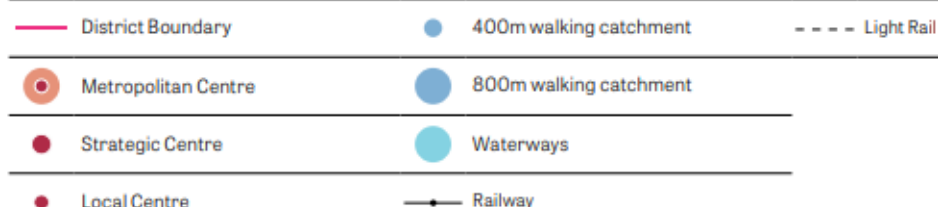
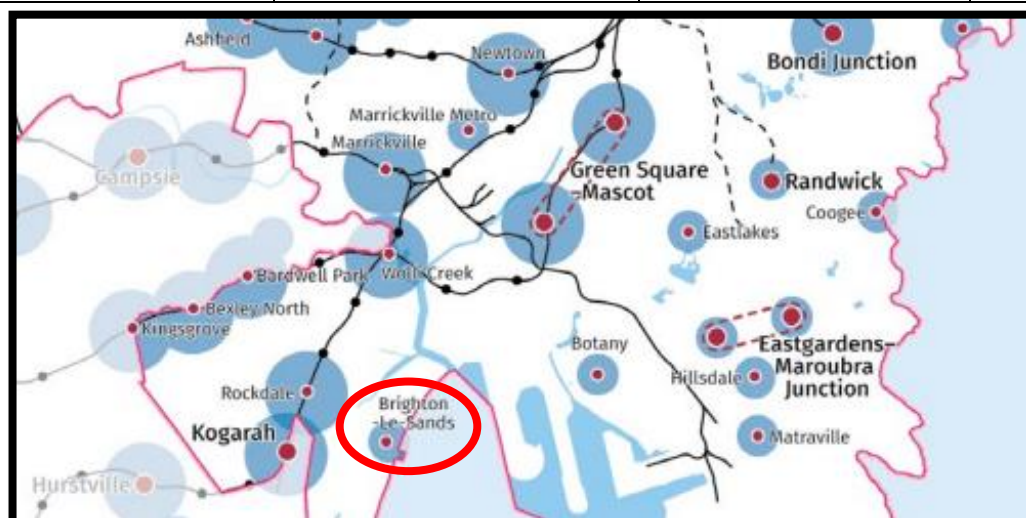
- **Strategic Planning Framework**

Regional, sub-regional and district plans and strategies include outcomes and specific actions for a range of different matters including housing and employment targets, and identify regionally important natural resources, transport networks and social infrastructure. An assessment of the Planning Proposals consistency with the strategic planning framework is provided in **Table 4**, below.

Table 4: Strategic Planning Framework

Name of Strategic Plan	Directions, priorities, objectives and actions	Planning Proposal consistency with Strategic Plan	Consistency Y/ N
Regional Plans			
Greater Sydney Region Plan	<p>Objective 10 – Greater housing supply, which encourages the supply of housing in the right locations with access to shops, services and public transport.</p> <p>Objective 14 – A Metropolis of Three Cities – integrated land use and transport creates walkable and 30-minute cities. <i>“One of the principal elements in achieving the productivity outcomes is:</i></p> <p><i>Co-locate activities in metropolitan, strategic and local centres and attract housing in and around centres to create walkable, cycle-friendly neighbourhoods.”</i></p>	<p><u>Comment:</u> The draft Planning Proposal is consistent with objective 10 as additional housing supply is facilitated within walking distance of shops, services and public transport.</p> <p><u>Comment:</u> The Planning Proposal is located in the Brighton-Le-Sands local centre and potentiates additional housing within walking distance of shops and public transport links that support the objective.</p>	YES

District Plans			
Eastern City District Plan (ECDP)	<ul style="list-style-type: none"> Planning Priority E5: Providing housing supply, choice and affordability, with access to jobs, services and public transport. Planning Priority E6: Creating and renewing great places and local centres. The Planning Priority establishes 'Principles for local centres' and states that: <i>"additional residential development within a five-minute walk of a centre focused on local transport, will help to create walkable local centres."</i> 	<p><u>Comment:</u> The Planning Proposal supports the role of the Brighton-Le-Sands local centre by increasing housing provision within walking distance of services and public transport.</p> <p><u>Comment:</u> Brighton-Le-Sands is identified as a local centre in the ECDP (refer to the extract from the ECDP at Figure 5, below).</p> <p>The Planning Proposal is consistent with the 'Principles for local centres' (p49 of the ECDP) through the increased provision of residential development in, or within walkable distance of, the centre.</p>	YES



The map illustrates the approximate five-minute walking catchment around local centres serviced by local transport and the approximate 10-minute walking catchment around a centre focused on a mass transit stop. Actual walking catchments of 5-10 minutes will depend on local connections and conditions and should be determined using a place-based approach within which housing, retail and commercial growth opportunities need to be balanced and planned for by councils.

Figure 5: Eastern City District – centres
(Source: Eastern City District Plan)

Local plans			
Rockdale Community Strategic Plan (adopted 15 June 2011)	<u>Villages and Local Centres</u> <i>Redevelopment within these centres is encouraged as a means of increasing residential densities in close proximity to public transport and services. Redevelopment proposals would need to recognise the desired local character of the centre.</i> <u>Rockdale Tomorrow:</u> <i>Future growth is likely to occur in the centres of Rockdale, Wolli Creek, Brighton Le Sands, Bexley and Bexley North, which have the most significant opportunities for redevelopment through the presence of larger sites which are more readily able to be developed.</i>	<u>Comment:</u> The Planning Proposal is generally consistent with the Plan to increase residential densities in close proximity to public transport.	YES

Other considerations

Car parking:

The Rockdale Development Control Plan 2011 (Rockdale DCP) requires car parking at the rate of 1 space per 1 and 2 bed apartments. The indicative floor plan (refer **Attachment 6**) submitted with the Planning Proposal indicates that the ground floor of the development could potentially accommodate 1 x 1 bedroom apartment and 1 x 2 bedroom apartment, which equates to a car parking requirement of 2 spaces.

The existing approved retail ground floor component has a GFA of 160m². The Rockdale DCP requires car parking at the rate of 1 space per 40m² GFA, equating to a car parking requirement of 4 spaces.

Accordingly, the Planning Proposal is acceptable in terms of car parking provision given the resultant decrease in car parking required.

Conclusion

The current SP3 Tourist zoning for the site was informed by a major development application under the former Part 3A of the *Environmental Planning and Assessment Act 1979* to expand the adjoining Novotel hotel.

The expansion of the existing Novotel did not proceed, and the site was subsequently developed for the purposes of a 9-storey shop top housing development in accordance with the permissible land uses in the SP3 Tourist zone. The existing development on the site has three commercial tenancies at ground floor.

Despite extensive marketing campaigns conducted over a period of several years, the owner was unable to lease the commercial tenancies for a variety of reasons, as detailed in the Planning Proposal and supporting reports submitted with the Planning Proposal.

The vacant tenancies have resulted in an inactive streetscape and the Planning Proposal seeks to rectify this unintended outcome by rezoning the site to B4 Mixed Use. It is anticipated that this will enable residential development at ground floor, which will provide casual surveillance and activation of the streetscape whilst retaining a zoning consistent with the primary function of the Brighton-Le-Sands local centre.

On the 28th August 2018, the Bayside Local Planning Panel considered the draft Planning Proposal and additional information requested by Council at the Council meeting of 8th August 2018. The recommendation of the Bayside Local Planning Panel from 28 August 2018 was the same recommendation as made by the Bayside Local Planning Panel at its meeting of 26 June 2018 for the same matter.

Financial Implications

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

Community Engagement

Should the Planning Proposal proceed through Gateway, community consultation will be undertaken in accordance with section 3.34 of the EPAA. The specific requirements for community consultation will be listed in the Gateway determination, including any government agencies that are to be consulted.

Attachments

- 1 Council Report DA-2012/325 [↓](#)
- 2 Sales & Marketing Overview Letter [↓](#)
- 3 Shop Tenancy Assessment [↓](#)
- 4 Draft Planning Proposal [↓](#)
- 5 Design Report [↓](#)
- 6 Indicative Floor Plan [↓](#)

Council Meeting

Meeting Date 05/12/2012

Item Number: ORD09
Property: 6-14 PRINCESS STREET BRIGHTON LE SANDS
Subject: CONSTRUCTION OF NINE STOREY MIXED USE DEVELOPMENT
 COMPRISING FOUR NON RESIDENTIAL TENANCIES, FIFTY NINE (59)
 RESIDENTIAL UNITS AND BASEMENT PARKING FOR SEVENTY ONE (71)
 VEHICLES
File Number: DA-2012/325
Owner: THAKRAL BRIGHTON HOTEL PTY LTD
Applicant: JBA PLANNING
Developer: -
Location: SOUTHERN SIDE OF PRINCESS STREET BETWEEN THE GRAND PARADE
 AND MOATE AVENUE
Date of Receipt: 16/04/2012
Previous Report to Council: Nil
Report by: Manager - Development Services (Luis Melim)
Contributors:
Community Engagement: Yes - Consult
Financial Implications: No

Precis

The assessment report was prepared by an independent planning consultant, Andrew Robinson Planning Services Pty Ltd because Council was a previous land owner of part of the site to which the application relates (report is attached). In accordance with Council's Code of Planning Practice, the application has been assessed by an external consultant and is referred to Council for determination.

This application proposes the construction of a 9 storey shop-top housing development comprising 4 retail/business tenancies at ground level, 59 residential units over 8 levels and 2 basement parking levels to accommodate 71 cars, 8 motorcycles and 8 bicycles. The site is currently vacant and adjoins the 15 storey Novotel to the east and a single storey dwelling on a zero lot line to the west, that formerly comprised one half of a pair of semis. Saywell Lane runs along the rear of the site.

The proposed development is the first sizable project to be proposed under the new LEP provisions and the redevelopment of this site will play a key role in establishing the built form outcomes to be expected by Council in this precinct.

Notwithstanding, the proposal does not comply with the height and floor space ratio principal development standards under Rockdale Local Environmental Plan 2011 (RLEP). The applicant has made a request for a variation to these development standards under Clause 4.6 of the LEP, which allows for flexibility in the application of the development standards.

The proposal seeks a 1.05m variation to the 28m maximum height standard, with a proposed maximum height of 29.05m. However, the majority of the building is below the 28m height limit and the non-compliance is contained wholly to the two (2) lift overruns positioned centrally on the roof of the building.

The proposed floor space ratio of 3.17:1 exceeds the 3:1 statutory maximum by 262m² (5.1%). The applicant argues that significant effort has gone into the building design to ensure the achievement of a high quality development outcome that is consistent with the established character of the area, which meets the underlying FSR and height objectives and which preserves the amenity of existing surrounding residents and future occupants of the building.

The proposal also seeks variations to the side boundary setback and retail floor space controls set under Rockdale Development Control Plan 2011 (RDCP). These variations are discussed in the body of the report. However, it is considered that sufficient justification has been provided by the applicant to support a variation to these non-compliances.

Seven (7) submissions, including a 27 signature petition were received in response to the community consultation process. The issues raised in the submissions are discussed in the body of the report. However in summary, the issues include that the building is bulky and dominates the streetscape, the building exceeds the height limit, potential for adverse traffic impacts, insufficient setbacks, the potential for a wind tunnel effect, overshadowing and that the development is not in the public interest as a proposal with similar issues was refused by the Land & Environment Court in 2003.

Despite the non-compliances, on its merits the proposed development is considered to be an acceptable design solution for the site and is recommended for approval.

Council Resolution

NOTE:

Ms Anne Leighton, objector, addressed the Council and raised the following issues:

- development has no setback from the pavement;
- some properties in Princess Street have 3-9 metre setback;
- size of building exceeds the permitted height;
- building's sheer bulk will overshadow other properties;
- no landscaping;
- traffic congestion;
- health issues;
- parking issues.

Mr Benjamin Craig, applicant, addressed the Council and raised the following issues:

- proposed development has been subject on an extensive Design Review Panel process;
- supported by an independent planning expert and Council officers;
- proposed development complies with the vision, objectives and intent for the site and is consistent with the relevant planning controls and standards.

MOTION moved by Councillors Saravinovski and Bezic

- 1 That Council support the variation to the maximum height and floor space ratio requirements contained in clauses 4.3 and 4.4 of Rockdale Local Environmental Plan 2011 (RLEP 2011).
- 2 That the development application DA-2012/325 for the construction of a nine storey mixed use development comprising four non residential tenancies, fifty nine (59) residential units and basement parking for seventy one (71) vehicles at 6-14 Princess Street Brighton Le Sands be APPROVED pursuant to Section 80(1)(a) of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.
- 3 That the NSW Department of Planning be advised of Council's decision.
- 4 That the objectors be advised of Council's decision.

DIVISION

DIVISION on the MOTION called for by Councillors Saravinovski and Bezic

FOR THE MOTION

Councillors Bezic, Awada, Saravinovski, Kalligas, Nagi, Mickovski, Ibrahim, Tsounis and Poulos

AGAINST THE MOTION

Councillors O'Brien and Barlow

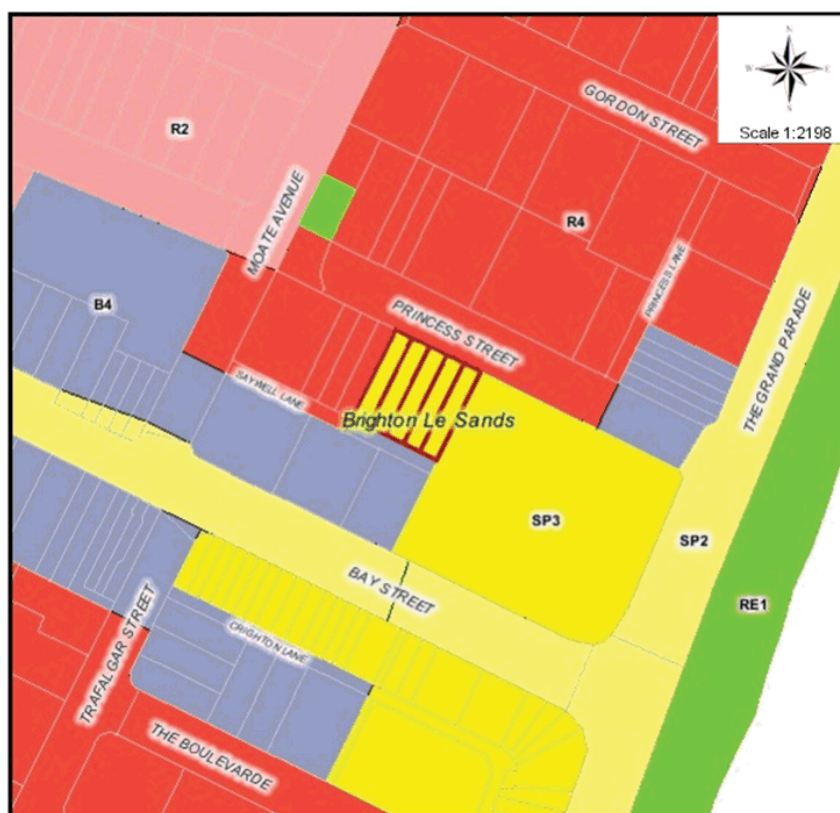
The MOTION was ADOPTED 9 votes to 2.

Officer Recommendation

That voting on this matter be by way of a Division.

- 1 That Council support the variation to the maximum height and floor space ratio requirements contained in clauses 4.3 and 4.4 of Rockdale Local Environmental Plan 2011 (RLEP 2011).
- 2 That the development application DA-2012/325 for the construction of a nine storey mixed use development comprising four non residential tenancies, fifty nine (59) residential units and basement parking for seventy one (71) vehicles at 6-14 Princess Street Brighton Le Sands be APPROVED pursuant to Section 80(1)(a) of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.
- 3 That the NSW Department of Planning be advised of Council's decision.
- 4 That the objectors be advised of Council's decision.

Report Background



6-14 Princess Street Brighton Le Sands

Community Engagement

The development application has been notified in accordance with Council's Development Control Plan.

Community Strategy

The proposal is consistent with Council's Community Outcome "A Sustainable City" and Community Outcome objective:

- Sustainability and environmental management is integral to the City's infrastructure and function. With sustainability at its core, the City is vibrant, engaging and liveable.
- Land Planning and Management - Promote high quality, well designed and sustainable development that enhances the City.

Financial Implications

There are no financial implications applicable to this report.

Compliance Table

Refer to the attached consultant's report.

File Attachments



6-14 Princess St - Consultants Report.pdf



6-14 Princess St BLS - Draft Dev Consent
Notice.pdf



Site & Elevation Plans - 6-14 Princess St
BLS.pdf

Related document Links

Subject:	PROPOSED SHOP-TOP HOUSING DEVELOPMENT COMPRISING A NINE STOREY MIXED USE DEVELOPMENT CONTAINING FOUR (4) NON-RESIDENTIAL TENANCIES, FIFTY NINE (59) RESIDENTIAL UNITS AND BASEMENT PARKING FOR SEVENTY ONE (71) VEHICLES
Property:	NOS. 6-14 PRINCESS STREET, BRIGHTON-LE-SANDS
File Number:	DA2012/325
Owner:	THAKRAL HOLDING LTD
Applicant:	JBA PLANNING PTY LTD
Report by:	CONSULTANT – ANDREW ROBINSON PLANNING SERVICES

PRECIS

This application proposes the construction of a 9 storey shop-top housing development comprising 4 retail/business tenancies at ground level, 59 residential units over 8 levels and 2 basement parking levels to accommodate 71 cars, 8 motorcycles and 8 bicycles. The site is currently vacant and adjoins the 15 storey Novotel to the east and a single storey dwelling on a zero lot line to the west, that formerly comprised one half of a pair of semis. Saywell Lane runs along the rear of the site.

The proposed development is the first sizable project to be proposed under the new LEP provisions and the redevelopment of this site will play a key role in establishing the built form outcomes to be expected by Council in this precinct.

Notwithstanding, the proposal does not comply with the height and floor space ratio principal development standards under Rockdale Local Environmental Plan 2011 (RLEP). The applicant has made a request for a variation to these development standards under Clause 4.6 of the LEP, which allows for flexibility in the application of the development standards.

The proposal seeks a 1.05m variation to the 28m maximum height standard, with a proposed maximum height of 29.05m. However, the majority of the building is below the 28m height limit and the non-compliance is contained wholly to the two (2) lift overruns positioned centrally on the roof of the building.

The proposed floor space ratio of 3.17:1 exceeds the 3:1 statutory maximum by 262m² (5.1%). The applicant argues that significant effort has gone into the building design to ensure the achievement of a high quality development outcome that is consistent with the established character of the area, which meets the underlying FSR and height objectives and which preserves the amenity of existing surrounding residents and future occupants of the building.

The proposal also seeks variations to the side boundary setback and retail floor space controls set under Rockdale Development Control Plan 2011 (RDCP). These variations are discussed in the body of the report. However, it is considered that sufficient justification has been provided by the applicant to support a variation to these non-compliances.

In support of the proposal, the applicant submits that:

"The proposed development will provide a better design and planning outcome for the site than would be achieved through strict compliance with the planning controls. The proposed variations of the development are as result of the constraints of the site and will not have any adverse environmental impacts. The amenity of surrounding residents will be maintained and a high quality development will be produced on the site which is currently vacant."

The proposed development was referred to the Design Review Panel on two occasions. Firstly at Pre-DA stage and then again following lodgement of the application. At the second meeting, the Panel concluded (in part) that 'although there are minor breaches of the height and FSR, the Panel supports the development on the basis of its architectural merit and minimal adverse impacts on the amenity of the neighbouring properties, streetscape and future residents'.

Seven (7) submissions, including a 27 signature petition were received in response to the community consultation process. The issues raised in the submissions are discussed in the body of the report. However in summary, the issues include that the building is bulky and dominates the streetscape, the building exceeds the height limit, potential for adverse traffic impacts, insufficient setbacks, the potential for a wind tunnel effect, overshadowing and that the development is not in the public interest as a proposal with similar issues was refused by the Land & Environment Court in 2003.

Despite the non-compliances, on its merits the proposed development is considered to be an acceptable design solution for the site and is recommended for approval.

Officer Recommendation

1. That Council support the variations to the maximum height and floor space ratio requirements contained in clauses 4.3 and 4.4 of Rockdale Local Environmental Plan 2011 (RLEP 2011).
2. That the development application DA-2012/325 for the construction of a nine storey mixed use development comprising four non-residential tenancies, fifty nine (59) residential units and basement parking for seventy one (71) vehicles at 6-14 Princess Street Brighton Le Sands be APPROVED pursuant to Section 80(1)(a) of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.
3. That the NSW Department of Planning be advised of Council's decision.
4. That the objectors be advised of Council's decision.

REASON FOR REFERRAL TO COUNCIL

The application is referred to Council on the basis that Council was a previous land owner of part of the site to which the application relates. Therefore, in accordance with Council's Code of Planning Practice, the application has been assessed by an external consultant and is referred to Council for determination.

BACKGROUND

In 1988, Council granted consent to the construction of the 15 storey Novotel Hotel Brighton Le Sands Parade, Brighton Le Sands adjacent to the subject site. Thakral Holdings Limited is the current owner of the Novotel Hotel. In 2007, Thakral Holdings Limited purchased the vacant site (Nos. 8-14 Princess Street, Brighton Le Sands) to the immediate west adjoining the Novotel.

Between early 2008 and early 2011, Thakral Holdings held a series of meetings with Rockdale City Council to discuss a possible extension of the existing Novotel hotel onto the adjoining Princess Street site. During this time, discussions were also held with the Department of Planning & Infrastructure (the Department) and Council regarding the proposed lodgement of a Part 3A Concept Plan for the refurbishment of the existing hotel and its extension onto the subject site. In January 2009, the proposed hotel expansion project was declared to be a project to which Part 3A of the EP&A Act applies, and the then Minister for Planning authorised the preparation of a Concept Plan.

However, in June 2011, Thakral Holdings advised Council that they would no longer be pursuing the hotel expansion due to a range of commercial and strategic reasons outside the control of Thakral Holdings.

On 23 September 2011, a formal Pre-DA Meeting was held at Council to discuss the proposed redevelopment of Nos. 6-14 Princess Street, Brighton-le-Sands for a mixed use development. The proposed development consisted of a part 9 storey, part 10 storey development containing 4 'Soho' style retail / commercial tenancies, each internally connected to a residential unit above, 57 residential units and 2 levels of basement parking to accommodate 63 cars.

At this time, Rockdale Local Environmental Plan 2000 was still in force and the proposed 'shop-top housing' development was prohibited in the 2(c) zone that applied to the site. However, the development concept for the site had been prepared based on the provisions of draft Rockdale Local Environmental Plan 2011 and draft Rockdale Development Control Plan 2011, under which 'shop-top housing' would be permissible.

The Pre-DA advice provided by Council raised a number of issues, most significantly that the proposal did not demonstrate consistency with the Draft LEP definition of 'shop-top housing' and as such, was prohibited in the SP3 Tourist zone. Other issues raised included:

- Proposal exceeds the 15.24m civil aviation height limit and therefore must be referred to the Sydney Airport Corporation Limited (SACL) for comment;
- Density and design of the proposed development is considered to result in poor amenity for the units, and is inconsistent with the controls contained in part 4.4 of DCP 2011 and the Residential Flat Design Code;
- The ground floor SOHO component is considered to be most accurately defined as a home business, home occupation or office use depending on the specific activities to be carried out. Proposed ground floor land use to be modified to a land use that is permissible in the SP3 zone (i.e. shop top housing);
- Proposed height is not in line with the strategic direction envisaged for Princess Street and should be reduced;

- The proposed FSR should be reduced to comply with the maximum permitted floor space ratio of 3:1;
- Front and side setbacks not supported and should be amended in accordance with DCP 2011; and
- The design of the building entry is to be enhanced so that it presents as a clearly defined element of the building in the street.

On the 3rd November 2011, the Pre-DA Concept Plan was considered by the Design Review Panel. At this meeting, in order to explain to the Panel their reasons for the non-compliances with the draft DCP controls, Thakral Holding's design team provided a detailed explanation of the design study that they had undertaken to arrive at the proposed scheme for the site.

The Panel acknowledged the thoroughness of the design study that had been undertaken, as well as the fact that the proposed development would only be permissible upon gazettal of the new LEP that would rezone the site to SP3 Tourist. Nevertheless, the Panel concluded that it supported the proposal 'in principle' subject to the following:

- *Meet the provisions of Draft Rockdale LEP 2011 in terms of FSR and height if the exceedance has any adverse overshadowing impacts;*
- *Reconfigure the ground floor plan to provide a more efficient and functional lobby space and remove the ramp in favour of on-grade access to the rear;*
- *Provide an awning along the street frontage;*
- *Improve the relationship between the indoors and outdoors by relocating the storage area, lowering the carpark and creating a more permeable edge to the new landscaped space; and*
- *Continue to develop the building aesthetics including expressing a stronger two storey base.*

SUBJECT SITE

The site comprises 5 allotments, the legal description being Lots 6, 7 and 8 in DP 435253; Lot 1 in DP 200686 and Lot 102 in DP 773760. The site is roughly square, with a frontage of 38.085m to Princess Street and depth of 40.215m. The site has a secondary frontage of 37.85m to Saywell Lane at the rear and the site has a total area of 1,527m².

The site is currently vacant and overgrown with grass. There are no significant trees or structures that require removal / demolition. However, there is a small tree on the western boundary and small cluster of trees in the south-western corner of the site that would be removed. The site is relatively flat, however has a slight fall of approximately 0.34m from north to south. The highest point of the site is at RL 6.64m AHD in the south-eastern corner and the lowest point is at RL 6.3m AHD in the south-western corner of the site.

Geotechnical investigations carried out on behalf of the applicant indicate that the current soil and geotechnical conditions are varied from silty sands to sandstone. The upper level soils transform from moderately compacted to loose natural sands. At a depth of 1.2m to 6.5m below the surface level, the soils consist of medium dense sands which increase in density and turn to silt clay at 17.2m to 25m. At a depth of 32m the soil is characterised by

sandstone, and below 37m it becomes high strength sandstone. The water table was determined to be located approximately 6m below the ground level at RL 1.0m AHD.

PROPOSAL

The Statement of Environmental Effects that accompanies the application indicates that the design of the proposed development has been amended in order to respond to the Pre-DA advice and the comments of the Design Review Panel. In this regard, the Statement advises that:

'There has been an overall reduction in height and FSR in the final scheme to better align with the Council controls. The design of the building has been optimised to achieve the requirements of SEPP 65 and Council's DCP. The design of the proposed development has since been amended to respond to the DRP's comments and suggestions, in particular the height and FSR have been reduced to more closely align to the LEP controls.'

'The facade of the building has been strengthened with a double height facade emphasising the recessed shopfronts. The ramp has been amended to the communal open space and has been amended to contain a large lobby space where residents can interact.'

The proposed development is described as follows:

- a mixed use building with eight (8) residential levels and four (4) retail/business premises at ground level;
- 59 residential apartments consisting of 12 x one bedroom and 47 x two bedroom apartments;
- 71 car parking spaces, 8 bicycle and 8 motorcycle spaces across two basement levels;
- extension/augmentation of services and utilities to the development; and
- associated landscaping.

Initially, the 4 retail/business tenancies were design to be 'Soho' style, each having an internal staircase to a residential unit above. However, as indicated to the applicant at both Pre-DA stage and following an initial assessment of the proposal, Council considered that the 'Soho' component was most accurately defined as a home business, home occupation or office use depending on the specific activities to be carried out. As such, the 'Soho' tenancies did not fall within the definition of 'retail or business premises' necessary to be considered as 'shop-top housing'. Therefore, the applicant has responded and removed the internal staircases in order to remove any uncertainty as to the permissibility of the proposed development. The ground floor retail/business tenancies constitute 256m² (5.2%) of the overall gross floor area.

The 59 residential units are distributed over levels 1 to 8, with the majority having living areas with a northerly aspect. Six (6) units have been designed so as to be adaptable in accordance with AS4299.

The building has been designed so that the single tower element is positioned on the northern half of the site, extending the full width of the site frontage. Two lifts in separate cores serve all floors of the development. The rear portion of the site provides a landscaped communal open space area over the basement parking. The communal open space is accessible from Princess Street via a central corridor. A gate and stairway also provides access to the site from Saywell Lane. The rear ground level landscaping comprises a range of shrubs, accent plants and ground covers, while a 2.8m deep soil zone along the Saywell Lane frontage will support larger trees including Scribbly Gum and Tuckeroos. A central area defined through the use of turf, pavers and timber decking will form the central component of the communal open space with a water feature proposed at the southern end of the deck acting as the central focal point. Tables and seating will be provided and a small semi-circular awning covered with Star Jasmine is proposed on the western edge of the communal area.

Across the site frontage, low level plantings and 2 Maczek are proposed to define the main pedestrian entry to the residential component and individual entries to the retail/business tenancies. Planting is also proposed in planter boxes on the outer edge of each of the residential balconies, in order to achieve a type of 'green wall' effect.

Vehicular access to the site will be via Princess Street and a single driveway located on the eastern side of the site. The proposed parking allocation includes 59 resident spaces and 12 visitor spaces, including 6 adaptable spaces. There are 8 motorcycle spaces and 8 bicycle spaces. A separate car wash bay is also provided.

A garbage storage room with twin compactors is proposed in the upper basement level. A further bin storage area is provided along the edge of the driveway.

Individual storage lockers for all residents are proposed in 2 areas on ground level at the rear of the retail/business tenancies, with access from each of the lift lobbies.

The 2 existing street trees along the site frontage are proposed to be removed and replaced with species to be selected by Council.

A summary of the proposed development is provided in the Table below:

Component	Proposal
Site Area	1,527m ²
GFA	4,842m ²
FSR	3.17:1
Height <ul style="list-style-type: none"> metres storeys 	29.05m 9 storeys
Setbacks <ul style="list-style-type: none"> Front (north) <ul style="list-style-type: none"> Levels G-6 Levels 7-8 South (rear) East West 	0m – 2.9m 2.9m 11m minimum Built to Boundary Built to Boundary
No. of Residential Units	59
No. of Retail/Business tenancies	4
Total No. of car parking spaces	71 + 8 motorcycle and 8 bicycle

Site Coverage	52%
Landscaped Area	40%

EXISTING AND SURROUNDING DEVELOPMENT

Adjoining the eastern boundary of the site is the 15-storey Novotel Hotel Brighton Le Sands. The main entrance (Porte Cochure) to the Novotel is located on Princess Street. The street trees along Princess Street in front of the Novotel are heritage listed (Item I70) under Rockdale Local Environmental Plan 2011. The row of Terraces located on the corner of Princess Street and The Grand Parade also heritage listed under Rockdale LEP.

To the immediate south of the site are 6 storey mixed use buildings that front Bay Street and back onto Saywell Lane. Saywell Lane serves as a vehicular access to these buildings as well as the loading area for the Novotel. The orientation of the majority of the units in these buildings is to the south towards Bay Street. However, there are some units located at the rear of these buildings that are oriented to the north and therefore, have an outlook towards the site. On the corner of Bay Street and Moate Avenue there is an 8-9 storey mixed use building.

Adjoining the western boundary of the site is a single storey cottage that was formerly one half of a duplex. As such, the eastern wall of this cottage is located on the boundary of the subject site. Next to this cottage are an intact single-storey duplex and then a 4 storey residential flat building which has a dual frontage to Moate Avenue and Princess Street. All of these properties also have a frontage to Saywell Lane. Further to the west on the opposite side of Moate Avenue is an 11 storey mixed use development occupied by a Coles supermarket at ground level with multi storey parking, community space and residential units above.

The northern side of Princess Street is predominantly characterised by residential flat buildings of varying heights. Directly opposite the site the two residential flat buildings are 7 and 8 storeys in height. With the exception of 1 remaining single storey dwelling, the remainder of the residential flat buildings on the northern side of Princess Street are 2-3 storeys in height.

PLANNING CONSIDERATION

The proposed development has been assessed under the provisions of the Environmental and Planning Assessment Act, 1979 and the matters below require the consideration of Council.

Section 79C (1) Matters for Consideration - General

Provisions of Environmental Planning Instruments (S.79C(1)(a)(i))

Environmental Planning And Assessment Act 1979

Integrated Development

The site is located in a Groundwater Protection Zone and during excavation for the basement levels it is likely that the water table will be breached. As such, the application was determined to be 'Integrated Development' pursuant to Section 91A of Part 4, Division 5 of the Environmental Planning and Assessment Act 1979 and required referral to the

Department of Environment, Climate Change and Water within the NSW Office of Water as a concurrence authority.

The application was referred on 15 May 2012. However a response has not been received. Notwithstanding, in accordance with Section 62 of the Environmental Planning and Assessment Regulation 2000, where a response is not received within 40 days of the referral, concurrence may be assumed and the application may be determined as if the concurrence authority has no objections to the proposal, or requires any conditions to be imposed on any consent.

Having regard to the above, the concurrence of the Department of Environment, Climate Change and Water has been assumed in this instance.

State Environmental Planning Policy No 55 – Remediation of Land (SEPP 55)

Under the provisions of Clause 7 of SEPP 55, a consent authority must not consent to the carrying out of development unless it has considered whether the land is contaminated and is satisfied that the land is suitable for the proposed use.

The application is accompanied by a Stage 1 Environmental Site Assessment that examines the potential for contamination on the site. This assessment has determined that the historical use of the site and the surrounding area did not indicate that there were any obvious on-site or nearby off-site activities which would result in contamination. Further, based on the general history of Sydney, there is the potential for imported fill material or buried building waste containing asbestos. Notwithstanding, the Assessment concludes that a Stage 2 Environmental Assessment be undertaken to include soil and groundwater sampling and analysis in order to characterise the soil/bedrock profile, provide a waste classification for off-site disposal of excavated material and to assess the potential to encounter Acid Sulfate Soils during excavation.

Following a request by Council, the applicant has provided a Preliminary Acid Sulfate Soil Management Plan that concludes that the risk of generating acid sulphate conditions following disturbance of the natural soils is low to moderate. However, the Management Plan sets out a methodology for minimising the potential environmental impacts in the event that positive acid sulphate soils are encountered during excavation.

A condition has been included in the draft conditions of consent to require implementation of the Acid Sulfate Soil Management Plan in the event that acid sulphate soil conditions are encountered. A condition has also been included to require a Stage 2 Environmental Site Assessment to be undertaken prior to the issue of a Construction Certificate. In the unlikely event that the Stage 2 Investigations finds that the site does contain contaminants, then a Remedial Action Plan will need to be prepared and implemented during excavation.

Having regard to the above, Council can be satisfied that it has fulfilled its statutory obligations under the SEPP.

State Environmental Planning Policy - Building Sustainability Index (BASIX)

The application is accompanied by a BASIX Certificate (No. 412889M_02) that demonstrates that the proposed development will achieve the specified Thermal Comfort and Water and Energy Reduction targets. Subject to the incorporation of all of the 'commitments' set out in the BASIX Certificate, the proposed development will satisfy the sustainability obligations under the SEPP. A condition has been included in the draft conditions of consent to ensure

that the BASIX requirements are adhered to. As such, the proposal is considered satisfactory having regards to this policy.

The commitments made result in the reduction in energy and water consumption shown below.

- Reduction in Energy Consumption - 30%
- Reduction in Water Consumption - 40%
- Thermal Comfort – Pass

State Environmental Planning Policy No 65 - Design Quality of Residential Flat Development (SEPP 65)

As required under SEPP 65, the application is accompanied by a Design Verification Statement stating that the proposed development has been designed in accordance with the best practise design principles set out in SEPP 65, under the guidance of registered Architects.

In accordance with Clause 30 of the SEPP, the consent authority must take into consideration the following:

a. The advice of the Design Review Panel (DRP)

The proposal has been referred to the Design Review Panel on two occasions. At Pre-DA stage the Panel gave 'in-principle' support to the scheme, subject to the issues discussed earlier in the report. The proposed development was referred to the Design Review Panel on 7 June 2012 following formal lodgement of the application. The Panel concluded:

'Although there are minor breaches of the height and FSR, the Panel supports the development on the basis of its architectural merit and minimal adverse impacts on the amenity of the neighbouring properties, streetscape and future residents. If the applicant could find a way of locating the storage area elsewhere and including an area for residents/visits etc adjacent to the proposed landscaped area that would be wonderful.'

Notwithstanding the Panel's preference to have the storage areas relocated, it is noted that the DRP report makes the following comment:

'Whilst the storage area has been retained at the rear of the ground floor, the redesign of the entry and see-through foyer has improved the amenity and potential of the ground floor as an attractive meeting and welcoming place.'

The applicant provided a response to the Panel's request for relocation of the storage area, advising that:

'The ground level storage is a key feature of the building and is highly important to achieving a high quality of residential amenity for future occupants. Relocation of these storage areas to within the basement would require further excavation below the water table and would introduce further construction challenges and significant additional cost that the project is unable to shoulder. Storage on ground level is also considered appropriate in this instance as a full level of ground floor retail is considered unfeasible in this location.'

The applicant's response has been given due consideration and it is agreed that in the circumstances, the location of the storage areas at ground level is appropriate in this instance. The use of the southern side of the ground floor level for residential use is unsuitable and the local market conditions suggest that there will be little demand for retail/business tenancies larger than this proposed in this location. The applicant's opinion that larger retail/business tenancies *will not be financially viable in the current market as retail tenants that require such a large amount of space are typically looking to locate on more prominent site's with greater exposure to passing traffic* is considered to have merit.

Accordingly, it is considered that the proposed location of the ground level storage areas be accepted.

b. The design quality of the residential flat building when evaluated in accordance with the ten design quality principles

The proposed development has been considered in the context of the 10 design quality principles by the Design Review Panel and in the assessment of the proposal and are found to be satisfactory as indicated below.

Principle 1 - Context

The proposed development is consistent with the desired future character of the area.

Principle 2 - Scale

In response to the recommendations of the Panel, the scale of the building has been reduced from 9-10 storeys to 9 storeys with a corresponding reduction in FSR. The building is compact and well designed and is considered to be consistent with the desired future character of the area.

It is noted that the building has a roof line below the RLEP 2011 height limit of 28m but has two lift overruns which exceed the height limit by 1.05m.

On the basis of the overall merits of the development and the relative minimal overshadowing and visual impact of the lift towers, the excess height of the lift overruns is considered to be acceptable.

Principle 3 - Built Form

The building is articulated as two vertical forms, with a contemporary facade unified by a two storey podium. The top two levels a slightly set back from the street. The Panel supports the overall siting and built form, in particular the definition of the continuous street edge along Princess Street.

Principle 4 - Density

On assessing the layout and amenity of the apartments, the Panel is satisfied that the small increase in the permissible FSR (3.17:1 instead of 3:1) is acceptable.

Principle 5 - Resource, energy and water efficiency

The proposal meets the water, energy and thermal comfort targets set under BASIX. Water sensitive urban design (WSUD) measures have been incorporated in the development such as water harvesting for irrigation and WC flushing.

Principle 6 - Landscape

The landscape design for the rear garden has the potential to provide a functional and attractive setting for the site.

Principle 7 - Amenity

The units are compact and well designed and offer a variety of functional configurations, each with a private balcony. The majority of kitchens and bathrooms are internal, although they are generally well placed and acceptable in the context of the functional amenity of the units.

Principle 8 - Safety and Security

The proposal has taken into account safer by design principles in the design of communal areas and landscaping. The NSW Police undertook a 'Safer by Design' analysis of the proposal and have recommended a number of conditions of consent aimed at enhancing the safety and security of the development.

Principle 9 - Social Dimensions

The unit mix and typologies will cater for a range of social groups and includes units capable of being adapted, promoting diversity, affordability and access to housing choice.

Principle 10 – Aesthetics

The proposal is generally well designed and responds well to its context and location.

c. The Residential Flat Design Code

The Residential Flat Design Code, published by the NSW Government, expands on the 10 design quality principles described in SEPP 65, providing detailed practical guidance for the design of residential flat buildings.

The proposed development has been assessed against the relevant criteria of the Residential Flat Design Code and is considered to perform adequately with respect to the design issues contained within the Code, such as cross flow ventilation, building separation, solar access and overall energy efficiency.

Rockdale Local Environmental Plan 2011

The site is zoned SP3 – Tourist under the provisions of Rockdale LEP 2011. The objective of the SP3 – Tourist zone is *to provide for a variety of tourist-oriented development and related uses*. Development for the purpose of 'shop top housing' is permissible with consent. Shop top housing means *one or more dwellings located above ground floor retail premises or business premises*. The proposed development falls within the definition of shop top housing, as it proposes 59 residential units above 4 ground floor non-residential tenancies.

A summary of the relevant statutory provisions under Rockdale LEP 2011 is provided in the table below:

LEP Clause	Proposal	Compliance
Clause 2.2 – Zoning - Zoned SP3 - Tourist	The proposed development constitutes 'shop-top' housing and is permissible with development consent.	Yes
Clause 4.3 – Height of Buildings - max. height of 28m	The proposed development has a maximum height of 29.05m (exceeds by 1.05m).	No
Clause 4.4 – Floor Space Ratio - max. FSR of 3:1	The proposed development has a floor space ratio of 3.17:1 (exceeds by 262m ² or 5.1%).	No
Clause 6.1 – Acid Sulfate Soils - Acid Sulfate Soils Management Plan to be submitted.	A Preliminary Acid Sulfate Soils Management Plan was submitted. Condition imposed to require finalisation and implementation of plan prior to commencing work.	Yes
Clause 6.4 – Airspace Operations - Affected by the 15.24m height Civil Aviation Regulation.	Sydney Airport Corporation Limited (SACL) has issued approval to the proposed building height.	Yes

Further to the above table, the LEP clauses that are of relevance to the proposed development are discussed below.

Clause 4.3 – Height of Buildings

The Building Height Map referred to in Clause 4.3 prescribes a maximum building height of 28m for this site. The majority of the building is below the 28m height limit. However, the two lift overruns positioned centrally on the roof of the building exceed this height development standard by 1.05m.

A request for a variation to this standard has been made under the provisions of Clause 4.6 of the LEP, arguing that due to the minimal nature of the departure and central positioning of the lift wells, strict compliance with the height standard is unreasonable and that despite the non-compliance, there will be no adverse impacts in terms of building bulk and scale or overshadowing as a consequence of the additional height.

This issue is discussed in more detail below.

Clause 4.4 – Floor Space Ratio

The Floor Space Ratio Map referred to in Clause 4.4 prescribes a maximum floor space ratio of 3:1 for this site. The proposed development has a floor space ratio of 3.17:1 and therefore exceeds the FSR development standard by 262m² (5.1%).

This issue is discussed in more detail below.

Clause 4.6 – Exceptions to Development Standards

Clause 4.6 of the LEP is intended to provide a degree of flexibility in the application of development standards to development proposals. As indicated above, the proposed

development exceeds the 28m maximum building height in two (2) locations and exceeds the floor space ratio by 5.1%.

In accordance with the requirements of Clause 4.6, the applicant has provided written justification as to the merits of allowing variations to the height and floor space ratio development standards. The justification is predicated on the applicant's opinion that:

- Despite the lift overruns exceeding the maximum height limit, the development still meets the objectives of the height standard; and
- The minor increase to the floor space ratio will not significantly increase the intensity of the development nor will it result in any adverse impact on the amenity of existing residents.

In accordance with the requirements of Clause 4.6 of the LEP, the applicant's justification seeks to demonstrate:

- *That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (in accordance with Clause 4.6(3)(a));*
- *That there are sufficient environmental planning grounds to justify contravening the development standard (in accordance with Clause 4.6(3)(b)); and*
- *That the proposed development will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development in the zone (in accordance with Clause 4.6(4)(a)(ii));*

Clause 4.6(4)(b) requires the concurrence of the Director-General to be obtained prior to granting consent to a development that contravenes a development standard. However, as advised in Planning Circular PS 08-003, the Director-General's concurrence can be assumed in respect of any environmental planning instrument that adopts Clause 4.6 of the Standard Template LEP. Accordingly, concurrence can be assumed in this instance.

Having made an assessment of the justification provided by the applicant, it is considered that there are sufficient grounds to permit a variation to the maximum building height limit in this instance. In summary:

- Aside from the two lift overruns, the remainder of the building, including the building parapet, is at or below 28m and is therefore compliant with the building height development standard prescribed by the Rockdale LEP 2011.
- The proposed development is consistent with the scale of built form envisaged for this site under Rockdale LEP 2011.
- The 1.05m non-compliance of the lift overruns is relatively minor, representing a 3.75% increase over the height limit affecting approximately 3% of the site area. As such, the extent of the non-compliance is inconsequential when considered in the context of the overall building height and surrounding built form. Further, the lift overruns will not have any substantial overshadowing impacts and do not cause the building to be overly bulky or adversely affect any surrounding development. These protruding elements of the building are considered to be compatible with the form and scale of nearby development, due to the wide variety of building forms evident in the local built environment.

- The non-compliant lift overruns are sufficiently setback from the site boundaries so that they do not have an adverse visual impact, or noticeably add bulk to the overall building when viewed from the public domain.
- Strict compliance with the development standard would not necessarily alter the design approach or outcome for the site, and would not significantly improve the building's relationship to its surrounding.
- The shadow diagrams indicate that the mid-winter shadows cast by the non-compliant lift overruns are wholly contained within the shadows cast by the building element below, so that despite the non-compliance, there will be no additional overshadowing impacts to adjoining and surrounding buildings as a consequence of the lift overruns.
- The Design Review Panel was supportive of the height non-compliance, noting that in the context of the project, the non-compliance is only of a minor nature.

Similarly, it is considered that there are sufficient grounds to permit a variation to the maximum floor space ratio standard in this instance. In summary:

- The proposed FSR for the development represents a 5.1% increase over the numerical standard prescribed under the Rockdale LEP 2011. This additional FSR is considered to be a minor deviation that has minimal effect to the overall bulk and scale of the proposed development.
- Despite the proposed development exceeding the maximum numerical FSR development standard, a comprehensive design process has been implemented to ensure the achievement of a development outcome that effectively responds to its surroundings and minimises potential impacts on surrounding residents. The proposed design was selected on the basis that it most effectively preserves the amenity currently enjoyed by existing residential properties.
- The site conditions constrain development to the front half of the site and force a smaller building footprint for the tower component of the development.
- Requiring the development to strictly adhere to the development standard would not enhance the relationship between the proposed building and its immediate surrounds.
- Proposed development is still consistent with the overarching FSR objective and the zone objectives for the site.

Accordingly, it is recommended that the request for an exemption to the maximum building height and maximum floor space ratio development standards made under Clause 4.6 of the LEP be supported in this instance.

Clause 5.10 of the LEP relates to heritage conservation and requires Council to give consideration to the likely impact development may have on the significance of heritage items or heritage conservation areas. There are six 'street trees' at the eastern end of Princess Street and a 'row of terraces' on the corner of Princess Street and the Grand Parade that are listed as local heritage items under Rockdale LEP 2011.

The proposed development does not have a direct interface with either of these items. However, it is noted that the building facade incorporates landscaped elements and two street trees are proposed along Princess Street. In this way, the landscape character of the

street will be maintained and it is unlikely that the proposed development or landscaping will result in any negative impacts to the heritage significance of the listed 'street trees'. The bulk and scale of the development is consistent with the surrounding built form and therefore will not pose any impacts on the heritage significance of the 'row of terraces'.

Clause 6.1 – Acid Sulfate Soils

The site is located within an area classified as Class 4 on Council's Acid Sulfate Soils map. Clause 6.1 of the LEP states that in relation to works more than 2 metres below the natural ground surface, development consent must not be granted for the carrying out of works unless an acid sulfate soils management plan has been prepared for the proposed works in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority.

The applicant has submitted a Preliminary Acid Sulfate Soil Management Plan that concludes that the risk of generating acid sulphate conditions following disturbance of the natural soils is low to moderate. However, the Management Plan sets out a methodology for minimising the potential environmental impacts in the event that positive acid sulphate soils are encountered during excavation.

As discussed earlier in the report, a condition has been included in the draft conditions of consent to require implementation of the Acid Sulfate Soil Management Plan in the event that acid sulphate soil conditions are encountered. A condition has also been included to require a Stage 2 Environmental Site Assessment to be undertaken prior to the issue of a Construction Certificate. In the unlikely event that the Stage 2 Investigations finds that the site does contain contaminants, then a Remedial Action Plan will need to be prepared and implemented during excavation.

Accordingly, the requirements of Clause 6.1 have been satisfied.

Clause 6.2 – Earthworks

The proposal involves extensive excavation within the site to accommodate the basement levels. As such, there is the potential for these earthworks to have a detrimental impact on soil stability and/or drainage patterns in the locality. A series of conditions aimed at minimising and/or ameliorating any adverse impacts have been included in the recommended conditions of consent. Subject to compliance with these conditions, the proposed development is considered to be consistent with the objectives and requirements of this Clause.

Clause 6.4 – Airspace Operations

The site is affected by the 15.24m building height Civil Aviation Regulation. Accordingly, the proposal was referred to Sydney Airports Corporation Limited (SACL) for comment. SACL has granted approval to the proposed building height subject to a number of conditions. The recommended conditions have been included in the draft conditions of consent provided with this report.

Clause 6.7 – Stormwater

The proposed stormwater system has been approved by Council's Development Engineer and is consistent with the requirements of this clause.

Clause 6.12 – Essential Services

Utility Services are available on the site. Notwithstanding, conditions of consent are proposed that require consultation with relevant utility service providers to ensure the appropriate provision of utilities on the site.

Provisions of any Draft Environmental Planning Instruments (S.79C(1)(a)(ii))

There are no draft Environmental Planning Instruments affecting the site or proposed development.

Provisions of Development Control Plans (S.79C(1)(a)(iii))Rockdale Development Control Plan 2011

Rockdale Development Control Plan 2011 contains detailed provisions and controls that supplement the provisions of the LEP. Part 4 of the DCP provides general principles applicable to all development types and Part 5 provides controls specific to residential flat and mixed use developments.

The proposal has been assessed against the relevant objectives and controls under Rockdale Development Control Plan 2011 and associated documents including the Technical Specifications for Parking, the Technical Specifications for Stormwater, and requirements for Waste Minimisation and Management and Landscaping.

Following an assessment of the proposed development against the general principles contained within Part 4, the following matters require discussion:

Communal Open Space

The DCP requires shop top housing containing 12 or more dwellings to provide a communal space area at a rate of 5m² for each dwelling. The communal open space should generally be north facing and have a minimum area of 40% that will receive sunlight at 1pm on 21 June. The communal open area complies with the DCP, providing over twice the required minimum area. However, due to the orientation of the site the communal open space is located on the southern side of the building. As such, based on the shadow diagrams provided for midday and 3pm in mid-winter, it appears that less than 40% of the communal open space will receive sunlight at 1pm. From the shadow diagrams, it is estimated that at midday in mid-winter, approximately 10% will receive sunlight. By 3pm this increases to approximately 50%. Therefore, it is projected that at 1pm, approximately 20-25% of the communal area will receive sunlight. Notwithstanding, when compared to the September / March shadows, it is estimated that the 40% requirement would be achieved.

It is noted that all of the residential units have generous private open space provided in balconies, with 80% of primary balconies being north facing. Forty seven (47) of the 59 units also have a secondary balcony providing additional private open space. Therefore, it is considered that despite a reduced amount of solar access to the communal open space area during the winter months, the majority of residents will have access to north facing private open space, with good levels of solar access. It is considered that this sufficiently compensates for the reduced solar access to the communal area.

Housing Diversity / Unit Mix

The DCP recommends a dwelling mix for shop top housing as follows:

Dwelling Type	% of Total Dwellings
3 bedroom and/or more	10% - 20%
2 bedroom	50% - 75%
1 bedroom and/or studio	10% - 30%

The dwelling mix for 1 and 2 bedroom units complies with the above percentages. However, no 3 bedroom units are proposed.

Nevertheless, the DCP states that the dwelling mix may be refined having regard to:

- The location of the development in relation to public transport, public facilities, employment areas, schools and retail areas;
- Population trends; and
- Whether the development is for the purpose of public housing, or the applicant is a community housing or not-for-profit organisation.

Having regard to the above criteria, the applicant submits that the proposed dwelling mix is appropriate as:

- *the proposed development has good public transport links, with a bus route to the city located nearby and Rockdale Train Station;*
- *the development is located in the cultural hub of Brighton Le Sands beach and the retail strip of Bay Street and therefore has good access to the services, facilities and businesses on offer in this area;*
- *Australian Bureau of Statistics (ABS) information shows that the majority of households (57%) in the Rockdale Local Government Area are made up of 1 to 2 people; and*
- *ABS figures show an increase of 1.5% in couples without children from 2001 to 2006.*

The applicant's justification aligns with the intent of the DCP and despite providing no 3 bedroom units will provide an acceptable housing choice relative to the expected resident demographic for the locality.

Car Parking

Based on the applicable rates under the DCP, the following on-site parking provision is required:

Parking Type	Spaces Required	Spaces Provided	Complies
Resident	59	59	Yes
Visitor	12	12	Yes
Retail	6	Nil	No
Motorcycle	4	8	Yes
Bicycle	6	8	Yes

Therefore, due to the absence of dedicated retail parking, the proposal is 6 spaces deficient. However, the DCP makes provision for the sharing of parking within mixed use developments where it can be demonstrated that a temporal parking demand between uses exists. The required method of demonstrating the existence of a temporal parking demand is through the submission of a 'Shared Parking Register', prepared in accordance with the template provided in Council's Technical Specification for Traffic, Parking and Access.

A 'Shared Parking Register' has not been submitted with the application. Instead, a report prepared by the applicant's Traffic Consultant presents an argument that the shared parking arrangement would be suitable as the peak demand for the retail parking spaces occurs during the day, whereas the peak demand for resident visitor parking occurs at night or on weekends.

The Rockdale Traffic Development Advisory Committee (RTDAC) was not prepared to accept the proposed shared parking on the basis that parking is at a premium in this location and the additional strain could not be absorbed. However, it is noted that the ability for shared parking to be provided in mixed use developments has been consistently permitted by Council since the coming into force of the DCP. It is also noted that rather than providing a visitor space that doubles as a car wash bay, as required under the DCP, a separate car wash bay is provided. Therefore, the visitor parking will not be constrained by the occasional use by residents for car washing.

Therefore, it is considered appropriate that a shared parking allocation be permitted for this development. However, in order to meet the DCP criteria, it is recommended that the preparation and submission of a 'Shared Parking Register' prior to the issue of a Construction Certificate be required as a condition of consent.

Following an assessment of the proposed development against the controls contained within Part 5, the following areas of non-compliance with the mixed use controls DCP have been identified in the assessment:

Side Boundary Setback

The development proposes nil setbacks to both side the boundaries of the site. The DCP requires the lower levels (generally the non-residential component) of mixed use premises to be built to the side boundaries in order to achieve a consistent street wall. Therefore, on the eastern side of the site, where the Novotel is located on a zero lot line with the site boundary, the proposed zero lot line complies with the DCP. However, where a site adjoins an allotment zoned residential or open space, a minimum side setback of 1.5m should be provided. On the western side of the site, the zone changes to residential. As such, the DCP requires a minimum 1.5m setback.

The applicant was requested to provide a setback to this western side. However, the applicant provided a detailed response arguing that the provision of a side setback would have a poor built form outcome and that the proposed nil setback was more appropriate. The applicant's response is partially reproduced below:

'The site is located in an area of transition, with Brighton le Sands commercial centre directly to the south and residential flat buildings to the north on the opposite side of Princess Street. The proposed development is the first major development proposal along Princess Street since the gazettal of the Rockdale LEP and has therefore been designed to be consistent with the existing and future development context which is

largely shaped by the Novotel Building to the east and intended future development to the west.

As set out in the SEPP 65 Design Verification Report (SJB Architects) a number of alternative options were considered in determining the most appropriate built form for the site. Several of these options clearly illustrate that options involving a side boundary setback were considered during the design process but were dismissed on the basis that they resulted in inferior development outcomes to that currently proposed. More specifically it is noted that:

- Option C which includes a setback in accordance with the DCP will result in a building that is too deep to satisfy SEPP 65. This option also fails to meet the RFDC building separation requirements thereby severely limiting the ability to modulate and articulate the western elevation through fenestration and balconies. This option would result in the creation of an unusable dead space between two buildings framed by full height blank facades. The end result would be both unsightly and unattractive and would significantly detract from the quality of the built form along Princess Street.*
- Option E demonstrates that provision of a setback in accordance with the RFDC building separation requirements will result in a building envelope that fails to respond to its surroundings and which has a greater overshadowing impact on adjacent sites. Setbacks of this magnitude will also substantially impact the feasibility of the proposed development and is likely stifle any future redevelopment proposal on the adjoining site to the west.*

In light of the above it can be seen that the proposed building design and layout, and particularly the proposed built to boundary wall along the western boundary, has been a deliberate design strategy in response to existing and future anticipated conditions of adjoining development. The built to boundary setback facilitates a superior design outcome that supports full activation of Princess Street and avoids the creation of unsightly dead spaces between buildings that would occur if setbacks were introduced along this common boundary.

The proposed built to boundary solution has been designed in consultation with the adjoining landowner, who has also indicated their intention to redevelop their site in the future with a built to boundary design that is complimentary to the proposed development.

The above methodology and design philosophy was presented to the Design Review Panel (DRP) on two separate occasions, the most recent being on the 7th June 2012. At both meetings the DRP outlined their strong support for the built to boundary wall solution along the site's western boundary. This is confirmed in their most recent report in which they state:

"As discussed in the previous report, the Panel supports the overall siting of the built form, in particular the definition of the continuous street edge along Princess Street."

Whilst the proposed side boundary setback does not comply with the numerical standard set out in the Rockdale DCP 2011, the proposed development is considered to provide an acceptable design outcome as the scheme still positively achieves the DCP objectives, namely:

- It will result in the introduction of a well designed contemporary building that responds to its local context and environmental conditions, which are defined by*

the transition between the commercial centre to the south and the residential flat buildings to the north;

- *It supports the creation of a safe and amenable public domain that is vibrant and active, and which is not characterised by dead spaces between buildings;*
- *It helps to create a well defined and legible public domain;*
- *It protects and preserves the amenity of existing and future neighbouring residential uses, particularly through minimising overshadowing impacts on existing adjacent buildings;*

It facilitates development of a high standard of architectural merit and design;

- *It ensures that future residential buildings will have adequate privacy and access to sunlight; and*
- *It supports the future orderly and economic development of land on the adjoining site.*

In light of above, the proposed built to boundary setback is considered to represent an appropriate and acceptable outcome for the site and no change is proposed to the building design in this regards.'

The applicant's point of view has been given due consideration and taking into account the fact that the Design Review Panel was also supportive of the proposed zero lot line, in this instance, a variation to the side boundary setback to the western side is warranted.

Retail Floorspace

The DCP requires a minimum 10% of the gross floor area of mixed use developments to be provided for retail and/or commercial uses.

The proposed development does not achieve the minimum 10% retail floor space requirement, providing only 5.2%. Originally the proposal contained only 238m² (4.9%). However, in response to a request by Council to increase the retail floor space the ground floor retail component was redesigned and the floor space increased to 256m², equating to 5.2% of the development's overall GFA. Although this is still well short of the 10% requirement, the applicant is of the opinion that provision of the full 10% would be unwarranted and that due to the somewhat isolated location of the site away from other commercial uses, there is a distinct possibility that larger retail units in this location would be left vacant for long periods of time at the detriment of the project and the street.

The applicant provided the following justification in support of a variation:

'As one of the major retail owners in Brighton le Sands including Bayside Plaza and the Novotel Brighton, Thakral (the applicant) have an acute understanding of the local market conditions and drivers and can advise that they are currently experiencing significant difficulty in finding quality tenants for their existing retail units. This is even the case along Bay Street and the Grand Parade, both of which areas are considered prime retail strips in Brighton Le Sands. At present Thakral have reluctantly had to reduce the size of the food court in Bayside Plaza from 2000m² to 700m² and

currently have two (2) vacancies on Bay Street that have little prospect of being leased in the short term.

Given the proposed ground floor retail space is situated away from the main retail area, based on Thakral's up to date data and market knowledge there are justifiable concerns with Council's request to expand the size of the ground floor space in accordance with the DCP requirement. As the Rockdale DCP 2011 is a blanket control it fails to take into consideration site specific context and is not informed by up to date market analysis. Should larger retail units be incorporated within this development then it is Thakral's firm belief that these units will not be financially viable in the current market as retail tenants that require such a large amount of space are typically looking to locate on more prominent site's with greater exposure to passing traffic.

Smaller retail units are therefore the preferred option in this instance as they provide a more sustainable and realistic alternative to Bay Street in what is a presently struggling 'bricks and mortar' retail sector. The sizing and type or product proposed for this scheme has been a deliberate decision by Thakral to provide a retail product that offers affordable smaller options that appeal to a wider retail market, and which are more flexible and viable from a leasing perspective. Similarly the inclusion of a connection between the ground floor space and apartments on Level 1 was also a deliberate development strategy aimed at delivering a product that is not presently available in the area.

In addition to the above, while the proposed retail space does not represent 10% of the developments overall GFA, the scheme is still considered to provide an acceptable outcome as it continues to satisfy the overarching DCP objectives for Mixed Use Development, specifically we note that:

- It will foster growth and improvement in the existing centre by providing a new high quality retail product that represent a viable leasing option for a wider section of the retail market;*
- It will promote a range of employment uses and increase retail diversity;*
- It will better contribute to the vitality and economic viability of Brighton le Sand by providing a retail product that has a wider market appeal and is more likely to be occupied by tenants in the short term;*
- It supports the creation of a safe and amenable public domain through the creation of a continuous active facade for the full width of the site;*
- It supports the creation of an active interface between ground floor level of the site and Princess Street;*
- It helps clearly define the extent of the public domain; and*
- It maximise the flexibility and adaptability of the building to meet current and future demands.*

In light of the above it is considered that despite non-compliance with the numerical DCP development standard, the level of retail development is appropriate for the site as it better responds to current market conditions, is more likely to attract future

occupiers in the short term, and satisfies the DCP objectives for Mixed Use development.'

The applicant's justification is considered to have sufficient merit to warrant a variation. The site is located away from the Brighton le Sands commercial strip, where it is less likely to attract retail tenants. As pointed out by the applicant, it is agreed that there are certain instances where the 'blanket' controls of the DCP do not fit every situation. It would be unreasonable to require the provision of the full 10% of retail floor space in this location if, once constructed, the tenancies remain unoccupied for long periods of time. The proposed smaller tenancies may be more attractive as office space for uses that do not rely on street presence and may be more readily occupied.

Provisions of Draft Development Control Plans (S.79C(1)(a)(iv))

There are no draft Development Control Plans affecting the site or proposed development.

Any Planning Agreement that has been entered into under section 93F, or any draft planning agreement that the developer has offered to enter into under section 93F (S.79C(1)(a)(iiia))

The application does not propose a Planning Agreement under Section 93F of the Act.

Provisions of Regulations (S.79C(1)(a)(iv))

The Regulations require notification to relevant authorities that may have an interest in the application. The proposal has been notified to Sydney Airport Corporation Limited (SACL), The Department of Environment, Climate Change and Water and the NSW Police Service. As indicated earlier, the Department of Environment, Climate Change and Water. The recommendations provided by the other authorities are included in the draft Notice of Determination.

All relevant provisions of the Regulations have been considered in the assessment of this proposal.

Impact of the Development (S.79C(1)(b))

Traffic & Parking

On-site parking provision has been discussed earlier in the report.

A Traffic & Parking Assessment was submitted with the application and provides an assessment of the existing traffic conditions of the surrounding road network, assesses the parking requirements and traffic impacts of the development and discusses the access and internal design arrangements arising from the proposed development. The report concludes that:

- the design of the proposed basement car park is consistent with Council's Technical Specification for Traffic, Parking and Access and the relevant Australian Standards for Off Street Car Parking (AS 2890.1:2004 and AS2890.6:2009;
- the proposed layout of the underground parking is expected to operate satisfactorily;

- the site is conveniently located to public transport services and walking and cycling facilities;
- the provision of 8 bicycle spaces exceeds the requirements established in Rockdale DCP. In addition to this, the storage located at ground level is capable of storing bicycles;
- the provision of kerbside loading and a dedicated garbage collection area is considered satisfactory based on the site layout. One on-street car parking space to be signposted as a time restricted loading zone is proposed to accommodate the servicing requirements for the ground floor commercial tenancies.; and
- the site is expected to generate up to 44 vehicle movements in any weekday peak hour, with SIDRA traffic analysis confirming that there is adequate capacity in the surrounding road network to cater for the traffic generated by the proposed development.

Council's Development Engineer has reviewed the Traffic & Parking Assessment and has no objections.

Access

Six (6) units within the development have been allocated as adaptable units in accordance with the requirements of AS4299 and 6 adaptable car spaces utilising the required central 'shared zone' have been provided in the basement in proximity to the lifts. All common areas of the development have been designed in accordance with the requirements of AS 1428.1.

An Accessibility Report has been submitted with the application and demonstrates that the design of the proposed development has been designed to provide equitable access, including access to all common amenities within the building. The proposed development is considered to satisfy the relevant provisions of the BCA and the DDA Access Code.

Overshadowing

Shadow Diagrams for mid-winter, mid-summer and the Equinox have been submitted with the application and indicate the shadows to be cast by the proposed development will not result in any significant overshadowing impacts on adjoining or surrounding properties.

The location of the residential tower on the northern half of the site maximises solar access, while minimising overshadowing impacts on the residential properties to the south. The most significant overshadowing impact to the south will be experienced at 9:00am in mid-winter, when shadows will be cast over a small portion of the residential buildings to the south that back onto Saywell Lane. However, these shadows will only have an impact for a short period of time and will not unreasonably affect the amenity of the affected residents.

It is noted that all surrounding residential properties will receive adequate solar access in accordance with SEPP 65.

Acoustic Impacts

An Acoustic Assessment was submitted with the application and concludes that the existing external noise environment would not pose any significant impacts on the amenity for residents of the proposed building. The site will not be subjected to significant road noise due

to the existing buildings that surrounding the site. Notwithstanding, the proposed standard glazing will provide sufficient acoustic attenuation from any road related noise, particularly from Traffic on the Grand Parade.

The site is also located outside the Australian Noise Exposure Forecast 20 (ANEF) contour and as such, no specific attenuative treatments in accordance with Australian Standard AS2021:2000 for Aircraft Noise Intrusion are required.

The assessment indicates that the mechanical ventilation required for the building services will result in some degree of internal noise impacts. However, the report makes recommendations for a range of attenuative measures that if implemented, will minimise the impacts associated with noise from the mechanical plant.

The Acoustic Assessment Report also outlines several measures to be implemented in order to manage construction related noise. These management measures will be detailed in a Construction Management Plan submitted prior to the issue of a Construction Certificate and will need to be implemented and maintained during the construction phase.

In order to ensure that these noise attenuation measures are implemented and maintained, a condition to this effect has been included in the recommended conditions of consent.

Wind Impacts

A Wind Assessment was submitted with the application and details the analysis undertaken to determine the likely impact that the building may have on the local environment and wind conditions. The report concludes that in the existing wind environment the proposed building will have a minor influence on the local wind conditions. The existing wind environment is characterised as being windy around the base of the buildings, but is generally considered acceptable.

It is also noted that the proposed development is a similar size to the surrounding buildings and is likely to have a positive impact on the localised wind environment as a consequence of developing the currently vacant site which allows for sweeping winds.

Suitability of the Site (S.79C(1)(c))

The site is considered to be suitable for the proposed development and residential land use. It is located in proximity to the Brighton le Sands commercial centre and has the capacity to support the proposed additional density and built form. Having regard to the characteristics of the site and its location, the proposed shop top housing development is considered appropriate in that:

- the site is zoned to accommodate this type and form of development;
- notwithstanding the minor non-compliances discussed in the report, the nature and form of the proposed development is generally consistent with the development controls which apply to the site;
- the size and dimensions of the land are suitable for the scale of the proposed development;

- the site will have access to all utility services to accommodate the demand generated by the proposed development;
- the proposed development is unlikely to result in any adverse traffic impacts;
- the proposed development will not result in any unacceptable or material environmental impacts in relation to adjoining and surrounding properties, particularly in terms of overshadowing, views, privacy (aural and visual), solar access and natural ventilation; and
- there are no known major physical constraints, environmental impacts, natural hazards or exceptional circumstances that would hinder the suitability of the site for the proposed development.

Additional conditions of consent are included in the draft conditions of consent aimed at further minimising any potential impacts on neighbouring properties, particularly during the construction phase.

Public Submissions (S.79C(1)(d))

The application was notified in accordance with Council's Development Control Plan 2011. Seven (7) submissions, including a 27 signature petition were received in response to the notification process. The issues raised in the submissions are discussed below:

Issue: *The building is bulky and dominates the streetscape.*

Comment: The proposed development is consistent with the intended built form for this site. The building envelope controls for this site differ from those applicable to the high density residential zone opposite the site on the northern side of Princess Street and to the immediate west of the site. As such, a different built form from traditional residential flat buildings will be realised.

Issue: *The building exceeds the height limit.*

Comment: The issue of the building height has been discussed earlier in the report and it is considered that despite the minor non-compliance to the height development standard, the development as proposed is acceptable. The two lift overruns, which are the only building elements that exceed the height limit will not result in any substantive adverse impacts in terms of building bulk and scale or overshadowing as a consequence of the additional height.

Issue: *Insufficient setbacks are provided and a landscaped front garden should be provided similar to the existing developments in Princess Street.*

Comment: As indicated above, the building envelope controls that apply to the site differ from those that apply to the high density residential zone opposite and to the immediate west of the site. The proposed front setback is in accordance with the DCP which stipulates that *'Development is to be built to the street alignment with a zero setback. The uppermost floor level may be set back. If there is a predominant parapet line in the street, a setback from this line may be required to achieve a cohesive streetscape.'*

It is acknowledged that the proposal seeks to vary the side boundary setbacks. This issue has been discussed earlier in the report and it is considered that in these particular

circumstances the provision of a 3m side setback will result in a poor design outcome and a substandard amenity for future residents.

Issue: *Increased traffic and parking demand will exacerbate the existing situation.*

Comment: On-site resident and visitor parking is provided within the basement levels in accordance with the parking rates set out in Rockdale DCP 2011. The Traffic and Parking Assessment submitted with the application provides details of the traffic modelling that was undertaken in order to assess whether the surrounding road network had adequate capacity to cater for the anticipated traffic and parking demands of the proposed development. Having regard to the findings of this assessment it is considered that the proposal will not have an unreasonable impact on traffic and parking in the vicinity of the site.

Issue: *Additional garbage bins will further exacerbate traffic congestion in Princess Street and conflict with bus movements to the Novotel on collection days.*

Comment: A dedicated bin holding area has been provided along the length of the driveway ramp. The proposed method of collection is that the full garbage bins will be brought from the waste and recycling storage room to the on-site holding area by the building's waste caretaker prior to collection day. Council's garbage contractors will then transfer the bins to the collection truck and return them to the holding area. As such, bins will not be left on the street, eliminating the potential for exacerbated traffic congestion due to bins being left on the street.

Issue: *The building will cause a wind tunnel effect along Princess Street.*

Comment: A Wind Report that makes an assessment of the likely wind environment post-construction was submitted with the application. The report sets out the methodology and results of the detailed analysis and modelling of the wind conditions. The report concludes that the building will have a minor influence on local wind conditions. However, the report also states that wind conditions at pedestrian level are expected to be similar to those currently experienced along the street.

Issue: *The developer should pay for any damage caused to nearby properties during construction.*

Comment: As is the usual practise where a proposal involves excavation in the vicinity of property boundaries, a condition requiring a Pre and Post construction Dilapidation Report to be prepared has been included in the recommended conditions of consent. This condition requires any damage to adjoining properties that is determined to have been caused by the construction works to be rectified by and at the expense of the developer.

Issue: *What provision has been made for a lowering of the water table, flooding and stormwater drainage?*

Comment: It is anticipated that dewatering will be carried out during the excavation and/or construction phases and the basement will be designed to be capable of resisting hydrostatic uplift pressures. The dewatering methodology and detailed design of the basement will be required with the Construction Certificate application and will need to be carried out so as to have no adverse effects on the water table and groundwater beyond the site. The site is not flood affected and in terms of stormwater management, Council's Development Engineer is satisfied that the stormwater drainage design is in accordance with Council's Technical Specifications.

Issue: *No. 16 Princess Street may become unstable during excavation / construction.*

Comment: As discussed above, a Pre and Post construction Dilapidation Report of the surrounding properties will be required to be undertaken and any damage to adjoining properties that is determined to have been caused by the construction works to be rectified by and at the expense of the developer. Further, the applicant has advised that a Construction Management Plan and Method Statement will be prepared for the proposed development and all necessary measures will be implemented to ensure there is no disruption to No.16 Princess Street.

Issue: *The site may contain hazardous materials such as imported fill and asbestos.*

Comment: The Stage 1 Environmental Site Assessment submitted with the application examines the potential for contamination on the site and determined that the historical use of the site and the surrounding area did not indicate that there were any obvious on-site or nearby off-site activities which would result in contamination. Notwithstanding, soil from the site will be monitored and tested during excavation and appropriate measures will be put in place in the unlikely event that hazardous materials are uncovered during initial excavation works. The requirement for a Stage 2 Environmental Assessment to be undertaken prior to issue of a Construction Certificate has been included as a condition in the recommended conditions of consent.

Issue: *The development is not in the public interest and a previous five storey proposal was refused by the Court in 2003 due to insufficient setbacks, overshadowing, traffic impacts, loss of privacy and overdevelopment.*

Comment: The proposed development has been designed in accordance with the statutory controls under the recently gazetted Rockdale LEP 2011, which embodies the current desired built form and urban character in this locality. The statutory controls that applied to the site at the time of the 2003 Court case were different from those under the current LEP.

Issue: *The building will cause overshadowing to the buildings on the southern side of Saywell Lane.*

Comment: Shadow diagrams were submitted with the application and indicate the extent of shadows to be cast by the proposed development during mid-winter, summer and the equinox. Having regard to these shadow diagrams, it is considered that the proposed building will not result in an unacceptable adverse impact on the buildings on the southern side of Saywell Lane.

Issue: *Residents were not notified of the change in zoning to allow shops.*

Comment: Prior to gazettal in December 2011, the draft LEP was placed on public exhibition in accordance with the statutory requirements and the community was invited to view the LEP and make submissions. The draft LEP set out the proposed rezoning of the subject site, as well as the land uses that would be permissible in this zone. Shop top housing was listed as a land use that was 'permissible only with development consent' in the SP3 – Tourist zone.

Public Interest (S.79C(1)(e))

The proposed development is not known to contradict any public State or Federal Government policy. The proposed development is considered to be in the wider public interest for the following reasons:

- it is consistent with the objects of the Environmental Planning and Assessment Act 1979, specifically because it represents the economic and orderly development of land;
- the proposal generally satisfies the objectives and intent of Rockdale Local Environmental Plan 2011 and Rockdale DCP 2011;
- the proposal provides a responsive design in terms of its relationship to adjoining development and establishes an appropriate streetscape and human scale through sound urban design principles;
- the design incorporates a number of ESD initiatives that will achieve a high standard of environmental design and sustainability;
- the proposal provides a satisfactory response to the design principles set out in SEPP 65; and
- the proposal provides the community with additional retail/business space, as well as additional high quality housing, taking advantage of the sites proximity to local and regional facilities, public transport and open space areas.

CONCLUSION

The proposed development has been assessed against the requirements of Section 79C of the Environmental Planning and Assessment Act, 1979. The application involves the demolition of all existing structures and the construction of a 9 storey shop top housing development containing 4 retail/business tenancies, 59 residential units and associated parking and landscaping.

The proposal provides a responsive design in terms of its relationship with adjoining development and establishes an appropriate human scale through sound urban design principles, whilst ensuring that environmentally sustainable principles are incorporated.

Although generally consistent with the objectives and relevant statutory requirements under Rockdale LEP 2011, the proposal is subject to requests for variations to the maximum building height and floor space ratio development standards prescribed under Clauses 4.3 and 4.4 of Rockdale LEP 2011.

As discussed in the body of the report, the proposed variations are considered to be well founded and worthy of support in the circumstances and on the merits of the proposal, having regard to the provisions of Clause 4.6 of Rockdale LEP 2011. The areas of non-compliance with the relevant controls under Rockdale DCP 2011 have also been discussed in the body of the report and on merit, are considered to be worthy of support.

The proposed development is considered to be both reasonable and appropriate in the context of the site. The development will have positive social and economic benefits in terms

of creating small retail/business tenancies, as well as accommodation for an additional resident population that will benefit from the sites location in proximity to services and facilities and who will, in turn, support local businesses and services.

Having regard to this assessment it is recommended that the application be approved subject to appropriate conditions of consent.

NOTICE OF APPROVAL FOR DEVELOPMENT

Section 81 (1)(A) of the Environmental Planning and Assessment Act, 1979

Approval Date	
Authority	Council
Reference	DA-2012/325
Contact	Michael Maloof 9562 1686

JBA Planning
C/- Thakral
Level 2, 77 Berry St
NORTH SYDNEY NSW 2060

DRAFT

Property: 6-14 Princess Street, BRIGHTON LE SANDS NSW 2216
Lot 1 DP 200686, Lot 102 DP 773760 & Lots 6, 7 & 8 in DP 435253

Proposal: Construction of nine storey mixed use development comprising four non residential tenancies, fifty nine (59) residential units and basement parking for seventy one (71) vehicles

The above development is approved subject to the following conditions:

GENERAL CONDITIONS

The following conditions restrict the work to the detail provided in the Development Application and are to ensure that the development is complete.

1. The term of this consent is limited to a period of **three** (3) years from the date of approval. The consent will lapse if the development does not commence within this time.
2. The development must be implemented substantially in accordance with the plans listed below, the application form and on any supporting information received with the application, except as may be amended in red on the attached plans and by the following conditions.

Architectural Plans Numbered	Revision	Drawn by	Dated	Received by Council on
A-0201-A-0212	6	SJB Architects	28/8/12	30/8/12
A-0501-A-0504	6	SJB Architects	28/8/12	30/8/12
A-0601-A-0602	6	SJB Architects	28/8/12	30/8/12
A-0991	6	SJB Architects	23/8/12	30/8/12

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3. All new building work must be carried out in accordance with the provisions of the Building Code of Australia (BCA).
4. **A Construction Certificate must be obtained from Council or an Accredited Certifier prior to any building work commencing.**
5. The development must be implemented and all BASIX commitments thereafter maintained in accordance with BASIX Certificate Number 412889M_02 other than superseded by any further amended consent and BASIX certificate.
Note: Clause 145(1)(a1) of the Environmental Planning & Assessment Regulation 2000 provides: A certifying authority must not issue a construction certificate for building work unless it is satisfied of the following matters: -
 - (a1) that the plans and specifications for the building include such matters as each relevant BASIX certificate requires.**Note:** Clause 154B(2) of the Environmental Planning & Assessment Regulation 2000 provides: "A certifying authority must not issue a final occupation certificate for a BASIX affected building to which this clause applies unless it is satisfied that each of the commitments whose fulfilment it is required to monitor has been fulfilled."
Note: For further information please see <http://www.basix.nsw.gov.au>.
6. A separate development application shall be submitted for the Strata Subdivision.
7. A separate development application shall be submitted for the specific use/uses of the retail/business tenancies. Additional conditions may be imposed on any such consent.
Note: Parking and loading provisions in a mixed use development may preclude certain uses.
8. Some forms of signage require separate development consent. Please refer to relevant planning policies for more information.
9. Excavation, filling of the site (with the exception of the area immediately under the building envelope), or construction of retaining walls are not permitted unless shown on the approved plans and authorised by a subsequent construction certificate.
10. Mail boxes must be installed along the street frontage of the property boundary in accordance with Australia Post Guidelines. Prominent house numbers are to be displayed, with a minimum number size of 150 mm in height for each number and letter in the alphabet.
11. Parking spaces shall be allocated to residential apartments / non-residential units in the development in the following manner and this shall be reflected in any subsequent strata subdivision of the development:

Allocated Spaces

Studio apartments, 1 bedroom apartments 1 space per apartment
 and 2 bedroom apartments

Non-Allocated Spaces

Residential Visitor Spaces 12 spaces
 Car wash bays 1 car wash bay

Parking calculations that are not whole numbers must be rounded up to the nearest

whole number.

All residential visitor spaces, car wash bays and loading bays shall be labelled as common property on the final strata plan for the site.

Note: This parking allocation condition applies to any Strata Certificate issued with respect to a Consent issued in accordance with Section 81 (1)(A) of the *Environmental Planning and Assessment Act 1979* or a Complying Development Certificate issued in accordance with Part 6 of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

NSW POLICE

The following conditions are specific to the NSW Police requirements:

12. Monitored CCTV facilities shall be implemented throughout the development. Areas of focus include the basement car park (including entry and exits), main entry areas to the development and garbage/storage areas. Details to be provided prior to the issue of the Construction Certificate.
13. A lighting maintenance policy shall be established for the development. Details to be provided prior to the issue of the Construction Certificate.
14. Lighting shall be designed to the Australian and New Zealand Lighting Standards. Australia and New Zealand Lighting Standard 1158.1 – Pedestrian, requires lighting engineers and designers to consider crime risk and fear when selecting lamps and lighting levels.
15. As malicious damage (graffiti) is often an offence committed at such developments, strong consideration is to be given to the use of graffiti resistant materials, particularly on fences and all ground floor areas. Details to be provided prior to the issue of the Construction Certificate.
16. Intercom facilities shall be installed into entry/exit points to enable residents to communicate and identify with people prior to admitting them to the development.

DEVELOPMENT SPECIFIC CONDITIONS

The following conditions are specific to the Development Application proposal:

17. Materials, goods or machinery shall not be stored, placed or otherwise permitted to stand between the building line and the street alignment.
18. All loading, unloading and transfer of goods to and from the loading bay and premises shall take place wholly within the property.
19. Loading areas are to be used only for the loading and unloading of goods, materials etc. not for any other purpose.
20. Parking spaces shall not be enclosed without further approval of Council. The enclosure of car spaces is not permitted unless the enclosure complies with the design requirements of AS2890.1.

21. Residents and tenants of the development are ineligible for parking permits in any Resident Parking Scheme that either exists or is proposed to be created by Council for any street surrounding the development. This restriction is required to be included into the Strata By-Laws of the development at the time of Strata Subdivision.
22. The existing and future owners (Registered Proprietor) of the property will be responsible for the operation and maintenance of the retention system. The registered proprietor will:
- i) permit stormwater to be retained by the system;
 - ii) keep the system clean and free of silt, rubbish and debris;
 - iii) maintain, renew and repair the whole or parts of the system so that it functions in a safe and efficient manner, and in doing so complete the same within the time and in the manner specified in written notice issued by the Council;
 - iv) carry out the matters referred to in paragraphs (ii) and (iii) at the proprietor's expense;
 - v) not make any alterations to the system or elements thereof without prior consent in writing of the Council;
 - vi) permit the Council or its authorised agents from time to time upon giving reasonable notice (but at any time and without notice in the case of emergency) to enter and inspect the land for compliance with the requirements of this clause;
 - vii) comply with the terms of any written notice issued by the Council in respect to the requirements of this clause within the time stated in the notice.
23. The existing and future owners (Registered Proprietor) of the property will be responsible for the operation and maintenance of the detention system.
- The Registered Proprietor will:
- i) permit stormwater to be temporarily detained by the system;
 - ii) keep the system clean and free of silt, rubbish and debris;
 - iii) maintain, renew and repair the whole or parts of the system so that it functions in a safe and efficient manner; and in doing so complete the same within the time and in the manner specified in written notice issued by the Council;
 - iv) carry out the matters referred to in paragraphs (ii) and (iii) at the proprietor's expense;
 - v) not make alterations to the system or elements thereof without prior consent in writing of the Council.
 - vi) permit the Council or its authorised agents from time to time upon giving reasonable notice (but at any time and without notice in the case of emergency) to enter and inspect the land for compliance with the requirement of this clause;
 - vii) comply with the terms of any written notice issued by the Council in respect to the requirements of this clause within the time stated in the notice.
24. The existing and future owners (Registered Proprietor) of the property will be responsible for the efficient operation and maintenance of the pump system.

The Registered Proprietor will:

- i) permit stormwater to be temporarily detained and pumped by the system;
 - ii) keep the system clean and free of silt, rubbish and debris;
 - iii) maintain, renew and repair the whole or parts of the system so that it functions in a safe and efficient manner; and in doing so complete the same within the time and in the manner specified in written notice issued by the Council;
 - iv) carry out the matters referred to in paragraphs (ii) and (iii) at the proprietor's expense;
 - v) not make alterations to the system or elements thereof without prior consent in writing of the Council.
 - vi) permit the Council or its authorised agents from time to time upon giving reasonable notice (but at any time and without notice in the case of emergency) to enter and inspect the land for compliance with the requirement of this clause;
 - vii) comply with the terms of any written notice issued by the Council in respect to the requirements of this clause within the time stated in the notice.
25. The rainwater tank shall be routinely de-sludged and all contents from the de-sludging process disposed – solids to the waste disposal and de-sludged liquid to the sewer.
26. The use of mechanical plant including air conditioners, fans, compressors, condensers, freezers, swimming pool or spa pumps (whether commercial or domestic) shall not cause sound pressure levels in excess of the criteria given in the NSW Industrial Noise Policy - 2000.
27. All external glazing shall have a maximum reflectivity of 20%.
28. Bicycle parking facilities shall be designed in accordance with AS2890.3:1993.
29. The off-street parking areas associated with the subject development shall be designed strictly in accordance with AS2890.1:2004.
30. Internal height clearance shall be designed throughout the car park and access driveway in accordance with AS2890.1:2004.
31. Commercial vehicle facilities shall be designed strictly in accordance with AS2890.2:2002.
32. All existing and proposed lights shall comply with the Australian Standard AS4282 - 1997 "Control of the Obtrusive Effects of Outdoor Lighting". In this regard, the lighting of the premises shall be directed so as not to cause nuisance to the owners or occupiers of adjacent/adjoining premises or to motorists on adjoining or nearby roads.
33. Hot and cold water hose cocks shall be installed to the garbage room.
34. Services or utility systems shall not be located in the garbage room.
35. The development shall be insulated to achieve an Acoustical Star Rating of 5 in accordance with the standards prescribed by the Association of Australian Acoustical Consultants (AAAC) in accordance with the report by Renzo Tonin & Associates (NSW) Pty Ltd, dated 26 March 2012 and received by Council on 20 April 2012.

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36. The development shall have an impact isolation between floors which achieves an Acoustical Star Rating of 5 in accordance with the standards prescribed by the Association of Australian Acoustical Consultants (AAAC) in accordance with the report by Renzo Tonin & Associates (NSW) Pty Ltd, dated 26 March 2012 and received by Council on 20 April 2012.
37. All vertical plumbing, other than roofwater heads and downpipes, shall be concealed within the brickwork of the building.
38. Where natural ventilation fails to comply with the provisions of the Building Code of Australia, mechanical ventilation shall be provided in accordance with Australian Standard, 1668, Part 2.
39. Balustrades shall be constructed from a solid/opaque material to a minimum height of 1000mm.
The top of the balustrade shall be a minimum height of 1200mm.
40. Ceiling heights for all habitable areas shall be a minimum of 2.7 metres as measured vertically from finished floor level to the underside of the ceiling.
Ceiling heights for all non-habitable areas shall be a minimum of 2.4 metres as measured vertically from finished floor level to the underside of the ceiling.
41. Adopt and implement all recommendations contained in the Acoustic Assessment Report prepared by Renzo Tonin & Associates (NSW) Pty Ltd dated 26 March 2012 Ref: TF447-01FO2 (REV1) received by Council on 20 April 2012.

PRIOR TO ISSUE OF THE CONSTRUCTION CERTIFICATE

The following conditions must be completed prior to the issue of the Construction Certificate.

42. A 'Shared Parking Register' prepared in accordance with Rockdale Development Control Plan 2011 is to be submitted to and approved by Council prior to issue of the Construction Certificate.
43. As per the recommendation of the Stage 1 Environmental Site Assessment dated July 2009, prepared by Environmental Investigation Services (EIS) and submitted with the development application, a Stage 2 Environmental Site Assessment, including soil and groundwater sampling is to be prepared and submitted with the Construction Certificate application.
The Stage 2 Environmental Site Assessment will serve to characterise the fill and natural soil/bedrock and provide a waste classification for off-site disposal of soil and bedrock.
44. The Preliminary Acid Sulfate Soil Management Plan dated 21 August 2012, prepared by Environmental Investigation Services (EIS) is to be enhanced so as to constitute a Final Acid Sulfate Soil Management Plan. The Final Acid Sulfate Soil Management Plan is to be submitted with the construction certificate application. In the event that Acid Sulfate Soil conditions are encountered during the excavation/construction works, then the strategies outlined in the Management Plan are to be implemented.
45. A Footpath Reserve Restoration Deposit of \$13,514.70 shall be paid to Council prior to the issue of a construction certificate. This is to cover repair of any damages, or other works to be done by Council. This includes construction, removal, or repair as

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required to: kerb and guttering, existing or new driveways; paved areas and concrete footpaths. The deposit may be lodged with Council in the form of a Bank Guarantee (Any proposed Bank Guarantee must not have an expiry date). If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges. The deposit will not be returned by Council until works are completed and all damage is restored and all specified works are completed by Council.

46. A footpath inspection fee of \$146.90 shall be paid to Council with lodgement of the Construction Certificate with Council, or by the PCA when submitting the copy to Council.
47. A fee is payable to Council for a Soil and Water Management Sign (811) of \$15.45. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges.
48. An environmental enforcement fee of 0.25% of the cost of the works shall be paid to Council prior to the issue of a construction certificate in accordance with Rockdale Council's City Plan (adopted fees and charges).
49. For work costing \$25,000 or more, a Long Service Leave Levy shall be paid. For further information please contact the Long Service Payments Corporation on their Helpline 13 1441.
50. An application for Boundary levels shall be made to Council's Customer Service Centre prior to issue of the Construction Certificate. All boundary works, egress paths, driveways and fences shall comply with this level.
A fee of \$230.00 is payable to Council for the determination of boundary levels. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges.
51. The connection of stormwater drainage pipes to the existing kerb inlet pit in Princes Street must be inspected by Council prior to backfilling. A payment of \$292.75 is required prior to the issue of the Construction Certificate for inspection of the connection and/or alteration to the Council pipeline. If payment is made after the end of the financial year the amount is to be adjusted in accordance with Council's adopted fees and charges. Where the inspection is unsatisfactory, each additional inspection will incur an extra charge.
52. A Section 94 contribution of \$349,220.51 shall be paid to Council. Such contributions are only used towards the provision or improvement of the amenities and services identified below. The amount to be paid is adjusted at the time of payment, in accordance with the contribution rates contained in Council's current Adopted Fees and Charges. The contribution is to be paid prior to the issue of any construction certificate for works above the floor level of the ground floor. (Payment of the contribution is not required prior to any separate construction certificates issued only for demolition, site preparation works and the construction of basement levels). The contribution is calculated from Council's adopted Section 94 contributions plan in the following manner:

Open Space	\$279,748.75
Community Services & Facilities	\$ 23,545.11
Town Centre & Streetscape Improvements	\$ 8,899.37
Pollution Control	\$ 34,916.52
Plan Administration & Management	\$ 2,110.76

Copies of Council's Section 94 Contribution Plans may be inspected at Council's Customer Service Centre, Administration Building, 2 Bryant Street, Rockdale.

53. In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance or owner builder's permit in force in accordance with Part 6 of that Act, that such a contract or permit is in place.
54. A landscape plan, prepared by a qualified Landscape Architect or Landscape Designer/Consultant, shall be submitted to Council or the accredited certifier (AC) for approval with or before the application for a Construction Certificate. The plan shall be at a scale of 1:100 or 1:200 and comply with Rockdale Technical Specification Landscape and all other relevant conditions of this Consent.
55. The building shall be constructed of a masonry or brick wall construction with coloured finishes as per the approved schedule of finishes. This requirement shall be reflected on the Construction Certificate plans and supporting documentation.
56. Compliance with Council's Development Control Plan (DCP) 2011. Access in accordance with Australian Standard 4299 must be provided to and within six (6) residential units, and between these units and their allocated car parking space. The allocated parking space will be located in close proximity to the access points of the building. The adaptable units are to be unit numbers 1.02, 1.05, 2.02, 2.05, 3.02 and 3.05. Please note that compliance with this condition requires the relevant units to be constructed to comply with all the essential (Type C) requirements of AS4299.
Note: Compliance with Council's Development Control Plan (DCP) 2011 and the Building Code of Australia does not necessarily guarantee that the development meets the full requirements of the Disability Discrimination Act (DDA) 1992. It is the responsibility of the applicant to make the necessary enquiries to ensure that all aspects of the DDA legislation are met.
57. Compliance with Council's Development Control (DCP) 2011 in relation to requirements for access. Compliance with this condition will require the design and fitout of the commercial/retail areas to be in accordance with Australian Standard 1428.1-2009.
Note: Compliance with Council's Development Control Plan (DCP) 2011 and the Building Code of Australia does not necessarily guarantee that the development meets the full requirements of the Disability Discrimination Act (DDA) 1992. It is the responsibility of the applicant to make the necessary enquiries to ensure that all aspects of the DDA legislation are met.
58. Compliance with Council's Development Control Plan (DCP) 2011. Compliance with this condition requires a minimum of six (6) carparking space/s to be provided. The car spaces shall be identified and reserved at all times and be in the vicinity to lifts or as close as possible to public areas and facilities. The car spaces shall have minimum dimensions of 3 x 5.5 metres and all spaces shall have an uninterrupted minimum headroom clearance of 2.5 metres free of all obstructions, such as service pipes, fittings etc for use by vehicles fitted with roof mounted wheelchair racks.
59. The applicant shall confer with Ausgrid to determine if an electricity distribution substation is required. Written confirmation of Ausgrid's requirements shall be obtained prior to issue Construction Certificate.

60. The applicant shall confer with Ausgrid to determine if installation of electricity conduits in the footway is required. Written confirmation of Ausgrid's requirements shall be obtained prior to issue Construction Certificate.
61. The applicant shall confer with Ausgrid to determine if satisfactory clearances to any existing overhead High Voltage mains will be affected. Written confirmation of Ausgrid's requirements shall be obtained prior to issue Construction Certificate.
62. The relocation of the existing electricity supply pole in the Princess Street road reserve is required to avoid conflict with the new driveway. The relocation works shall be undertaken in accordance with the requirements of Ausgrid. The applicant shall enter into a contract with Ausgrid for the relocation works prior to the issue of the Construction Certificate, and the works must be completed prior to the commencement of the driveway works and issue of the Occupation Certificate. The applicant is responsible for all relocation costs, including costs associated with other cabling such as telecommunications cables.
63. The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. Plans will be appropriately stamped. For Quick Check agent details please contact Sydney Water.

The consent authority or a private accredited certifier must ensure that a Quick Check agent/Sydney Water has appropriately stamped the plans before issue of any Construction Certificate.
64. A dilapidation survey shall be undertaken of all properties and/or Council infrastructure, including but not limited to all footpaths, kerb and gutter, stormwater inlet pits, and road carriageway pavements, in the vicinity which could be potentially affected by the construction of this development. Any damage caused to other properties during construction shall be rectified. A copy of the dilapidation survey and an insurance policy that covers the cost of any rectification works shall be submitted to the Accredited Certifier (AC) prior to issue of the Construction Certificate. The insurance cover shall be a minimum of \$10 million.
65. Prior to issue of the Construction Certificate, a longitudinal driveway profile shall be submitted to Council or an Accredited Certifier for assessment and approval. The profile shall start in the centre of the road and be along the critical edge (worst case) of the driveway. Gradients and transitions shall be in accordance with Council's Code. The profile shall be drawn to a scale of 1 to 20 and shall include all relevant levels, grades (%) and lengths.
66. The subsurface structure shall be designed with a waterproof retention system (ie tanking and waterproofing) with adequate provision for future fluctuation of the water table. The subsurface structure is required to be designed with consideration of uplift due to water pressure and "flotation" (buoyancy) effects. Subsoil drainage around the subsurface structure must allow free movement of groundwater around the structure, but must not be connected to the internal drainage system. The design of subsurface structure, tanking and waterproofing, and subsoil drainage shall be undertaken by a suitably experienced Chartered Professional Engineer(s). Design details and construction specifications shall be included in the documentation accompanying the Construction Certificate.

67. The mechanical ventilation system shall comply with the requirements of the Building Code of Australia, and/or relevant standards AS1668.1-1998 The Use of Ventilation and Air-conditioning in Buildings Part 1: Fire and Smoke Control in Multi-compartment Buildings, and/or AS 1668.2 - 2002: The Use of Ventilation and Air-conditioning in Buildings Part 2: Ventilation Design for Indoor Air Contaminant Control.
- The system shall be certified by a suitably qualified and experienced engineer at the completion of installation prior to the issue of an Occupation Certificate. A copy of the certificate shall be provided to the Principal Certifying Authority (PCA). A copy shall also be provided to Council if Council is not the PCA.
68. Prepare a detailed acoustic assessment of mechanical services equipment as recommended in Section 5 of Acoustic Assessment Report prepared by Renzo Tonin & Associates (NSW) Pty Ltd dated 26 March 2012 Ref: TF447-01FO2 (REV1) and received by Council on 20 April 2012. This report shall be prepared by a suitably qualified and experienced acoustic consultant and submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.
69. The low level driveway must be designed to prevent inflow of water from the Princess Street road reserve. The assessment of flows and design of prevention measures shall be in accordance with the requirements of Rockdale Technical Specification Stormwater Management. Details shall be included in the documentation presented with the Construction Certificate application.
70. Any part of the proposed building located in the vicinity of the existing pipeline shall be constructed on a pier and beam type foundation, piers shall be located outside the boundary of the drainage easement and to extend to a depth of no less than 300mm below the pipeline invert. This requirement shall be reflected on the Construction Certificate plans and supporting documentation.
71. Any part of the proposed building within 3m of the proposed detention tank or absorption trench shall be constructed on a pier and beam foundation with piers extending no less than 300mm below the bottom of the tank or trench base. This requirement shall be reflected on the Construction Certificate plans and supporting documentation.
72. Stormwater management requirements for the development site, including the final discharge/end connection point, must comply with Rockdale Technical Specification Stormwater Management.
73. A dedicated car wash bay is required. A tap shall be provided. A sign shall be fixed saying 'Car Wash Bay'. The runoff shall be directed and treated as per Rockdale Technical Specification Stormwater Management. Details shall be provided with the plans accompanying the Construction Certificate.
74. Prior to the issue of the Construction Certificate, detailed drainage design plans for the management of stormwater are to be submitted to Council or an Accredited Certifier for assessment and approval. Design certification, in the form specified in Rockdale Technical Specification Stormwater Management, and drainage design calculations are to be submitted with the plans. Rockdale Technical Specification Stormwater Management sets out the minimum documentation requirements for detailed design plans.

PRIOR TO COMMENCEMENT OF WORKS

The following conditions must be completed prior to the commencement of works.

75. Council's warning sign for soil and water management must be displayed on the most prominent point on the building site, visible to both the street and site workers. The sign shall be erected prior to commencement of works and shall be displayed throughout construction.
76. Soil and sedimentation controls are to be put in place prior to commencement of any work on site. The controls are to be maintained in effective working order during construction.

The controls are to be designed and installed in accordance with the Soil and Water Management for Urban Development Guidelines produced by the Southern Sydney Regional Organisation of Councils. Copies of the guidelines are available from Council.
77. A Soil and Water Management Plan shall be prepared in accordance with Soil and Water Management for Urban Development Guidelines produced by the Southern Sydney Region Organisation of Councils. A copy of the plan must be submitted to Council. The Plan must include details of the proposed erosion and sediment controls to be installed on the building site. A copy of the Soil and Water Management Plan must be kept on-site at all times and made available on request.

Sediment control devices shall not be located beneath the driplines of trees, which are to be retained.
78. A sign must be erected at the front boundary of the property clearly indicating the Development Approval Number, description of work, builder's name, licence number and house number before commencement of work. If owner/builder, the Owner/Builder Permit Number must be displayed.
79. A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
 - i) stating that unauthorised entry to the work site is prohibited, and
 - ii) showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours.Any such sign is to be removed when the work has been completed.
This condition does not apply to:
 - iii) building work carried out inside an existing building or
 - iv) building work carried out on premises that are to be occupied continuously (both during and outside working hours) while the work is being carried out.
80. Where it is necessary to import landfill material onto the site to fill the land to levels shown on the plans forming part of the consent, a certificate, prepared by a suitably qualified and experienced Contaminated Land Consultant, shall be submitted to Council being the Regulatory Authority prior to the commencement of works, certifying that the imported fill is suitable for the land use.
81. The site shall be secured by a 1500 mm (minimum) high temporary fence for the duration of the work. Gates shall be provided at the opening points.
82. Where construction/building works require the use of a public place including a road or footpath, approval under Section 68 of the Local Government act 1993 for a Barricade

Permit is to be obtained from Council prior to commencement of work. Details of the barricade construction, area of enclosure and period of work are required to be submitted to the satisfaction of Council.

83. When the work involved in the erection or demolition of a building:
- i) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or
 - ii) building involves the enclosure of a public place,
- a hoarding or fence shall be erected between the work site and the public place.
- When necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.
- Any such hoarding, fence or awning is to be removed when the work has been completed.
- The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.
84. Toilet facilities must be available or provided at the work site before works begin and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site.
85. A system of fire and smoke alarms and/or detection system (as applicable) shall be provided throughout the building. Details shall be submitted for assessment and approval prior to commencement of works.
86. Consultation with Ausgrid is essential prior to commencement of work. Failure to notify Ausgrid may involve unnecessary expense in circumstances such as:
- i) where the point of connection and the meter board has been located in positions other than those selected by Ausgrid or
 - ii) where the erection of gates or fences has restricted access to metering equipment.
87. Where clearances to any existing overhead High Voltage mains are affected, the builder shall make arrangements with Ausgrid for any necessary modification to the electrical network in question. These works shall be at the applicant's expense. Ausgrid's requirements under *Section 49 Part 1* of the *Electricity Supply Act 1995* shall be met prior to commencement of works or as agreed with Ausgrid.

DURING DEMOLITION / EXCAVATION / CONSTRUCTION

The following conditions must be complied with during demolition, excavation and or construction.

88. A copy of the Construction Certificate and the approved plans and specifications must be kept on the site at all times and be available to Council officers upon request.
89. Hours of construction shall be confined to between 7 am and 6.30 pm Mondays to Fridays, inclusive, and between 8 am and 3.30 pm Saturdays with no work being carried out on Sundays and all public holidays.

90. For Class 2, 3 and 4 structures, the building works are to be inspected during construction, by the principal certifying authority (or other suitably qualified person on behalf of the principal certifying authority) to monitor compliance with Council's approval and the relevant standards of construction encompassing the following stages:
- i) after excavation for, and before the placement of, any footing, and
 - ii) prior to covering waterproofing in any wet areas, for a minimum of 10% of rooms with wet areas within a building, and
 - iii) prior to covering any stormwater drainage connections, and
 - iv) after the building work has been completed and prior to any occupation certificate being issued in relation to the building.
- Documentary evidence of compliance with Council's approval and relevant standards of construction is to be obtained prior to proceeding to the subsequent stages of construction and copies of the documentary evidence are to be maintained by the principal certifying authority and be made available to Council officers upon request.
91. Upon inspection of each stage of construction, the Principal Certifying Authority (or other suitably qualified person on behalf of the Principal Certifying Authority) is also required to ensure that adequate provisions are made for the following measures (as applicable), to ensure compliance with the terms of Council's approval:
- Sediment control measures
 - Provision of perimeter fences or hoardings for public safety and restricted access to building sites.
 - Maintenance of the public place free from unauthorised materials, waste containers or other obstructions.
92. All waste generated on site shall be disposed of in accordance with the submitted Waste Management Plan.
93. A Registered Surveyor's check survey certificate or compliance certificate shall be forwarded to the certifying authority detailing compliance with Council's approval at the following stage/s of construction:
- i) After excavation work for the footings, but prior to pouring of concrete, showing the area of the land, building and boundary setbacks.
 - ii) Prior to construction of each floor level showing the area of the land, building and boundary setbacks and verifying that the building is being constructed at the approved level.
 - iii) Prior to fixing of roof cladding verifying the eave, gutter setback is not less than that approved and that the building has been constructed at the approved levels.
 - iv) On completion of the building showing the area of the land, the position of the building and boundary setbacks and verifying that the building has been constructed at the approved levels.
 - v) On completion of the drainage works (comprising the drainage pipeline, pits, overland flow paths, on-site detention or retention system, and other relevant works) verifying that the drainage has been constructed to the approved levels,

accompanied by a plan showing sizes and reduced levels of the elements that comprise the works.

94. All excavation and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards and guarded and protected to prevent them from being dangerous to life or property.
95. When excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building or an adjoining allotment of land, you shall:
- i) preserve and protect the building from damage and
 - ii) underpin and support the building in an approved manner, if necessary and
 - iii) give notice of intention to excavate below the level of the base of the footings of a building on an adjoining allotment of land to the owner at least 7 days prior to excavation and furnish particulars of the excavation to the owner of the building being erected or demolished.

Note: The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this conditions **allotment of land** includes a public road and any other public place.

96. When soil conditions require it:
- i) retaining walls associated with the erection or demolition of a building or other approved methods of preventing movement of the soil shall be provided, and
 - ii) adequate provision shall be made for drainage.
97. Wind blown dust from stockpile and construction activities shall be minimised by one or more of the following methods:
- i) spraying water in dry windy weather
 - ii) cover stockpiles
 - iii) fabric fences
98. Works shall not encroach onto or over adjoining properties, including retaining walls, fill material or other similar works. Soil shall not be lost from adjoining sites due to construction techniques employed on the subject site.
99. All contractors shall comply with the following during all stages of demolition and construction:
- A Waste Container on Public Road Reserve Permit must be obtained prior to the placement of any waste container or skip bin in the road reserve (i.e. road or footpath or nature strip). Where a waste container or skip bin is placed in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
 - A Road Opening Permit must be obtained prior to any excavation in the road reserve (i.e. road or footpath or nature strip). Where excavation is carried out on the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.

- A Hoarding Permit must be obtained prior to the erection of any hoarding (Class A or Class B) in the road reserve (i.e. road or footpath or nature strip). Where a hoarding is erected in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
 - A Crane Permit must be obtained from Council prior to the operation of any activity involving the swinging or hoisting of goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway. Permits can be obtained from Council's Customer Service Centre.
 - A Permit to Dewater or Pump Out a site must be obtained prior to the discharge of pumped water into the road reserve, which includes Council stormwater pits and the kerb and gutter. Permits can be obtained from Council's Customer Service Centre.
100. The new building work shall be protected in accordance with the provisions of AS 3660.1-2000 "Termite Management - Part 1: New Building Work", as required by Part 3.1.3 of the Building Code of Australia. Certification is required to be submitted to the Principal Certifying Authority (PCA), prior to the next stage of works to ensure that the selected method of treatment is in compliance with the relevant provisions of the standard. Such certification is to be prepared by a suitably qualified person.
101. Stockpiles are not permitted to be stored on Council property (including nature strip) unless prior approval has been granted. In addition stockpiles of topsoil, sand, aggregate, soil or other material shall be stored clear of any drainage line or easement, natural watercourse, kerb or road surface.
102. Building and demolition operations such as brickcutting, washing tools or paint brushes, and mixing mortar shall not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
103. All disturbed areas shall be stabilised against erosion within 14 days of completion, and prior to removal of sediment controls.
104. Stormwater from roof areas shall be linked via a temporary downpipe to an approved stormwater disposal system immediately after completion of the roof area.
105. Building and construction works not to cause stormwater pollution and being carried out in accordance with Section 2.8 of Council's Stormwater Pollution Control Code 1993. Pollutants such as concrete slurry, clay and soil shall not be washed from vehicles onto roadways, footways or into the stormwater system. Drains, gutters, roadways and access ways shall be maintained free of sediment. Where required, gutters and roadways shall be swept regularly to maintain them free from sediment.
- Note:** The Applicant may be liable to prosecution under the Environmental Planning and Assessment Act 1979 for a breach of an approval condition, or under the Protection of the Environment Operations Act 1997, if its employees, agents or sub-contractors allow sediment, including soil, excavated material, building materials, or other materials to be pumped, drained or allowed to flow to the street, stormwater pipes or waterways. The Applicant shall ensure that its employees, agents or sub-contractors understand and maintain sediment control measures.

106. Owners/Applicants/Builders are required to confine access to building and demolition sites to no more than two 3m driveways, and provide a footpath protection pad over Council's footpath at these points (see attached detail). Within the site, provision of a minimum of 100mm coarse crushed rock is to be provided for a minimum length of 2 metres to remove mud from the tyres of construction vehicles.

An all weather drive system or a vehicle wheel wash, cattle grid, wheel shaker or other appropriate device, shall be installed prior to commencement of any site works or activities, to prevent mud and dirt leaving the site and being deposited on the street. Vehicular access is to be controlled so as to prevent tracking of sediment onto adjoining roadways, particularly during wet weather or when the site is muddy. Where any sediment is deposited on roadways it is to be removed by means other than washing and disposed of appropriately.

In addition builders / demolishers are required to erect a 1.5m high fence along the whole of the street alignment other than at the two openings. Such protection work, including fences, is to be constructed, positioned and maintained in a safe condition to the satisfaction of the Principal Certifying Authority, prior to the demolition of the existing structures and commencement of building operations.

107. Removal of the street tree to enable construction of the new vehicle crossing is approved, subject to a replacement tree being planted by Council in a suitable location.

As street trees are Council assets, removal of the tree must be undertaken by Council or its nominated contractor at the applicant/property owners' cost. Removal or cutting of this tree by anyone other than Council or its nominated contractor will be deemed a breach of Council's Development Consent and may be subject to legal action.

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE OR COMMENCEMENT OF USE

The following conditions must be complied with prior to issue of the Occupation Certificate or Commencement of Use.

108. An Occupation Certificate shall be obtained in relation to the approved works prior to any use or occupation of the building.
109. Appropriate signage and tactile information indicating accessible facilities shall be provided at the main entrance directory, or wherever directional signage such as lifts or building directories or information is provided to those buildings where access and facilities for people with disabilities has been provided. Such signage shall have regard to the provisions of AS1428.1 and AS1428.2.
110. Tactile differentiation on floor surfaces indicating change of gradient shall be provided to those buildings where access and facilities for people with disabilities has been provided. This includes the external parts of the building, eg. access walkways and ramps. Such differentiation shall have regard to the provisions of AS1428.4.
111. Where Council's park/reserve is damaged as a result of building work or vehicular building traffic, this area shall be restored by Council at the applicant's expense. Repairs shall be completed prior to the issue of the Occupation Certificate.

112. All excess excavated material, demolition material, vegetative matter and builder's rubbish shall be removed to the Waste Disposal Depot or the Regional Tip prior to final inspection.
- Note:** Burning on site is prohibited.
113. Damage to brick kerb and/or gutter and any other damage in the road reserve shall be repaired using brick kerb and gutter of a similar type and equal dimensions. All works shall be to Council's satisfaction at the applicant's expense. Repairs shall be completed prior to the issue of the Occupation Certificate.
114. Ground level surfaces are to be treated with anti-graffiti coating to minimise the potential of defacement. In addition, any graffiti evident on the exterior facades and visible from a public place shall be removed forthwith.
115. All landscape works are to be carried out in accordance with the approved landscape plans. The landscaping is to be maintained to the approved standard at all times.
116. All works within the road reserve, which are subject to approval pursuant to Section 138 of the Roads Act 1993, shall be completed and accepted by council.
117. The underground placement of all low voltage street mains in that section of the street/s adjacent to the development, and associated services and the installation of underground supplied street lighting columns, shall be carried out at the applicant's expense. The works shall be completed and Ausgrid's requirements shall be met prior to issue of the Occupation Certificate.
118. Where an electricity substation is required by Ausgrid, a final film survey plan shall be endorsed with an area having the required dimensions as agreed with Ausgrid over the location of the proposed electricity distribution substation site. The substation must be located within the boundary of the development site, or within the building, subject to compliance with the BCA. The substation site shall be dedicated to Council as public roadway, or as otherwise agreed with Ausgrid. Ausgrid's requirements shall be met prior to release of the issue of the Occupation Certificate.
119. The vehicular entry in Princess Street to be clearly marked and signposted "entry" from the street and "exit" internally.
120. Vehicles shall enter and exit the site in a forward direction at all times. A plaque with minimum dimensions 300mm x 200mm shall be permanently fixed to the inside skin of the front fence, or where there is no front fence a prominent place approved by the Principal Certifying Authority, stating the following: "Vehicle shall enter and exit the site in a forward direction at all times".
121. Prior to completion of the building works, a full width vehicular entry is to be constructed to service the property. Any obsolete vehicular entries are to be removed and reconstructed with kerb and gutter. This work may be done using either a Council quote or a private contractor. There are specific requirements for approval of private contractors.
122. The width of the double driveway at the boundary shall be a maximum of 6 metres. Note: Council's Vehicular Entrance Policy restricts the width of the vehicular entrance over the footpath to a maximum of 4.5 metres.
123. A convex mirror is to be installed at the point of egress from the basement to provide increased sight distance for vehicles.

124. The gate for the basement shall be located in order to permit the queuing of two (2) vehicles when waiting to enter the basement garage. The control mechanism for the gate shall be arranged such that access to the basement garage for registered proprietors of the commercial units, and their visitors, does not require security clearance or assisted entrance between the hours of 7:30am to 6:00pm Monday to Saturday and 7:30am to 1:00pm on Sunday. Where the hours of operation of the commercial units are approved outside of these hours, the access arrangements shall match the approved hours of operation.
125. The provision of a 0.9 metre wide right of footway in favour of Rockdale City Council along the boundary with Saywell Lane. The right of footway is to be covered by a Section 88B Instrument, which may only be varied or extinguished with the consent of Rockdale City Council.
- Council requires proof of lodgement of the signed Subdivision/Strata Certificate and 88B Instrument with the Land Titles Office.
126. Seventy one (71) off-street car spaces shall be provided in accordance with the submitted plan and shall be sealed and linemarked to Council's satisfaction. The pavement of all car parking spaces, manoeuvring areas and internal driveways shall comply with Australian Standard AS3727 – Guide to Residential Pavements.
127. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.
- Application must be made through an authorised Water Servicing Coordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.
- Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.
- The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to occupation of the development.
128. Prior to occupation, a registered surveyor shall certify that the driveway(s) over the footpath and within the property have been constructed in accordance with the approved driveway profile(s). The certification shall be based on a survey of the completed works. A copy of the certificate and a works-as-executed driveway profile shall be provided to Council if Council is not the Principal Certifying Authority.
129. Testing and evaluation of the wall insulation system is to be carried out at post construction stage by a suitably qualified acoustical engineer to show an Acoustical Star Rating of 5 has been achieved in accordance with the standards prescribed by the Association of Australian Acoustical Consultants (AAAC) in accordance with the report submitted to Council with the Development Application. A report is to be submitted to the Principal Certifying authority prior to the issue of the Occupation Certificate.
130. Testing and evaluation of the floor system is to be carried out at post construction stage by a suitably qualified acoustical engineer to show that an Acoustical Star Rating of 5 in accordance with the standards prescribed by the Association of Australian Acoustical Consultants (AAAC) and in accordance with the report submitted

to Council with the Development Application has been achieved. A report is to be submitted to the Principal Certifying authority prior to the issue of the Occupation Certificate.

131. The noise mitigation measures specified in the Acoustic Assessment Report prepared by Renzo Tonin & Associates (NSW) Pty Ltd dated 26 March 2012 Ref: TF447-01FO2 (REV1) and received by Council on 20 April 2012, shall be validated by a Certificate of Compliance prepared by the acoustic consultant and submitted to the Principal Certifying Authority (PCA) prior to the issue of an Occupation Certificate. If Council is not the PCA, a copy shall be submitted to Council concurrently.
132. A certificate is to be provided to Council that all wet areas have been effectively waterproofed (prior to tiling) in accordance with AS3740 and the product manufacturer's recommendations.
133. A Landscape Architect shall provide a report to the certifying authority (with a copy provided to Council, if Council is not the principal certifying authority) stating that the landscape works have been carried out in accordance with the approved plans and documentation.
134. The stormwater drainage system shall be certified by a suitably qualified and experienced engineer at the completion of installation prior to the issue of an Occupation Certificate.
135. Prior to occupation, a chartered professional engineer shall certify that the tanking and waterproofing has been constructed in accordance with the approved design and specification. A copy shall be provided to Council if council is not the Principal Certifying Authority.
136. Prior to occupation a Chartered Professional Engineer shall certify that the stormwater system has been constructed in accordance with the approved plans and as required by Rockdale Technical Specification Stormwater Management. The certificate shall be in the form specified in Rockdale Technical Specification Stormwater Management and include an evaluation of the completed drainage works. A works-as-executed drainage plan shall be prepared by a registered surveyor based on a survey of the completed works. A copy of the certificate and works-as-executed plan(s) shall be supplied to the Principal Certifying Authority. A copy shall be provided to Council if Council is not the Principal Certifying Authority.
137. All modular drainage cell installations must be inspected, and a compliance certificate under Part 4A of the Environmental Planning and Assessment Act issued prior to back filling and proceeding to subsequent stages of construction. Copies of the certificate are to be maintained by the Principal Certifying Authority and be made available to Council officers upon request.
138. The underground garage shall be floodproofed to a minimum of 500mm above the 1% Annual Exceedance Probability flood level. The levels shall be certified by a registered surveyor prior to construction of the driveway or other openings.
139. There shall be no encroachment of paths, fencing or other improvements onto the drainage easements without Council approval.
140. A positive covenant pursuant to the Conveyancing Act 1919 shall be created on the title of the lots that contain the stormwater detention facility to provide for the maintenance of the detention facility.

141. The pump system, including all associated electrical and control systems, shall be tested and inspected by a suitably qualified and experienced person. Records of testing shall be retained and provided to the certifying hydraulic engineer and/or PCA upon request.
142. The drainage system shall be constructed in accordance with the approved drainage plans and any amendments in red. All stormwater drainage plumbing work shall comply with the NSW Code of Practice: Plumbing and Drainage and Australian Standard AS3500.
143. Signs shall be displayed adjacent to all stormwater drains on the premises, clearly indicating "Clean water only - No waste".
144. The owner of the premises shall inform Sydney Water that a Rainwater tank has been installed in accordance with applicable requirements of Sydney Water.
145. The overflow from the rainwater tank shall be directed to the storm water system.
146. All plumbing work proposed for the installation and reuse of rainwater shall comply with the NSW Code of Practice: Plumbing and Drainage and be installed in accordance with Sydney Water "Guidelines for rainwater tanks on residential properties".
147. A first flush device shall be installed to reduce the amount of dust, bird faeces, leaves and other matter entering the rainwater tank.

INTEGRATED DEVELOPMENT/EXTERNAL AUTHORITIES

The following conditions have been imposed in accordance with Section 91A of the Environmental Planning and Assessment Act, 1979.

148. **Sydney Airports Corporation Limited**

Sydney Airport Corporation Limited (SACL) has approved the maximum height of the proposed building at 35.7 metres relative to Australian Height Datum (AHD). This height is inclusive of all vents, chimneys, aerials, TV antennae and construction cranes etc. No permanent or temporary structure is to exceed this height without further approval from Sydney Airport Corporation Limited.

Note: Under Section 186 of the Airports Act 1996, it is an offence not to give information to the Airport Operator that is relevant to a proposed "controlled activity" and is punishable by a fine of up to 50 penalty units.

For further information on Height Restrictions please contact SACL on 9667 9217.

Bird and Obstacle Hazard Management

To minimise the potential for bird habitation and roosting, the Proponent must ensure the following plans are prepared prior to construction commencing:

- Landscape Plan which only includes non-bird attracting plant species;
- Site Management Plan which minimises the attractiveness for foraging birds, i.e. site is kept clean regularly, refuse bins are covered, and detention ponds are netted.
- The proposed development incorporates anti-bird roosting measures to discourage bird habitation.

The Proponent must consult with Sydney Airport Corporation Limited on the preparation of each plan.

All trees to be planted shall not be capable of intruding into the Obstacle Limitation Surface when mature.

ROADS ACT

149. Construction related activities must not take place on the roadway without Council approval.
- Short-term activities (including operating plant, materials delivery) that reduce parking spaces, affect access to a particular route or prevent or restrict the passage of vehicles along the road must not occur without a valid Temporary Roadside Closure Permit.
- Activities involving occupation of the parking lane for durations longer than allowed under a Temporary Roadside Closure Permit require a Construction Zone Permit and must not occur prior to the erection of Construction Zone signs by the RMS.
- Permit application forms should be lodged at Council's Customer Service Centre allowing sufficient time for evaluation. An information package is available on request.
150. Where applicable, the following works will be required to be undertaken in the road reserve at the applicant's expense:
- i) construction of a concrete footpath along the frontage of the development site;
 - ii) construction of a new fully constructed concrete vehicular entrance/s;
 - iii) removal of the existing concrete vehicular entrance/s, and/or kerb laybacks which will no longer be required;
 - iv) reconstruction of selected areas of the existing concrete Footpath/vehicular entrances and/or kerb and gutter;
 - v) construction of paving between the boundary and the kerb;
 - vi) removal of redundant paving;
 - vii) construction of kerb and gutter.
151. In addition to the works in the road reserve listed above, the following modification and/or improvement works to the road and drainage in Saywell Lane will be required to be undertaken at the applicant's expense:
- i) construct a 375 mm diameter pipeline from the existing Council drainage pit along Moate Avenue to a new pit to be constructed along Saywell Lane;
- Note:** Detailed plans of the works are required to be submitted to Council for assessment and approval pursuant to *Section 138* of the *Roads Act 1993*, prior to the issue of the Construction Certificate.
152. All footpath, or road and drainage modification and/or improvement works to be undertaken in the road reserve shall be undertaken by Council, or by a Private Licensed Contractor subject to the submission and approval of a Private Contractor Permit, together with payment of all inspection fees. An estimate of the cost to have these works constructed by Council may be obtained by contacting Council on 9562 1670. The cost of conducting these works will be deducted from the Footpath

Reserve Restoration Deposit, or if this is insufficient the balance of the cost will be due for payment to Council upon completion of the work.

153. All driveway, footpath, or road and drainage modification and/or improvement works to be undertaken in the road reserve shall be undertaken in accordance with Council's Subdivision and Civil Works Construction Specification (AUS-SPEC 1). Amendment to the works specification shall only apply where approved by Council. Where a conflict exists between design documentation or design notes and AUS-SPEC 1, the provisions of AUS-SPEC 1 shall apply unless otherwise approved by Council.
154. Where the works are undertaken by a Private licensed Contractor, the contractor shall:
- i) Undertake quality system testing as specified in Specification CQS of AUS-SPEC. Records of quality testing shall be made available to Council at the completion of the works;
 - ii) Engage a supervising engineer (superintendent). The supervising engineer shall, upon completion of the works, submit an engineering certificate for the completed works.
 - iii) Provide Council with one (1) copy of works as executed drawings upon completion of the works. The works as executed drawings shall be based on a survey of the works by a registered surveyor.
 - iv) Make a payment to Council of \$440.70 for inspection of the works. The payment shall be made prior to the commencement of works. If payment is to be made after the end of financial year, this amount shall be adjusted in accordance with Council's adopted fees and charges.
 - v) Provide Council with 48 hours notice of the following:
 - a) Commencement of the works
 - b) Before backfilling drains;
 - c) Completion of works.
- Note:** An inspection by Council is required at each of these stages. Works shall not continue until inspected by Council. Inspection by Council does not relieve the responsibility of a Private Licensed Contractor to undertake quality testing in accordance with the Council's Construction Specifications (AUS-SPEC), have the works inspected by the superintendent and have the superintendent submit an engineering certificate.
- vi) Maintain the works for the duration of the Defects Correction Period, which shall be twelve (12) months. (The Defects Correction Period commences on the date of acceptance of the completed works by Council). During this period the contractor shall:
 - a) Keep the works clean and free of silt, rubbish and debris;
 - b) Maintain, renew and repair, either in whole or in part, defective works as identified in written notice by the Council so that the works function in a safe and efficient manner, and in doing so complete the same within the time and in the manner specified in written notice issued by the Council;
 - c) Carry out the matters referred to in paragraphs (i) and (ii) at the contractor's expense;

- d) Not make alterations to the system or elements thereof without prior consent in writing of the Council;
- e) Comply with the terms of any written notice issued by the Council in respect to the requirements of this condition within the time stated in the notice.

In the event of the contractor failing to comply with the terms of any written notice served in respect of the matters in this condition the Council or its authorised agents may carry out any work required to ensure the safe and efficient operation of the system and recover from the registered proprietor the cost of carrying out the work, and if necessary, recover the amount due by legal proceedings (including legal costs and fees).

- 155. This Roads Act approval does not eradicate the need for the Contractor to obtain a Road Opening Permit prior to undertaking excavation in the road or footpath.
- 156. Any driveway works to be undertaken in the footpath reserve by a private contractor requires an "Application for Consideration by a Private Contractor" to be submitted to Council together with payment of the application fee. Works within the footpath reserve must not start until the application has been approved by Council.
- 157. Following completion of concrete works in the footpath reserve area, the balance of the area between the fence and the kerb over the full frontage of the proposed development shall be turfed with either buffalo or couch (**not kikuyu**) or landscaped. If landscaping is proposed rather than turfing, details shall be submitted to the Property and Community Services Department for approval.

DEVELOPMENT CONSENT ADVICE

- a. You are advised to consult with your utility providers (i.e. Energy Aust, Telstra etc) in order to fully understand **their** requirements **before** commencement of any work.
- b. If Council is appointed as the Principal Certifying Authority (PCA), a fee shall be paid before a Construction Certificate is issued. If the fee is paid after the end of the financial year, it will be adjusted in accordance with Council's adopted fees and charges. The fees charged encompass **all** matters related to ensuring that the proposed development is carried out in accordance with the approved plans and any post inspection issues that may arise.
- c. If Council is the Principal Certifying Authority for the development, a drainage inspection fee shall be paid prior to the issue of the Construction Certificate. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges.

NB: This fee does not include a confined space entry into the on-site detention tank. Where a confined space entry is required, an additional fee is payable. A confined space entry will be required where:

- a) Information provided in the works-as-executed drawing and engineering certification is inconclusive as to the compliance of the system with the approved plans; and/or
- b) Visual inspection from outside the tank is inconclusive as to the compliance of the system with the approved plans.

DA-2012/325

- d. Where Council is **not** engaged as the Principal Certifying Authority for the issue of the Subdivision Certificate (Strata), and the Section 88B Instrument contains easements and/or covenants to which Council is a Prescribed Authority, the Council must be provided with all relevant supporting information (such as works-as-executed drainage plans and certification) prior to Council endorsing the Instrument.
- e. All asbestos fibre demolition material and asbestos dust shall be handled, stored and removed in accordance with the relevant legislation and guidelines including:
 - Work Health and Safety Act 2011
 - Work Health and Safety Regulation 2011
 - Code of Practice for the Safe Removal of Asbestos [NOHSC: 2002 (2005)]
 - Code of Practice for the Management and Control of Asbestos in Workplaces [NOHSC: 2018 (2005)]
 - Protection of the Environment Operations (Waste) Regulation 2005

All work procedures shall be devised to minimise the release of dust and fibres. A checklist of safety precautions when working with asbestos is available in Health & Safety Guidelines prepared by the WorkCover Authority of NSW. Collection, storage and transportation is subject to the Protection of the Environment Operations (Waste) Regulation 2005.
- f. The water from the rainwater tank should not be used for drinking, Sydney Water shall be advised of the installation of the rainwater tank.
- g. In the event of any inconsistency between conditions of this approval and the drawings/documents referred to in condition 2, the conditions of this approval prevail.

ADDITIONAL INFORMATION

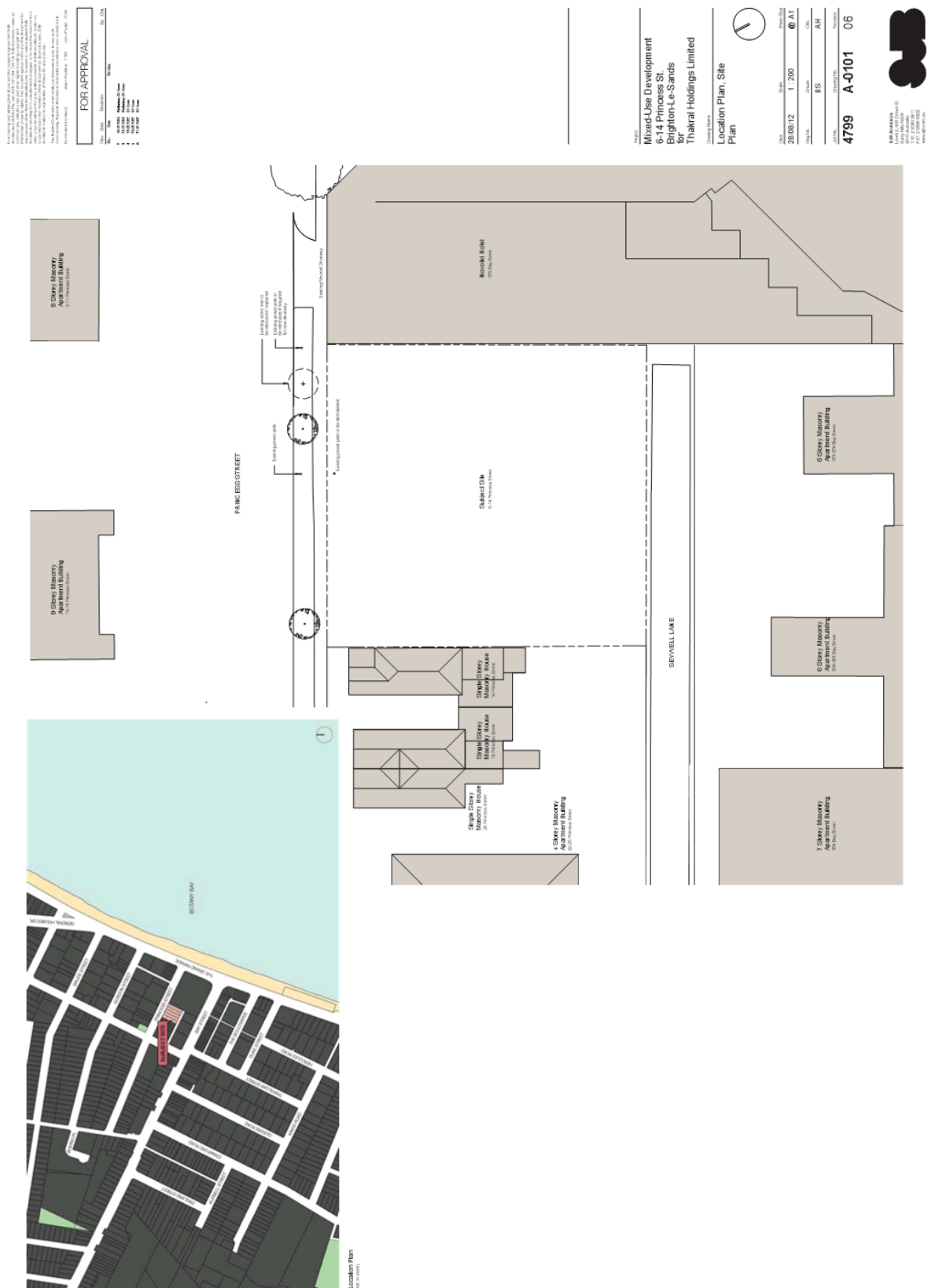
- To confirm the date upon which this consent becomes effective, refer to Section 83 of the Environmental Planning and Assessment Act, 1979. Generally the consent becomes effective from the determination date shown on the front of this notice. However if unsure applicants should rely on their own enquiries.
- To confirm the likelihood of consent lapsing, refer to Section 95 of the Act. Generally consent lapses if the development is not commenced within five years of the date of approval. However if a lesser period is stated in the conditions of consent, the lesser period applies. If unsure applicants should rely on their own enquiries.
- Section 82A allows Council to reconsider your proposal. Should you wish to have the matter reconsidered you should make an application under that section with the appropriate fee.
- Under Section 97 of the Act applicants who are dissatisfied with the outcome of a consent authority have a right of appeal to the Land and Environment Court. This right must be exercised within six (6) months from the date of this notice. The Court's Office is

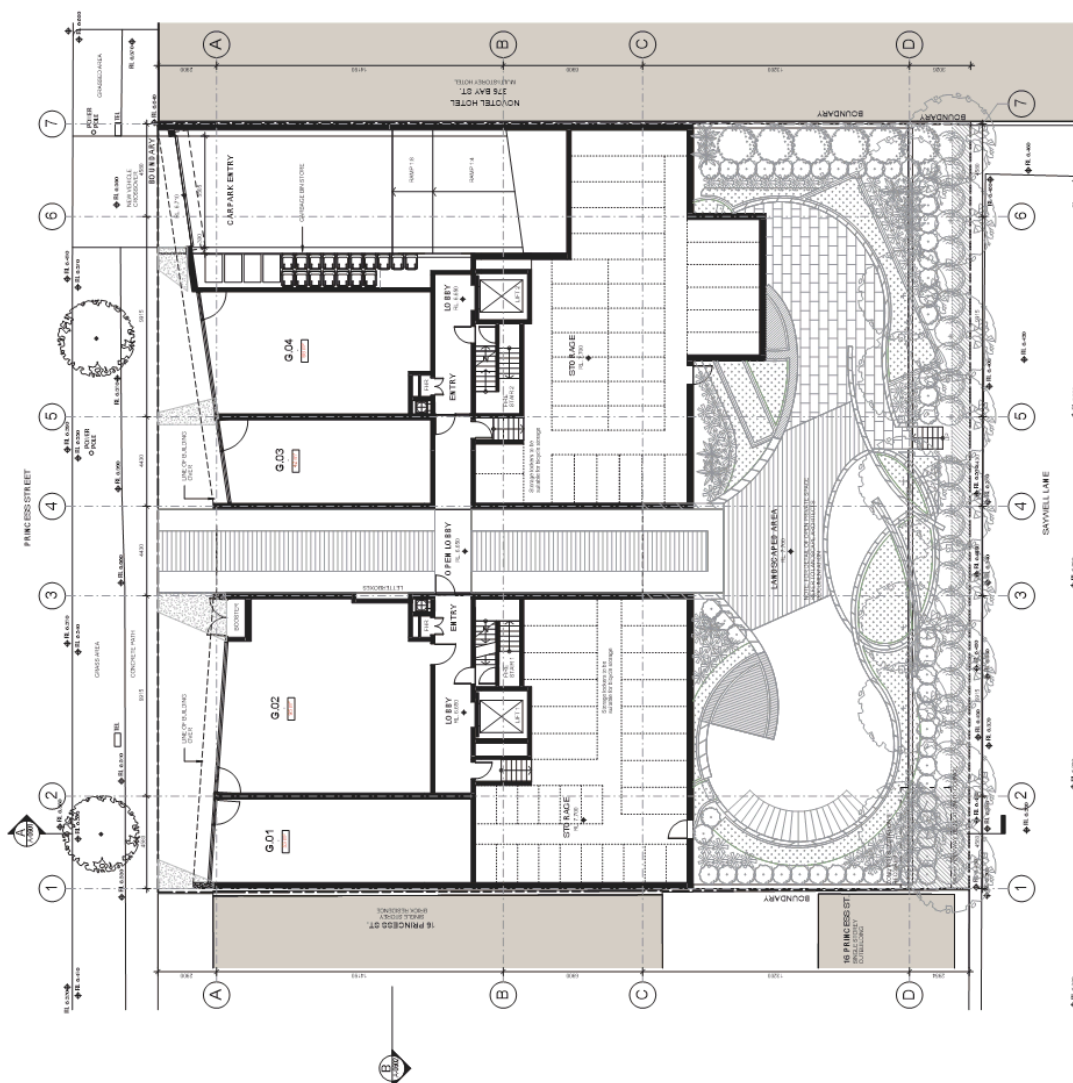
DA-2012/325

situated at Level 1, 225 Macquarie Street, Sydney (Telephone 9228 8388), and the appropriate form of appeal is available from the Clerk of your Local Court.

Should you have any queries please contact Michael Maloof on 9562 1686.

Luis Melim
Manager - Development Services





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1. The Council is requested to consider the proposed development and the associated planning application and to determine whether or not it should be granted planning permission.

2. The Council is requested to consider the proposed development and the associated planning application and to determine whether or not it should be granted planning permission.

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FOR APPROVAL

2018/12/09

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2018/12/09

A

B

C

D



Mixed-Use Development
6-14 Princess St.
Brighton-Le-Sands
Thakral Holdings Limited

East Elevation

2018/12/09

2018/12/09

2018/12/09

2018/12/09

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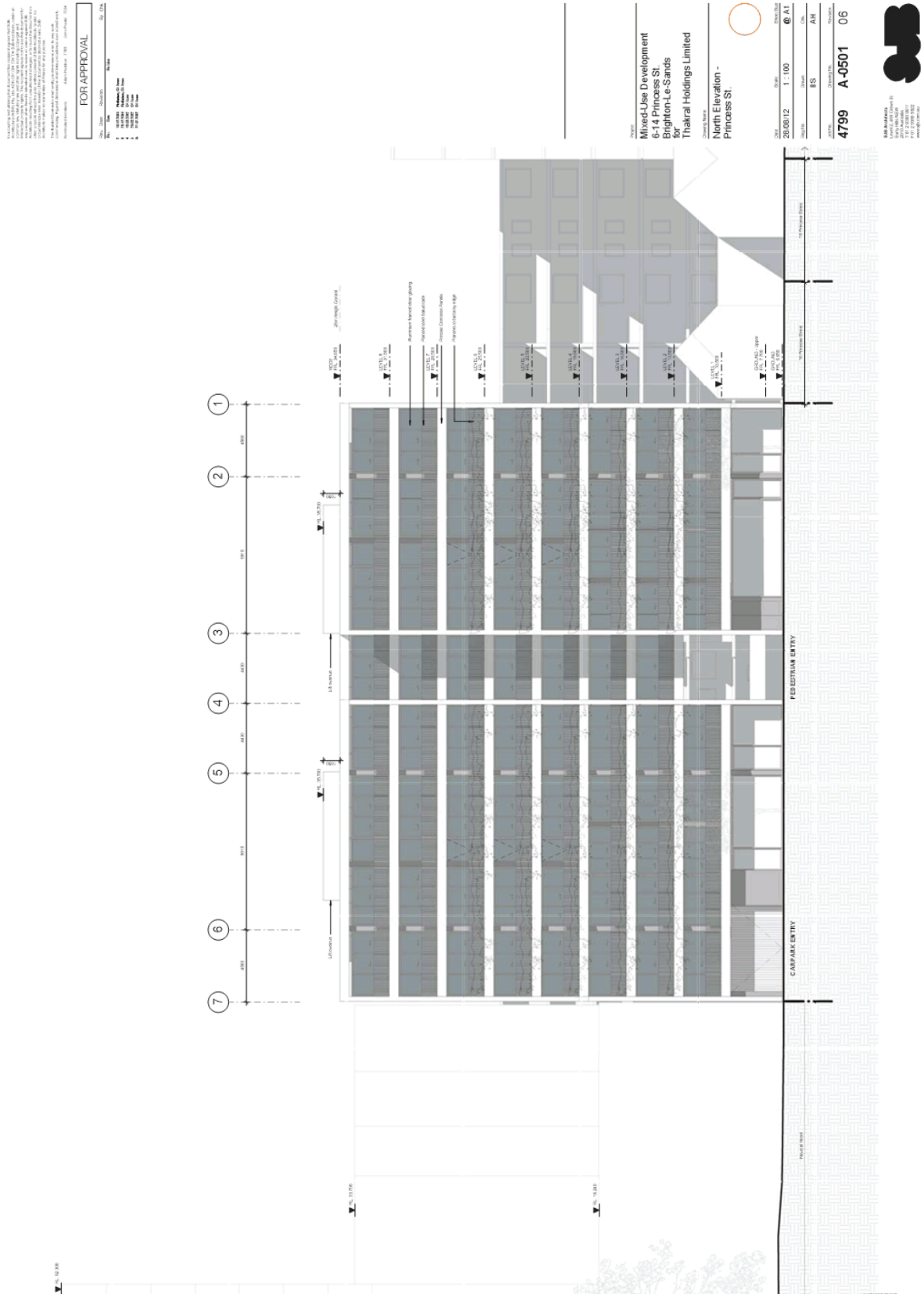
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16 May 2017

Mau Huynh
Director
Lumex Property Group Pty Ltd
PO BOX 20
Homebush West NSW 2140

Dear Mau Huynh,

We write to you regarding the sales and leasing campaign we conducted for the three retail tenancies at 8 Princess Street, Brighton-Le-Sands. We have been engaged by Lumex to assist in the sale or lease of the three tenancies for a period of 6 months, and have received minimal interest in the properties and recommended that the campaign be suspended. A brief summary of the campaign and an overview of the enquiries received is provided below.

As is standard practice for sales and leasing campaigns, a suite of mediums were adopted to market the tenancies. These mediums included:

- Online advertising (Real commercial, Commercial Real estate listing, company websites)
- Advertising in print media (the St George and Sutherland Shire Leader and the Sydney Morning Herald)
- E-flyer distribution
- Signboard at the site

In addition to the promotion of the tenancies through these mediums, I utilised the existing database available at Cushman and Wakefield and Colliers to distribute information regarding the tenancies. Through this database, a total of 6234 individuals were contacted by private email.

As a result of this campaign, sum 90 enquiries were received. These enquiries related to a number of potential uses, including offices, massage businesses and gymnasiums. These uses were not considered appropriate or desirable on the site for a number of reasons, including the lack of activation they would deliver and as such, these uses were discounted and the discussions with the respective tenants were not progressed to formal offers.

Overall, the sales and leasing campaign was conducted for a period of 6 months as set out above, limited interest was received in the tenancies and no suitable formal offers were provided. In light of the length of time dedicated to the campaign, and the lack of interest resulting from our efforts, it was my recommendation that the active campaign be ceased.

In my opinion, the tenancies are not located in a desirable position for non-residential uses which we believe are ordinarily suitable for such a site, such as a café or retail premise. The tenancies are removed from the core retail/commercial strip of Bay Street and Grand Parade, resulting in substantially less foot traffic which is unattractive to potential tenants. Furthermore, the context of the tenancies on Princess Street is largely residential, with limited attraction for non-residential uses due to concerns about noise impacts and potential complaints limiting or affecting operations.

I trust the above information is sufficient to demonstrate the campaign undertaken and lack of interest shown in the sale and lease of the tenancies.

Regards,


Peter Seeto
Director
Sales and Investments – Retail
Phone 0400 222 666

Land Economists, Property & Hotel Consultants, Valuers, Property Managers, Real Estate Agents, Auctioneers
Colliers International (NSW) Pty Limited | ABN 65 001 401 681





ESSENTIAL ECONOMICS

6-14 Princess St, Brighton-Le-Sands Shop Tenancy Assessment

Prepared for
Lumex Property Group
c/o Ethos Urban

by
Essential Economics Pty Ltd

April 2018

Authorship

Report stage	Author	Date	Review	Date
Draft report	Sean Stephens Malcolm Spence	23 February 2018	Client	
Final report	Sean Stephens	16 April 2018		

Disclaimer

Although every effort has been made to ensure the accuracy of the material and the integrity of the analysis presented herein, Essential Economics Pty Ltd accepts no liability for any actions taken on the basis of the contents of this report.

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Our Reference: 17255

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6-14 PRINCESS STREET BRIGHT-LE-SANDS
SHOP TENANCY ASSESSMENT

INTRODUCTION

Background

Lumex Property Group Pty Ltd (Lumex) completed construction of a mixed use building at 6-14 Princess Street in 2015. The property comprises below ground parking, ground floor retail/commercial space and apartments on above ground levels 1-8.

While the apartments have been sold and are fully occupied, the ground floor retail/commercial tenancies have failed to attract market interest. Several real estate agents have been engaged at various times to lease the tenancies, without success.

In view of the difficulty in securing tenants for the ground floor space, Lumex has approached Bayside Council to seek approval to convert the retail/commercial space to a residential use. This conversion will require a change to the planning permit that currently applies to the property.

Council requires evidence to be supplied with a planning proposal. In email correspondence, Council have specified supporting evidence to include:

- *Land use analysis – analysis of existing uses within the centre and the demand (or otherwise) for tourist related uses and subsequently the zoning;*
- *Evidence of tenant interest – documentation showing that the owner has exhausted all reasonable efforts to secure tenants for the shop fronts;*
- *Impact analysis – details on the proposed future uses of the ground floor space and the impact it may have in regards to the surrounding context;*
- *Traffic and parking analysis – this could be coupled with the ‘impact analysis’ and should include a look at whether the proposed future use of the ground floor space will have a significant impact on traffic movement in and out of the site as well as the surrounding area. This should also include information on whether there is sufficient space for parking (depending on the use).*

As additional evidence Ethos Urban, on behalf of Lumex, are seeking an independent market appraisal of the ground floor retail/commercial space to assess the likelihood of securing long term sustainable tenancies. Essential Economics is engaged to undertake this independent appraisal.

6-14 PRINCESS STREET BRIGHT-LE-SANDS
SHOP TENANCY ASSESSMENT

Objectives

The objective of this report is to broadly assess the potential for retail or commercial tenants to occupy the ground floor tenancies at 6-14 Princess St, taking into account:

- General location and retail market characteristics
- Site specific features.

This Report

This report contains the following chapters:

- 1 **Brighton-Le-Sands** discusses the suburb, its location, provision of retail shops and services, and population and demographic characteristics.
- 2 **Site Analysis** describes the ground floor tenancies at 6-14 Princess Street, key adjacencies, vehicle and pedestrian access, and improvements undertaken by the owner.
- 3 **Leasing History** provides evidence of leasing campaigns and interest in the tenancies.
- 4 **Location Assessment** measures broad retail potential of the site using a scorecard methodology.

6-14 PRINCESS STREET BRIGHTON-LE-SANDS
SHOP TENANCY ASSESSMENT**EXECUTIVE SUMMARY**

- 1 The Blue Apartments (or the 'subject site') were developed in 2015 and are located at 6-14 Princess Street Brighton-Le-Sands approximately 13km south-west of the Sydney CBD. Centred on Bay Street, the Brighton-Le-Sands activity centre is one of three main activity centres located in the City of Bayside. The centre is a well-known dining destination, particularly on weekends. In contrast to other large street-based centres, Brighton-Le-Sands has a relatively low share of shops in non-food categories.
- 2 The population of Brighton-Le-Sands has experienced some moderate growth over the past decade associated with infill residential development opportunities, including at the subject site. The rate of population growth is expected to slow over the next decade.
- 3 Overall retail spending per capita by residents of Brighton-Le-Sands is approximately 3% below the Greater Sydney average, although spending is slightly above average for cafes and restaurants and takeaway food. The demographics of the suburb are slightly older than average, with a high share of lone person households. The median individual income is slightly below average.
- 4 The location of the Blue Apartments is on the southern side of Princess Street, one block north of Bay Street and the high activity areas of the Brighton-Le-Sands centre. Located in the SP3 Tourist Zone, the development of the apartments was required to incorporate ground floor shops. It is understood the application of the SP3 Tourist Zone to the subject site reflects the historical potential for expansion to the adjacent Novotel Brighton Beach. That potential no longer exists.
- 5 Princess Street is primarily residential in nature at this location, with low levels of vehicle and pedestrian traffic. The Novotel Brighton Beach immediately to the east, at best, provides only very limited levels of activity which would benefit tenants at the subject site. Similarly, the nearby Coles and Bay Street shopping strip do not generate activity in Princess Street which would create sales and visitation for potential tenants at the subject site.
- 6 The ground floor shops at the Blue Apartments have been designed in a manner which meets contemporary tenant expectations. This includes commercial grade paving in the outdoor areas, exhaust fans and grease traps installed to accommodate a commercial kitchen, and a flexible layout to maximise attractiveness to possible operators. From a tenancy design perspective only, the shops are suitable to a range of potential users.
- 7 A leasing program for the ground floor shops has been underway since mid-2015, without success. Cushman and Wakefield, Colliers International and LJ Hooker Commercial are well-regarded commercial agencies who have been unable to lease the tenancies over a period of 2.5 years. This is despite reductions in the asking rent, and improvements (exhaust system and grease trap) designed to attract tenants. Feedback from the leasing agents has identified the poor locational attributes of the site as the key reason for a lack of tenant interest.

6-14 PRINCESS STREET BRIGHT-LE-SANDS
SHOP TENANCY ASSESSMENT

- 8 Applying a scorecard methodology to a set of 12 criteria commonly applied in locational advice, identifies that the subject site has relatively poor overall locational attributes. In particular, the subject site has very low ratings for factors including:
- Competition (extensive competition already exists for food-based retailing on Bay Street)
 - Pedestrian Traffic (the subject site has minimal levels of pedestrian traffic and no direct sight lines to highly trafficked areas)
 - Visibility to Passing Traffic (low levels of vehicle traffic in Princess Street and complex access arrangements from The Grand Parade)
 - Adjacencies (the adjacent Novotel provides very limited activity to the subject site, no other significant attractors are in the immediate vicinity with the exception of Coles which has no interface or sight line to the Blue Apartments)
 - Critical mass/destinational appeal (the subject site is located a block north of Bay Street and derives no benefit from the activity levels and visitation generated from the Brighton-Le-Sands activity centre).
- 9 Overall, it is our view that the subject site has below-average attributes for the operation of successful ground-floor retailing, which indicates:
- A low desirability for potential tenants
 - Poor locational attributes which may undermine the long-term trading success of any tenants which are attracted to the site
 - A high 'vacancy risk' for the shop tenancies.

6-14 PRINCESS STREET BRIGHTON-LE-SANDS
SHOP TENANCY ASSESSMENT

1 BRIGHTON-LE-SANDS DESCRIPTION AND CONTEXT

This Chapter of the report describes the broad locational context for the subject site at 6-14 Princess Street, Brighton-Le-Sands.

1.1 Location and Accessibility

Brighton-Le-Sands is located 13km south-west of the Sydney CBD, on the western shore of Botany Bay within the City of Bayside.

As shown in Map 1.1, the suburb is bordered by: Bestic Street in the north; Botany Bay in the east; President Avenue in the south; and an irregular boundary in the west, including part of Memorial Fields, West Botany Street and Muddy Creek.

Map 1.1 Brighton-Le-Sands Suburb Outline



Source: BingMaps with MapInfo

The Grand Parade, runs north-south along the eastern border of the suburb, adjacent to the beach. The Grand Parade is 2 or 3 lanes in either direction through Brighton-Le-Sands, depending on the prevailing parking restrictions. Along with the Princess Highway further west, the Grand Parade is the main north south arterial route connecting the suburb with other parts of Sydney.

6-14 PRINCESS STREET BRIGHTON-LE-SANDS
SHOP TENANCY ASSESSMENT

Bay Street runs east-west through Brighton-Le-Sands, connecting with Rockdale in the west.

The suburb is not served by rail, although a bus operates to Rockdale Station. Otherwise, State Transit provides a limited bus service linking Brighton-Le-Sands to Sydney CBD and Miranda.

1.2 Brighton-Le-Sands Town Centre

The Brighton-Le-Sands town centre is one the three main activity centres located in the City of Bayside (the other being Rockdale and Wolli Creek).

Bay Street and The Grand Parade comprise the main commercial and retail areas of the town centre. Both sides of Bay Street between The Grand Parade and Crawford Road feature ground floor shops facing onto relatively wide footpaths. The southern side of Bay Street mainly comprises two level buildings, while the northern side has a number of multi-storey apartment and commercial buildings.

The western side of The Grand Parade between The Boulevard and Princess Street also has ground floor shop uses.

Novotel Brighton Beach is located on the northern side of The Grand Parade and Bay Street intersection. The 296 room 4.5 star hotel benefits from water views, frontage to The Grand Parade and Brighton-Le-Sands beach, and proximity to Sydney Airport.

The Brighton-Le-Sands town centre is well known as a multi-cultural food destination, particularly for numerous Greek cafes, restaurants and businesses. Accordingly, the retail mix on Bay Street and The Grand Parade has a high share of cafes, restaurants, food and convenience stores.

In contrast, the share of shops in non-food categories (such as apparel, homewares, general merchandise) is well-below that for similar sized street-based activity centres in Sydney.

A small Coles supermarket, located on the corner of Princess Street and Moate Avenue, is the only significant national brand store in the centre.

1.3 Population, Demographics and Retail Spending

Population Trends and Forecasts

The population of Brighton-Le-Sands has experienced consistent growth in recent years, increasing from 7,950 residents in 2006 to 9,100 residents in 2017. Over the period to 2031, the population of the suburb is forecast to increase further to approximately 10,350 residents.

A summary of historic and forecast population trends for Brighton-Le-Sands is shown in Table 1.1.

6-14 PRINCESS STREET BRIGHT-LE-SANDS
SHOP TENANCY ASSESSMENT**Table 1.1 Brighton-Le-Sands Population Trends and Forecasts**

	2006	2011	2017	2021	2026	2031
Population (No.)						
Brighton-Le-Sands	7,800	8,480	9,100	9,600	10,000	10,350
Average Annual Growth (%)						
Brighton-Le-Sands		1.7%	1.2%	1.3%	0.8%	0.7%
Average Annual Growth (No.)						
Brighton-Le-Sands		+140	+100	+130	+80	+70

Source: Essential Economics and published sources

Retail Spending

Estimates of per capita retail spending by residents of Brighton-Le-Sands have been prepared with reference to the *MarketInfo* retail spending model. *MarketInfo* is a micro-simulation model which uses data from the ABS Household Expenditure Survey, the ABS Census of Population and Housing, ABS Australian National Accounts, and other relevant sources.

Average per capita retail spending in 2017 for residents of Brighton-Le-Sands is summarised in Table 1.2 and compared with the metropolitan Sydney average. The retail spending data is presented in four major spending category groupings.

- **Food, Liquor and Groceries** – includes spending on fresh food, groceries and take home liquor. This main category is relevant to supermarket based shopping.
- **Food catering** – includes cafes, restaurants and take-away food.
- **Non-Food** - includes apparel, homewares, bulky merchandise and general merchandise
- **Services** – such as hairdressers, beauty salons etc.

Table 1.2 Per Capita Retail Spending by Brighton-Le-Sands Residents, 2017 (\$2017)

	Food, Liquor and Groceries	Food Catering	Non Food	Services	Total Retail
Per Capita Spending (\$2017)					
Brighton-Le-Sands	\$5,560	\$2,160	\$5,100	\$510	\$13,330
Greater Sydney Average	\$5,470	\$2,110	\$5,620	\$510	\$13,710
Variation from Greater Sydney Average (%)					
Brighton-Le-Sands	+1.6%	+2.4%	-9.3%	+0.0%	-2.8%

Source: MarketInfo, Essential Economics

Total spending per capita by residents of Brighton-Le-Sands on retail goods and services in 2017 was \$13,330 per capita, or 2.8% lower than the Greater Sydney average of \$13,710.

6-14 PRINCESS STREET BRIGHTON-LE-SANDS
SHOP TENANCY ASSESSMENT

However, for food catering spending, which includes cafes, restaurants and takeaway food outlets, per capita spending by residents of Brighton-Le-Sands is +2.4% above the Greater Sydney average. This indicates an above average propensity of residents living in the area to dine out.

Socio-Economic Characteristics

According to the 2016 ABS Census of Population and Housing, the suburb of Brighton-Le-Sands is characterised by:

- Personal income levels (\$36,850) marginally below the Greater Sydney average (\$37,460)
- An older age profile with a median age of 40.1 years in the suburb relative to the Greater Sydney average of 36.4 years
- A lower than average share of family households, and a higher proportion of lone person households
- An above average share of dwellings rented (45.9%) relative to the Greater Sydney benchmark (35.1%).

Table 1.3 Brighton-Le-Sands Socio-Economic Characteristics, 2016

	Brighton-Le-Sands	Greater Sydney
<u>Income</u>		
Median individual income (annual)	\$36,850	\$37,460
Variation from Greater Sydney median	-1.6%	na
% of persons (15 years or older) earning \$1,000pw or more	35.1%	37.3%
<u>Age Structure</u>		
Median Age (years)	40.1	36.4
<u>Household Composition</u>		
<i>Couple family with no children</i>	23.0%	23.8%
<i>Couple family with children</i>	26.3%	37.5%
Couple family - Total	49.4%	61.3%
One parent family	12.5%	11.1%
Other families	1.3%	1.3%
Family Households - Total	63.2%	73.7%
Lone person household	32.2%	21.7%
Group Household	4.6%	4.6%
Average household size	2.3	2.8
<u>Tenure Type (Occupied Private Dwellings)</u>		
Owned outright	30.8%	30.0%
Owned with a mortgage	22.5%	34.2%
Rented	45.9%	35.1%

Source: 2016 ABS Census of Population and Housing

6-14 PRINCESS STREET BRIGHT-LE-SANDS
SHOP TENANCY ASSESSMENT

1.4 Implications for Subject Site

A review of the locational context for the subject site indicates the suburb of Brighton-Le-Sands which is experiencing moderate rates of population growth, although this is expected to slow over coming years. Overall levels of per capita retail spending are 3% below the Greater Sydney average, with income levels of local residents also marginally below the Greater Sydney average.

The Brighton-Le-Sands town centre, centred on Bay Street, is one the three main activity centres located in the City of Bayside. On weekends, the town centre has high volumes of people visiting the numerous cafes and restaurants, while during the week the centre has much lower levels of activity. A significant range of food-related shops are already located in the Brighton-Le-Sands town centre, indicating any such tenants for the subject site would be operating in a highly competitive environment.

Essential Economics Pty Ltd

9

6-14 PRINCESS STREET BRIGHT-LE-SANDS SHOP TENANCY ASSESSMENT

2 SUBJECT SITE ANALYSIS

This Chapter of the report considers the locational context and features of the ground floor tenancies at the subject site of 6-14 Princess Street, Brighton-Le-Sands.

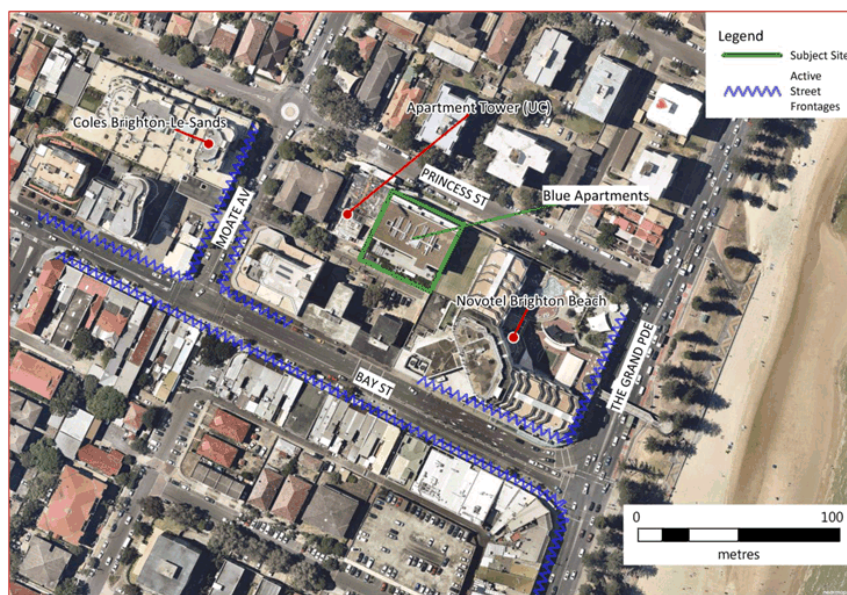
2.1 Location

The subject site, called the 'Blue' apartment building, is located on the southern side of Princess Street between The Grand Parade in the east and Moate Avenue in the west. Immediately east is the Novotel Brighton Beach, while to the west is a residential apartment building currently under-construction.

Immediately opposite the site on the northern side of Princess Street are residential uses, primarily apartments.

The subject site is located one block north of the main commercial area in Bay Street.

Map 2.1 Blue Apartments Location and Site Context



Source: Essential Economics with Nearmap and MapInfo
UC – under construction

2.2 Site Description

The three tenancies considered in this report are located on the ground floor of the 8-level Blue apartment tower.

Construction of the Blue Apartments was completed in September 2015. The building comprises a total of 67 1-bed, 2-bed and 3-bed apartments. All dwellings have been sold to owner-occupiers or investors.

Below ground parking is provided for residents with an entry point at the eastern end of the building. Pedestrian entry is provided centrally to the site, while the three ground floor tenancies are located at the western end of the site, farthest from the Novotel Brighton Beach.

Parking has been reserved for prospective tenants of the ground floor shops.

2.3 Surrounding Land Uses

Novotel

The Blue Apartments are immediately adjacent to the Novotel Brighton Beach, a 296 room hotel. The hotel serves business travellers and tourists, and offers facilities for meetings and events, including weddings. In 2015, the hotel was sold to new owners and indications from the sale campaign at that time are the facility has relatively strong occupancy levels.

In common with the four and five star hotel market, the Novotel Brighton Beach includes dining and bar facilities which aim to maximise guest spending within the building. Furthermore, although an entrance to the hotel is provided from Princess Street, this provides only limited exposure to the Blue apartment building. An internalised retail mall links the hotel foyer to Bay Street.

Active uses fronting The Grand Parade are located at the ground-level of the Novotel building, including a large restaurant and a number of cafes/takeaway outlets. These businesses have direct sightlines to Botany Bay and the Brighton-Le-Sands beach.

In contrast, the shop tenancies in the Blue Apartment building front what is primarily a quiet residential street.

For this reason, we do not believe that it is reasonable to expect that guests and visitors to the Novotel Brighton Beach can be considered to be a strong and consistent source of sales and patronage to potential shop tenants at the subject site.

Apartment Tower (Under Construction)

A new apartment block is currently under construction immediately west of the Blue Apartments at 16-20 Princess Street. This development will be comparable in height and scale to the Blue Apartments, although it will not include ground floor shop tenancies.

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The apartment tower at 16-20 Princess Street is located in the R4 High Density Residential Zone which does not require active ground floor shops. In contrast, the immediately adjacent subject site is located within the SP3 Tourist Zone which does encourage ground floor active uses.

This difference in the planning zone applying to each site is inconsistent with the relatively similar locational and development context for both sites.

Coles Brighton-Le-Sands

Further to the west at the south-west corner of Princess Street and Moate Street, a Coles supermarket is located on the ground floor of an apartment building. The Coles generates substantial customer traffic, by virtue of it being the only major supermarket in the neighbourhood, although the overall size of the store (2,200m²) is well-below the typical size of a full range Coles supermarket (3,000m²-plus).

Supermarket shopping is largely based on convenience. A key convenience is the ability to park near the supermarket, shop at the supermarket and other complementary nearby shops (often with a trolley), then take bought items back to the car.

This convenience would not be facilitated by the relative locations of Coles and shops in the Blue apartment building, even if Blue shops could offer complementary goods or services.

Accordingly, it is not reasonable to expect that Coles would be a significant driver of customer traffic to shops on the ground floor of the Blue Apartments.

Bay Street

Bay Street is the primary 'spine' of the Brighton-Le-Sands activity centre and is comprised of shops located on both sides of the street extending approximately 400 metres from The Grande Parade in the east to Francis Avenue in the west.

As previously noted, the centre has a higher than average share of food-based tenancies including cafes, restaurants and takeaway stores. In this sense, any similar outlets located at the Blue Apartment building would be operating in a highly competitive environment, with an extensive range of alternative operators located in the nearby, and much higher profile, Bay Street.

As shown in Map 2.1, the subject site has a northern aspect to Princess Street and is effectively one block removed from Bay Street. No mid-block pedestrian through-links are available, and no continuous active frontage links the subject site to the shops in Bay Street. A site visit confirms that the level of pedestrian activity in Princess Street and in front of the subject site is very low, compared with the level of activity and vibrancy in Bay Street.

The Bay Street strip includes numerous food-based tenants including cafes and restaurants. Importantly, despite the relative success of the centre as a dining and entertainment destination, some tenancies in the street are vacant (see Photo 2.1 as an example). This indicates that:

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- The vacant tenancies on Bay Street are likely to be preferred by operators seeking to locate at Brighton-Le-Sands, and
- The current leasing conditions in the area do not support full occupancy in the prime commercial Bay Street strip, let alone the more secondary location of the Blue Apartments in Princess Street.

Despite the relative proximity of the Blue Apartments to the Bay Street centre, the synergies between both locations are limited. That is, the subject site is relatively isolated from the visitation generated by the wider Brighton-Le-Sands activity centre, and thus any tenants at the Blue Apartments site will not benefit from customer traffic generated by traders in Bay Street.

Photo 2.1 Vacant Shop Tenancies in Bay Street



2.4 Accessibility

Vehicle Traffic

The Grand Parade carries both northbound and southbound traffic. However, vehicles travelling south are unable to turn right into Princess Street. Cars would need to turn right at Bay Street, right at Moate Avenue then right again into Princess Street.

Cars travelling north on The Grand Parade can turn directly left into Princess Street, although no left turn is permitted between 9pm to 2am on Friday, Saturday and Sunday.

Furthermore, on-street parking, while available, is limited.

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Overall, the quality of vehicle access and the levels of passing vehicle traffic to the ground floor shops at the Blue Apartments could be best described as poor to fair.

Pedestrian Traffic

Ample footpath space is located on both sides of Princess Street near the Blue Apartments. Those pedestrians passing the shops located at the subject site would be easily able to see and visit the tenancies.

However, as discussed in Section 2.3, no consistent and regular drivers of pedestrian traffic exist which are able to generate patronage to the shops at the subject site.

As is the case for vehicle traffic, the volume and consistency of pedestrian traffic in front of the Blue Apartments shop tenancies can be best described as poor to fair.

2.5 Description of Shop Tenancies

The layout of the three ground floor tenancies in the Blue apartment building are shown in Map 2.2, while Photo 2.2 show the street-frontage of the tenancies.

In relation to the tenancies we note the following aspects:

- **Frontage.** All three shops have generous frontages onto Princess Street, and are set back 3.25m from the building line.
- **Tenancy Size.** The three shop tenancies have a combined floorspace of 166m², comprising of Shop 1, 44m²; Shop 2, 73m² and Shop 3, 49m². The design of the three tenancies allows for combining adjacent tenancies if required. That is, the shops are configured in such a way that one, two or three tenants could operate from the site subject to tenant demand. This flexibility is 'best practice' from a leasing perspective as it maximises the attractiveness of the tenancies to a wider variety of potential operators.
- **Outdoor Area.** An outdoor seating area is available outside each tenancy, which is particularly useful given the northern aspect of the site and thus consistent access to sunshine. The paving at the front of the shops and extending onto the footpath is commercial grade, and suitable for external seating and high levels of traffic.
- **Fit-out.** Although the tenancies are currently in 'shell' condition (i.e. empty), exhaust fans and a grease trap have been installed to service potential commercial kitchen operators. In effect, the landlord has already undertaken some improvements to the shop tenancies to attract potential food operators.
- **Carparking.** Three basement car spaces have been reserved for potential tenants, with bollards protecting those spaces from casual use by residents and visitors.

In terms of target tenant types, the shops have physical attributes that would accommodate:

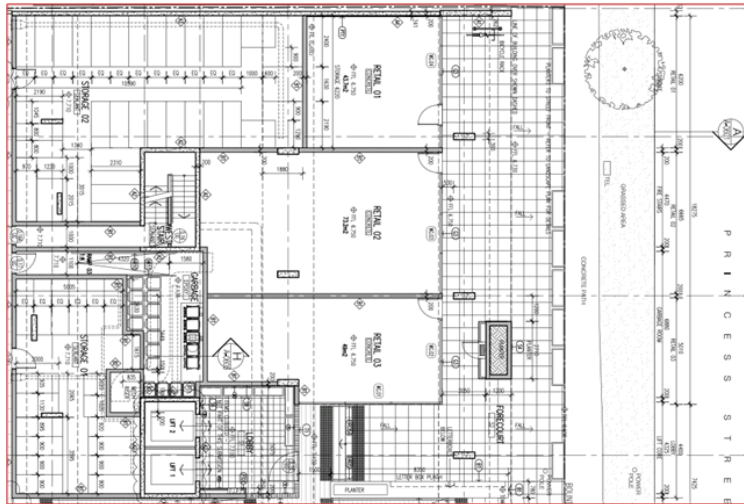
- Small restaurant, café, take-away food (cooked on the premises), deli or sandwich shop.

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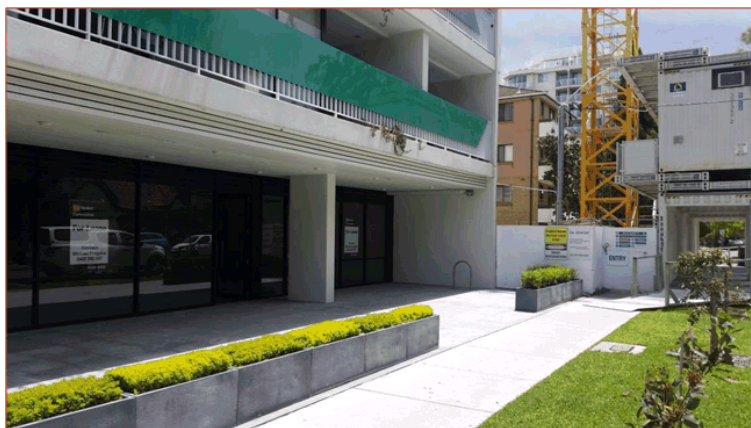
- Small convenience store.
- Small liquor store.
- Non-food retail, such as toys, clothing boutique, hairdresser, beauty salon etc
- Commercial uses, such as real estate agency.

These shop spaces could be suitable for independent specialty traders or small chains. The shops would not attract interest from nationally branded retailers, who generally seek sites with higher exposure.

Map 2.2 Layout of Blue Apartments Ground Floor Tenancies



Source: SJB Architects

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SHOP TENANCY ASSESSMENT**Photo 2.2 Blue Apartments Ground Floor Tenancies****2.6 Implications for Subject Site**

In terms of physical attributes only, the existing shop tenancies at the subject site are appropriate for a range of potential tenants, and have attributes and features likely to be attractive to possible operators.

However, that the spaces have not been leased suggests strongly that other factors, principally locational issues, are not conducive to sustaining a viable retail or commercial use at the site.

These locational issues are further discussed in Chapter 4 of this report.

3 LEASING CONSIDERATIONS

This Chapter of the report considers the leasing program implemented for the shop tenancies at the subject site.

3.1 Leasing History

On completion of the Blue Apartments building in September 2015, a leasing program was implemented for the shop tenancies. Notwithstanding the leasing program, the shops remain untenanted to this day.

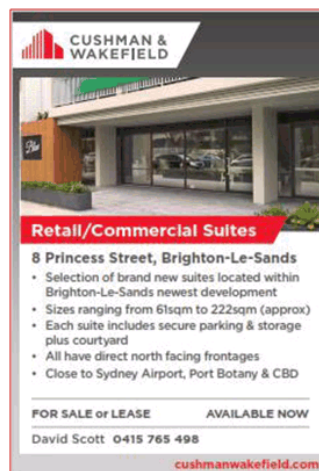
A summary of the leasing program, based on information made available by the client and a review of online real estate data, is as follows:

Cushman and Wakefield

The original leasing program was undertaken by Cushman and Wakefield. A global commercial real estate services company, Cushman and Wakefield has a strong commercial real-estate leasing team in Sydney, with a specialisation in small and mid-scale commercial developments.

It is understood that the leasing program undertaken by Cushman and Wakefield in 2015 included advertising in the Sydney Morning Herald and St George Leader and other print media, emails to C&W database, site signage and an online listing.

Given the lack of initial interest from prospective tenants, in early-2016 Cushman and Wakefield was replaced as the leasing agent by Colliers International. I understand that appointing a new agent was a response to the lack of tenant interest, rather than any specific issues with the quality of representation from Cushman and Wakefield.



Colliers International

Colliers International is one of the largest Commercial real estate agencies in Australia, with a market share of 16.5% of total commercial real estate transactions in 2016 (Source IBISWorld).

In early-2016 Colliers International implemented a 6-month leasing strategy for the shop tenancies at the subject site, including:

- Website advertising – including Colliers website, Real Commercial etc
- Print media – SMH and St George and Sutherland Leader newspapers

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- Distribution of E-Flyer to prospective tenants
- Email contact with tenant database
- On-site sign boards

A total of 90 enquiries to the Colliers campaign did not result in any suitable candidates to lease the shop tenancies at the subject site.

In a letter to Lumex (16 May 2017), Colliers concluded:

“Overall, the sales and leasing campaign was conducted for a period of 6 months as set out above, limited interest was received in the tenancies and no suitable formal offers were provided. In light of the length of time dedicated to the campaign, and the lack of interest resulting from our efforts, it was my recommendation that the active campaign be ceased.

In my opinion, the tenancies are not located in a desirable position for non-residential uses which we believe are ordinarily suitable for such a site, such as a cafe or retail premise. The tenancies are removed from the core retail/commercial strip of Bay Street and Grand Parade, resulting in substantially less foot traffic which is unattractive to potential tenants. Furthermore, the context of the tenancies on Princess Street is largely residential, with limited attraction for non-residential uses due to concerns about noise impacts and potential complaint limiting or affecting operations.”

LJ Hooker Commercial

Given the lack of interest generated from the leasing campaigns operated by the previous two ‘corporate’ commercial leasing agents, the local office of LJ Hooker Commercial was engaged to continue the leasing program in June 2017.

LJ Hooker Commercial tends to operate from smaller regional offices who have a closer relationship with the local business community within the area that they serve.

Since June 2017, LJ Hooker Commercial has continued to market the property to potential tenants, with only six formal enquiries made in the past 6-months. None of these inquiries have proceeded to a formal commitment to lease the shops.

3.2 Comments on Leasing Program

The leasing program undertaken for the ground floor shops at the subject site has been comprehensive, with three well-regarded commercial agencies unable to lease the tenancies over a period exceeding 2.5 years.

Feedback from the leasing agents, including written advice from Colliers International, is that the tenancies lack the locational attributes able to attract commercial tenants.

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It is understood that the asking rental level for the shops has been reduced over the period since June 2015, in response to the lack of tenant interest. The current asking rent for the shops is at a discount to that being achieved in Bay Street.

Furthermore, the leasing agents for the subject site have successfully leased space at other locations controlled by the client.

3.3 Implications for Subject Site

Overall, the leasing program implemented for the ground floor shops at the Blue Apartments is consistent with normal industry expectations. Three well-known and competent leasing agencies have been engaged to undertake the leasing program, and available evidence suggests that all agents have made genuine efforts to attract tenants to the site.

The lack of interest in the site for potential tenants is not associated with the specific layout and design of the tenancies, rather the leasing agents have identified the poor locational attributes of the site as a key reason for a lack of tenant interest. The asking rents and leasing terms being sought by the owner for the shops are reasonable in the context of standard tenant expectations.

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4 LOCATION ASSESSMENT

This Chapter undertakes a locational assessment for the subject site at the Blue Apartments in Brighton-Le-Sands with the application of criteria normally applied to commercial location decisions in private client advice by our firm.

4.1 Methodology and Criteria

An important consideration in the trading performance of any shop or retail outlet is the relative locational and design merits of the individual tenancy in which the outlet operates.

Two factors which are usually fundamental to business success in the retail industry are exposure and accessibility to potential customers.

A scorecard methodology can be used to assess the merits of shop tenancies for potential operators. A summary of 12 location criteria which are commonly applied in locational advice to clients is summarised in Table 4.1, with the relative performance of the subject identified according to each measure. In general, developers/landlords/tenants are seeking sites with an average score of 3 (average) or better.

Table 4.1 Location Assessment Criteria

Criteria	Considerations	Subject Site Score ^a
Retail Spending	Per capita food and non-food retail spending	3 - Average
Socio-Economic Profile	Are demographics of local population supportive of potential tenants	3 - Average
Resident Population	Is the local population stable, declining or growing.	3 - Average
Daytime population	Number of daytime workers and/or students	2- Below Average
Visitor spending	Visitors on weekends or during holidays	3 -Average
Significant retailers	Exposure to customers generated by national brand major, mini major and specialty stores	2- Below Average
Competition	Is the location well-placed relative to local competitors	1 - Very Low
Vehicle traffic and parking	Ease or difficulty of accessing the site by car. Availability of parking. Volume of passing vehicle traffic.	2 – Below Average
Pedestrian traffic	Ease or difficult of accessing the site for pedestrians. Volume of pedestrian traffic.	1 - Very Low
Visibility to passing traffic	Sight lines, signage opportunities	1 – Very Low
Adjacencies	Benefit of adjacent land uses to retail traders	1 – Very Low
Critical mass/destination appeal	Number and size of surrounding shops. Local attractiveness of site for shoppers.	1 – Very Low
Overall Average		1.9 Below Average
Source:	Essential Economics	
a.	1=Very Low, 2=Below Average, 3=Average. 4=Above Average, 5=Very High	

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4.2 Implications for Subject Site

An average of score of 1.9 has been assessed for the subject site, which reflects locational attributes well-below average and indicates:

- A low desirability for potential tenants
- Poor locational attributes which may undermine the long-term trading success of any tenants which are attracted to the site
- A high 'vacancy risk' for the shop tenancies.

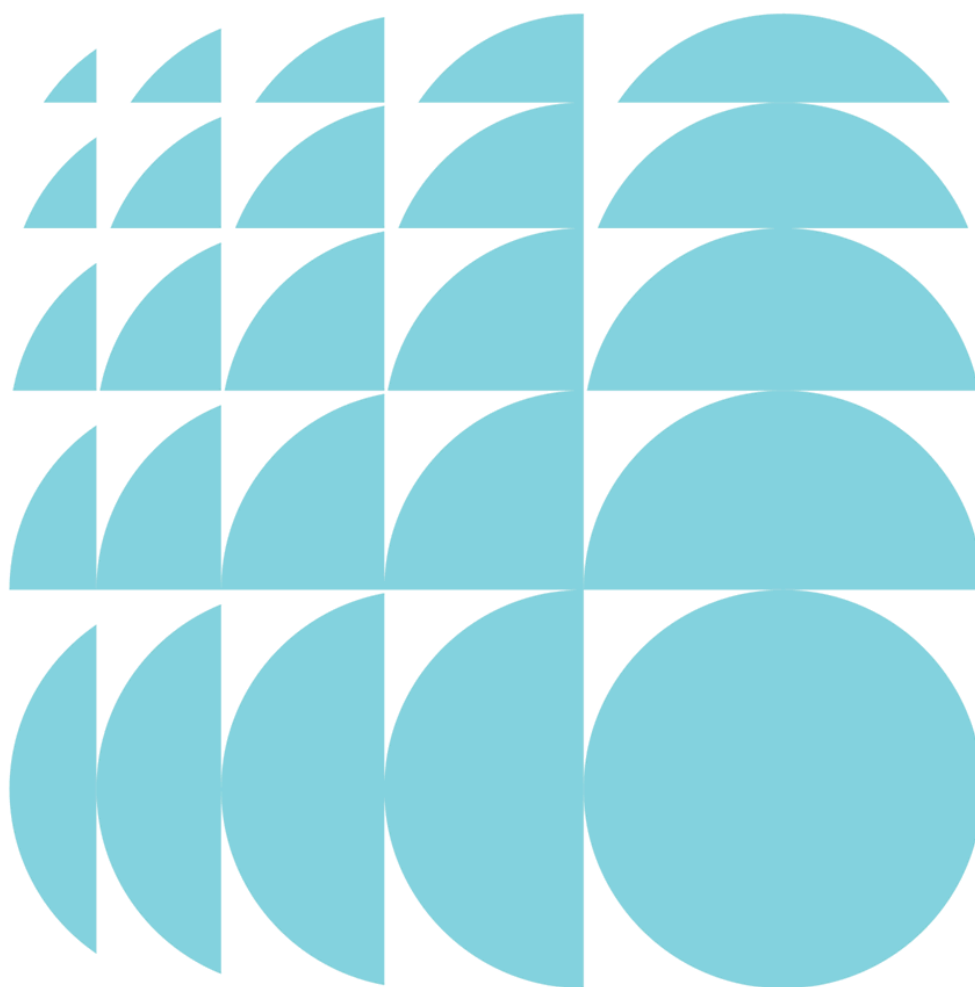
ETHOS URBAN

Planning Proposal

8 Princess Street, Brighton-Le-Sands
Rezoning from SP3 Tourist to B4 Mixed Use

Submitted to Bayside Council
On behalf of Lumex Property Group Pty Ltd

09 April 2018 | 17060



CONTACT

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8 Princess Street, Brighton-Le-Sands | Planning Proposal | 09 April 2018

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- B. Sales and Marketing Overview Letter
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- C. Traffic Impact Assessment
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Essential Economics

1.0 Introduction

This Planning Proposal explains the intended effect of, and justification for, the proposed amendment to the *Rockdale Local Environmental Plan 2011* ('Rockdale LEP 2011'). It has been prepared in accordance with Section 3.33 of the *Environmental Planning and Assessment Act 1979* and the relevant Department of Planning and Environment guidelines, including 'A Guide to Preparing Local Environment Plans' and 'A Guide to Preparing Planning Proposals'.

1.1 The Site

The site to which this planning proposal relates is located at 8 Princess Street, Brighton-Le-Sands and is legally described as SP92060. The subject strata units located on the ground floor are Lot 70, Lot 4 and Lot 5 within SP92060. **Figure 1** illustrates the subject site.



The Site

Figure 1 Site Location

Source: Nearmap

1.2 Background

In 1988, development consent (DA175/87) was granted by Council for the construction of a 15-storey hotel – the Novotel Hotel Brighton Le Sands – at the Grand Parade, Brighton Le Sands. Thakral Holdings Limited is the current owner of the Novotel Hotel.

Recently in 2007, Thakral Holdings Limited purchased the vacant site (8-14 Princess Street, Brighton Le Sands) to the immediate west adjoining the Novotel.

Between early 2008 and early 2011, a series of meetings were held at Rockdale City Council to discuss a possible extension of the existing Novotel hotel onto the subject site. During this time, discussions were also held with the Department of Planning & Infrastructure (the Department) and Council regarding the proposed lodgement of a Part 3A Concept Plan for the refurbishment of the existing hotel and its extension onto the subject site. In January 2009, the proposed hotel expansion project was declared to be a project to which Part 3A of the EP&A Act applies, and the then Minister for Planning authorised the preparation of a Concept Plan.

As part of the comprehensive LEP process, the site was re-zoned from Residential 2(c) under the preceding Rockdale LEP 2000 to SP3 Tourist under the Rockdale LEP 2011, which would appear to be in response to the declaration of the Part 3A Concept Plan.

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In June 2011, Thakral advised the Council that a hotel expansion onto the subject site would not be pursued for a range of commercial and strategic reasons outside the control of Thakral Holdings. Accordingly, Thakral Holdings pursued a 'shop top housing' development of the site and lodged a Development Application on 20 April 2012. During the course of the DA assessment, the current landowner, Lumex Property Group acquired the site.

The existing development at the site, being a shop top housing building, was approved by (the former) Rockdale City Council on 12 December 2012 as part of DA-2012/325. A shop top housing building was proposed under DA-2012/325 as a result of the prohibition of residential flat buildings within the SP3 Tourist zone which applies to the site.

DA-2012/325 provided consent for the construction and use of a 9-storey mixed-use development comprising three (3) non-residential tenancies, 67 residential units and basement parking for 71 vehicles. The building was completed and occupied in September 2015.

1.3 Description of the Planning Proposal

This planning proposal seeks to amend the zoning of land at 8 Princess Street, Brighton-Le-Sands (legally known as SP 92060) from SP3 Tourist to B4 Mixed Use in the Land Zoning Map of the Rockdale LEP 2011.

No amendment to the existing building height or floor space ratio development standards is proposed.

1.4 Rationale for the Proposal

The rationale for this planning proposal is that the site is currently being underutilised and is not contributing to the amenity of Brighton-Le-Sands. The landowner has actively marketed the three ground level tenancies for either leasing or sale through a national specialist commercial real estate agent, Cushman and Wakefield and thereafter engaging Colliers and LJ Hooker to extend the campaign. During the past 2.5 years since its completion, no reasonable offers were received for the purchase or leasing of the space. A letter providing an overview of the sales and marketing campaign is provided at **Appendix B**.

Shortly after construction of the exiting building in September 2015, the non-residential tenancies were advertised for lease or sale through a comprehensive marketing campaign involving:

- online listings on Real Commercial;
- listings within the Sydney Morning Herald and the St George and Sutherland Shire Leader newspapers;
- notifications of an e-flyer within a national database for commercial real estate agents; and
- onsite sign boards.

The three tenancies are subdivided into separate titles, each with a regular and highly usable shape. The tenancies were marketed as 'empty shells' (i.e. no fit out), allowing for flexibility in their final use. Furthermore, the design of each tenancy was maximised for retail exposure, with floor to ceiling glazing towards Princess Street. Building upgrades were also completed for a 1,000 Litre Grease arrestor and mechanical exhaust, allowing for reduced fit out costs for food and beverage operators utilising the spaces.

Despite the above and an asking rent reduction, interest in the tenancies was still limited, as outlined in the letter provided at **Appendix B**. Colliers note the following key factors contributing to the lack of commercial interest:

- a lack of foot traffic along Princess Street;
- reduced critical mass of other retail operations immediately surrounding the site;
- potential conflict of non-residential and residential uses, particularly in regard to noise and hours of operation; and
- a shortage of customer parking (particularly on weekends) in the surrounding street network.

Given the long term vacancy status of the site, Essential Economics were engaged to undertake an independent market appraisal of the ground floor retail/commercial space to determine its future financial viability (attached in **Appendix D**). The report finds that the subject site has below-average attributes for the operation of successful ground-floor retailing based on 12 commonly applied locational assessment criteria. The assessment result also confirms that the poor locational attributes of the site is one of the key reasons for a lack of interest.

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In light of the above, this planning proposal is necessary to facilitate the conversion of the non-residential tenancies to residential apartments. All reasonable efforts have been exhausted to secure the occupation of these tenancies for commercial purposes, therefore it is considered necessary to allow for an alternative use which is in demand and will allow for the ground level to contribute to the streetscape and activity in the locality.

It is noted that the conversion of the ground floor commercial tenancies to residential apartments will be subject to a subsequent Development Application.

2.0 Objectives or Intended Outcomes

The key objective and intended outcome of the planning proposal is to amend the *Rockdale LEP 2011* to enable the infill redevelopment of three vacant non-residential tenancies at the subject site. The infill of these three non-residential tenancies will allow for the delivery of two residential apartments.

The broader objectives of this planning proposal are to:

- Amend the zoning of the land from SP3 Tourist to B4 Mixed Use to in order to permit residential uses on the ground floor;
- Enhance the degree to which the existing building integrates with the immediate surrounds, which predominantly consists of residential uses;
- Provide a comparatively enhanced level of street front activation and urban design outcome through the occupation of the lower levels of the building; and
- Establish additional opportunities for housing within the Brighton-Le-Sands centre, in turn offering residents the opportunity to live within immediate access to key services, amenities, and infrastructure within walking distance.

3.0 Explanation of Changes

The proposed outcome, as outlined at **Section 2.0**, will be achieved by amending Sheet LZN_004 Land Zoning Map of Rockdale LEP 2011 as follows:

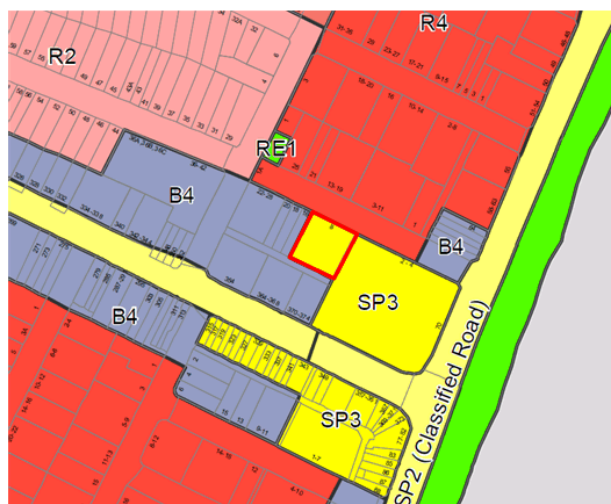


Figure 2 Existing Zoning Map

Source: Rockdale LEP 2011

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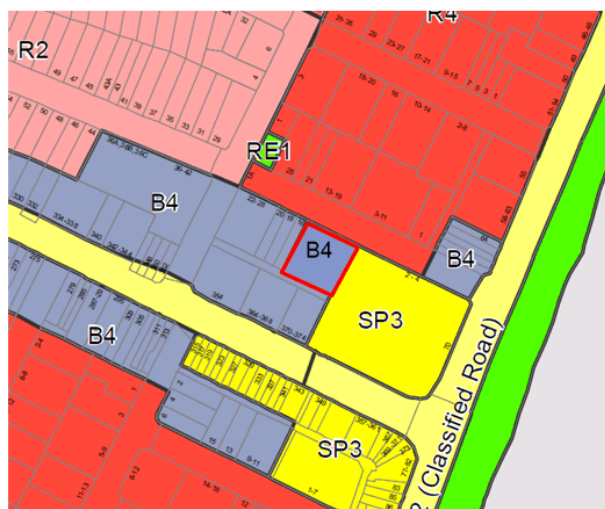


Figure 3 Proposed Zoning Map

Source: Ethos Urban

4.0 Justification

4.1 Need for the planning proposal

4.1.1 Is the planning proposal a result of any strategic study or report?

This planning proposal is not in direct response to any strategic study or report, but more broadly implements the goals and aspirations of the adopted metropolitan and district strategic plans. The relationship of the proposal with the relevant strategic planning documents is addressed in Section 4.2 below.

The need for the planning proposal has mainly arisen from a lack of interest in the non-residential tenancies and the long-term vacancies (2.5 years), given a number of constraints. As such, it is more appropriate to rezone the site to B4 Mixed Use to allow for residential flat buildings given the prolonged vacancy of the ground floor commercial tenancies.

The future provision of residential uses on the ground level in lieu of the non-residential tenancies will also result in an improvement to the contribution of the building in the streetscape, particularly given the vacant nature of the current tenancies. Currently, the vacant tenancies present a blank response to the street, being empty shells with no visual interest or activity provided. The future envisaged residential apartments will enable a level of activation to the ground level and will ensure that the presentation of the building is purposeful rather than vacant tenancies.

4.1.2 Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The planning proposal is the most appropriate means of achieving the objectives and intended outcomes outlined at Section 2.0. Currently, the zoning of the site does not permit residential flat buildings, meaning that ground level tenancies within the existing building are required to be utilised for non-residential uses. As such, there is a clear need for an amendment to the current permissible uses on the site to permit the conversion of the ground level non-residential tenancies to residential apartments.

The planning proposal will amend the zoning of the site from SP3 Tourist zone to a B4 Mixed Use zoning in order to permit 'residential flat buildings' on the site. The proposed rezoning will respond to the underlying commercial zone of the Brighton-Le-Sands Town Centre and will be commensurate with uses foreshadowed in the zone.

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An alternative to the amendment sought with the planning proposal would be to amend Schedule 1 'Additional permitted uses' to insert "residential flat buildings" as a permissible use on the land without amending the existing SP3 Tourist zone. This alternative would not provide a desirable outcome for the site as it will create an unnecessary provision in the LEP and is not reflective of the underlying objective of the SP3 zone which is to promote tourist related uses. It is noted that given the recent re-development of the site, it is considered that the SP3 Tourist zoning of the site is effectively redundant.

Overall, the amendment to the zoning of the site pursuant to the Rockdale LEP 2011 is the most efficient and time effective approach to meet the intended outcomes of the planning proposal.

4.2 Relationship to Strategic Planning Framework

4.2.1 Is the planning proposal consistent with the objectives and actions contained within the applicable regional, sub-regional or district plan or strategy (including any exhibited draft plans or strategies)?

The planning proposal is consistent with the objectives and actions of the relevant regional, sub-regional or district strategic plans as set out below.

A Plan for Growing Sydney

The proposed amendment to the Rockdale LEP 2011 is consistent with the goals outlined under *A Plan for Growing Sydney* as discussed in **Table 1** below.

Table 1 Table Caption Proposal's consistency with the goals of A Plan for Growing Sydney

Goal	Comment
GOAL 1: A competitive economy with world-class services and transport	The planning proposal will not affect the achievement of a competitive economy with world-class services and transport. The subject tenancies have been marketed for over 2.5 years for leasing or sale without any success. As such, it is evident that the commercial/retail tenancies do not contribute to a competitive economy in their current form. These tenancies are expected to contribute to the economy when converted to residential apartments.
GOAL 2: A city of housing choice, with homes that meet our needs and lifestyles	The proposed amendment of the Rockdale LEP 2011 will facilitate additional housing within the locality.
GOAL 3: A great place to live with communities that are strong, healthy and well connected	The planning proposal will facilitate the improvement of the current building, allowing for the replacement of vacant non-residential tenancies with residential apartments. These new apartments will enhance the streetscape and increase community members, offering opportunities for a strengthened sense of community.
GOAL 4: A sustainable and resilient city that protects the natural environment and has a balanced approach to the use of land and resources	The proposal will facilitate the conversion of vacant non-residential tenancies to residential apartments, ensuring that the land is utilised to its full potential and housing is consolidated in a location with close proximity to existing services, facilities and infrastructure.

Greater Sydney Region Plan - Vision to 2056

The Greater Sydney Commission (GSC) has published a finalised new Greater Sydney Region Plan titled *Our Greater Sydney 2056 A metropolis of three cities*, aligns the metropolitan plan for the Greater Sydney with the more targeted district plans. The planning proposal is consistent with the Directions of *Our Greater Sydney 2056* as set out in **Table 2** below.

Table 2 Table Caption Proposal's consistency with Our Greater Sydney 2056

Priority	Comment
A city for people Celebrating diversity and putting people at the heart of planning	The planning proposal will accommodate the growing population of Sydney and contribute to a healthy resilient community.
Housing the city Giving people housing choices	The additional residential apartments facilitated through the planning proposal will accommodate new residents, contributing to the housing target of the Eastern City.

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Priority	Comment
A city of great places Designing places for people	The planning proposal will increase capacity for residential development and will improve viability and sustainability of the place, while enhancing the street interface.
A well-connected city Developing a more accessible and walkable city	The site is located in an identified local centre with close proximity to Kogarah Health and Education Precinct and Bayside West Precincts urban renewal area. The proposal will allow for additional housing in a well located area to support the local centre and contribute to a more accessible and walkable city.

Eastern City District Plan

The proposed amendment to the Rockdale LEP 2011 is consistent with the priorities and actions for the eastern city outlined within the adopted Eastern City District Plan. The proposal's consistency with the relevant priorities is set out in **Table 3** below.

Table 3 Proposal's consistency with the relevant priorities and actions of the Eastern City District Plan

Priority	Comment
Planning Priority E5: Providing housing supply, choice and affordability with access to jobs and services	The planning proposal will allow for future residential apartments in an accessible location with access to jobs and services. These apartments will contribute to housing target, choice and diversity in the locality.
Planning Priority E6: Creating and renewing great places and local centres, and respecting the District's heritage	The additional residential apartments facilitated through the planning proposal will provide a unique housing proposition, being courtyard apartments accessed directly from the street in a local centre. These apartments will provide diversity to the building and more broadly contributing to greater choice in the housing market.
Planning Priority E10: Delivering integrated land use and transport planning and a 30-minute city	The planning proposal will support the principle of integrating land use and transport by facilitating the provision of residential apartments in close proximity to existing facilities and services, allowing residents to live within 30 minutes of existing infrastructure, facilities, services and employment.

4.2.2 Is the planning proposal consistent with the local council's Community Strategic Plan or other local strategic plan?

The planning proposal is consistent with the Rockdale City Community Strategic Plan. The Community Strategic Plan sets out the vision for the local area until 2025, establishing four key outcomes. **Table 4** sets out the consistency of the proposal with these outcomes and the relevant objective.

Table 4 Proposal's consistency with the outcomes of the Rockdale City Community Strategic Plan

Outcome	Comment
Outcome 1 – Rockdale is a welcoming and creative City with active, healthy and safe communities	The planning proposal will contribute to this outcome by facilitating residential apartments which will allow people to live in the Brighton-Le-Sands centre. The integration of new housing in this centre will allow people to live a healthy and active lifestyle.
Outcome 2 – Rockdale is a City with a high quality natural and built environment and valued heritage in liveable neighbourhoods. A City that is easy to get around and has good links and connections to other parts of Sydney and beyond.	The proposal will facilitate improvements to the existing building, being the enhancement and activation of the ground floor plate. This will ultimately contribute to the quality of the built environment.
Objective 2.2 Our City has a well managed and sustainable built environment, quality and diverse development with effective housing choice	The planning proposal will facilitate the conversion of non-residential tenancies into residential apartments, contributing to greater housing choice in the locality.
Outcome 3 – Rockdale is a City with a thriving economy that provides jobs for local people and opportunities for lifelong learning	The planning proposal seeks to permit the use of vacant non-residential tenancies for use as residential apartments. Ultimately, this will allow for a greater population in the locality, in turn enhancing the local economy.
Outcome 4 – Rockdale is a City with engaged communities, effective leadership and access to decision making.	The planning proposal will not affect the ability for effective leadership and access to decision making.

4.2.3 Is the planning proposal consistent with applicable State Environmental Planning Policies (SEPPs)?

The consistency of the planning proposal to applicable SEPPs is discussed in **Table 5** below.

Table 5 Table Caption Consistency with SEPPs

No.	Title	Consistency with planning proposal
1	Development Standards	Not applicable as per Clause 1.9 of the Rockdale LEP 2011.
14	Coastal Wetlands	Not applicable
19	Bushland in Urban Areas	Not applicable
21	Caravan Parks	Not applicable
26	Littoral Rainforests	Not applicable
30	Intensive Aquaculture	Not applicable
33	Hazardous and Offensive Development	Not applicable
36	Manufactured Home Estates	Not applicable
44	Koala Habitat Protection	Not applicable
47	Moore Park Showground	Not applicable
50	Canal Estate Development	Not applicable
52	Farm Dams and Other Works in Land and Water Management Plan Areas	Not applicable
55	Remediation of Land	The site was deemed suitable for residential uses under DA-2012/325. The findings of this original assessment are considered to remain valid.
62	Sustainable Aquaculture	Not applicable
64	Advertising and Signage	Not applicable
65	Design Quality of Residential Apartment Development	Consistency with the principles of SEPP 65 and accompanying Apartment Design Guide will be further demonstrated in a future development application for the change of use. A high level overview of the proposals consistency with these matters and residential amenity more generally is set out in Section 4.3.2 below.
70	Affordable Housing (Revised Schemes)	Not applicable
71	Coastal Protection	Not applicable
-	(Affordable Rental Housing) 2009	Not applicable
-	(Building Sustainability Index: BASIX) 2004	Detailed compliance with SEPP (BASIX) will be demonstrated in a future separate development application for the change of use facilitated by this planning proposal.
-	(Exempt and Complying Development Codes) 2008	SEPP (Exempt and Complying Development Codes) 2008 may apply to the future development, however is not relevant to this planning proposal.
-	(Housing for Seniors or People with a Disability) 2004	Not applicable
-	(Infrastructure) 2007	Not applicable
-	(Kosciuszko National Park Alpine Resorts) 2007	Not applicable
-	(Kurnell Peninsula) 1989	Not applicable
-	(Mining, Petroleum Production and Extractive Industries) 2007	Not applicable
-	(Miscellaneous Consent Provisions) 2007	Not applicable
-	(Penrith Lakes Scheme) 1989	Not applicable
-	(Rural Lands) 2008	Not applicable
-	(State and Regional Development) 2011	Not applicable

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No.	Title	Consistency with planning proposal
-	(State Significant Precincts) 2005	Not applicable
-	(Sydney Drinking Water Catchment) 2011	Not applicable
-	(Sydney Region Growth Centres) 2006	Not applicable
-	(Three Ports) 2013	Not applicable
-	(Urban Renewal) 2010	Not applicable
-	(Western Sydney Employment Area) 2009	Not applicable
-	(Western Sydney Parklands) 2009	Not applicable

4.2.4 Is the planning proposal consistent with applicable Ministerial Directions (s. 9.1 directions)?

The consistency of the planning proposal to the relevant Ministerial Directions for Local Environmental Plans under Section 9.1 of the *Environmental Planning and Assessment Act 1979* is discussed in **Table 6** below.

Table 6 Consistency with applicable Ministerial Directions

No.	Title	Consistency with planning proposal
1. Employment and Resources		
1.1	Business and Industrial Zones	The planning proposal seeks to amend the zoning of the site from SP3 Tourist zone to B4 Mixed use under the Rockdale LEP 2011. This amendment will permit residential flat buildings on the site and will encourage greater variety and choice of housing types close to facilities and services.
1.2	Rural Zones	Not applicable
1.3	Mining, Petroleum Production & Extractive Industries	Not applicable
1.4	Oyster Aquaculture	Not applicable
1.5	Rural Lands	Not applicable
2. Environment and Heritage		
2.1	Environmental Protection Zones	Not applicable
2.2	Coastal Protection	Not applicable
2.3	Heritage Conservation	Not applicable
2.4	Recreation Vehicle Areas	Not applicable
3. Housing, Infrastructure and Urban Development		
3.1	Residential Zones	The planning proposal seeks to amend the zoning of the site from SP3 Tourist zone to B4 Mixed use under the Rockdale LEP 2011. This amendment will permit residential flat buildings on the site and will encourage greater variety and choice of housing types close to facilities and services.
3.2	Caravan Parks and Manufactured Home Estates	Not applicable
3.3	Home Occupations	Not applicable
3.4	Integrating land use and Transport	The planning proposal will support the principle of integrating land use and transport by facilitating the provision of residential apartments in close proximity to existing facilities and services.
3.5	Development near Licensed Aerodromes	Not applicable
3.6	Shooting ranges	Not applicable
4. Hazard and Risk		
4.1	Acid Sulfate Soils	Not applicable
4.2	Mine Subsidence and Unstable Land	Not applicable
4.3	Flood Prone Land	Not applicable

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No.	Title	Consistency with planning proposal
4.4	Planning for Bushfire Protection	Not applicable
5. Regional Planning		
5.1	Implementation of Regional Strategies	The planning proposal is of minor significance in terms of regional planning and is consistent with the objectives of the adopted Greater Sydney Region Plan and Sydney Eastern District Plan.
5.2	Sydney Drinking Water Catchments	Not applicable
5.3	Farmland of State and Regional Significance on the NSW Far North Coast	Not applicable
5.4	Commercial and Retail Development along the Pacific Highway, North Coast	Not applicable
5.5	Development on the vicinity of Ellalong	(Revoked)
5.6	Sydney to Canberra Corridor	(Revoked)
5.7	Central Coast	(Revoked)
5.8	Second Sydney Airport: Badgerys Creek	Not applicable
5.9	North West Rail Link Corridor Strategy	Not applicable
6. Local Plan Making		
6.1	Approval and Referral Requirements	The planning proposal does not relate to matters which are likely to require the referral or approval from a public authority.
6.2	Reserving land for Public Purposes	Not applicable
6.3	Site Specific Provisions	The planning proposal seeks to amend the site zoning on the zoning map and will not involve amendments to any site-specific clause. Further, no amendments are proposed to the existing development standards for the site.
7. Metropolitan Planning		
7.1	Implementation of A Plan for Growing Sydney	The planning proposal is of minor significance in terms of metropolitan planning and supports the goals of A Metropolis of Three Cities.
7.2	Implementation of Greater Macarthur Land Release Investigation	Not applicable
7.3	Parramatta Road Corridor Urban Transformation Strategy	Not applicable
7.4	Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	Not applicable
7.5	Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	Not applicable
7.6	Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	Not applicable
7.7	Implementation of Glenfield to Macarthur Urban Renewal Corridor	Not applicable

4.3 Environmental, social and economic impact

4.3.1 Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

The planning proposal will not result in any impact on critical habitat or threatened species, populations or ecological communities, or their habitats, given the site's urban location.

4.3.2 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

It is not anticipated that there will be any significant environmental effects as a result of the planning proposal. Potential environmental effects requiring further consideration are addressed below.

Residential Amenity

The planning proposal will facilitate the future conversion of three commercial tenancies to potentially two residential apartments subject to a separate Development Application. The residential amenity of these apartments in accordance with SEPP 65 and the Apartment Design Guide has been considered.

Figure 2 illustrates the potential layout of two apartments prepared by SJB Architects. The configuration will allow for 1 x one bedroom unit and 1 x two bedroom unit. The indicative layout demonstrates that each unit will achieve natural light and will be afforded a functional floor layout with direct access to a private courtyard.

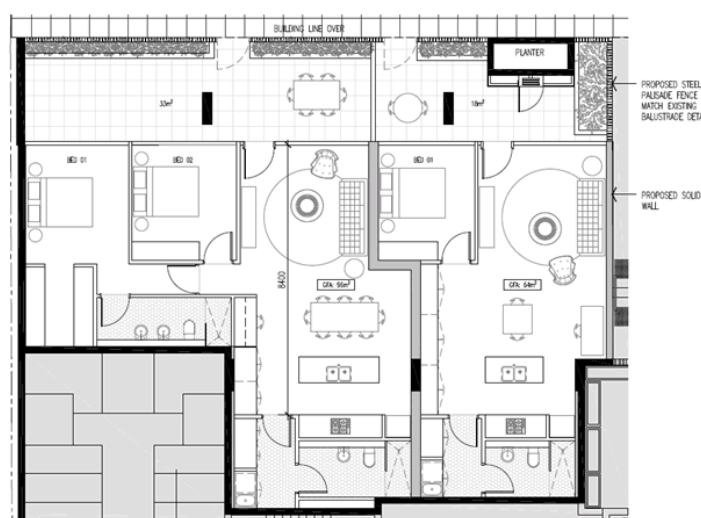


Figure 4 Anticipated Apartment Layout

Source: SJB Architects

SJB has designed the anticipated layouts in reference to the nine principles of *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development* (SEPP 65) and the accompanying Apartment Design Guide ('the ADG'). **Table 7** outlines the consistency of the proposal with the design criteria of the ADG.

Table 7 Assessment of the proposal's consistency with the objective of the ADG

Design Criteria	Proposal
Part 3 Siting the Development	
3D Communal and Public Open Space	
<i>Objective</i> An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping	✓
<i>Design Criteria</i> Communal open space has a minimum area equal to 25% of the site	✓
Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter).	✓ (Refer to Shadow Diagrams at Attachment A)

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Design Criteria		Proposal												
3E Deep Soil Zones														
<u>Objective</u> Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality.		✓												
<u>Design Criteria</u> Deep soil zones are to meet the following minimum requirements: <table border="1"> <thead> <tr> <th>Site Area</th><th>Min. Dimensions</th><th>Deep Soil Zone*</th></tr> </thead> <tbody> <tr> <td>Less than 650m²</td><td>-</td><td rowspan="4">7%</td></tr> <tr> <td>650m² – 1,500m²</td><td>3m</td></tr> <tr> <td>Greater than 1,500m²</td><td>6m</td></tr> <tr> <td>Greater than 1,500m² with significant existing tree cover</td><td>6m</td></tr> </tbody> </table> * % of site area		Site Area	Min. Dimensions	Deep Soil Zone*	Less than 650m ²	-	7%	650m ² – 1,500m ²	3m	Greater than 1,500m ²	6m	Greater than 1,500m ² with significant existing tree cover	6m	✓
Site Area	Min. Dimensions	Deep Soil Zone*												
Less than 650m ²	-	7%												
650m ² – 1,500m ²	3m													
Greater than 1,500m ²	6m													
Greater than 1,500m ² with significant existing tree cover	6m													
3F Visual Privacy														
<u>Objective</u> Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy.		✓												
<u>Design Criteria</u> Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows: <table border="1"> <thead> <tr> <th>Building Height</th><th>Habitable Rooms & Balconies</th><th>Non-habitable Rooms</th></tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr> <tr> <td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr> <tr> <td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr> </tbody> </table>		Building Height	Habitable Rooms & Balconies	Non-habitable Rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	✓
Building Height	Habitable Rooms & Balconies	Non-habitable Rooms												
Up to 12m (4 storeys)	6m	3m												
Up to 25m (5-8 storeys)	9m	4.5m												
Over 25m (9+ storeys)	12m	6m												
3K Bicycle and Car Parking														
<u>Objective</u> Car Parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas		✓												
<u>Design Criteria</u> For development in the following locations: on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; or on land zoned, and sites within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less. The car parking needs for a development must be provided off street.		✓												
Part 4 Designing the Buildings														
4A Solar and Daylight access														
<u>Objective</u> To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space		✓												
<u>Design Criteria</u>		✓ (76% overall)												

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3F Visual Privacy

Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas.

A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter.

✓

4B Natural VentilationObjective

The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents

✓

Design Criteria

At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.

✓
(76%)

Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.

N/A

4C Ceiling HeightObjective

Ceiling height achieves sufficient natural ventilation and daylight access

✓

Design Criteria

Measured from finished floor level to finished ceiling level, minimum ceiling heights are:

✓

Habitable rooms	2.7m
Non-habitable	2.4m
For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area
Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope

These minimums do not preclude higher ceilings if desired.

4D Apartment Size and LayoutObjective

The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity

✓

Design Criteria

Apartments are required to have the following minimum internal areas:

✓

Apartment Type	Minimum internal area
Studio	35m ²
1 bedroom	50m ²
2 bedroom	70m ²
3 bedroom	90m ²

The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.

Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.

✓

Objective

Environmental performance of the apartment is maximised

✓

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4C Ceiling HeightDesign Criteria

Habitable room depths are limited to a maximum of 2.5 x the ceiling height.

Further discussion provided below.

In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.

Further discussion provided below.

Objective

Apartment layouts are designed to accommodate a variety of household activities and needs

✓

Design CriteriaMaster bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space).

✓

Bedrooms have a minimum dimension of 3m (excluding wardrobe space).

✓

Living rooms or combined living/dining rooms have a minimum width of:
3.6m for studio and 1 bedroom apartments
4m for 2 and 3 bedroom apartments

✓

The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.

✓

4E Private Open Space and BalconiesObjectives

Apartments provide appropriately sized private open space and balconies to enhance residential amenity

✓

Design Criteria

All apartments are required to have primary balconies as follows:

✓

Dwelling Type	Minimum Area	Minimum Internal area
Studio apartment	4m ²	-
1 bedroom apartment	8m ²	2m
2 bedroom apartment	10m ²	2m
3+ bedroom apartment	12m ²	2.4m

The minimum balcony depth to be counted as contributing to the balcony area is 1m.

For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m.

✓

4F Common Circulation and SpacesObjective

Common circulation spaces achieve good amenity and properly service the number of apartments

N/A

Design Criteria

The maximum number of apartments off a circulation core on a single level is eight.

N/A

For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.

N/A

4G StorageObjective

Adequate, well designed storage is provided in each apartment

✓

Design Criteria

In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:

✓

Dwelling Type	Minimum Area
Studio apartment	4m ²
1 bedroom apartment	6m ²
2 bedroom apartment	8m ²
3+ bedroom apartment	10m ²

At least 50% of the required storage is to be located within the apartment.

Apartment Depth

The two future residential apartments would be provided with a combined habitable living, dining and kitchen depth of 8.4m, marginally exceeding the 8m maximum depth recommended under Objective 4D-2 of the ADG.

Notwithstanding this minor variation, the future room depth is acceptable given the subject apartments will overall achieve a suitable level of residential amenity. The exceedance of 0.4m over the recommended depth is marginal and compliance would not result in a significant level of added amenity.

The internal area of each apartment has been designed to exceed minimum requirements, ensuring that a satisfactory degree of solar access and ventilation is achieved. Both apartments will also have access to a large private outdoor space which will promote surveillance of the street given its location on the ground plane.

It is also noted that the primary habitable areas within each apartment, including the living, dining and bedroom areas, have been located closest to the external face of the building to ensure a high level of solar access and daylight.

Traffic and Parking

A Traffic and Parking Assessment has been prepared by GTA Consultants ('GTA') and is provided at **Appendix C**.

With respect to the supply of car parking, GTA has determined that:

'...the proposed development changes [facilitated by this Planning Proposal] will not affect the overall parking provision of the approved DA when assessed against [Rockdale Development Control Plan] 2011 requirements'.

The Rockdale DCP 2011 stipulates that one parking space per one or two-bedroom apartment is required within a residential flat building. As the five (5) retail parking spaces approved under DA-2012/325 will no longer be required for retail use, these would be proposed to be converted for residential uses. Overall, no additional parking will be provided to the site. The planning proposal will also remain consistent with the current arrangements for visitor parking.

Furthermore, GTA has determined that any impact on the surrounding road network as a result of this planning proposal would be negligible. Within the *Guide to Traffic Generating Developments*, the Roads and Maritime Service recognises that residential apartments generate less traffic than retail premises, therefore the traffic generation of the site would likely decrease.

4.3.3 How has the planning proposal adequately addressed any social and economic effects?

The proposed development will result in positive social and economic effects for the local area through the generation of local employment opportunities during construction and post-construction and through provision of additional housing stock.

The site currently accommodates three commercial tenancies on the ground level which have remained vacant since the completion of the development in September 2015. These ground floor retail/commercial tenancies have failed to attract market interest. In particular, Cushman and Wakefield, Colliers International and LJ Hooker Commercial are well-regarded and capable commercial agencies who have been unable to lease the tenancies over a period of 2.5 years, even after a reduced asking rent in response to the lack of interest.

In order to achieve a positive and sustainable outcome and in response to an unsuccessful market campaign, the landowner engaged Essential Economics to undertake an independent market appraisal of the ground floor retail/commercial space to assess the viability and likelihood of securing long term sustainable tenancies (refer to **Appendix D**).

The report finds that despite the design of the ground floor space is suitable to a range of potential tenants, the poor locational attributes of the site is the key reason for a lack of tenant interest based on the feedback. It analysed the site's location context, local provision of retail shops and services, local population and demographic characteristics, and its leasing program history. Essential Economics concludes that the subject site has *below-average attributes* for the operation of successful ground-floor retailing, which is confirmed by the following indications of the assessment result:

- A low desirability for potential tenants

- *Poor locational attributes which may undermine the long-term trading success of any tenants which are attracted to the site*
- *A high 'vacancy risk' for the shop tenancies.*

In particular, the subject site has very low ratings of 1.9 out of 5 to a set of 12 criteria commonly applied in locational advice for factors including:

- *Competition (extensive competition already exists for food-based retailing on Bay Street)*
- *Pedestrian Traffic (the subject site has minimal levels of pedestrian traffic and no direct sight lines to highly trafficked areas)*
- *Visibility to Passing Traffic (low levels of vehicle traffic in Princess Street and complex access arrangements from The Grand Parade)*
- *Adjacencies (the adjacent Novotel provides very limited activity to the subject site, no other significant attractors are in the immediate vicinity with the exception of Coles which has no interface or sight line to the Blue Apartments)*
- *Critical mass/destinational appeal (the subject site is located a block north of Bay Street and derives no benefit from the activity levels and visitation generated from the Brighton-Le-Sands activity centre).*

The conclusion is further supported by the demographics data of the suburb which is characterised by a slightly older than average population, with a high percentage of lone person households and below average medium individual income. Following the two and half years vacancy, it is evident that the long term financial viability of the ground floor retail/commercial tenancies is highly at risk

The planning proposal responds to the undesirable traits of the site with respect to facilitating commercial ground floor uses and will facilitate the conversion of these tenancies into residential apartments.

4.4 State and Commonwealth interests

4.4.1 Is there adequate public infrastructure for the planning proposal?

The proposal is intended to facilitate the delivery of two additional residential apartments within the existing building. This minimal increase in residential density is not expected to result in any significant strain on existing infrastructure such as local roads, public transport schools or the existing mixed use centre of Brighton-Le-Sands.

Any potential required amplification/upgrade of existing services will be further investigated in the separate planning application for the construction and use of the residential apartments.

4.4.2 What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?

Consultation has not yet occurred with any State and Commonwealth public authorities given the stage of the planning proposal. Any feedback provided with the Gateway determination will be taken into consideration and addressed in the final planning proposal.

5.0 Community Consultation

Community consultation will be undertaken in accordance with section 57 of the EP&A Act. This planning proposal will be publicly exhibited for at least 28 days following the LEP Gateway determination. It is expected that all exhibition material will be available on Council's website. Public notice of the public exhibition is expected to be given in local papers and on Council's website.

All submissions received during the exhibition period will be considered in the finalisation of the planning proposal.

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6.0 Project Timeline

Table 8 Table Caption Approximate project timeline

Task	Timing
Date of Gateway determination	August 2018
Anticipated timeframe for the completion of required technical information	September 2018
Timeframe for government agency consultation (pre and post exhibition as required by Gateway determination)	November 2018
Commencement and completion dates for public exhibition period	September – October 2018
Dates for public hearing (if required)	N/A
Timeframe for consideration of submissions	November 2018 – January 2019
Timeframe for the consideration of a PP following exhibition	November 2018 – January 2019
Consideration of PP by Council (Council Meeting)	February 2019
Date of submission to the department to finalise the LEP	February 2019
Anticipated date RPA will make the plan (if delegated) or Anticipated date RPA will forward to the department for notification	March 2019
Anticipated publication date	March 2019

SJB Architects



Design Report

8 Princess Street
Brighton Le Sands

4 April 2017 | Version 1.0

SJB Architects

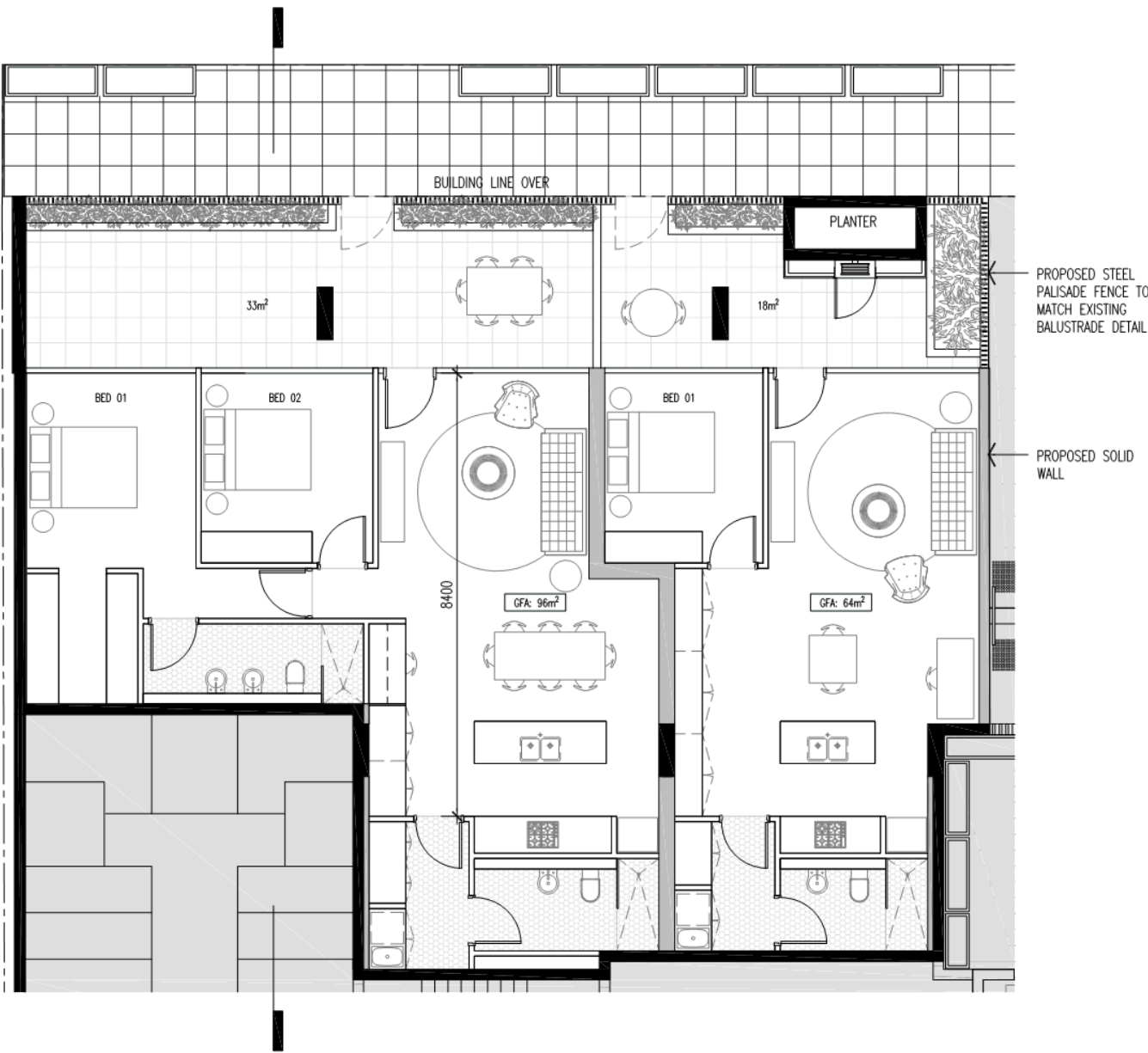


Design Report
8 Princess Street
Brighton Le Sands

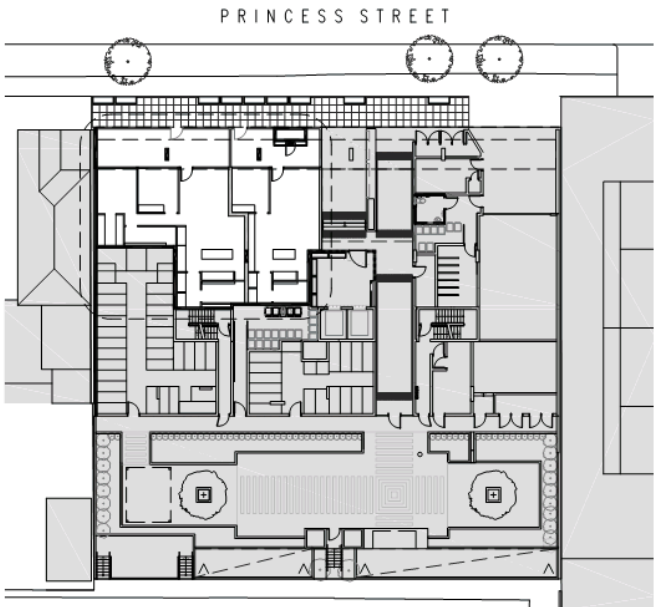
5627
Date issued: 4 April 2017
Version: 1.0
Prepared by: PC
Checked by: GS

Contact Details
SJB Architects
Level 2, 490 Crown Street
Surry Hills NSW 2010
Australia

T: 61 2 9380 9911
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www.sjb.com.au



Floor Plan - Proposed Apartment Layout



Existing Floor Plan - Ground Floor

Project	Job No.	Scale
LUMEX	5627	1:100 @ A3
6-14 Princess Street		

Drawing	Revision	SJB Architects
SK01	1.0	Level 2, 490 Crown Street, Surry Hills NSW 2010
Proposed Apartment Layout	04/04/17	T: 61 2 9390 9911 sjb.com.au
		SJB Architecture (NSW) Pty Ltd ACN 061 094 724
		Adam Haddow 7166 John Pradel 7004

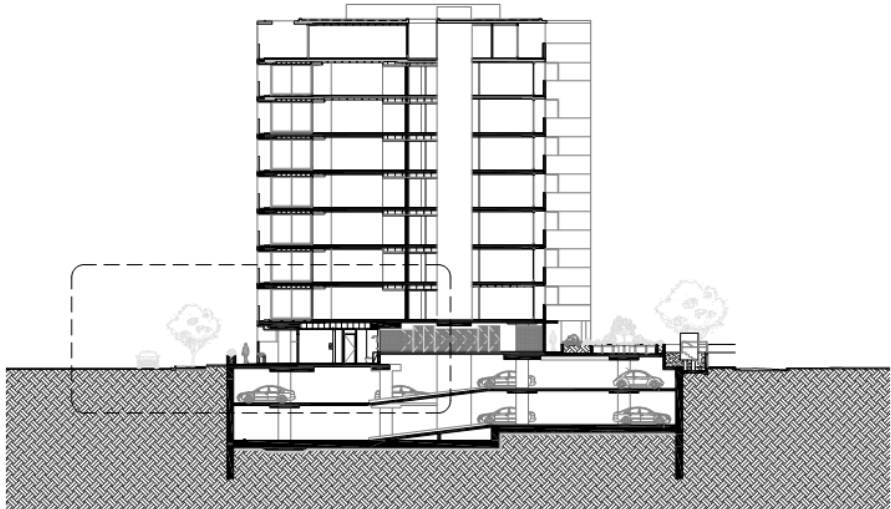




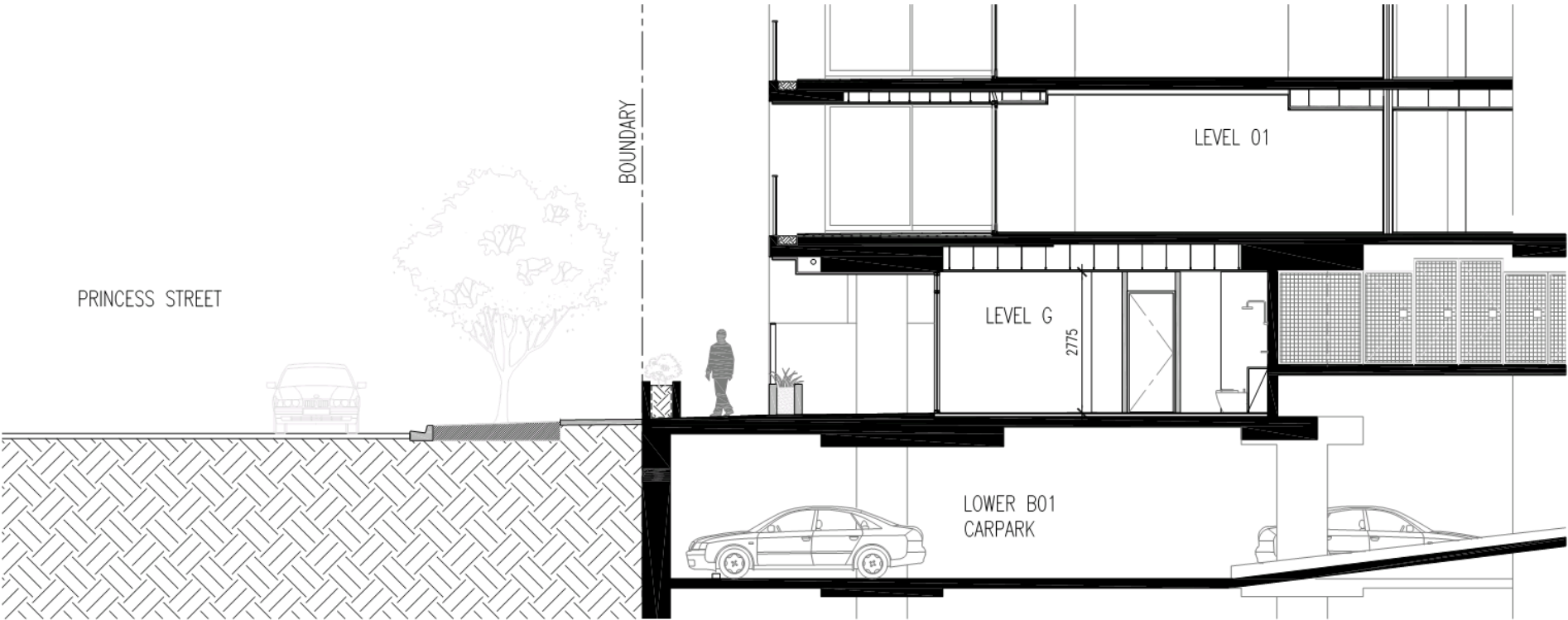
Project	Job No.	Scale
LUMEX	5627	1:100 @ A3
6-14 Princess Street		<div> <div>1</div> <div>2</div> <div>3</div> <div>4</div> <div>5</div> </div>

Drawing	Revision	SJB Architects
SK02	1.0	Level 2, 490 Crown Street, Surry Hills NSW 2010
North Elevation	04/04/17	T: 61 2 9390 9911 sjb.com.au
		SJB Architecture (NGW) Pty Ltd ACN 081 094 724
		Adam Haddow 7188 John Pradel 7004





Existing Section

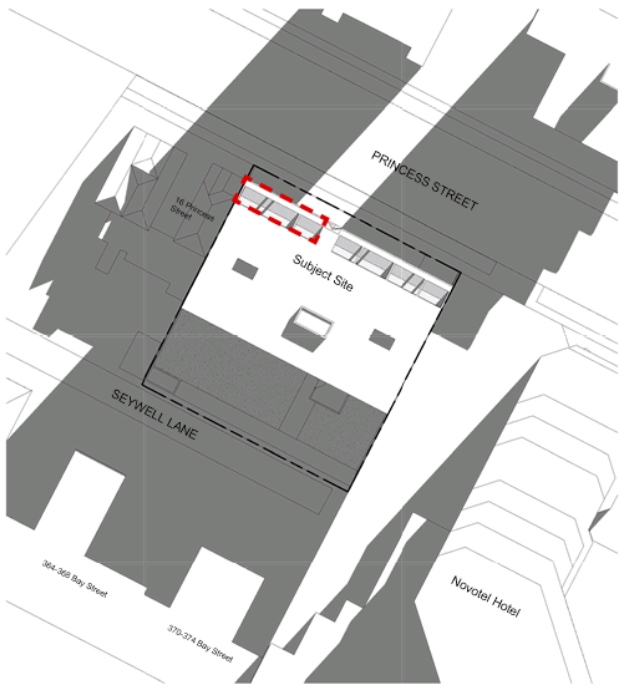


Section - Proposed Apartment Section

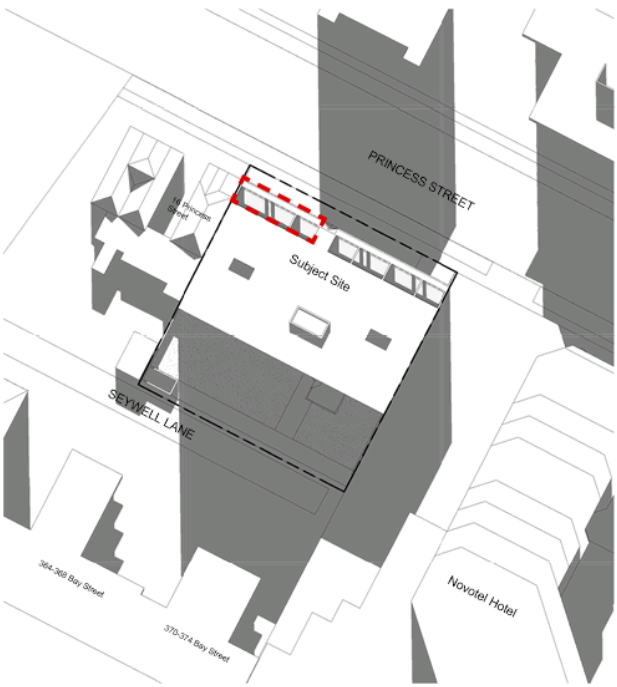
Project	Job No.	Scale
LUMEX	5627	1:100 @ A3
6-14 Princess Street		

Drawing	Revision	SJB Architects
SK03	1.0	Level 2, 490 Crown Street, Surry Hills NSW 2010
Section	04/04/17	T: 61 2 9390 9911 sjb.com.au
		SJB Architecture (NGW) Pty Ltd ACN 081 094 724
		Adam Haddow 7166 John Pradel 7004

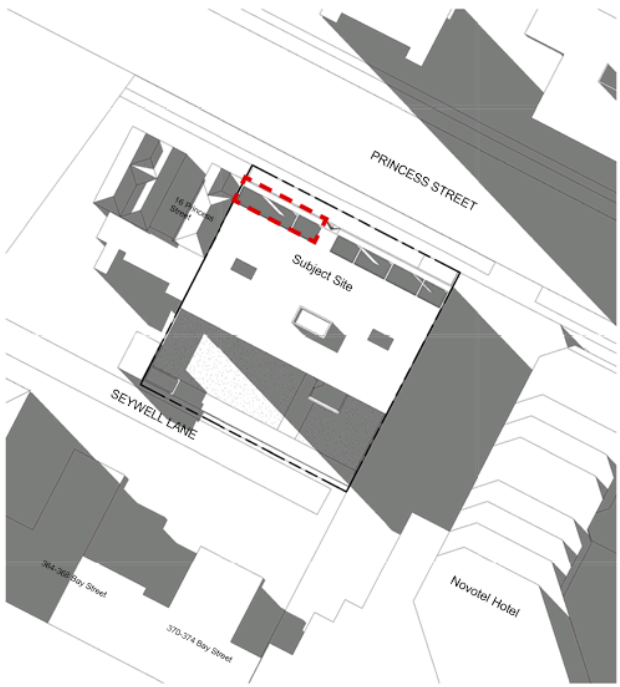




Shadow Diagram - Winter 9am



Shadow Diagram - Winter 12pm



Shadow Diagram - Winter 3pm

Solar Analysis

Achieves a minimum of 2 hours of direct sunlight on at least 1sq.m of living room glazing between 9am to 3pm, June 21st.

Approved Total: 51/67 (76%)
Proposed Total: 53/69 (76%)

Cross Ventilation

Approved Total: 53/67 (79%)
Proposed Total: 53/69 (76%)

Project	Job No.	Scale	
LUMEX	5627	1:100 @ A3	
6-14 Princess Street			

1

2

3

4

5

Drawing	Revision	SJB Architects
SK04	1.0	Level 2, 490 Crown Street, Surry Hills NSW 2010
Shadow Diagrams	04/04/17	T: 61 2 9390 9911 sjb.com.au
		SJB Architecture (NGW) Pty Ltd ACN 061 094 724
		Adam Haddow 7166 John Pradel 7004

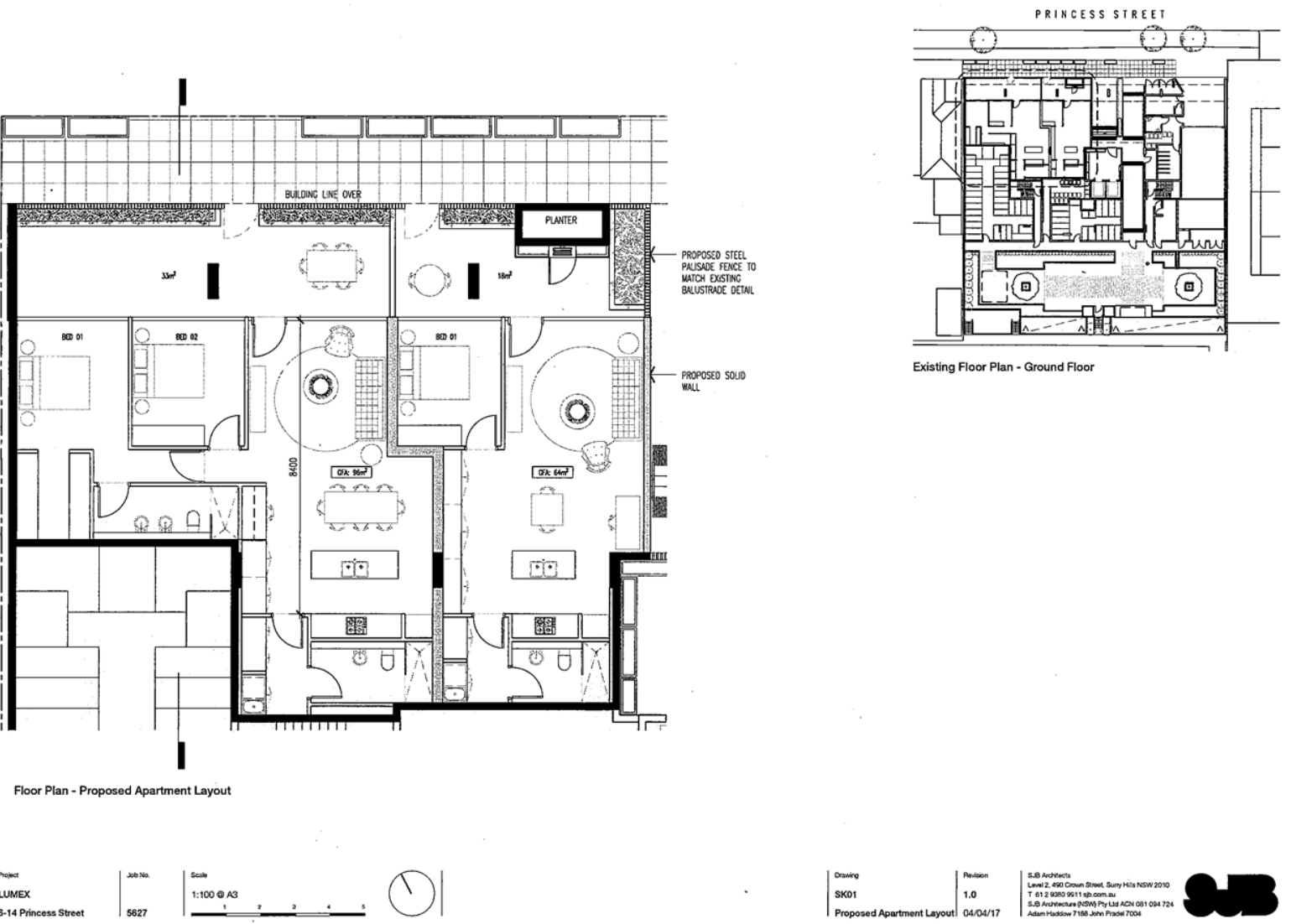
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Council Meeting

12/09/2018

Item No	8.8
Subject	Bad Debts Write-Off for Uncollectable Debts Relating to the Bayside Council as at 30 June 2018
Report by	Michael Mamo, Director City Performance
File	SF17/2828

Summary

Formal Council approval is required to write-off individual uncollectable bad debts greater than \$5,000, however all write-offs for the period ending 30 June 2018 are being referred to Council.

A review of the outstanding debts as at 30 June 2018 has identified \$71,747.00 (GST inclusive) of debts that are considered uncollectable.

Of these debts, a bad debt provision of \$49,625.10 (GST exclusive) has already been established in the financial accounts. Therefore \$16,926.59 (GST exclusive) will negatively impact on the net operating result for 2017/18.

The remaining balance is \$5,195.31 which is the GST associated with these bad debts that has already been remitted to the Australian Taxation Office. This will be recovered after Council resolves to write off these debts.

Officer Recommendation

That the outstanding bad debts relating to Bayside Council as at 30 June 2018, totalling \$71,747.00 (GST Inclusive) be written off as uncollectable.

Background

In completing the annual financial statements, Council is required to assess bad and doubtful debts in accordance with the requirements of the Australian Accounting Standards to ensure the Statement of Financial Position within the annual financial reports accurately reflect debts not only owed and which are considered collectable. Accounting provisions are made annually for debts where their collection is deemed doubtful.

The outstanding debts listed in the tables in this report have been assessed as being uncollectable and recommended for write off under the financial delegations of the Director of City Performance who ensures the Council's statutory obligations are met.

In accordance with cl.213 of the Local Government (General) Regulations 2005 the write off of individual uncollectable debts to Council greater than \$5,000 requires Council resolution. The General Manager has delegated authority to write off individual debts to Council where the individual debt is less than \$5,000 however as this is the first time that the elected Bayside Council has considered bad debts and in the interest of transparency this delegation has not been exercised and all identified debts to be considered for write off have been referred to Council for approval.

Table 1 – Sec 603 LGA charges under *Food Act 2003 (No GST applicable)*

Customer Number	Customer Name	Amount	Summary of assessment
81361	Kingston & Co	\$400.00	2017 annual food inspection and admin fee. Store closed - debt not secured so recovery unlikely.
81477	The Naked Duck Mascot	\$400.00	2017 annual food inspection and admin fee. Store closed - debt not secured so recovery unlikely.
81509	Mediterranean Seafood	\$730.00	2017 annual food inspection and admin fee including subsequent Improvement Notice fee. Store closed - debt not secured so recovery unlikely.
81600	Shadiz	\$400.00	2017 annual food inspection and admin fee. Store closed - debt not secured so recovery unlikely.
82404	Bun Saigon	\$400.00	2017 annual food inspection and admin fee. Store closed - debt not secured so recovery unlikely.
82409	Fresh Co 351	\$400.00	2017 annual food inspection and admin fee. Store closed - debt not secured so recovery unlikely.
82427	ABS Espresso Bar	\$400.00	2017 annual food inspection and admin fee. Store closed - debt not secured so recovery unlikely.
82834	Fresh Corner	\$690.00	2017 annual food inspection, re-inspection and admin fee. Store closed - debt not secured so recovery unlikely.
82834	Fresh Corner	\$300.00	2018 annual food inspection, reinspection and admin fee. Store closed - debt not secured so recovery unlikely.
82853	Bee 99	\$870.00	2017 annual food inspection, re-inspection, Improvement Notice Fee and admin fee. Store closed - debt not secured so recovery unlikely.
81362	Michel's Patisserie	\$25.00	Outstanding amount relates to post adjustments to 2017 annual food inspection/re-inspection fees. Amount not economical to recover.
81499	RJs Sandwich Bar	\$150.00	2017 annual food inspection, re-inspection and admin fee. Store closed - debt not secured so recovery unlikely.
81515	Boom Sushi	\$150.00	2018 annual food inspection, re-inspection and admin fee. Store closed - debt not secured so recovery unlikely.
81635	Pagewood Kindergarten	\$225.00	2018 annual food inspection and admin fee. Under an agreement with the former City of Botany Bay Council (CoBB), child care centres were not required to pay for the Administration fee issued under the Food Act. The write off at this stage is to honour the prior CoBB agreement. Note: this agreement has not been carried over to Bayside Council.
82431	Taste Gallery	\$820.00	2017 annual food inspection and admin. Store closed - debt not secured so recovery unlikely.
82433	Taisho	\$150.00	2018 annual food inspection, re-inspection and admin. Store closed - debt not secured so recovery unlikely.
82544	Noodle & Dumpling Canteen	\$400.00	2017 annual food inspection and admin. Store closed - debt not secured so recovery unlikely.
82839	Espresso Warriors - Eastgardens	\$150.00	2018 annual food inspection, re-inspection and admin. Store closed - debt not secured so recovery unlikely.
82723	A & K Bros Pty Ltd (Trading as Spice Thai Cuisine)	\$150.00	2017 annual food inspection, re-inspection and admin. Store closed - debt not secured so recovery unlikely.
82839	Espresso Warriors	\$150.00	2018 annual food inspection, re-inspection and admin.

Customer Number	Customer Name	Amount	Summary of assessment
	- Eastgardens		Store closed - debt not secured so recovery unlikely.
82856	B.H. Bakers Oven	\$150.00	2018 annual food inspection, re-inspection and admin. Store closed - debt not secured so recovery unlikely.
82900	Cignall Mascot	\$150.00	2018 annual food inspection, re-inspection and admin. Store closed - debt not secured so recovery unlikely.
82977	Mascot Bakery	\$150.00	2018 annual food inspection, re-inspection and admin. Store closed - debt not secured so recovery unlikely.
81366	Breadtop	\$150.00	2018 annual food inspection, re-inspection and admin. Store closed - debt not secured so recovery unlikely.
Total Debts Write-Off		\$7,810.00	

Table 2 – Charges under *Public Health Regulation Act 2012 (no GST applicable)*

Customer Number	Customer Name	Amount	Summary of assessments
82886	Exquisite Brows	\$140.00	2018 annual inspection fee. Store closed and debt not secured so recovery unlikely.
82762	Xclusive Hair	\$140.00	2017 annual inspection fee. Store closed and debt not secured so recovery unlikely.
82763	Vondoo Hair	\$140.00	2017 annual inspection fee payable under <i>Public Health Regulation 2012</i> . Store closed and debt not secured so recovery unlikely.
82765	Rejuvenation Beauty Therapy	\$140.00	2017 annual inspection fee. Store closed and debt not secured so recovery unlikely.
82771	AMS Barbering	\$140.00	2017 annual inspection fee. Store closed and debt not secured so recovery unlikely.
82772	John's Men Hair Stylist	\$140.00	2017 annual inspection fee. Store closed and debt not secured so recovery unlikely.
82776	Hair Royale	\$140.00	2017 annual inspection fee. Store closed and debt not secured so recovery unlikely.
82866	Top Spa & Nail Studio	\$140.00	2017 annual inspection fee. Store closed and debt not secured so recovery unlikely.
82868	Pearl Nails	\$140.00	2018 re-inspection fee. Store closed and debt not secured so recovery unlikely.
82873	Chi-Link Massage & Acupuncture	\$140.00	2017 annual inspection fee. Store closed and debt not secured so recovery unlikely.
82876	Australian Skin Clinics	\$140.00	2017 annual inspection fee. Store closed and debt not secured so recovery unlikely.
82887	Hair Scope	\$140.00	2018 annual inspection fee. Store closed and debt not secured so recovery unlikely.
82888	Laser Clinics Australia	\$140.00	2018 annual inspection fee. Store closed and debt not secured so recovery unlikely.
82890	Sunshine Nails & Beauty	\$140.00	2018 annual inspection fee. Store closed and debt not secured so recovery unlikely.
82892	Beautiful Hair	\$140.00	2018 annual inspection fee. Store closed and debt not secured so recovery unlikely.
82895	Uppercuts Men Style Pty Ltd	\$140.00	2018 annual inspection fee. Store closed and debt not secured so recovery unlikely.
82896	Results Laser Clinic	\$140.00	2018 annual inspection fee. Store closed and debt not secured so recovery unlikely.

Customer Number	Customer Name	Amount	Summary of assessments
82897	Global Beauty & Nails	\$140.00	2018 annual inspection fee. Store closed and debt not secured so recovery unlikely.
82898	Nirvana Beauty Laser Clinics	\$140.00	2018 annual inspection fee. Store closed and debt not secured so recovery unlikely.
82904	Mese Hair Specialist	\$140.00	2018 annual inspection fee. Store closed and debt not secured so recovery unlikely.
82924	Mr Stylz Barber Shop	\$140.00	2018 annual inspection fee. Store closed and debt not secured so recovery unlikely.
82964	Amethyst Nails Baqr	\$140.00	2018 annual inspection fee. Store closed and debt not secured so recovery unlikely.
Total Debts Write-Off		\$3,080.00	

Table 3 – Charges for Footway Trading Fees (no GST applicable)

Customer Number	Customer Name	Amount	Summary of assessments
80143	Mr J Ayad	\$555.56	2017 remaining balance for Kamari Restaurant that was located at 82 The Grand Parade Brighton Le Sands. The company owned by the debtor was placed into liquidation in 2017. As the debt is not secured recovery is unlikely.
80291	Ms Q M Xu	\$389.30	2017 fees for Allwell Supermarket that was located at 290 Kingsgrove Road Kingsgrove. The business has closed and as the debt is not secured recovery is unlikely.
80449	Mr G J Iskander	\$2,700.70	2017 fees for shop Dezerts located at 373 Bay Street Brighton Le Sands. The business has closed and as the debt is not secured recovery is unlikely.
Total Debts Write-Off		\$3,645.56	

Table 4 – Hire and User Charges

Customer Number	Customer Name	Gross Amount	GST	Net Amount	Summary of assessments
80307	Moriah College	\$19.50	\$1.95	\$17.55	2017 Charges for admin fee for Hensley Field hire. While the Fees was refunded, the admin fee remained outstanding. Amount not economical to recover.
72133	Unique Gifts	\$60.00	\$5.45	\$54.55	Hire of a stall at Carols by the Sea 2017. Council staff have sent various requests for payment, this amount remains unpaid to date. Amount not economical to recover.
80422	Mr P Perenyi	\$8.00	\$0	\$8.00	Being for purchase of bike under Council's Sustainable Transport Policy. Amount not economical to recover.
80705	Buildtech Building & Plumbing Pty Ltd	\$2,479.50	\$225.41	\$2,254.09	Road restoration works undertaken in 2015 by Council at 9 Harrow Road Bexley. The business was placed under liquidation. Debt is not secured recovery is unlikely.
80856	Ms T Kladis	\$56.84	\$0	\$56.84	Commercial waste collection charge for month of September 2017 for 3a/20-22 Levey Street Wolli Creek. Amount not economical to recover.

Customer Number	Customer Name	Gross Amount	GST	Net Amount	Summary of assessments
Total Debts Write-Off		\$2,623.84			
Less GST Recoverable			\$232.81		
Net Debts Write-off				\$2,391.03	

Table 5 – Summary of Doubtful Debts

Customer Number	Customer Name	Gross Amount	GST	Net Amount	Summary of assessments
80871	J & Lee Property Investments	\$54,587.60	\$4,962.50	\$49,625.10	Debt raised on 2/10/13 for 'annexation to land 13B Church Avenue Mascot'. A search of Council records shows no paperwork to support the invoice. The company was also wound up by order of the Supreme Court on 13 February 2017. As the debt is not secured, recovery is considered highly unlikely
Total Debts Write-Off		\$54,587.60			
Less GST Recoverable			\$4,962.50		
Net Debts Write-off				\$49,625.10	

The recommended bad debt to be written off as uncollectable totals \$71,747 (GST inclusive), of this amount \$49,625.10 (GST exclusive) has been provided for in the Provision for Doubtful Debts. The net additional expense incurred due to this write off is \$16,926.59 (GST exclusive). The GST relating to the proposed debt write offs is \$5,195.31, this amount will be recovered from the ATO when approved write offs are processed.

Council staff, over a period of time, have pursued various channels in an attempt to recover the outstanding debt. It is deemed that further attempts to recover the debt would not be cost effective.

Financial Implications

The net impact on the financial period 30 June 2018 is as follows:

- The net additional expense incurred due to this write off is \$16,926.59 (GST Exclusive) after allowing for:
- GST Adjustment Receivable from ATO is \$5,195.31. The GST relating to the proposed debt write offs will be recovered from the ATO when approved write offs are processed.

Community Engagement

Not applicable

Attachments

Nil

Council Meeting

12/09/2018

Item No	8.9
Subject	Statutory Financial Report for July 2018
Report by	Michael Mamo, Director City Performance
File	F09/605

Summary

This report is provided in accordance with the Local Government (General) Regulations, 2005, Division 5, paragraph 212 and s625 of the Local Government Act, 1993.

The necessary certificate by the Responsible Accounting Officer is included in this report and the Statutory Financial Reports are presented as follows:

- Investment Performance against Benchmark
- Statement of Bank Balances
- Schedule of Investments

As at 31 July 2018, Bayside Council had \$387.4m in cash and investments with an adjusted portfolio of 2.71%.

- Income from operating activities \$8.2m from rates, grants and development planning contributions.
- Expenses from operating activities \$15.4m include payments for employee costs, utilities, waste, contract and infrastructure work.

The restricted cash and investments funding dissection will be included in a future report to Council.

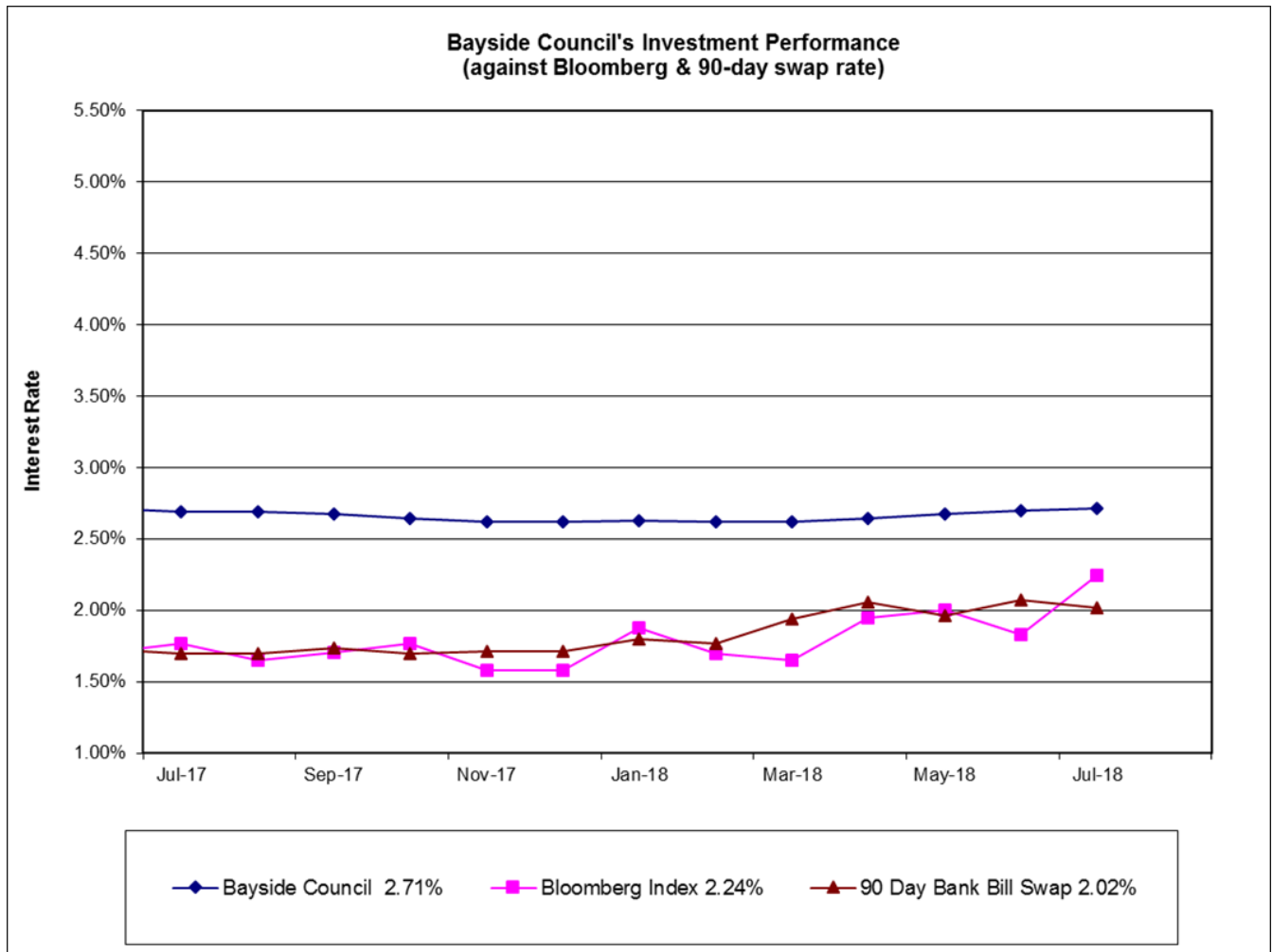
Officer Recommendation

That the Statutory Financial Report by the Responsible Accounting Officer be received and noted.

Background

The following table shows the performance of Council's investments since July 2017. The Bloomberg (former UBS) Index is used for comparison as this is a generally accepted industry benchmark used by Australian businesses. The 90-day Bank Bill Swap Rate is the worldwide rate that is reviewed by the financial markets every 90 days. This rate underpins the majority of investments which makes it a meaningful comparison for measuring investment performance.

For the current period, Council outperformed the market by 47 basis points. As demonstrated by the investment performance graph, investment returns are stable and consistently above the industry benchmark and 90-day Bank Bill Swap Rate.



Statement of Bank Balances

The table below shows details of movements in Council's cash at bank for July 2018.

STATEMENT OF BANK BALANCES AS AT 31 July 2018		
	GENERAL FUND	
Cash at Bank (Overdraft) as per Bank Statement as at: 30/06/2018		\$543,845
Add: Income from Operating Activities for the Period		
- Rates and other receipts*	\$1,615,435	
- Sundry Debtors	\$652,233	
- DA Fees, FCDs & Application Fees	\$563,265	
- Interest	\$502,554	
- Parking and Other Infringements	\$384,154	
- Rents, Leases, Booking Fees, Certificates & Licences	\$207,529	
- Sydney Airport Contract Income	\$467,456	
- Sale of Assets/Fleet	\$180,958	
- GST Refund from Tax Office	\$798,756	
- Long Service Levy	\$50,687	
- Grants	\$849,958	
- Childcare, Pool & Library Income	\$65,930	
- S.94 & Planning Contributions	\$1,850,944	
Total Income from Operating Activities for the Period	\$8,189,859	
Less: Expenses from Operating Activities for the Period		
Accounts Paid for Period (includes urgent cheques & refunds)	-\$10,049,789	
Direct Payroll	-\$5,259,981	
Presented Cheques	-\$89,627	
Dishonoured Cheques	-\$14,445	
Bank Charges (including Agency Fees)	-\$16,778	
Total Expenses from Operating Activities for the Period	-\$15,430,620	
Total Net Movement from Operating Activities:		-\$7,240,761
Investment Activities for the Period		
- Investments redeemed	\$1,307,227	
- Transfer from Short-Term Money Market	\$32,630,000	
- Transfer to Short-Term Money Market	-\$5,030,000	
- New Investments	-\$20,000,000	
Net Investment Flows for the Period	\$8,907,227	
Funding Activities for the Period		
Loan Repayments	-\$33,904	
Net Funding Flows for the Period	-\$33,904	
Total Net Movement from Investment & Funding Activities:		\$8,873,323
Cash at Bank (Overdraft) as per Bank Statement as at: 31/07/2018		\$2,176,407
Limit of overdraft arranged at Bank for: Bayside West \$350,000 & Bayside East \$540,000		
* other receipts include Australia Post & Bank Tape		

Schedule of Investments

Bayside Council currently holds \$387.4m in investments and cash at call. In accordance with current accounting standards, investments are recorded at Fair Value (market value).

SCHEDULE OF INVESTMENTS HELD ON BEHALF OF BAYSIDE COUNCIL AS AT: 31/07/2018								
	Credit Rating	Purchase Price	Purchase Date	Maturity Date	Term Days	Prop %	Interest Rate	Market Value
Term Deposits								
Bank of Western Australia	A1	\$1,203,508	24/07/2018	03/10/2018	71	0.34%	2.59%	\$1,203,508
Bank of Western Australia	A1	\$5,000,000	02/03/2018	30/08/2018	181	1.40%	2.45%	\$5,000,000
Bank of Western Australia	A1	\$2,000,000	18/07/2018	10/10/2018	84	0.56%	2.70%	\$2,000,000
Bank of Western Australia	A1	\$2,137,008	30/05/2018	29/11/2018	183	0.60%	2.65%	\$2,137,008
Bank of Western Australia	A1	\$5,193,991	20/06/2018	20/03/2019	273	1.45%	2.80%	\$5,193,991
Bank of Western Australia	A1	\$5,149,822	21/02/2018	20/11/2018	272	1.44%	2.55%	\$5,149,822
Bank of Western Australia	A1	\$1,191,234	27/02/2018	29/08/2018	183	0.33%	2.55%	\$1,191,234
Bank of Western Australia	A1	\$1,238,546	03/07/2018	26/03/2019	266	0.35%	2.80%	\$1,238,546
Bank of Western Australia	A1	\$1,142,737	27/06/2018	26/03/2019	272	0.32%	2.80%	\$1,142,737
Bank of Western Australia	A1	\$1,109,909	10/04/2018	10/10/2018	183	0.31%	2.70%	\$1,109,909
Bank of Western Australia	A1	\$1,271,017	22/11/2017	21/08/2018	272	0.36%	2.55%	\$1,271,017
Bank of Western Australia	A1	\$1,084,961	06/03/2018	13/09/2018	191	0.30%	2.45%	\$1,084,961
Bank of Western Australia	A1	\$1,084,813	13/02/2018	13/11/2018	273	0.30%	2.50%	\$1,084,813
Bank of Western Australia	A1	\$1,300,000	17/07/2018	10/04/2019	267	0.36%	2.80%	\$1,300,000
Bank of Western Australia	A1	\$1,135,414	05/12/2017	05/09/2018	274	0.32%	2.50%	\$1,135,414
Bank of Western Australia	A1	\$2,305,429	16/11/2017	14/08/2018	271	0.65%	2.55%	\$2,305,429
Bank of Western Australia	A1	\$5,000,000	31/07/2018	02/05/2019	275	1.40%	2.80%	\$5,000,000
Bank of Western Australia	A1	\$2,500,000	10/07/2018	11/04/2019	275	0.70%	2.80%	\$2,500,000
Bank of Western Australia	A1	\$1,353,322	12/04/2018	03/10/2018	174	0.38%	2.70%	\$1,353,322
Bank of Western Australia	A1	\$1,196,307	12/01/2018	09/10/2018	270	0.33%	2.55%	\$1,196,307
Bank of Western Australia	A1	\$1,208,837	13/06/2018	13/03/2019	273	0.34%	2.75%	\$1,208,837
Bank of Western Australia	A1	\$2,081,679	13/03/2018	13/09/2018	184	0.58%	2.55%	\$2,081,679
Bank of Western Australia	A1	\$1,303,595	14/03/2018	12/12/2018	273	0.36%	2.55%	\$1,303,595
Bank of Western Australia	A1	\$1,303,640	15/02/2018	15/11/2018	273	0.36%	2.55%	\$1,303,640
Bank of Western Australia	A1	\$2,036,247	08/05/2018	05/02/2019	273	0.57%	2.65%	\$2,036,247
Bank of Western Australia	A1	\$2,026,712	14/12/2017	12/09/2018	272	0.57%	2.50%	\$2,026,712
						<u>14.99%</u>		
Illawarra Mutual Building Society	A2	\$5,000,000	6/06/2018	06/06/2019	365	1.40%	2.75%	\$5,000,000
Illawarra Mutual Building Society	A2	\$1,198,273	24/04/2018	07/11/2018	197	0.34%	2.65%	\$1,198,273
Illawarra Mutual Building Society	A2	\$1,500,000	16/07/2018	11/04/2019	269	0.42%	2.75%	\$1,500,000
Illawarra Mutual Building Society	A2	\$2,025,929	31/08/2017	31/08/2018	365	0.57%	2.50%	\$2,025,929
Illawarra Mutual Building Society	A2	\$1,400,000	17/07/2018	11/04/2019	268	0.39%	2.75%	\$1,400,000
Illawarra Mutual Building Society	A2	\$1,410,974	5/04/2018	04/10/2018	182	0.39%	2.55%	\$1,410,974
Illawarra Mutual Building Society	A2	\$1,134,511	18/04/2018	18/10/2018	183	0.32%	2.60%	\$1,134,511
Illawarra Mutual Building Society	A2	\$1,206,626	16/05/2018	12/02/2019	272	0.34%	2.70%	\$1,206,626
Illawarra Mutual Building Society	A2	\$2,659,570	5/06/2018	05/06/2019	365	0.74%	2.75%	\$2,659,570
Illawarra Mutual Building Society	A2	\$1,778,167	12/06/2018	12/03/2019	273	0.50%	2.68%	\$1,778,167
Illawarra Mutual Building Society	A2	\$1,310,107	19/04/2018	18/10/2018	182	0.37%	2.60%	\$1,310,107
Illawarra Mutual Building Society	A2	\$2,000,000	1/09/2017	03/09/2018	367	0.56%	2.50%	\$2,000,000
Illawarra Mutual Building Society	A2	\$3,077,104	30/05/2018	30/05/2019	365	0.86%	2.75%	\$3,077,104
Illawarra Mutual Building Society	A2	\$1,262,628	28/03/2018	27/09/2018	183	0.35%	2.50%	\$1,262,628
						<u>7.55%</u>		
Newcastle Permanent Build Society	A2	\$1,272,595	19/07/2018	17/10/2018	90	0.36%	2.50%	\$1,272,595
Newcastle Permanent Build Society	A2	\$1,299,356	10/05/2018	06/11/2018	180	0.36%	2.40%	\$1,299,356
Newcastle Permanent Build Society	A2	\$1,194,645	27/03/2018	23/10/2018	210	0.33%	2.40%	\$1,194,645
Newcastle Permanent Build Society	A2	\$1,356,407	20/02/2018	22/08/2018	183	0.38%	2.40%	\$1,356,407
Newcastle Permanent Build Society	A2	\$1,230,672	07/03/2018	18/09/2018	195	0.34%	2.40%	\$1,230,672
Newcastle Permanent Build Society	A2	\$1,133,269	29/03/2018	17/10/2018	202	0.32%	2.40%	\$1,133,269
Newcastle Permanent Build Society	A2	\$1,244,932	15/03/2018	26/09/2018	195	0.35%	2.40%	\$1,244,932
Newcastle Permanent Build Society	A2	\$1,321,984	17/05/2018	13/02/2019	272	0.37%	2.40%	\$1,321,984
Newcastle Permanent Build Society	A2	\$1,194,339	16/02/2018	16/08/2018	181	0.33%	2.40%	\$1,194,339
						<u>3.15%</u>		
ME Bank	A2	\$1,000,000	07/12/2017	06/09/2018	273	0.28%	2.57%	\$1,000,000
ME Bank	A2	\$5,000,000	31/07/2018	01/08/2019	366	1.40%	2.80%	\$5,000,000
ME Bank	A2	\$2,000,000	22/05/2018	22/05/2019	365	0.56%	2.75%	\$2,000,000
ME Bank	A2	\$2,000,000	01/09/2017	04/09/2018	368	0.56%	2.60%	\$2,000,000
ME Bank	A2	\$1,000,000	09/11/2017	09/08/2018	273	0.28%	2.52%	\$1,000,000
ME Bank	A2	\$2,000,000	29/05/2018	26/02/2019	273	0.56%	2.72%	\$2,000,000
ME Bank	A2	\$2,000,000	19/12/2017	19/09/2018	274	0.56%	2.57%	\$2,000,000
ME Bank	A2	\$3,000,000	08/03/2018	06/12/2018	273	0.84%	2.50%	\$3,000,000
ME Bank	A2	\$4,000,000	11/05/2018	10/05/2019	364	1.12%	2.75%	\$4,000,000
ME Bank	A2	\$2,000,000	06/12/2017	06/09/2018	274	0.56%	2.57%	\$2,000,000
ME Bank	A2	\$1,000,000	08/05/2018	08/05/2019	365	0.28%	2.75%	\$1,000,000
ME Bank	A2	\$1,000,000	12/07/2018	11/07/2019	364	0.28%	2.80%	\$1,000,000
ME Bank	A2	\$1,000,000	23/05/2018	22/05/2019	364	0.28%	2.75%	\$1,000,000
						<u>7.56%</u>		

<u>Schedule of Investments cont'd</u>								
Westpac	AA-	\$5,000,000	06/06/2018	06/06/2019	365	1.40%	2.76%	\$5,000,000
Westpac	AA-	\$3,000,000	01/08/2017	01/08/2018	365	0.84%	2.57%	\$3,000,000
Westpac	AA-	\$3,000,000	01/05/2018	01/05/2019	365	0.84%	2.76%	\$3,000,000
Westpac	AA-	\$3,000,000	08/06/2018	11/06/2019	368	0.84%	2.76%	\$3,000,000
Westpac	AA-	\$3,000,000	23/11/2017	23/11/2018	365	0.84%	2.55%	\$3,000,000
Westpac	AA-	\$2,000,000	18/12/2017	18/12/2018	365	0.56%	2.58%	\$2,000,000
Westpac	AA-	\$5,000,000	09/02/2018	10/09/2018	213	1.40%	2.44%	\$5,000,000
Westpac	AA-	\$5,000,000	09/02/2018	11/02/2019	367	1.40%	2.61%	\$5,000,000
Westpac	AA-	\$5,000,000	23/03/2018	25/03/2019	367	1.40%	2.72%	\$5,000,000
Westpac	AA-	\$5,000,000	09/02/2018	09/11/2018	273	1.40%	2.50%	\$5,000,000
Westpac	AA-	\$5,000,000	09/02/2018	09/08/2018	181	1.40%	2.40%	\$5,000,000
Westpac	AA-	\$5,000,000	02/03/2018	03/12/2018	276	1.40%	2.52%	\$5,000,000
Westpac	AA-	\$5,000,000	02/03/2018	02/01/2019	306	1.40%	2.53%	\$5,000,000
Westpac	AA-	\$5,000,000	02/03/2018	04/03/2019	367	1.40%	2.62%	\$5,000,000
Westpac	AA-	\$10,000,000	31/07/2018	31/07/2019	365	2.80%	2.76%	\$10,000,000
Westpac- AMP FRN	A	\$750,000	11/12/2015	11/06/2019	1278	0.21%	2.86%	\$756,300
Westpac FRN	AA-	\$1,000,000	11/03/2016	10/05/2019	1155	0.28%	2.77%	\$1,011,550
Westpac- Bank of QLD FRN	BBB+	\$1,000,000	18/05/2016	18/05/2021	1826	0.28%	3.25%	\$1,020,130
						20.08%		
AMP Bank	A1	\$3,000,000	12/06/2018	12/06/2019	365	0.84%	2.80%	\$3,000,000
AMP Bank	A1	\$2,000,000	15/05/2018	13/11/2018	182	0.56%	2.75%	\$2,000,000
						1.40%		
National Australia Bank	A1	\$2,000,000	11/07/2018	11/07/2019	365	0.56%	2.75%	\$2,000,000
National Australia Bank	A1	\$1,000,000	12/02/2018	12/11/2018	273	0.28%	2.45%	\$1,000,000
National Australia Bank	A1	\$1,000,000	28/02/2018	30/08/2018	183	0.28%	2.43%	\$1,000,000
National Australia Bank	A1	\$1,000,000	21/02/2018	21/11/2018	273	0.28%	2.45%	\$1,000,000
National Australia Bank	A1	\$1,000,000	15/05/2018	28/11/2018	197	0.28%	2.55%	\$1,000,000
National Australia Bank	A1	\$2,000,000	07/03/2018	25/09/2018	202	0.56%	2.51%	\$2,000,000
National Australia Bank	A1	\$2,000,000	28/02/2018	28/11/2018	273	0.56%	2.45%	\$2,000,000
National Australia Bank	A1	\$3,000,000	29/05/2018	27/11/2018	182	0.84%	2.60%	\$3,000,000
National Australia Bank	A1	\$2,000,000	17/08/2017	17/08/2018	365	0.56%	2.50%	\$2,000,000
National Australia Bank	A1	\$2,000,000	24/05/2018	21/11/2018	181	0.56%	2.58%	\$2,000,000
National Australia Bank	A1	\$1,000,000	14/06/2018	14/06/2019	365	0.28%	2.75%	\$1,000,000
National Australia Bank	A1	\$2,000,000	08/02/2018	08/11/2018	273	0.56%	2.45%	\$2,000,000
National Australia Bank	A1	\$2,000,000	21/03/2018	26/09/2018	189	0.56%	2.55%	\$2,000,000
National Australia Bank	A1	\$1,000,000	13/03/2018	13/09/2018	184	0.28%	2.55%	\$1,000,000
National Australia Bank	A1	\$3,000,000	01/03/2018	04/09/2018	187	0.84%	2.50%	\$3,000,000
National Australia Bank	A1	\$5,000,000	19/06/2018	19/03/2019	273	1.40%	2.70%	\$5,000,000
National Australia Bank	A1	\$5,000,000	20/03/2018	20/09/2018	184	1.40%	2.55%	\$5,000,000
National Australia Bank	A1	\$2,000,000	01/09/2017	03/09/2018	367	0.56%	2.55%	\$2,000,000
National Australia Bank	A1	\$2,000,000	22/02/2018	22/11/2018	273	0.56%	2.45%	\$2,000,000
National Australia Bank	A1	\$2,000,000	25/08/2017	28/08/2018	368	0.56%	2.52%	\$2,000,000
NAB FRN	AA-	\$2,000,000	25/02/2016	25/02/2019	1096	0.56%	2.92%	\$2,017,541
NAB- Suncorp FRN	A+	\$2,000,000	12/04/2016	12/04/2021	1826	0.56%	3.35%	\$2,032,986
NAB - Newcastle Perm Build Soc FRN	BBB	\$2,000,000	22/03/2016	22/03/2019	1095	0.56%	3.71%	\$2,016,461
NAB- Bank of QLD FRN	BBB+	\$1,000,000	29/10/2015	29/04/2019	1278	0.28%	3.11%	\$1,003,631
						13.72%		
ING Direct	A	\$2,000,000	15/09/2017	25/09/2019	740	0.56%	2.75%	\$2,000,000
ING Direct	A	\$4,000,000	31/08/2017	04/09/2019	734	1.12%	2.75%	\$4,000,000
ING Direct	A	\$3,000,000	13/09/2017	18/09/2019	735	0.84%	2.75%	\$3,000,000
ING Direct	A	\$3,000,000	12/09/2017	12/09/2019	730	0.84%	2.75%	\$3,000,000
ING Direct	A	\$1,000,000	05/12/2017	05/12/2018	365	0.28%	2.52%	\$1,000,000
ING Direct	A	\$1,000,000	14/09/2017	18/12/2018	460	0.28%	2.70%	\$1,000,000
ING Direct	A	\$1,000,000	06/06/2018	06/12/2019	548	0.28%	2.80%	\$1,000,000
ING Direct	A	\$3,000,000	15/09/2017	18/12/2018	459	0.84%	2.70%	\$3,000,000
ING Direct	A	\$2,000,000	24/07/2018	04/09/2019	407	0.56%	2.53%	\$2,000,000
						5.60%		

Direct Investments (Floating Rate & Fixed Rate Term Deposits - TDs)								
CBA- ME Bank FRN	BBB	\$3,000,000	09/08/2016	18/07/2019	1073	0.84%	3.45%	\$3,020,700
CBA- Greater Bank FRN	BBB+	\$2,000,000	30/08/2016	30/08/2019	1095	0.56%	3.52%	\$2,016,730
CBA- Bank of QLD FRN	A-	\$2,000,000	26/02/2016	06/11/2019	1349	0.56%	3.07%	\$2,007,700
CBA- Bendigo & Adelaide FRN	A-	\$2,000,000	26/02/2016	18/08/2020	1635	0.56%	3.04%	\$2,022,760
CBA - Rabobank FRN	A+	\$2,000,000	04/03/2016	04/03/2021	1826	0.56%	3.50%	\$2,049,300
CBA FRN	AA-	\$3,000,000	17/01/2017	17/01/2022	1826	0.84%	3.12%	\$3,036,900
CBA- Greater Bank FRN	BBB-	\$3,000,000	07/06/2016	07/06/2019	1095	0.84%	3.65%	\$3,023,475
CBA- Greater Bank FRN	BBB-	\$4,000,000	24/02/2017	24/02/2020	1095	1.12%	3.39%	\$4,026,380
CBA- Greater Bank FRN	BBB-	\$1,000,000	04/08/2017	29/05/2020	1029	0.28%	3.34%	\$1,005,140
CBA- Credit Union Australia FRN	BBB+	\$2,000,000	01/04/2016	01/04/2019	1095	0.56%	3.70%	\$2,016,700
CBA- Credit Union Australia FRN	BBB+	\$2,750,000	20/03/2017	20/03/2020	1096	0.77%	3.39%	\$2,772,550
CBA- Rabobank FRN	A+	\$2,000,000	03/03/2017	03/03/2022	1826	0.56%	3.08%	\$2,027,060
CBA- Bendigo & Adelaide FRN	A-	\$2,000,000	09/08/2016	19/09/2019	1136	0.56%	2.90%	\$2,013,260
CBA-Suncorp FRN	A+	\$2,000,000	12/10/2016	12/10/2018	730	0.56%	2.77%	\$2,004,760
CBA- Bendigo & Adelaide FRN	A-	\$2,000,000	21/11/2016	21/02/2020	1187	0.56%	3.03%	\$2,021,420
CBA- ME Bank FRN	BBB+	\$3,000,000	06/04/2017	06/04/2020	1096	0.84%	3.31%	\$3,016,800
CBA- Greater Bank FRN	BBB-	\$2,000,000	25/03/2017	29/05/2020	1161	0.56%	3.34%	\$2,010,280
CBA- AMP FRN	A	\$2,000,000	06/10/2017	06/10/2020	1096	0.56%	2.81%	\$1,996,160
CBA - Heritage Bank FRN	BBB+	\$2,000,000	27/11/2017	04/05/2020	889	0.56%	3.32%	\$2,007,220
CBA - Newcastle Perm Build Soc FRN	BBB	\$2,000,000	29/11/2017	07/04/2020	860	0.56%	3.41%	\$2,014,060
CBA FRN	AA-	\$2,000,000	12/07/2016	12/07/2021	1826	0.56%	3.23%	\$2,032,720
ANZ - Heritage Bank FRN	BBB+	\$1,450,000	04/05/2017	04/05/2020	1096	0.41%	3.32%	\$1,453,501
ANZ Bank Fixed Rate TD	A1+	\$1,203,555	01/03/2018	01/09/2018	184	0.34%	2.35%	\$1,203,555
ANZ Bank Fixed Rate TD	A1+	\$1,191,338	21/03/2018	21/09/2018	184	0.33%	2.35%	\$1,191,338
ANZ Bank Fixed Rate TD	A1+	\$5,131,392	06/04/2018	06/10/2018	183	1.44%	2.25%	\$5,131,392
Commonwealth Bank Fixed Rate TD	A1+	\$2,000,000	18/07/2018	20/09/2018	64	0.56%	2.33%	\$2,000,000
Commonwealth Bank Fixed Rate TD	A1+	\$2,000,000	20/03/2018	20/09/2018	184	0.56%	2.55%	\$2,000,000
Commonwealth Bank Fixed Rate TD	A1+	\$2,000,000	14/05/2018	14/11/2018	184	0.56%	2.43%	\$2,000,000
Commonwealth Bank Fixed Rate TD	A1+	\$5,000,000	08/02/2018	05/11/2018	270	1.40%	2.55%	\$5,000,000
Commonwealth Bank Fixed Rate TD	A1+	\$2,000,000	18/04/2018	18/02/2019	306	0.56%	2.70%	\$2,000,000
Commonwealth Bank Fixed Rate TD	A1+	\$2,000,000	18/06/2018	18/02/2019	245	0.56%	2.70%	\$2,000,000
Commonwealth Bank Fixed Rate TD	A1+	\$2,000,000	20/10/2017	16/08/2018	300	0.56%	2.55%	\$2,000,000
Commonwealth Bank Fixed Rate TD	A1+	\$5,000,000	13/04/2018	13/12/2018	244	1.40%	2.62%	\$5,000,000
Commonwealth Bank Fixed Rate TD	A1+	\$2,000,000	08/03/2018	04/09/2018	180	0.56%	2.50%	\$2,000,000
Bendigo Adelaide Bank Fixed Rate TD	A2	\$5,000,000	02/03/2018	30/11/2018	273	1.40%	2.50%	\$5,000,000
Bendigo Adelaide Bank Fixed Rate TD	A2	\$5,000,000	02/03/2018	01/03/2019	364	1.40%	2.55%	\$5,000,000
Bendigo Adelaide Bank Fixed Rate TD	A2	\$2,000,000	19/03/2018	18/12/2018	274	0.56%	2.50%	\$2,000,000
						<u>25.95%</u>		
FTD= Floating Rate Deposit								
FRN= Floating Rate Note								
Unlisted Community Bank Shares								
NRMA/IAG Shares	Unrated	\$7,552				0.01%		
Bendigo Bank	A2	\$5,000				0.01%		
Total Investments		\$357,259,655				100.00%		
Operating Accounts		\$2,176,407						
Cash Deposit Accounts		\$17,541,362						
AMP 31 Day Notice Account		\$10,410,357						
Total Investments and Cash		\$387,387,781						

Investment and Cash Flows for Bayside Council:

	Jun-18	Jul-18	Total Net Movement
Total Investments	\$340,544,229	\$357,259,655	\$16,715,425
Operating Accounts	\$543,845	\$2,176,407	\$1,632,562
Cash/Short Term Money Market	\$42,974,837	\$17,541,362	-\$25,433,476
AMP 31 Day Notice Account	\$10,390,714	\$10,410,357	\$19,643
TOTAL Investments and Cash:	\$394,453,626	\$387,387,781	-\$7,065,845

NOTE: In accordance with current accounting standards Council is required to obtain market values on its investments and hence the inclusion in the above table. It is important to note that Council does not hold any CDOs which have adversely affected many councils in NSW.

I hereby certify in accordance with Clause 212 of the Local Government (General) Regulation 2005 that the above investments have been made in accordance with Section 625 of the Local Government Act 1993, and Council's investment policies.

MATTHEW WALKER
RESPONSIBLE ACCOUNTING OFFICER

Investment Translation

The following investment information is provided as translation of what the types of investments are:

- * A Term Deposit is a short term deposit held at a financial institution for a fixed term and attracts interest at the prevailing market rate.
- * A Bank Bill is a short term investment issued by a bank representing its promise to pay a specific sum to the bearer on settlement. The amount payable to Council at maturity is the face value which represents the purchase price and interest earned.
- * A Floating Rate Note is a longer term investment issued by a financial institution with a variable interest rate. The adjustments to the interest rate are usually made every three months are tied to a certain money-market index such as the Bank Bill Swap Rate (BBSW).
- * A CDO (Collateralised Debt Obligation) is an investment backed by a diversified pool of one or more classes of debt. These investments are for longer terms and offer a higher rate of interest. Council does not invest in CDOs.
- * A Capital Guaranteed Note is a longer term investment issued by a financial institution with a fixed coupon that is paid contingent on the performance of the underlying investments, being equities, property bonds etc. In addition, this form of investment also can attract capital growth. The issuer of the note has provided a guarantee that the capital is guaranteed at maturity.
- * A Floating Term Deposit and Variable Rate Deposits are exactly the same as term deposits except they automatically roll over (reinvest) at the end of the 90-day period for up to 2 years.
- * Money Market Call Account refers to funds held at a financial institution and can be recalled by Council either same day or overnight.
- * Unlisted Community Bank Shares refer to bank shares not listed on the Australian Stock Exchange. The local community owns and operates the Bendigo Bank branch which assists the bank in providing banking infrastructure and community support.

Credit Ratings

- * AAA - Extremely strong capacity to meet financial commitments (highest rating).
- * AA - Very strong capacity to meet financial commitments.
- * A - Strong capacity to meet financial commitments, but somewhat more susceptible to adverse economic conditions and changes in circumstances.
- * BBB - Adequate capacity to meet financial commitments with adverse economic conditions or changing circumstances more likely to lead to a weakened capacity of the obligor to meet its financial commitments.
- * BB - Less vulnerable in the near term, but faces uncertainties and exposures to adverse business, financial and economic conditions.
- * B - More vulnerable to non-payment than obligations rated 'BB', but the obligor has the capacity to meet its financial commitment on the obligation.
- * CCC - Currently vulnerable, dependent upon favourable business, financial and economic conditions to meet its financial commitments.
- * CC - Currently highly vulnerable.
- * C - Highly likely to default.

Financial Implications

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

Community Engagement

Not required.

Attachments

Nil

Council Meeting

12/09/2018

Item No	8.10
Subject	Request for Financial Assistance-Botany District Music Association
Report by	Debra Dawson, Director City Life
File	F16/998

Summary

This report concerns an application from Botany District Music Association to support the Botany Bay Band for ongoing program development and to supplement income received from performances in the community.

Officer Recommendation

- 1 That Council approves financial assistance of \$5,000 to the Botany District Music Association for the Botany Bay Band.
 - 2 That Council notes that the Botany Bay Band will be paid to deliver between 6 to 8 performances for Council per annum to ensure its ongoing financial sustainability.
-

Background

The Botany Bay Band has been operating for over 40 years, performing at citizenship ceremonies, Carols in the Park, fairs and opening events. Throughout this period the Band received ongoing financial assistance of around \$10,000 per annum from the former City of Botany Bay Council.

The Band aims to provide opportunities for musical activities. A community band encourages and promotes musical appreciation and provides entertainment for everyone to enjoy. It is a good way for young and old local musicians to improve their music skills and engage in performance.

These aims are in line with themes expressed in the Community Strategic Plan 2018-2030.

Under the Financial Assistance Policy an out of cycle request for funding can be approved by Council at any time. The Community Grants Program usually opens in February. In addition to this grant Council will also pay the Band to deliver 6-8 performances per annum. This will ensure long term sustainability for an organisation which has no other continuing source of funding.

A report to the Community Services and Library Committee and Council in October will address amendments to the Financial Assistance Policy. These will make it clearer that cultural groups like bands can apply for grants from Council.

Financial Implications

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

Community Engagement

Nil

Attachments

Nil

Council Meeting

12/09/2018

Item No	8.11
Subject	Request for Support by the Organisation of Hellene and Hellene-Cypriot Women of Australia
Report by	Debra Dawson, Director City Life
File	F15/5

Summary

Council has received a request for a donation towards the Organisation of Hellene and Hellene-Cypriot Women of Australia fundraising dinner to be held in November 2018. The request is for support to the value of \$1000.00 comprising tickets, a donation or a mixture of both.

Officer Recommendation

- 1 That Council provides support for this event under its Financial Policy to a value of \$1,000.
 - 2 That Councillors interested in attending the annual fundraising event be confirmed.
-

Background

The Organisation of Hellene and Hellene-Cypriot Women of Australia (OEEGA NSW) supports the work carried out by the scientific researchers at the Children's Cancer Institute of Australia (CCIA) to find a cure for childhood cancers.

CCIA's vision is to eliminate the suffering and save the lives of children with cancer. This year OEEGA's fundraising efforts in aid of the CCIA will culminate with a dinner dance to be held at the Grand Roxy Function Centre, 128 The Grand Parade Brighton Le Sands on Saturday, 17th November 2018.

Bayside Council has been approached by OEEGA with a request to support the fundraising event at the Grand Roxy Function Centre on 17 November 2018 by providing \$1,000. Interested Councillors can elect to attend the dinner. Council has given support to this event in the past.

It is suggested that Councillors indicate their willingness to attend the fundraising dinner and that up to ten tickets (at \$100 per head) be purchased or that a donation up to the equivalent value be made to the fundraising event.

Financial Implications

Not applicable



Included in existing approved budget ☒
Additional funds required ☐

Community Engagement

Not applicable

Attachments

Nil

Council Meeting

12/09/2018

Item No	8.12
Subject	Disclosure of Interest Return
Report by	Michael Mamo, Director City Performance
File	SC17/164

Summary

The Local Government Act 1993 details the statutory requirements in respect of the lodgement of Disclosure of Pecuniary Interest and Other Matters Returns by Councillors and Designated Persons.

This report provides information regarding the Return recently lodged with the General Manager by a Designated Person.

Officer Recommendation

That the information be received and noted.

Background

The Local Government Act 1993 details the statutory requirements in respect of the lodgement of Disclosure of Pecuniary Interest and Other Matters Returns by Councillors and Designated Persons.

Section 450A(2)(a) of the Local Government Act 1993 requires any Returns of Interest under Section 449 of the Act lodged with the General Manager to be tabled at the first meeting of Council held after the last day of lodgement of the return (which is three months after the commencement date of the Designated Person).

Section 450A of the Local Government Act 1993, as outlined below, relates to the register of Pecuniary Interest Returns and the tabling of this Return that has been lodged by a Designated Person.

450A Register and tabling of Returns:

- 1 The general manager must keep a register of returns required to be lodged with the general manager under section 449.***
- 2 Returns required to be lodged with the general manager under section 449 must be tabled at a meeting of the council, being:***
 - (a) in the case of a return lodged in accordance with section 449(1) – the first meeting held after the last day for lodgement under that subsection, or***
 - (b) in the case of a return in accordance with section 449(3) – the first meeting held after the last day for lodgement under that subsection, or***
 - (c) in the case of a return otherwise lodged with the general manager – the first meeting after lodgement.***

With regard to Section 450(1), a register of all Returns lodged by Councillors and Designated Persons in accordance with Section 449 of the Act is currently kept by Council as required by this part of the Act.

With regard to Section 450(2)(a), all Returns lodged by a Designated Persons under Section 449(1) of the Act, (that is, their first Return) must be tabled at a Council Meeting within three months of being a Designated Person.

In accordance with Section 450A(2)(a) the following Section 449(1) return has been recently lodged with the General Manager by a Designated Person.

POSITION	RETURN DATE	DATE LODGED
Director City Performance	12/06/2018	19/07/2018

The return is now tabled in accordance with Section 450A(2)(a) of the Local Government Act 1993 and is available for inspection if required.

Financial Implications

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

Community Engagement

The issue raised in this report does not require community consultation under Council's Community Engagement Policy.

Attachments

Nil

Council Meeting

12/09/2018

Item No 8.13
Subject **Leave of Absence - Councillor Michael Nagi**
Report by Meredith Wallace, General Manager
File F14/292

Summary

Councillor Michael Nagi is seeking leave of absence from Council commencing 18 August 2018 to 29 September 2018 inclusive.

Officer Recommendation

That Councillor Michael Nagi's request be received and leave of absence granted for the period 18 August 2018 to 29 September 2018 inclusive.

Background

The Council's Code of Meeting Practice, states at:

"2.10 Application for Leave of Absence (Section 234 of the Act)

2.10.1 A Councillor applying for a leave of absence from the meeting of a Council does not need to make the application in person and the Council may grant such leave in the absence of that Councillor.

2.10.2 A Councillor's application for leave of absence from Council Meetings should, if practicable, identify (by date) the meetings from which the Councillor intends to be absent (Clause 235A (1) of the Regulation)."

Councillor Nagi's leave of absence will incur apologies at the Council Meeting scheduled for 12 September 2018.

Financial Implications

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

Community Engagement

Not applicable.

Attachments

Nil

Council Meeting

12/09/2018

Item No	8.14
Subject	5 Lindsay Street Rockdale - Fire Order
Report by	Michael McCabe, Director City Futures
File	F08/585

Summary

Council is in receipt of correspondence from Fire & Rescue NSW dated 11 July 2018 advising that an inspection of the waste facility at 5 Lindsay Street Rockdale by one of their Authorised Fire Officers has identified concerns relating to fire safety. A copy of the report and recommendations has been referred to Council as required by Part 9.3 Sch.5 Part 8 (17), formerly Section 121ZD (2) of the Environmental Planning and Assessment Act 1979.

A copy of the Fire & Rescue correspondence was sent to the operator of the waste facility on 6 August 2018 and a site inspection was requested.

A site inspection of the facility was undertaken by a Council Fire Safety Officer with representatives of the waste facility operator on 16 August 2018, which confirmed some of the defects raised by Fire & Rescue NSW had been rectified and verified other items that needed actioning.

A Notice of Proposed Order (Fire Safety Order) requiring the rectification of fire safety breaches was served on the building owner (Waste Recycling and Processing Corporation) on 21 August 2018.

Officer Recommendation

- 1 That Report Reference number BFS 18/568 (8000002915) dated 11 July 2018, forwarded on behalf of the Commissioner of Fire and Rescue NSW, be tabled at Council's meeting as required by Part 9.3 Sch.5 Part 8 (17), of the Environmental Planning and Assessment Act 1979.
 - 2 That Council notifies Fire & Rescue NSW of Council's actions in relation to this matter.
-

Background

A waste facility was approved by Council in 1977 and has been operating at 5 Lindsay Street Rockdale since that time.

Council is in receipt of correspondence from Fire & Rescue NSW dated 11 July 2018 advising that an inspection of the Waste Centre at 5 Lindsay Street Rockdale by one of their Authorised Fire Officers has identified issues relating to fire safety.

A site inspection of the facility was undertaken by a Council Fire Safety Officer with representatives of the waste facility operator on 16 August 2018, which confirmed some of

the defects raised by Fire & Rescue NSW had been rectified and verified other items that needed actioning.

A Notice of Proposed Order (Fire Safety Order) requiring the rectification of fire safety breaches was served on the building owner (Waste Recycling and Processing Corporation) on 21 August 2018. The Notice of Proposed Order states that Council will not proceed with the Proposed Order if the terms are satisfied within 28 days, being 17 September 2018.

A copy of the report and recommendations has been referred to Council as required by Part 9.3 Sch.5 Part 8 (17), of the Environmental Planning and Assessment Act 1979.

Financial Implications

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

Community Engagement

Not Applicable

Attachments

Fire & Rescue NSW Inspection Report - 5 Lindsay Street, Rockdale [↓](#)



**Fire &
Rescue NSW**

Unclassified

File Ref. No: BFS18/568 (8000002915)
TRIM Ref. No: D18/39124
Contact: John Bruscano

11 July 2018

General Manager
Bayside Council
PO Box 21
ROCKDALE NSW 2216

Email: council@bayside.nsw.gov.au

Attention: Manager Compliance/Fire Safety

Dear Sir / Madam

**Re: INSPECTION REPORT
SUEZ RECYCLING AND RECOVERY PTY LTD ("the premises")
AKA –ROCKDALE WASTE MANAGEMENT CENTRE
5 LINDSAY STREET, ROCKDALE – LOT 11, DP 817839**

Fire & Rescue NSW (FRNSW) received correspondence on 1 March 2018, in relation to the adequacy of the provision for fire safety in connection with 'the premises'.

The correspondence stated that:

- *The NSW Environment Protection Authority (EPA) administers and enforces the Protection of the Environment Operations Act 1997 (the Act), including the administration of environment protection licences (EPL) issued under the Act. This site is operated as a waste facility under an EPL. The EPA is investigating the safety and adequacy of protection measures at waste facilities, particularly those that store and/or process highly combustible waste types including plastics, paper, and organic material. Several fires have occurred recently at waste facilities in NSW and other jurisdictions of Australia that store and/or process waste, such as the waste facility operated at this site. The EPA requests FRNSW to inspect the premises.*

Details of the EPL can be found here by going to the website here: <http://app.epa.nsw.gov.au/prpoeoapp/> and searching for licence 4557.

Pursuant to the provisions of Section 9.32 (1) of the *Environmental Planning and Assessment Act 1979* (EP&A Act), an inspection of 'the premises' on 6 March 2018 was conducted by an Authorised Fire Officer from the Fire Safety Compliance Unit of FRNSW. The inspection was also conducted in the company of Officers from the NSW Environmental Protection Authority (EPA).

Unclassified

Fire & Rescue NSW

ABN 12 593 473 110

www.fire.nsw.gov.au

Community Safety Directorate
Fire Safety Compliance Unit

Locked Bag 12
Greenacre NSW 2190

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Unclassified

The inspection was limited to the following:

- A visual inspection of the essential Fire Safety Measures as identified in this report only.
- A conceptual overview of the EPA licenced waste facility only, where an inspection had been conducted without copies of the development consent or copies of the approved floor plans.

On behalf of the Commissioner of FRNSW, the following comments are provided for your information in accordance with Section 9.32 (4) and Schedule 5, Part 8, Section 17(1) of the EP&A Act. Please be advised that Schedule 5, Part 8, Section 17(2) requires any report or recommendation from the Commissioner of FRNSW to be tabled at a Council meeting.

COMMENTS

Please note, that this report is limited to observations and sections of the building accessed at the time of the inspection. As such, this report lists potential deviations from the National Construction Code 2016 Building Code of Australia - Volume 1 (NCC). Please be advised that whilst the report is not an exhaustive list of non-compliances, the items as listed outline concerns that may contradict development consent approval or correlate to the building's age. In this regard, it is council's discretion as the appropriate regulatory authority to conduct its own investigation and consider the most appropriate action.

The following items were identified as concerns during the inspection:

1. Essential Fire Safety Measures

1A. Fire Hydrant System

- A. The pressure gauge at the hydrant booster inlets was showing a reading of zero (0), indicating that there was no pressure in the system, contrary to the requirements of Clause 9.3 of Australian Standard (AS)2419.1-2005. The pointer within the dial was stuck under the pointer stop.
- B. The external fire hydrant located to the south of the weighbridge had protecting bollards around it, some of which appear to have been struck by a vehicle, causing an obstruction to one of the fire hydrant valve outlets in such a way that does not facilitate the needs of the attending fire brigades to connect up to the equipment to undertake firefighting operations, contrary to the requirements of Clause 3.2.2.2 of AS2419.1-2005. At the time of the inspection, the site manager advised that the issue would be rectified.

1B. Fire Hose Reel (FHR)

- A. Multiple FHR's throughout the premises were detached from the hose guide and nozzle interlocking device, contrary to the requirements of AS2441-2005.

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2. Access and Egress

2A. Provisions for Escape

- A. Required exits – The doors forming part of the required exits from the transfer station contain deadbolts where the door handles are not a lever type handle, contrary to the requirements of Clause D2.21 of the NCC.

3. General

3A. Automatic Fire Sprinkler System

- A. A fire sprinkler system which appeared to have been installed to provide protection to the transfer station, has been decommissioned and was not operational. Without access to the approved plans, it could not be determined whether the sprinklers were once required to be installed in the building and/or if they were decommissioned through an approvals process.

FRNSW is therefore of the opinion that there are inadequate provisions for fire safety within the building.

RECOMMENDATIONS


FRNSW recommends that Council:

- a. Inspect and address any other deficiencies identified on 'the premises', and require item no. 1 through to item no. 3 of this report be addressed appropriately.

This matter is referred to Council as the appropriate regulatory authority. FRNSW therefore awaits Council's advice regarding its determination in accordance with Schedule 5, Part 8, Section 17 (4) of the EP&A Act.

Should you have any enquiries regarding any of the above matters, please do not hesitate to contact John Bruscino of FRNSW's Fire Safety Compliance Unit on (02) 9742 7434. Please ensure that you refer to file reference BFS18/568 (8000002915) for any future correspondence in relation to this matter.

Yours faithfully


John Bruscino
Building Surveyor
Fire Safety Compliance Unit

CC Lesley Corkill
Unit Head, Waste Compliance
Waste and Resource Recovery, NSW Environment Protection Authority
Lesley.Corkill@epa.nsw.gov.au

Unclassified

Fire & Rescue NSW

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Council Meeting

12/09/2018

Item No	9.1
Subject	Minutes of the Bayside Traffic Committee Meeting - 5 September 2018
Report by	Michael McCabe, Director City Futures
File	SF17/2828

Officer Recommendation

That the Minutes of the Bayside Traffic Committee meeting held on 5 September 2018 be received and the recommendations therein be adopted.

Present

Councillor Ed McDougal (Convener),
Traffic Sergeant Frank Gaal, St George Local Area Command,
Senior Constable Alexander Weissel, Botany Bay Police,
James Suprain, representing Roads and Maritime Services,
George Perivolarellis, representing State Members for Rockdale and Heffron

Also present

Jeremy Morgan, Manager City Infrastructure, Bayside Council,
Pintara Lay, Coordinator Traffic and Road Safety, Bayside Council,
Lyn Moore, NSW Pedestrian Council,
Kathee Quirk, St George Bicycle User Group
Rabih Bekdache, Transit Systems,
Glen McKeachie, Coordinator Regulations, Bayside Council,
David Carroll, Senior Parking Patrol Officer, Bayside Council
Agasteena Patel, Traffic Engineer, Bayside Council,
Malik Almuhanha, Traffic Engineer, Bayside Council,
Pat Hill, Traffic Committee Administration Officer, Bayside Council,
Sharon Clague, John Holland (Item BTC18.138),
Jason Nisbet, John Holland (Item BTC18.138),
Van Tran, Roads and Maritime Services (BTC18.138),
Robbie Allen, Transport Planner, BC – Informal Item (Botany Road)
Debbie Fransen, Senior Strategic Asset Engineer, BC – Informal Item (Magdalene Terrace)
Nadim Elmasri, Public Domain Engineer, Bayside Council – Informal Item (21 Bay Street)
Andrew Coleman, Deicorp – Informal Items (1-3 Chapel Street – new temporary laneway)
Richard Edwards, Deicorp – Informal Items (1-3 Chapel Street – new temporary laneway)
Matthew Young, Deicorp – Informal Items (1-3 Chapel Street – new temporary laneway)

The Convenor opened the meeting in the Rockdale Town Hall, Pindari Room, Level 1, 448 Princes Highway, Rockdale at 9.15am and affirmed that Bayside Council respects the traditional custodians of the land, elders past and present and future leaders, on which this meeting takes place, and acknowledges the Gadigal and Bidjigal Clans of the Eora Nation.

1 Apologies

The following apologies were received:

Les Crompton, representing State Member for Kogarah

2 Disclosures of Interest

There were no disclosures of interest.

3 Minutes of Previous Meetings

BTC18.130 Minutes of the Bayside Traffic Committee Meeting - 1 August 2018

Committee Recommendation

That the Minutes of the Bayside Traffic Committee meeting held on 1 August 2018 be confirmed as a true record of proceedings.

4 Reports

BTC18.131 7 Arncliffe Street, Wolli Creek - proposed 'No Stopping' restriction

Committee Recommendation

That approval be given to the installation of 25m 'No Stopping' restriction along the northern kerb line of Arncliffe Street, in front of No. 7 and driveway of No. 11 Arncliffe Street, Wolli Creek.

BTC18.132 4 Dover Road north of Hastings Street, Botany - Proposed removal of a disabled parking space

Committee Recommendation

That the proposed removal of parking space for people with mobility difficulty in front of No. 4 Dover Road, Botany, be approved as it is no longer required.

BTC18.133 30-32 Guess Avenue and Lusty Street, Wolli Creek, east of Bonar Street - Proposed 50m Works Zone for 25 weeks

Committee Recommendation

- 1 That the approval be given to the installation of 25m of 'Works Zone, 7 am – 6.30 pm, Mon – Fri- and 8 am – 3.30 pm Sat' restriction along the northern kerb line of Guess Avenue and southern kerb line of Lusty Street east of Bonar

Street, Wolli, respectively, Wolli Creek for the duration of 25 weeks, subject to relevant conditions.

- 2 That the existing 10m statutory 'No Stopping' zones at the corners of Bonar Street with Guess Avenue and Lusty Street be retained.

BTC18.134 Hattersley Street (north), Arncliffe- Proposed extension of the existing resident parking scheme

Committee Recommendation

- 1 That endorsement be given to the extension of the existing resident parking scheme in Hattersley Street from south of Subway Road to north of Subway Road along the eastern kerb line of residential properties. The signage is '2P 8.30 am-6.00 pm Mon-Fri 8.30 am-12.30 pm Sat, Permit holders excepted, Area RCD'
- 2 That endorsement be referred to Roads and Maritime Services to approve as this area is within 1km radius of Rockdale Railway Station.

BTC18.135 Heffron Road west of Banks Avenue, Pagewood - Proposed relocation of the marked footcrossing

Committee Recommendation

That approval be given to the installation of a raised marked footcrossing in Heffron Road approximately 150m west of Banks Avenue, Pagewood, when funds are made available.

BTC18.136 High Street, Carlton - Proposed 10m 'No Parking' and 29m 'P15min 3pm-7pm Mon-Fri'

Committee Recommendation

That approval be given for the installation of following parking restrictions along the eastern kerblines of High Street, north of Carlton Parade at the applicant's cost:

- 1 0-10m – retain existing 'No Stopping'
- 2 10-39m – Proposed 29m 'P15 min, 3 pm - 7.00 pm Mon-Fri'

BTC18.137 Intersection of Bay Street and Daniel Street, Botany - Proposed double barrier lines

Committee Recommendation

- 1 That the approval be given to install:

- a. 10m (BB) lines at Daniel Street north of Bay Street, Botany.
 - b. 10m (BB) lines at Daniel Street south of Bay Street, Botany.
 - c. 10m (BB) lines at Bay Street west of Daniel Street, Botany.
 - d. 3m (BB) lines at Bay Street east of Daniel Street, Botany.
- 2 That further investigation be carried out for traffic calming in Bay Street.

**BTC18.138 Intersection of Botany Road and Wentworth Avenue, Mascot
- Proposed temporary intersection closure for Airport East
Road Project in October 2018**

Committee Recommendation

- 1 That the Committee endorse the proposed installation of a clearway restriction in Bronti Street and Merchant Street between Wentworth Avenue and Botany Road in association with those works in October 2018.
- 2 That the RMS undertake community consultation as agreed to with Bayside Council.

**BTC18.139 John Street south of Hannam Street, Bardwell Valley -
Proposed signposting of statutory 10m 'No Stopping'
restrictions**

Committee Recommendation

That approval be given for the installation of 'No Stopping' signs to reinforce the 10m statutory 'No Stopping' zones in John and Hannam Streets, Bardwell Valley.

**BTC18.140 Kingsgrove Avenue, Kingsgrove - Detailed design drawings
for traffic calming scheme**

Committee Recommendation

That endorsement be given for the implementation of traffic calming scheme in Kingsgrove Road as shown in detailed plan.

**BTC18.141 Kingsland Road South, Bexley North - Detailed design
drawings for traffic calming scheme**

Committee Recommendation

That endorsement be given for the implementation of traffic calming scheme in Kingsland Road South as shown in the detailed plan.

BTC18.142 Maloney Lane between Robinson Street and Robinson Lane, Eastlakes - Proposed 'No Parking' restriction and statutory 'No Stopping' signposting on western and eastern side of Maloney Lane

Committee Recommendation

That the approval be given to install:

- 1 A 30m 'No Parking' restriction along the western side of Maloney Lane, north of Robinson Street to the rear of No. 64, 66 and 68 Maloney Street.
- 2 Three (3) Statutory 'No Stopping' signs 10m from Robinson Street and Robinson Lane.
- 3 A 15m 'No Parking' restriction along the eastern side of Maloney Lane, along number 1 Robinson Street.

BTC18.143 MS Ride from Sydney to Wollongong Road - Sunday 4 November 2018 - proposed traffic management Plan and Control Plan

Committee Recommendation

- 1 That approval be granted for the Multiple Sclerosis Society of NSW Outdoor to conduct the annual bicycle ride from Sydney to Wollongong through Arncliffe, Kyeemagh, Banksia, Brighton Le Sands, Ramsgate and Sandringham, on Sunday 4 November 2018 commencing from 6:15am.
- 2 That concurrence be given to RMS for the establishment of a temporary "Clearway, 4 am - 11am" restriction on Sunday 4 November 2018:
 - a. along the northern kerb side of Bestic Street between Jacobson Avenue and General Holmes Drive
 - b. along the western kerb side of The Grand Parade between Bestic Street and Sellwood St.
 - c. to remove and reinstate the removable bollards in The Grand Parade (The little Grand Pde) at General Holmes Drive
- 3 That concurrence be given to event organisers/police/RMS to install the temporary restrictions at the following locations:
 - a. "No Left Turn" from Princes Highway into West Botany Street in the southbound direction
 - b. "No Left Turn" from Flora Street into West Botany Street in the southbound direction

- c. "No Right Turn" from West Botany Street to Bestic Street in the eastbound direction between 6am and 7am due to the sun glare.
 - d. "No Entry" along Bestic Street from Jacobson Avenue to General Holmes Drive in the eastbound direction.
- 4 That the event organisers be requested to allow State Transit Authority, Transit Systems and Veolia Transport's buses exiting from Malua Street to the Grand Parade to travel in both directions, as there is no alternative route for the buses.
 - 5 That the organisers of the event advise affected local residents of Bestic Street and The Grand Parade where the proposed "Clearway" and the proposed road closure restriction will be imposed and that the removable bollards in The Grand Parade be temporarily removed by RMS.
 - 6 That the organisers of the event comply with all requirements of public authorities for the event.
 - 7 That the event organisers organise with Council's Operation Services to temporarily remove and reinstate the bollards at The Little Grand Parade with General Holmes Drive to allow cyclists to pass through.
 - 8 That Council authorise the bike riders and Multiple Sclerosis Society to use Cook Park at the corner of The Grand Parade and Culver Street, Monterey as a minor water, bike repair and first aid stop and assist them in removing the bollards in The (Little) Grand Parade with General Holmes Drive for the event on Sunday 4 November 2018.

BTC18.144 President Lane, between Wycombe Avenue and Roslyn Avenue - proposed parking re-arrangement

Committee Recommendation

That approval be given to the removal of two painted parking bays along the southern kerb line of President Lane between Wycombe Avenue and Roslyn Avenue at the rear of 202 President Avenue.

BTC18.145 8 Princes Street, Bexley, West of Forest Road - Proposed 10m Works Zone for 27 weeks

Committee Recommendation

That the approval be given to the installation of 10m of 'Works Zone, 7 am – 6.30 pm, Mon – Fri and 8 am – 3.30 pm Sat' restriction outside No. 8 Princes Street, Bexley for the duration of 27 weeks, subject to relevant conditions.

BTC18.146 Skinners Avenue between Malua Street and Carruthers Drive, Dolls Point - Proposed 16m 'No Parking' restriction around the bend

Committee Recommendation

That approval be given for the installation of 16m 'No Stopping' restriction in Skinners Avenue around the bend in front of No. 18 Skinners Avenue, Dolls Point.

BTC18.147 Sutherland Street, Mascot, near L'Estrange Park south of King Street - Proposed '1/2P, 6am-8.30am and 4pm-5.30pm, Mon - Fri'

Committee Recommendation

That consultation be undertaken with residents of Sutherland Street between Wentworth Avenue and King Street, Mascot regarding options for timed parking restrictions.

BTC18.148 42, 42A and 43 The Little Grand Parade, Brighton Le Sands - proposed 'No Parking' restriction across driveways

Committee Recommendation

That approval be given to the installation of 'No Parking' restrictions across driveways of Nos. 42 and 43 The Little Grand Parade, Brighton Le Sands.

BTC18.149 Unnamed laneway off Princes Highway opposite Bestic Street at the side of #397 Princes Highway, Rockdale - proposed 'No Stopping' and 'Give Way' restrictions

Committee Recommendation

That approval be given to the installation of traffic signs and lines in the unnamed laneway at the side of #397 Princes Highway and south of Spotlight Building, west of Princes Highway, opposite Bestic Street, Rockdale:

- 1 'No stopping' restrictions along both sides of the laneway, except 'No Parking, Telstra Vehicle Excepted' zone
- 2 'All Traffic Turn Right' sign, directly opposite the subject site's basement car park driveway
- 3 'Give Way' priority control (sign & line) at the eastern end of the unnamed laneway, on approach to the Princes Highway junction. Retain 'All Traffic Turn Right' sign in Princes Highway, opposite the laneway.

- 4 Relocation of existing 'No Parking, Telstra Vehicles Excepted' restriction away from the new basement car park exit.
- 5 That the Committee members recommend that this laneway be named for enforcement purposes.

BTC18.150 Joe Scarpignato - Taxi Industry - Resignation from Bayside Traffic Committee Membership

Committee Recommendation

That the Committee thank Joe Scarpignato for his involvement in the local Traffic Committee over the last 15 years.

BTC18.151 Anti-Social Driving Behaviour

Committee Recommendation

There were no matters raised.

BTC18.152 Matters referred to the Bayside Traffic Committee by the Chair

Committee Recommendation

There were no matters raised by the Chair.

BTC18.153 General Business

Committee Recommendation

There was no General Business raised.

5 General Business

The Convenor closed the meeting at 11.40am.

Attachments

Nil

Council Meeting

12/09/2018

Item No	9.2
Subject	Minutes of the Bayside Floodplain Risk Management Committee Meeting - 20 June 2018
Report by	Michael McCabe, Director City Futures
File	SF17/2828

Officer Recommendation

That the Minutes of the Bayside Floodplain Risk Management Committee meeting held on 20 June 2018 be received and the recommendations therein be adopted.

Summary

The minutes include the following substantial recommendations:

5.2 Flood Studies Update

- 2 That the Committee notes that Council will:
 - a Engage consultants to identify flood affected lots in the Springvale Drain Floodvale Drain Catchment, Sans Souci, Muddy Creek and Bonnie Doon catchments.
 - b Prepare a plan for consultation with the communities in the following catchments:
 - Springvale Drain and Floodvale Drain
 - Mascot, Rosebery and Eastlakes
 - Birds Gully and Bunnerong Road
-

Present

Meredith Wallace, General Manager
Michael McCabe, Director City Futures (Chairperson)
Pulak Saha, Floodplain Engineer
David Grasby, Sydney Water

Also present

Debbie Fransen, Senior Strategic Asset Engineer
Alan Hoyne, Bayside State Emergency Services

The General Manager opened the meeting in the Level 2 Meeting Room, Council's Administration Building at 1.00 pm.

1 Acknowledgement of Traditional Owners

The Chairperson affirmed that Bayside Council respects the traditional custodians of the land, elders past and present and future leaders, on which this meeting takes place, and acknowledges the Gadigal and Bidjigal Clans of the Eora Nation.

2 Apologies

The following apologies were received:

Isabelle Testoni, Senior Natural Resource Officer Office of Environment and Heritage
Andrew Jenkins, Bayside State Emergency Services
Clare Harley, Manager Strategic Planning
Zoran Sarin, Coordinator Asset Strategy

3 Disclosures of Interest

There were no disclosures of interest.

4 Minutes of Previous Meetings

Nil

5 Reports

5.1 Flood Catchment Summary

Committee Recommendation

That the report be received and noted.

5.2 Flood Studies Update

Committee Recommendation

- 1 That the attachments to this report be withheld from the press and public as they are confidential for the following reason:

The matters in this report are confidential, as it is considered that it is in the public interest that they not be disclosed to the public. In accordance with the Code of Conduct, the matters and the information contained within this report must not be discussed with or disclosed to any person who is not a member of the meeting or otherwise authorised.

- 2 That the Committee notes that Council will:

- a Engage consultants to identify flood affected lots in the Springvale Drain Floodvale Drain Catchment, Sans Souci, Muddy Creek and Bonnie Doon catchments.
- b Prepare a plan for consultation with the communities in the following

catchments:

- Springvale Drain and Floodvale Drain
- Mascot, Rosebery and Eastlakes
- Birds Gully and Bunnerong Road

5.3 Terms of Reference

Committee Recommendation

- 1 That the Bayside Floodplain Risk Management Terms of Reference are noted.
- 2 That it be noted that the General Manager nominates the Director City Futures as Committee Chair, in the absence of a Chair nominated by the Council.
- 3 That the arrangements for Committee community representation be broad and city wide.

5.4 Flood Mitigation options under assessment

Committee Recommendation

That the Floodplain Risk Management Committee notes that Council is investigating two flood mitigation projects at:

- Mutch Park, Pagewood
- Dominey Reserve, Bexley

6 General Business

There was no General Business.

7 Next Meeting

That the next meeting be held in August 2018.

The Chairperson closed the meeting at 3.00 pm.

Attachments

Nil

Council Meeting

12/09/2018

Subject **Closed Council Meeting**

Summary

This report recommends that the Council Meeting be closed to the press and public in order to consider the items below.

Council's Code of Meeting Practice allows members of the public to make representations to or at a meeting, before any part of the meeting is closed to the public, as to whether that part of the meeting should be closed.

Officer Recommendation

- 1 That, in accordance with section 10A (1) of the Local Government Act 1993, the Council considers the following items in closed Council Meeting, from which the press and public are excluded, for the reasons indicated:

12.1 CONFIDENTIAL - Sydney Airport Corporation Limited (SACL) - rate equivalent payments in lieu of rates

In accordance with section 10A (2) (c) of the Local Government Act 1993, the matters dealt with in this report relate to information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business. It is considered that if the matter were discussed in an open Council Meeting it would, on balance, be contrary to the public interest due to the issue it deals with.

- 2 That, in accordance with section 11 (2) and (3) of the Local Government Act 1993, the reports, correspondence and other documentation relating to these items be withheld from the press and public.