

26 February 2024

Our Ref: 24/46564
Our Contact: Matthew Hammond 9562 1621

Laura Locke
Director, Eastern and South Districts
Department of Planning, Housing and Infrastructure
Locked Bag 5022
PARRAMATTA NSW 2124

Dear Ms Locke,

RE: Request for Rezoning Review - 26 Tupia Street, Botany (RR-2023-35)

I refer to the Department of Planning, Housing and Infrastructure's (DPHI) letter received by Council on 7 February 2024. The letter advised that DPHI has received a Rezoning Review request for the draft Planning Proposal (PP) to amend *Bayside Local Environmental Plan 2021* (BLEP 2021) in relation to land at 26 Tupia Street, Botany.

The Rezoning Review seeks to:

- increase Height of Buildings (HOB) from 10m to RL 18.30 (effectively 14.27 to 16.61m above ground level);
- increase Floor Space Ratio (FSR) from 0.85:1 to 1.15:1; and
- apply Additional Permitted Use (APU) '35' Use of certain land in R3 Medium Density Residential zone for residential flat buildings.

In the letter, DPHI requested that Council:

- provide comment on the proposal and/or provide a response detailing why the original request to Council was not progressed; and
- confirm that the proposal which has been submitted for a Rezoning Review is the same proposal that was considered by Council.

Consistency of Planning Proposal Submitted for Rezoning Review

Council can confirm that the version of the PP submitted to DPHI for Rezoning Review is the same version that was submitted to Council for consideration on 19 May 2023, and subsequently reported to the Bayside Local Planning Panel (BLPP), the City Planning and Environment Committee (CP&EC) and Council.

However, it should be noted that your letter incorrectly stipulates that the Rezoning Review seeks an increase in the maximum height of buildings from 10m to 18.3m, rather, the documents that the Proponent has submitted, is seeking an increase in the maximum

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height of buildings to RL 18.3, which they have equated to around 14.27 to 16.61m above ground level.

History and Assessment of Planning Proposal

The PP subject to Rezoning Review is the second PP that Council has received from the Proponent for the site since 25 January 2021.

The detailed background is provided below for context, when informing the Sydney Eastern City Planning Panel (SECPP) of the history of the Proposal.

2021 Lodgement of the First Planning Proposal

On 25 January 2021, the Proponent lodged a PP which sought similar outcomes to the current PP. The PP requested Council to amend the draft BLEP 2021 to:

- increase HOB from 10m to 15m;
- increase FSR from 0.85:1 to 1.37:1; and
- introduce an APU into Schedule 1 to allow development for the purposes of Residential Flat Buildings.

Council did not receive an offer for a Planning Agreement.

BLPP Recommendation - 20 August 2021

The draft PP was reported to the BLPP on 20 August 2021. After considering the Council Officer's report, the BLPP were not supportive of the PP proceeding to Gateway for the following reasons:

1. *The Planning Proposal seeks substantially greater height and floor space than is proposed in the draft Bayside Local Environmental Plan 2021 (Draft LEP) but fails to provide sufficient justification for these increases.*
2. *Given that the finalisation of the Draft LEP is imminent, it would not promote orderly development of land as referred to in s1.3(c) of the Environmental Planning & Assessment Act, 1979 to amend the controls at this late stage of the strategic planning process.*
3. *The Planning Proposal seeks development that would significantly increase the number of people living at the site yet fails to adequately address the risks to the residents of living on flood prone land.*
4. *The Planning Proposal is inconsistent with a number of Ministerial directions relating to Planning Proposals made under s9.1 of the Environmental Planning & Assessment Act, 1979.*

Council Resolution - 13 October 2021

The recommendations of the BLPP were included in the report to the Council Meeting of 13 October 2021.

Council accepted the recommendation of the BLPP that the draft PP for 26 Tupia Street, Botany not be forwarded to the NSW Department of Planning, Industry and Environment

(now DPHI) for a Gateway Determination for the reasons outlined in the report, in particular:

- 1. It is inconsistent with the objectives and detailed requirements of s.9.1 Directions including 3.1 Residential Zones, 2.3 Heritage conservation; and 4.3 Flood Prone Land.*
- 2. The Planning Proposal seeks substantially greater height and floor space in an area that has not been identified in the Bayside Local Housing Strategy for increased residential density, and is not located with a centre identified in the Eastern City District Plan.*
- 3. The Planning Proposal would not promote orderly development of land as referred to in s1.3(c) of the Environmental Planning & Assessment Act 1979 by amending controls at this stage of the strategic planning process.*

The Proponent was notified in writing on 19 October 2021 that the PP was not supported by Council.

2023 Current PP - Subject of Rezoning Review

On 19 May 2023, a new PP request was submitted to Council. The PP requested Council to initiate an amendment to the BLEP 2021 to:

- increase HOB from 10m to RL 18.30 (14.27 to 16.61m above ground level);
- increase FSR from 0.85:1 to 1.15:1; and
- apply APU '35' Use of certain land in R3 Medium Density Residential zone for Residential Flat Buildings.

Council has not received an offer of a Planning Agreement.

BLPP Recommendation - 26 September 2023

The draft PP was reported to the BLPP on 26 September 2023. After considering the [officer's report](#) (report available via hyperlink), the BLPP advised Council that the draft PP should not be supported for the following reasons:

- 1. The Panel acknowledges the need for additional housing in suitable locations and notes the efforts of Bayside Council in achieving its dwelling targets under the Eastern City District Plan, Planning Proposals being advanced to increase housing diversity in Bayside and strategic planning investigations in 3 specific investigation areas endorsed under Council's Local Housing Strategy in:*
 - *Botany Road, Mascot,*
 - *Bexley North, and*
 - *West Kogarah.*
- 2. The Planning Proposal seeks substantially greater height and floor space than is permitted in the Bayside Local Environmental Plan 2021 (BLEP 2021) but fails to provide sufficient justification for these increases.*
- 3. The Planning Proposal would not promote orderly development of land as referred to in s1.3(c) of the Environmental Planning & Assessment Act 1979.*

4. *Given the expected increase in density that the Planning Proposal seeks, it presents increased flooding risks to a greater number of people yet fails to adequately address the risks to the residents living on flood prone land and is not satisfied with the emergency evacuation of residents during flood events.*
5. *The Panel notes the current R3 zoning and planning controls for the site; however, intensification is not appropriate for the site.*
6. *The Planning Proposal is inconsistent with a number of Ministerial directions relating to Planning Proposals made under s9.1 of the Environmental Planning & Assessment Act, 1979. The recommendations of the BLPP were included in the report to the Council Meeting of 3 November 2021.*

City Planning and Environment Committee Recommendation - 8 November 2023

The recommendations of the BLPP were included in the [report to the City Planning and Environment Committee \(CP&EC\) meeting on 8 November 2023](#) (report available via hyperlink), where the following recommendation was made for Council's consideration:

1. *That Council notes the advice of the Bayside Local Planning Panel; and*
2. *That Council does not support the Planning Proposal Request for land at 26 Tupia Street, Botany for the following reasons:*
 - a) *The Planning Proposal seeks substantially greater height and floor space than is permitted in the Bayside Local Environmental Plan 2021 (BLEP 2021) but fails to provide sufficient justification for these increases.*
 - b) *The Planning Proposal would not promote the orderly development of land as referred to in s1.3(c) of the Environmental Planning & Assessment Act 1979.*
 - c) *Given the expected increase in density that the Planning Proposal seeks, it presents increased flooding risks to a greater number of people, yet fails to adequately address the risks to the residents of living on flood prone land, and has not satisfied provisions around the emergency evacuation of residents during flood events.*
 - d) *The current R3 zoning and planning controls for the site are noted, however, intensification is not appropriate for the site.*
 - e) *The Planning Proposal is inconsistent with a number of Ministerial directions relating to Planning Proposals made under s9.1 of the Environmental Planning & Assessment Act, 1979.*

Latest Council Resolution – 22 November 2023

At its meeting on 22 November 2023, Council resolved to endorse the minutes of the CP&EC meeting held on 8 November 2023, which included the above recommendation to *not support* the PP.

The November 2023 Council resolution is the latest position of Council in relation to this PP.

Next Steps

Council understands that the DPHI will now prepare a Rezoning Review report and forward that report (including the subject correspondence), to the SECPP for consideration. It is also Council's understanding that the DPHI will notify Council of the determination shortly after it is made by the SECPP.

Should you require further information or have any queries in relation to this matter, please contact Matthew Hammond, Urban Planner on 9562 1621.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'DSmith', with a stylized flourish at the end.

David Smith
Manager Strategic Planning