

NOTICE

Bayside Local Planning Panel - Other Applications

will be held in the Committee Room, Botany Town Hall
Corner of Edward Street and Botany Road, Botany
on **Tuesday 26 September 2023 at 4:00pm**
to consider items outside the public meeting
in accordance with the Operational Procedures

Members of the public do not have the opportunity to speak on this item

ON-SITE INSPECTIONS

On-site inspections are undertaken beforehand.

AGENDA

1 ACKNOWLEDGEMENT OF COUNTRY

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

2 APOLOGIES

3 DISCLOSURES OF INTEREST

4 MINUTES OF PREVIOUS MEETINGS

Nil

5 REPORTS – PLANNING PROPOSALS

5.1 Planning Proposal Request - 26 Tupia Street, Botany2

6 REPORTS – DEVELOPMENT APPLICATIONS

Nil

Meredith Wallace
General Manager

Bayside Local Planning Panel - Other Applications

26/09/2023

Item No	5.1
Subject	Planning Proposal Request - 26 Tupia Street, Botany
Report by	Peter Barber, Director City Futures
File	SF23/3702

Summary

Council received a Planning Proposal Request (PP) (**Attachment 1**) for land at 26 Tupia Street, Botany on 19 May 2023, which proposes amendments to the height of buildings and floor space ratio development standards in the Bayside Local Environmental Plan 2021 (Bayside LEP 2021) applying to the site and to apply Additional Permitted Use 35 (APU 35) to the site to permit residential flat buildings (RFBs).

The proponent submitted a similar PP in 2021, which also sought amendments to the height of buildings and floor space ratio development standards in the Bayside LEP 2021 and to apply APU 35 to the site to permit residential flat buildings (RFBs) on the site.

The 2021 PP was considered by the Bayside Local Planning Panel at its meeting on 20 August 2021, and the panel recommended that the proposal not be submitted for a Gateway determination. The Panel concluded that the PP failed to provide sufficient justification to support the proposed changes to development standards, which included increasing residential density on a flood prone site and inconsistency with several Ministerial Directions. At its meeting of 13 October 2021, Council resolved not to support the PP.

A summary of the current standards in the Bayside LEP 2021 and the proposed amendments sought through this PP is outlined in **Table 1**.

Table 1: Summary of Current and Proposed Controls

Control	Bayside LEP 2021	Draft Planning Proposal
Zone	R3 Medium Density Residential	No change
Height of Buildings (HOB)	10 metres	RL 18.30 (effectively 14.27m to 16.61m)
Floor Space Ratio (FSR)	0.85 : 1	1.15 : 1
Additional Permitted Use	N/A	Include as an Additional Permitted Use '35' Use of certain land in R3 Medium Density Residential zone for residential flat buildings.

The PP has been the subject of a detailed merit assessment against the strategic and statutory planning framework as established by the *Environmental Planning and Assessment Act 1979* (the Act), relevant guidelines, Planning Circulars and Practice Notes. In considering whether or not to progress the PP to a Gateway determination, Council is required to consider if the proposed changes to the Bayside LEP 2021 have *both* strategic and site-specific merit.

In regard to strategic merit, the Bayside Local Strategic Planning Statement 2020 (LSPS) and Local Housing Strategy 2021 (LHS) were adopted by Council to inform future land use planning in Bayside. Neither identifies this site or the general area as an investigation area for consideration for development uplift, or additional residential development.

The proposal does not demonstrate site-specific merit as the proposed amendments to HOB and FSR development standards would result in a future built form that is inconsistent in scale with the adjacent residential area and Sir Joseph Banks Park. There are also unresolved issues regarding traffic, flooding and hazards relating to the adjacent high pressure gas pipeline.

It is recommended that the Bayside Local Planning Panel recommend to Council that the PP is not supported, and should not proceed to Gateway determination, for the reasons set out in this report.

Officer Recommendation

That the Planning Proposal Request relating to land at 26 Tupia Street, Botany is not supported for the following reasons:

- a) The proposal is inconsistent with Section 9.1 Ministerial Directions: 1.1 Implementation of Regional Plans, 3.1 Biodiversity and Conservation, 3.2 Heritage Conservation, 3.7 Public Bushland, 3.10 Water Catchment Protection, 4.1 Flooding, 4.2 Coastal Management, 5.1 Integrating Land Use and Transport and 6.1 Residential Zones.
- b) The proposal is inconsistent with various objectives within the Greater Sydney Regional Plan under Directions 1. A city supported by infrastructure, 5. A city of great places, 8. A city in landscape and 10. A Resilient City.
- c) The proposal is inconsistent with Planning Priorities E1 and E4 to E6 in the Eastern City District Plan, as the proposed location for increased residential density is not considered appropriate as it is not identified as a centre.
- d) The proposal is inconsistent with Planning Priorities E15, E16, E18 and E20 in the Eastern City District Plan, given the adverse impacts the potential built form will have on the adjoining public open space, heritage items and flooding issues.
- e) The proposal is not consistent with the Bayside Local Strategic Planning Statement and Local Housing Strategy, in that the proposal seeks a significant increase in density and height in an area which has not been proposed for residential intensification.
- f) The proposal seeks development that would increase the number of people living at the site, which is flood prone and does not adequately address flood risks.
- g) The proposal seeks substantially greater height and floor space than is currently provided for in planning controls in the Bayside Local Environmental Plan 2021 and has not provided sufficient justification for these increases.

Background

Applicant: Mr Peter Zaverdinos on behalf of Archicorp Architects

Owner: Mr I Aberasturi

ASIC Current Company Extract:

Company name: Archicorp Pty Ltd

Director/Secretary: Jamil Boutros

SUBJECT SITE AND SURROUNDING AREA

26 Tupia Street, Botany is legally described as Lot X in Deposited Plan 32914 and is shown in bold red in **Figure 1** below.



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

The site is located at the southern end of Tupia Street, has an area of approximately 8000sqm and contains 3 separate warehouse buildings with 18 industrial units and associated car parking. Access to the site is currently from the north-east corner of the site which is also the high point of the site. The subject site has a fall of approximately 2.34m from the north-east towards the southern boundary.

The southern and western boundaries of the site directly adjoin Council-owned land, indicated in **Figure 1** by a bold yellow outline, being Sir Joseph Banks Park. More broadly, the site is surrounded on its western, eastern and southern boundaries by the Sir Joseph Banks Park, part of which is listed as Heritage Item I204 under *Schedule 5 Environmental Heritage* of the Bayside LEP 2021.

An easement approximately 20-metres wide containing the Southern and Western Suburbs Ocean Outfall Sewer (SWSOOS) and a high-pressure gas pipeline traverses the northern boundary of the site. The easement, shown dashed in bold blue in **Figure 1**, forms a separation between the subject site and the low-density residential areas to the north.

There are numerous significant trees located along the site's boundaries.

SITE CONTEXT

The site is located within 400 metres walking distance to the southwest of the Banksmeadow Neighbourhood Centre, located along Botany Road.

To the east, the site adjoins the heritage listed part of Sir Joseph Banks Park, being locally significant item I204 within Schedule 5 Environmental Heritage of the Bayside LEP 2021. The subject site is also approximately 70 metres west of the former Sir Joseph Banks Hotel, an item of State heritage significance identified as item I162 within the aforementioned Schedule.

The northern extent of NSW Ports land is located approximately 400 metres to the south of the subject site, with Foreshore Road, a major freight route servicing 24-hour Port activities approximately 150 metres from the southern boundary. The north-south runway of Sydney International Airport is located approximately 800 metres to the west. A site context map is provided in **Figure 2** below.



Figure 2: Site Context

The area between Botany Road and the subject site is predominantly characterised by one and two-storey detached style residential dwellings, as shown in **Figure 3** and **Figure 4** below.



Figure 3: Typical one and two-storey detached style residential dwellings in Tupia Street - view facing north (Source: Google Maps).

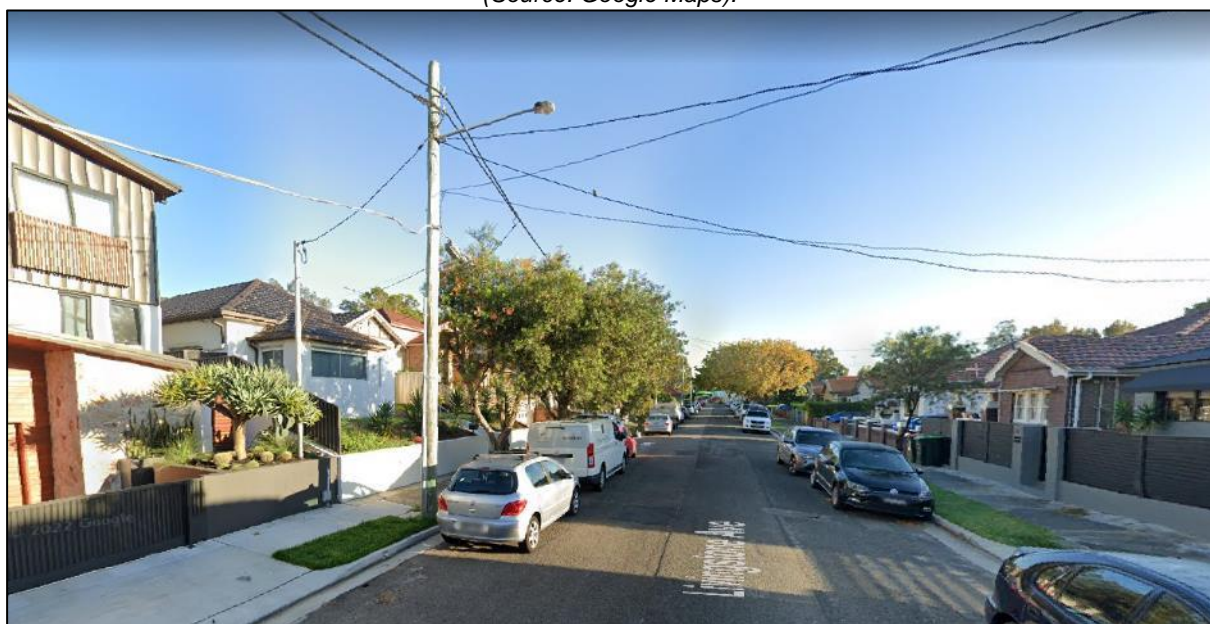


Figure 4: Typical one- and two-storey detached style residential dwellings in Livingstone Avenue – view facing north (Source: Google Maps)

Contextually, the subject site reads as an extension of the low density residential development block directly to the north. Whilst it is noted that within this area, there is one. four-storey Residential Flat Building (RFB) located at 19 Livingstone Avenue (**Figure 5**), this is the exception to a street that is characterised by one-storey and two-storey dwellings.

Similarly, it is noted that there is a two-storey and three-storey residential flat building adjoining the heritage listed former Sir Joseph Banks Hotel at 23 Anniversary Street (**Figure 6**), to the east of the site, but again this is the exception to an area that is characterised by one and two storey dwellings.



Figure 5: Four-storey RFBs at 19 Livingstone Avenue, Botany (Source: Google Maps)

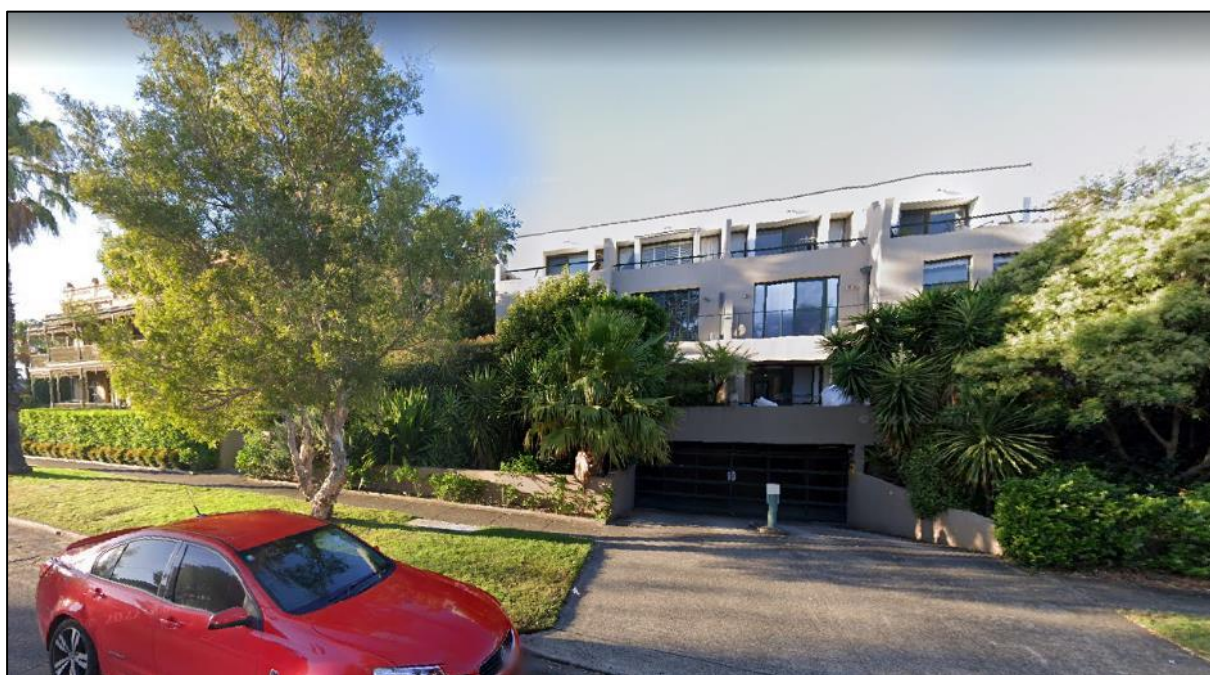


Figure 6: Three-storey complex adjoining former Sir Joseph Banks Hotel at 23 Anniversary Street, Botany – view from Anniversary Street (Source: Google Maps)

The area in which residential flat buildings are more prominent is located to the north-west of the subject site, in the area bound generally by Edgehill Avenue, Chelmsford Avenue, Hayden Place and Sir Joseph Banks Park. This area is predominantly characterised by multi-dwelling housing, interspersed with some newer dual occupancy development and RFBs. The locations of the above developments are reflected in **Figure 7** below. Contextually, this

area is largely separated from the subject site and buffered by vegetation, the park and a block of low density detached dwellings.



Figure 7: Locations of development types in land bound by Edgehill Avenue, Chelmsford Avenue, Hayden Place and Sir Joseph Banks Park

PLANNING PROPOSAL HISTORY

A history of the Planning Proposal Request is included in **Table 2** below.

Table 2: History and Context of the draft Planning Proposal

Date	Summary of Event
Draft Bayside LEP 2021	
17 April 2020	<p>Submission to the draft Bayside LEP 2021</p> <p>The proponent lodged a submission to the draft Bayside LEP 2021, in a form equivalent to a Planning Proposal Request (not formally lodged and no assessment fee paid). The submission proposed the following controls for the site:</p> <ul style="list-style-type: none"> • Height of buildings 15m;

Date	Summary of Event
	<ul style="list-style-type: none"> • FSR of 1.35:1; and • Retain RFBs as a permissible use. <p>The proponent was advised that both Council and the Department of Planning and Environment (DPE) had considered the submissions prepared as part of the LEP making process, and that both Council and DPE declined to change the zoning and controls for the site from what had been exhibited.</p>
2021 Planning Proposal Request	
25 January 2021	<p>Planning Proposal Request submitted sought to amend the draft Bayside LEP 2021 to:</p> <ul style="list-style-type: none"> • increase the maximum Height of Buildings (HOB) from 10 metres to 15 metres; • increase the maximum Floor Space Ratio (FSR) from 0.85:1 to 1.37:1; and • introduce an additional permitted use into Schedule 1 to allow development for the purposes of residential flat buildings.
20 August 2021	<p>Bayside Local Planning Panel Advice</p> <p>The BLPP were not supportive of the PP proceeding to Gateway for the following reasons:</p> <p><i>“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.</i></p> <p><i>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.</i></p> <p><i>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.</i></p> <p><i>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.”</i></p>
13 October 2021	<p>Council resolution</p> <p>Council accepted the recommendation of planning staff and the BLPP that the <i>“Draft Planning Proposal for 26 Tupia Street, Botany not be forwarded to the NSW Department of Planning, Industry and Environment for a Gateway Determination for the reasons outlined in the report, in particular:</i></p>

Date	Summary of Event
	<p><i>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.</i></p> <p><i>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.</i></p> <p><i>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."</i></p>
Current Planning Proposal Request	
11 May 2022	<p>Pre-Lodgement Advice to Proponent</p> <p>Council Officers met with the proponent to discuss a Scoping Proposal that proposed the following amendments to the Bayside LEP 2021:</p> <ul style="list-style-type: none"> • Height of Buildings from 10m to 15m; • Floor Space Ratio from 0.85:1 to 1.12:1; and • Add an Additional Permitted Use to allow development for the purposes of RFBs on the subject site. <p>At the meeting, the proponent was advised that Council had considered a similar PP for the site at the Council meeting on 13 October 2021.</p> <p>The proponent was advised that, based on consideration of the Scoping Proposal, Council's previous reasons for not supporting the PP remain applicable to this proposal. Apart from a minor reduction in FSR of 0.25:1, the Scoping Proposal was noted to be seeking substantially the same outcome as the PP that Council resolved not to support in 2021, and that the three key reasons for not supporting that proposal had not been adequately addressed within the Scoping Proposal.</p> <p>In relation to the Additional Permitted Use to allow development for the purpose of an RFB, the proponent was advised at the pre-lodgement meeting that one of the reasons Council had not supported the former PP was that the site was in an "<i>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.</i>"</p> <p>The proponent was advised of the option for a Rezoning Review, enabling the proponent to request an independent Planning Panel to evaluate whether a PP should progress to Gateway Determination.</p>

DETAILS OF THE PLANNING PROPOSAL REQUEST

The Planning Proposal Request (**Attachment 1**) seeks amendments to the Bayside LEP 2021 as detailed in **Table 3** below.

Table 3: Proposed Amendments to the Bayside LEP 2021

Provisions	Change
Zone	No change – maintain R3 Medium Density Residential zone
Height of Buildings	Increase from 10 metres to RL 18.30 (effectively 14.27m to 16.61m)
Floor Space Ratio	Increase from 0.85:1 to 1.15:1.
Schedule 1 – Additional Permitted Use	Include the subject site in APU 35 to allow development for the purposes of Residential Flat Buildings with consent.

The proposed amendments to development standards are greater than that proposed in the Scoping Proposal which was a height of 15m and FSR of 1.12:1. The current PP seeks a HOB development standard of RL18.30 for the site, which results in a varying maximum building height of 14.27m to 16.61m across the site due to the sites topography.

While the proposed amendment to HOB development standard of RL 18.30 is feasible under the *Standard Technical Requirements for Spatial Datasets and Maps* (NSW Department of Planning, 2017), LEP Practice Note PN 08-001 – *Height and floor space ratio* states that “*It is important that a consistent approach to the identification and application of height ... is utilised so that these controls are clearly understood by development and community interests alike.*”

The proposed format is not consistent with Bayside’s existing format, which prescribes controls in the form of metres above the Australian Height Datum (AHD) and thus an RL is not supported.

The PP is accompanied by the technical documentation listed in **Table 4** below.

Table 4: List of supporting documentation to the draft Planning Proposal

PP Supporting Documentation	Prepared By	Report Attachment
Appendix A – Proposed LEP Maps	<i>Ethos Urban</i>	Attachment 2
Appendix B – Concept Design	<i>Cottee Parker</i>	Attachment 3
Appendix C – Urban Design Report	<i>Cottee Parker</i>	Attachment 4
Appendix D – Hazard Analysis Report	<i>Arriscar</i>	Attachment 5
Appendix E – Statement of Heritage Impact	<i>GBA Heritage</i>	Attachment 6
Appendix F – Acid Sulfate Soils Assessment	<i>JK Environments</i>	Attachment 7
Appendix G – Sydney Airport Corporation Limited Correspondence	<i>Sydney Airport Corporation Limited</i>	Attachment 8
Appendix H – Flood Risk Assessment & Flood Emergency Response Plan	<i>BMT</i>	Attachment 9
Appendix I – Coastal Hazard and Risk Assessment	<i>BMT</i>	Attachment 10
Appendix J – Transport, Traffic and Parking Assessment Report	<i>Terrafic</i>	Attachment 11
Appendix K – Stormwater Management Report	<i>Woolacotts</i>	Attachment 12
Appendix L – Geotechnical Investigation	<i>JK Geotechnics</i>	Attachment 13

ASSESSMENT OF PLANNING PROPOSAL REQUEST

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (THE ACT)

DPE's publication '*Local Environmental Plan Making Guideline*' (the LEP Making Guidelines) – issued under Division 3.4 of the Act – provides guidance and information on the process for preparing Planning Proposals. The assessment of the submitted PP has been undertaken in accordance with the latest version of this guideline, dated August 2023.

The LEP-Making Guidelines require an evaluation that:

- All section 9.1 Directions and SEPPs have been adequately addressed; and
- Relevant regional/district plans and LSPS (if relevant) have been addressed.

SECTION 9.1 DIRECTIONS

Section 9.1 Directions by the Minister are issued regarding the content of LEPs, to the extent that the content must achieve or give effect to particular principles, aims, objectives or policies set out in those directions.

As assessment of the PP against the s9.1 Ministerial Directions is provided in **Table 5** below.

Table 5: Consistency with Relevant Section 9.1 Directions

Ministerial Direction	Comment	Consistency
Focus Area 1: Planning Systems		
1.1 Implementation of Regional Plans	Objective: To give legal effect to the vision, land use strategy, goals, directions and actions contained in Regional Plans. Comment: The PP is largely inconsistent with the Greater Sydney Regional Plan. See Table 7 for further details.	No
1.3 Approval and Referral Requirements	Objective: To ensure that LEP provisions encourage the efficient and appropriate assessment of development. Comment: The PP is not designated development; and hence would not require the concurrence, consultation or referral to a Minister.	Yes
1.4 Site Specific Provisions	Objective: To discourage unnecessarily restrictive site specific planning controls. Comment: The PP proposes to amend the Bayside LEP 2021 to allow RFBs as a land use that is permissible with consent by way of an additional permitted use: <ul style="list-style-type: none"> • Including the site on the APU Map; and • Including the site in Clause 35 of Schedule 1 in the Bayside LEP 2021. Council resolved to exclude RFBs as a land use permissible with consent in R3 Medium Density Residential zones under the former Botany Bay LEP 2013. However, DPE requested that RFBs are retained as a permissible land use, with consent, via an APU clause within the LEP for sites that were zoned R3 Medium Density Residential under the former Botany Bay LEP 2013. The site was not included with APU 35 in the Bayside LEP 2021 as it was a deferred matter site excluded from the Botany Bay LEP 2013. The R3 zoning applied to the subject site under the Bayside LEP 2021 was based on the previous 2(b) Residential "B" zone prescribed under the Botany LEP 1995. The PP is consistent with this Direction in that it does not	Yes

Ministerial Direction	Comment	Consistency
	seek to unnecessarily restrict development on the subject site.	
Focus Area 1: Planning Systems – Place-based		
1.11 Implementation of Bayside West Precincts 2036 Plan	Objective: To ensure development within the Bayside West Precincts (Arncliffe, Banksia and Cooks Cove) is consistent with the <i>Bayside West Precincts 2036 Plan</i> . Comment: The PP does not include land within the Bayside West Precincts in Arncliffe, Banksia or Cooks Cove.	N/A
Focus Area 3: Biodiversity and Conservation		
3.1 Biodiversity and Conservation	Objective: To protect and conserve environmentally sensitive areas. Comment: Advice given by Council's technical staff regarding the Stormwater Management Report (Attachment 12) stated that the proposed stormwater discharge directly to Sir Joseph Banks ponds/lake is not supported. Sir Joseph Banks ponds/lake are mapped as wetlands under the Bayside LEP 2021, which need to be protected.	No
3.2 Heritage Conservation	Objective: To conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance. Comment: The subject site adjoins Sir Joseph Banks Park, an item of local heritage significance; and is in the vicinity of Sir Joseph Banks Hotel (former), an item of State heritage significance. The PP is supported by a Statement of Heritage Impact Report ('the 2023 Heritage Report') (Attachment 6), which is largely the same as the 2020 Heritage Impact Report submitted with the previous PP. The 2020 Heritage Impact Report was subject to an independent review in the assessment of the previous 2021 Planning Proposal. The advice provided as a result of the independent review recommended the proposal not be supported as: <i>"the height and density ... would adversely impact on the setting of and views from and scenic quality of the heritage item Sir Joseph Banks Park and is excessive within the context of 1-3 storey residential development in the vicinity include the 3-storey scale of a 1990s building on part of the Sir Joseph Banks Hotel (former) site, also a heritage item in the vicinity of the site."</i> The Heritage Report submitted as part of this Planning Proposal remains largely the same as the previous Heritage Report submitted as part of the 2021 Planning Proposal, with the exception of updated details to reflect the new proposal that is, the revised height and FSR being sought. The current PP seeks a HOB development standard of RL18.30 for the site, which results in a varying maximum building height of 14.27m to 16.61m across the site due to the topography of the site. This is an increase in the proposed building heights in the low points of the site in comparison to the blanket 15m sought as part of the previous Planning Proposal. Whilst a slightly reduced FSR is being sought as part of this current Planning Proposal, from 1.37:1 to 1.15:1, the bulk and scale resulting from the proposed RFB built form with increased height in some parts of the site will still have potential to impact the setting of, and views from, and scenic quality of the heritage item Sir Joseph Banks Park and the former Sir Joseph Banks Hotel. In this regard, the advice and concerns regarding adverse impacts to the nearby heritage items, received in relation to the previous Planning Proposal remain valid. The proposed amendments to the development standards	No

Ministerial Direction	Comment	Consistency
	<p>remain excessive within the context of the heritage items and residential development in the vicinity of the subject site.</p> <p>In relation to Aboriginal heritage, the submitted Heritage Report (p. 6) states that:</p> <p><i>"While this report is limited to the investigation of European cultural heritage values, GBA Heritage recognises that for over forty thousand years or more Aboriginal people occupied the land that was later to be claimed as a European settlement.</i></p> <p><i>Recommendations have been made on the basis of documentary evidence viewed and inspection of the existing site and precinct.</i></p> <p><i>Archaeological assessment of the subject site is outside the scope of this report."</i></p> <p>If the Panel were to recommend to Council that the proposal proceed to Gateway, a recommendation should be included to require additional assessment via a condition of Gateway Determination to better understand the archaeological and Aboriginal heritage impacts.</p> <p>Overall, the proposed amendments to the development standards to enable a residential flat building built form is not considered to conserve items, areas, objects and places of environmental heritage significance and insufficient information is available to properly assess its impacts on Aboriginal heritage.</p>	
3.7 Public Bushland	<p>Objective: To protect bushland in urban areas, including rehabilitated areas, and ensure the ecological viability of the bushland.</p> <p>Comment: Under the Bayside LEP 2021, Public Bushland is defined as land:</p> <p>On which there is vegetation that is—</p> <ol style="list-style-type: none"> A remainder of the natural vegetation of the land, or Representative of the structure and floristics of the natural vegetation of the land, and <p>That is owned, managed or reserved for open space or environmental conservation by the Council or a public authority.</p> <p>Council's technical staff have identified the surrounding vegetation external to the subject site would fit the description 'public bushland'. In their analysis, the technical staff advised that:</p> <p><i>"While the vegetation is not remnant, as this part of the Sir Joseph Banks Park is made of reclaimed land from the deposition of sand extracted from Botany Bay during the construction of Port Botany and the third runway, the vegetation as it exists now, is consistent with native vegetation growing in the park and surrounding area.</i></p> <p><i>Additionally, the vegetation surrounding [the subject site] is contiguous with the rest of the bushland in Sir Joseph Banks Park providing amenity for residents and local fauna. The vegetation in Sir Joseph Banks Park is locally important and part of the biodiversity corridor in the area.</i></p> <p><i>Sir Joseph Banks Park is managed by Council as bushland and provides an important area of passive recreation.</i></p>	Insufficient information to determine consistency.

Ministerial Direction	Comment	Consistency
	<p><i>[...] removal of the vegetation of a significant amount of trees around [the subject site] would have a detrimental impact on the overall environmental quality of the park, local area and fauna as well as reduce amenity for local residents."</i></p> <p>Though the PP states that there is no plan to remove trees from the subject site, no concept landscape plan has been submitted as part of the PP. The RFB built form sought to be enabled as part of this proposal will require multi-level basement works which is likely to result in disturbance to the trees identified as public bushland.</p> <p>If the PP proceeds, further studies would need to be prepared to assure Council that the surrounding public bushland would not be significantly impacted.</p> <p>Further, Objective (a) iv under this Direction aims to ensure ecological viability by preserving existing wetlands. Advice given by Council's technical staff regarding the Stormwater Management Report (Attachment 12) stated that the proposed stormwater discharge directly Sir Joseph Banks ponds/lake is not supported. Sir Joseph Banks ponds/lake are mapped as wetlands under the bayside LEP 2021, which need to be protected.</p>	
3.10 Water Catchment Protection	<p>Objective: To:</p> <ul style="list-style-type: none"> (a) Maintain and improve the water quality (including ground water) and flows of natural waterbodies, and reduce urban run-off and stormwater pollution; (b) Protect and improve the hydrological, ecological and geomorphological processes of natural waterbodies and their connectivity; (c) Protect and enhance the environmental quality of water catchments by managing them in an ecologically and sustainable manner, for the benefit of all users; and (d) Protect, maintain and rehabilitate watercourses, wetlands, riparian lands and their vegetation and ecological connectivity. <p>Comment: Advice given by Council's technical staff regarding the Stormwater Management Report (Attachment 12) stated that the proposed stormwater discharge directly Sir Joseph Banks ponds/lake is not supported. Sir Joseph Banks ponds/lake are mapped as wetlands under the Bayside LEP 2021, which need to be protected.</p>	No
Focus Area 4: Resilience and Hazards		
4.1 Flooding	<p>Objective: To:</p> <ul style="list-style-type: none"> (a) Ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005, and (b) Ensure that the provisions of an LEP that apply to flood prone land are commensurate with flood behaviour and includes consideration of the potential flood impacts both on and off the subject land. <p>Comment: The PP is accompanied by a Flood Risk Assessment and a Flood Risk Management Plan</p>	<p>No – To justify inconsistency, Consistency item (c) requires a flood and risk impact assessment to support the Planning Proposal prepared in accordance with the principles of the Floodplain Development Manual 2005.</p> <p>Council's technical staff have advised that</p>

Ministerial Direction	Comment	Consistency
	<p>(Attachment 9). This report was referred to Council's technical staff for review, who stated that the PP is inconsistent with the following subclauses of Direction 4.1 for the following reasons:</p> <p>1(a)-(d) – the PP does not adequately address the Floodplain Development Manual (NSW Department of Planning 2005) or the other applicable policies mentioned in this Direction.</p> <p>3(b) – the PP will result in significant flood impacts to neighbouring properties.</p> <p>3(c) – the site is subject to high flood hazard floodwaters. High-density residential accommodation is proposed and hence this clause is not satisfied.</p> <p>3(d) – a significant increase in dwelling density is proposed; hence, the clause is not satisfied.</p> <p>3(g) – a significant increase in government spending may be necessary to alleviate flood depths surround, and providing access to, the site. Hence, the clause is not satisfied.</p> <p>5 – the PP does not adequately address the Floodplain Development Manual (2005).</p>	<p>modelling is inaccurate and the emergency response strategy is not satisfactory.</p> <p>As such, inconsistency with this Direction has not been justified.</p> <p>Further comments are provided under the heading Site Specific Considerations and Technical Studies.</p>
4.2 Coastal Management	<p>Objective: To protect and manage coastal areas of NSW.</p> <p>Comment: The PP is supported by a Coastal Hazard and Risk Assessment (Attachment 10), which states that the concept development's finished floor level will effectively manage storm inundation risks under current and future timeframes, as the coastal inundation level for the site is lower than the determined FPL level. However, as per technical advice regarding flooding and stormwater discussed throughout this report, the proposed response to flood mitigation and stormwater management is not supported.</p> <p>The subject site is approximately 50m north of the coastal zone identified under the <i>Statement Environmental Planning Policy (Resilience and Hazards) 2021</i>, the Stormwater Management Report proposed stormwater discharge from the site into the Sir Joseph Banks ponds/lake, which are within the coastal zone. This is not supported by Council's technical staff.</p>	No
4.4 Remediation of Contaminated Land	<p>Objective: To reduce the risk of harm to human health and the environment by ensuring that contamination and remediation are considered by Planning Proposal Authorities.</p> <p>Comment: Though the site is not currently identified as Significantly Contaminated Land, it is currently used for industrial purposes. If the Planning Proposal proceeds and the site were to be redeveloped for residential purposes, under <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i>, further studies would be required for any future development application for the site.</p>	Yes
4.5 Acid Sulfate Soils	<p>Objective: To avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils.</p> <p>Comment: The Bayside LEP 2021 Acid Sulfate Soils Map identifies the site as partially affected by Class 2 Acid Sulfate Soils and partially affected by Class 4 Acid Sulfate Soils.</p> <p>The PP is supported by an Acid Sulfate Soils and Management Plan (Attachment 7) to appropriately manage Acid Sulfate Soils.</p>	Yes
Focus Area 5: Transport and Infrastructure		
5.1 Integrating Land Use and Transport	<p>Objective: To ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve the following planning objectives:</p>	No – The LEP-Making guidelines note that best practice is achieved

Ministerial Direction	Comment	Consistency
	<p>Improving access to housing, jobs and services by walking, cycling and public transport, and</p> <p>Increasing the choice of available transport and reducing dependence on cars, and</p> <p>Reducing travel demand including the number of trips generated by development and the distances travelled, especially by car, and</p> <p>Supporting the efficient and viable operation of public transport services, and</p> <p>Providing for the efficient movement of freight.</p> <p>Comment: The Bayside LSPS notes the following about public transport in the area in which the PP is located: <i>"Access to public transport is more limited in the eastern part of Bayside, particularly the suburbs of Hillsdale, Botany, Pagewood, Banksmeadow and Eastlakes."</i></p> <p>Whilst the Bayside LSPS advocated for increased frequency of bus services to connect Banksmeadow with Mascot rail station, it is noted that the South East Sydney Transport Strategy has not identified the Botany Road corridor in the preferred land use and transport future scenario.</p>	<p>when commercial and residential development are located within close proximity to rail and/or bus services.</p> <p>The subject site is not located within the typically accepted 800m catchment zone from a high frequency rail station. As such, it is not close enough to transport nodes to be regarded as transit-oriented development.</p> <p>While the subject site is within the 400m catchment of the bus route available on Botany Road, these are mainly local bus routes only. The proposed increase in density and limited public transport options will increase reliance on car usage and result in adverse impacts on local traffic generation in the area.</p> <p>The PP is therefore inconsistent with this Direction.</p>
5.3 Development Near Regulated Airports and Defence Airfields	<p>Objective: To:</p> <p>Ensure the effective and safe operation of regulated airports and defence airfields;</p> <p>Ensure that their operation is not compromised by development that constitutes an obstruction, hazard or potential hazard to aircraft flying in the vicinity; and</p> <p>Ensure development, if situated on noise sensitive land, incorporates appropriate mitigation measures so that the development is not adversely affected by aircraft noise.</p> <p>Comment: The PP is supported by a letter from Sydney Airport Corporation Limited (Attachment 8), which raised concern that the site is located within an area defined in schedules of Civil Aviation (Buildings Control) Regulations which limit the height of structures to 15.24 metres above existing ground height (AEGH) without prior approval of the Civil Aviation Safety Authority.</p> <p>If the Panel were to recommend that Council support this PP, the proposed HOB of RL 18.30 will result in height of structures exceeding 15.24m in some areas on the site. The proponent has stated that engagement with respect to the PP can be undertaken during assessment with relevant airspace authorities as required.</p>	<p>No – Insufficient information available to determine compliance with this objective.</p> <p>If the Panel were to support this PP proceed to Gateway Determination, a condition of Gateway should be recommended for the proponent to provide further information or studies to support the PP.</p>
Focus Area 6: Housing		
6.1 Residential Zones	<p>Objective: To:</p> <p>Encourage a variety of housing types to provide for existing and future housing needs,</p> <p>Make efficient use of existing infrastructure and services</p>	<p>No – The PP is inconsistent with this direction, as it is not supported by a strategy endorsed by the Minister or a study prepared in</p>

Ministerial Direction	Comment	Consistency
	<p>and ensure that new housing has appropriate access to infrastructure and services, and</p> <p>Minimise the impact of residential development on the environment and resource lands.</p> <p>Comment: The PP seeks to enable an increased residential floorspace ratio and building height for the site. To implement the Bayside LSPS, Council prepared and adopted the Local Housing Strategy (LHS). The LHS informs locations where opportunities for increased housing provision should be further investigated. The LHS does not identify the area within which the subject site is located as an appropriate location for additional housing supply.</p>	support of the Planning Proposal that gives consideration to the objectives of this direction.

STATE ENVIRONMENTAL PLANNING POLICIES (SEPPS)

An assessment of the PP against the relevant SEPPs is provided in **Table 6** below.

Table 6: Consistency with relevant State Environmental Planning Policies

State Environmental Planning Policy (SEPP)	Comment	Consistency
No 65. Design Quality of Residential Apartment Development	<p>The PP is supported by a Concept Design (Attachment 3), which includes a preliminary assessment of the masterplan against the <i>Apartment Design Guide</i> (ADG), which demonstrates general compliance.</p> <p>If the PP were to be supported, detailed compliance should be further demonstrated at the DA stage.</p>	Yes
(Resilience and Hazards) 2021	<p>The Resilience and Hazards SEPP aims to promote remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment. It specifically requires consideration when rezoning land and in determining Development Applications and requires that remediation work meets certain standards and notification requirements.</p> <p>The site is not identified on Council or EPA's Contaminated Lands Register nor is an EPA regulated site. However, as the site is currently used for industrial purposes, if the Planning Proposal was supported and the site were to be redeveloped for residential purposes, under <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i>, any future Development Application for the site would be required to be supported by a Preliminary Site Investigation and, if necessary, a Detailed Site Investigation and Remediation Action Plan and Site Audit Statement.</p> <p>Further, the subject site is approximately 50m north of the coastal zone identified under the Resilience and Hazards SEPP, and demonstrates within Stormwater Management Report (Attachment 12) that proposed discharge from the site will flow directly into the Sir Joseph Banks ponds/lake, which are within the coastal zone. This is not supported by Council's technical staff.</p>	Yes

STRATEGIC PLANNING FRAMEWORK – REGIONAL AND DISTRICT PLANS

Regional and District Plans, and local 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.

It should be noted that neither the Regional or District Plan propose a changed role or any significant change to the built form character of this area. The future character that can be

expected under the existing statutory framework (representing very little change) is in alignment with the current Strategic Planning Framework.

Greater Sydney Regional Plan (GSRP)

Table 7 below provides an assessment of this PP against the GSRP.

Table 7: Consistency with the Greater Sydney Regional Plan

Directions	Comment	Consistency
Infrastructure and Collaboration		
1. A city supported by infrastructure	Objective 2: Infrastructure aligns with forecast growth – growth infrastructure compact. Comment: The intensification of the subject site has not been identified in the Strategic Planning Framework for growth. As such, master planning and infrastructure planning has not occurred.	No
Liveability		
3. A city for people	Objective 7: Communities are healthy, resilient and socially connected. Comment: The site currently benefits from good access to Sir Joseph Banks Park, a high-quality public park featuring open spaces, play equipment and pedestrian and cycling paths. The proposal seeks to leverage on this direct access to public open space by supporting additional capacity for new homes on the site that will allow new residents to have access to places to meet, exercise, and socially connect.	Yes
4. Housing the city	Objective 10: Greater housing supply. Comment: While the PP offers opportunity to increase housing supply within the Bayside LGA, the Bayside LSPS and LHS inform locations where opportunities for increased housing provision should be further investigated. The LHS does not identify the area within which the subject site is located as an appropriate location for additional housing supply.	No
5. A city of great places	Objective 12: Great places that bring people together. Comment: Objective 12 outlines that: <i>"Through place-based planning the mechanisms for delivering public benefits can be agreed early in the planning process."</i> This area has not been identified for investigation or uplift. Accordingly, strategic planning has not occurred in this location.	No
	Objective 13: Environmental heritage is conserved and enhanced. Comment: The PP does not enhance existing heritage items identified in the Bayside LEP 2021. See detailed discussion under 3.2 Heritage Conservation of the S9.1 Ministerial Directions.	No
Productivity		
6. A well connected city	Objective 14: A metropolis of three cities – integrated land use and transport creates walkable and 30-minute cities. Comment: Objective 14 focuses on locating land uses in locations with access to public transport to enable the delivery of a 30-minutes city where residents can access the nearest centres, jobs, and services. The Bayside LSPS notes the following about public transport in the area in which the subject site is located: <i>"Access to public transport is more limited in the eastern part of Bayside, particularly in the suburbs of Hillsdale, Botany, Pagewood, Banksmeadow and Eastlakes."</i> However, the site is located within 400 metres walking distance of bus stops located on Botany Road that provide regular bus services between Port Botany to Redfern Station.	Yes
Sustainability		
8. A city in landscape	Objective 25: The coast and waterways are protected and healthier. Comment: The subject site is approximately 50m north of the coastal zone identified under the <i>Statement Environmental Planning Policy (Resilience and Hazards) 2021</i> , and the Stormwater Management Report (Attachment 12) proposes stormwater discharge from the site directly into the Sir Joseph Banks ponds/lake, which are within the coastal zone. This is not supported by Council's technical staff.	No
	Objective 27: Biodiversity is protected, urban bushland and remnant vegetation is enhanced. Comment: Refer to S9.1 Ministerial Direction 3.7 Public Bushland for detailed comments.	No

Directions	Comment	Consistency
	Objective 31: Public open space is accessible, protected and enhanced. Comment: Whilst the proposal does not restrict access to the adjoining public open space, being Sir Joseph Banks Park, the built form envisaged by the proposed controls do not enhance the visual amenity of the public open space or protect the scenic and cultural landscape of the heritage listed part of the park and the park generally. The PP proposes an increase in FSR and height with no appropriate transition from the one-storey and two-storey detached dwelling style houses adjacent to the subject site leading towards Sir Joseph Banks Park.	No
10. A Resilient City	Objective 36: People and places adapt to climate change and future shocks and stresses. Comment: Council technical staff have reviewed the Flood Risk Assessment & Flood Emergency Response Plan (Attachment 9) which undertakes an assessment using 0.5% and 0.2% AEP flood events to model sea level rise without justifying why this approach has been taken. Council technical staff have advised that a proper sea level rise assessment needs to be undertaken.	No
	Objective 37: Exposure to natural and urban hazards is reduced. Comment: Strategy 37.1 of the GSRP states that new urban development in areas exposed to natural and urban hazards should be avoided and that consideration should be taken for options to limit the intensification of development in existing urban areas most exposed to hazards. The PP would result in unnecessary uplift to a site that is located within a floodplain and bordered by a major gas line to the north of the property. Council technical staff have assessed the Flood Risk Assessment & Flood Emergency Response Plan (Attachment 9) and have advised that the "flood and risk assessment report does not provide any details on the length of time Tupia Street is inundated by 1% AEP floodwaters." The proposed "Shelter in place" evacuation strategy is not supported as it is considered that the site will lose access to essential emergency services for up to 24 hours in a 1% AEP event, and several days in a PMF flood event. Hazards relating to the gas line is discussed under the Site Specific Considerations and Technical Studies later in the report.	No

Eastern City District Plan (ECDP)

The PP's consistency with the priorities in the ECDP are discussed in further detail in **Table 8** below.

Table 8: Consistency with the Eastern City District Plan

Priority	Consistency
Infrastructure and Collaboration	
E1	<p>Planning for a city supported by infrastructure. Comment: This priority requires that land use planning aligns with infrastructure planning. The intensification of the subject site has not been identified in the Strategic Planning Framework for growth. As such, master planning and infrastructure planning has not occurred for this area.</p> No
E2	<p>Working through collaboration. Comment: The subject site is not located in a Collaboration Area.</p> N/A
Liveability	
E3	<p>Providing services and social infrastructure to meet people's changing needs. Comment: This priority encourages the provision of services and social infrastructure to meet the needs of future residents. The proposal does not include delivery of any services or social infrastructure.</p> N/A
E4	<p>Fostering healthy, creative, culturally rich and socially connected communities. Comment: Additional housing capacity should be in accessible locations with high concentrations of social connectors. The proposed location is not considered to be an area with high concentrations of social connectors and thus not considered appropriate for increasing housing supply.</p> No

Priority		Consistency
E5	Providing housing supply, choice and affordability, with access to jobs, services and public transport. Comment: Whilst the PP aims to increase housing supply, the LHS does not identify the subject site or the immediate locality as an appropriate location for additional housing given that it is not in proximity to a local centre for employment and services or in close proximity to a rail station.	No
E6	Creating and renewing great places and local centres, and respecting the District's heritage. Comment: The height and density of development envisaged in the PP would adversely impact on the scenic quality and views from the heritage listed Sir Joseph Banks Park. See detailed discussion under 3.2 Heritage Conservation of the S9.1 Ministerial Directions. As such, the PP is not considered to conserve the significance of the surrounding heritage items.	No
Productivity		
E7	Growing a stronger and more competitive Harbour CBD. Comment: The subject site is not located within the Harbour CBD.	N/A
E8	Growing and investing in health and education precincts and the Innovation Corridor. Comment: The subject site is not located in the Innovation Corridor, nor has it been identified as having a role in nearby health and education precincts.	N/A
E9	Growing international trade gateways. Comment: The site and PP will not have an impact on the international trade gateway.	N/A
E10	Delivering integrated land use and transport planning and a 30-minute city. Comment: The Bayside LSPS notes the following about public transport in the area in which the subject site is located: <i>"Access to public transport is more limited in the eastern part of Bayside, particularly in the suburbs of Hillside, Botany, Pagewood, Banksmeadow and Eastlakes."</i> However, the site is located within 400 metres walking distance of bus stops located on Botany Road that provide regular bus services between Port Botany to Redfern Station.	Yes
E11	Growing investment, business opportunities and jobs in strategic centres. Comment: The site is not located within an identified strategic centre.	N/A
E12	Retaining and managing industrial and urban services land. Comment: The subject site is not classified as employment land.	N/A
E13	Supporting growth of targeted industry sectors. Comment: The PP relates to residential development.	N/A
Sustainability		
E14	Protecting and improving the health and enjoyment of Sydney Harbour and the District's waterways. Comment: If the PP were to be supported, any future Development Application would be required to demonstrate that run-off does not adversely impact the water quality of the Botany Bay basin.	N/A – this is a matter to be addressed at the development stage should be PP be supported.
E15	Protecting and enhancing bushland and biodiversity. Comment: The proposed increase in development standards is seeking to facilitate a high density built form that will require multi-level basement excavation which will likely impact surrounding bushland vegetation. See detailed discussion under Section 9.1 Direction 3.7.	No
E16	Protecting and enhancing scenic and cultural landscapes. Comment: The subject site adjoins the Sir Joseph Banks Park, an item of local heritage significance. The height and density of development envisaged in the PP would adversely impact on the setting of and views from and scenic quality of the heritage item, being Sir Joseph Banks Park as discussed throughout this report.	No
E17	Increasing urban tree canopy cover and delivering Green Grid connections. Comment: The subject site is located within the Mill Stream and Botany Wetlands Green Grid Corridor identified in the Government Architect Publication 'Sydney Green Grid – Central District'. No concept landscape plan was submitted with this PP for assessment. Opportunities should be explored in relation to integrating the site with the Green Grid given the	N/A – Insufficient information available to determine consistency with this priority. If the Panel were to recommend that Council support this PP

Priority		Consistency
	unique location of the subject site within Sir Joseph Banks Park.	proceeding to Gateway Determination, a condition of Gateway should be recommended for the proponent to provide further information to support the PP.
E18	Delivering high quality open space. Comment: The eastern extent of the Bayside LGA (former City of Botany Bay LGA) has a shortage of open space provision. Council is preparing its Social Infrastructure Strategy as an action of the LSPS, which will determine Bayside's open space needs in the locality. Whilst the proposal does not hinder access to the adjoining public open space, the built form envisioned by the proposed amendments to the development standards adversely impacts the visual quality of the public open space.	No
E19	Reducing carbon emissions and managing energy, water and waste efficiently. Comment: If the PP was supported to proceed, an assessment of energy efficiency would be required at DA stage.	No – this is a matter to be addressed at the development stage should be PP be supported.
E20	Adapting to the impacts of urban and natural hazards and climate change. Comment: See discussion under Direction 10 A Resilient City Objective 37 in the assessment against the GSRP.	No

STRATEGIC PLANNING FRAMEWORK – LOCAL

Bayside Local Strategic Planning Statement (LSPS)

Council's LSPS sets the 20-year vision for the Bayside LGA, including identifying the special character and values to be preserved and how change will be managed. The Bayside LSPS explains how Council is implementing the planning priorities and actions in the relevant District Plan in conjunction with their Community Strategic Plan.

It should be noted that the Bayside LSPS does not propose a role or any change to the built form character in the vicinity of, and to the subject site. The future character that can be expected under the existing statutory framework (representing very little change) is in alignment with the current Strategic Planning Framework.

The PP compares with the following relevant Planning Priorities identified in the Bayside LSPS, as noted in **Table 9**, below:

Table 9: Consistency with relevant Planning Priorities in the Bayside LSPS

Priority		Consistency / Comment
Infrastructure and Collaboration		
B2	Align land use planning with the delivery and management of assets by Bayside Council to support our community. LSPS Action: Council will take a place-based approach to land use and asset planning to ensure growth aligns with infrastructure provision.	No – There has been no strategic planning or master planning undertaken for the area in which the subject site is located to determine whether there should be development uplift.
Liveability		
B4	Provide social infrastructure to meet the needs of the Bayside Community. LSPS Action: Ensure social infrastructure planning is considered at the earliest stages of planning for change to ensure there is an adequate level of provision to meet the incoming population's needs and that it is part of a place-based approach.	No – The proponent has not proposed to enter into a Planning Agreement that may contribute to public domain improvements that will encourage walking to, from, and around, the subject site.

Priority		Consistency / Comment
B5	Foster healthy, creative, culturally rich and socially connected communities. LSPS Action: Prioritise opportunities for people to walk, cycle and use public transport when planning for existing and future centres.	N/A – Whilst the Bayside LSPS advocated for increased frequency of bus services to connect Banksmeadow with Mascot Rail Station, it is noted that the South Eastern Sydney Transport Strategy 2056 has not identified the Botany Road corridor in the preferred land use and transport future scenario.
B6	Support sustainable housing growth by concentrating high density urban growth close to centres and public transport corridors. LSPS Action: Finalise and adopt the Local Housing Strategy to inform investigation of opportunities for residential growth.	No – The subject site is not identified in the Bayside LHS as an area for housing growth. As such, the PP does not align with this priority.
B7	Provide choice in housing to meet the needs of the community. LSPS Action: Review planning controls to deliver a greater range of dwelling types, size and standards.	No – While the PP offers opportunity to increase housing supply within the Bayside LGA, the Bayside LSPS and LHS inform locations where opportunities for increased housing provision should be further investigated. The LHS does not identify the area within which the subject site is located as an appropriate location for additional housing supply. The current planning controls for the site allow for a range of housing types and uses on the site and have been carefully considered for the Bayside LEP as discussed later. The LHS and LSPS have been adopted post-finalisation of the Bayside LEP, and have not recommended any changes to controls applying to this site.
B8	Provide housing that is affordable.	No – The PP does not include the provision of affordable housing and the proponent has not made any offer of a Planning Agreement that may contribute to affordable housing.
B9	Manage and enhance the distinctive character of the LGA through good quality urban design, respect for existing character and enhancements of the public realm. LSPS Action: Council will encourage good built form outcomes.	No – The proposed built form is not in keeping with the existing character of the area and does not demonstrate a built form outcome that is consistent with the immediate locality. The proposed height and density are substantially greater than that of the surrounding area which is predominantly one and two storey dwellings in a low density residential area. The current zoning and development standards for the subject site allows for medium density residential development such as multi dwelling housing which is already a denser built form than that which exists to the north of the site. However, to ensure that the character of the area is maintained, the current height of 10m and FSR of 0.85:1 is considered appropriate and further increases to this as proposed in this PP will result in adverse impacts to the existing character of the area as viewed from the public realm.
B11	Develop clear and appropriate controls for development of	No – The height and density of

Priority	Consistency / Comment
heritage items, adjoining sites and within conservation areas. LSPS Action: Council will protect, celebrate, and promote Bayside's rich cultural heritage.	development envisaged by the PP would adversely impact on the setting of, and views from, and scenic quality of, the heritage item of Sir Joseph Banks Park and is excessive within the context of residential development in the vicinity. See detailed discussion under 3.2 Heritage Conservation of the S9.1 Ministerial Directions.

Bayside Community Strategic Plan 2018-2032

Table 10: Consistency with the relevant Community Outcomes and Strategies in Bayside Community Strategic Plan 2018-2032

Community Outcome	Strategies	Consistency / Comment
Theme One – In 2032 Bayside will be a Vibrant Place		
Bayside's places are accessible to all	Improve availability of parking for residents.	No Comment: The PP is supported by a Traffic and Parking Impact Assessment (TPIA) (Attachment 11), which was referred to Council's technical staff for review. Whilst the proposed built form envisaged by the amendments to the development standards are a concept only, the concept basement design does not support the required parking spaces and is likely to require additional basement levels. Additional excavation to support this is likely to have further adverse environmental impacts. Additionally, an internal Urban Design review raised concern with a shared entryway with the heritage listed Sir Joseph Banks Park carpark at Tupia Street, which may result in residents or visitors exploiting the Council's designated parking spaces reserved for park visitors.
	Promote the provision of affordable housing for those who need it.	No Comment: Though the proposed apartments may present affordable housing opportunities more affordable than the currently permitted multi-dwelling housing, the PP does not include the provision of affordable housing and the proponent has not made any offer of a Planning Agreement that may contribute to affordable housing.
Bayside's places are people focused	Create and maintain vibrant, visually appealing, and welcoming places with their own village atmosphere and sense of identity.	No Comment: The PP was referred internally for urban design comments and the advice notes that the concept is not considered to be contextually responsive design. The advice notes that the concept design hugs the north, west and southern perimeters of the site to create an east facing courtyard. Buildings are up to 70m in length with only minimal setbacks (6m) provided between building to mitigate the perceived bulk of the development. The resultant building form is significantly denser than the adjoining low density residential neighbourhood. The concept does not appear to have been designed to relate to its park land context or provide a positive connection the park and its pedestrian circulation routes. The extension of an (18m) high building into the southern portion of the park will present as an encroachment of a dense built form deeper into the park. In this regards, the proposal is not considered to address the strategies to create and maintain vibrant, visually appealing, and welcoming places with their own village atmosphere and sense of identity.
Theme Two – In 2032 Our People will be Connected in a Creative City		

Community Outcome	Strategies	Consistency / Comment
The community is united and proud to live in Bayside	Engage effectively with community and provide information in a timely manner.	Yes Comment: Should this PP proceed, Council will undertake consultation in line with the Bayside Community Participation Plan and the NSW Government's <i>LEP Making Guidelines</i> .

Bayside Local Housing Strategy

The Bayside Local Housing Strategy (Bayside LHS) considers the following factors:

- The demand for dwellings in the Bayside LGA
- The type of dwellings needed over the next 20 years
- Opportunities and housing constraints to housing growth
- The need for affordable housing, now and in the future
- Future investigation areas for housing growth.

The subject site, and the surrounding land are not identified in the LHS for an increase in housing supply, or for further investigation. As such, the proposed amendments to the existing development standards currently applying to the subject site are inconsistent with this Strategy.

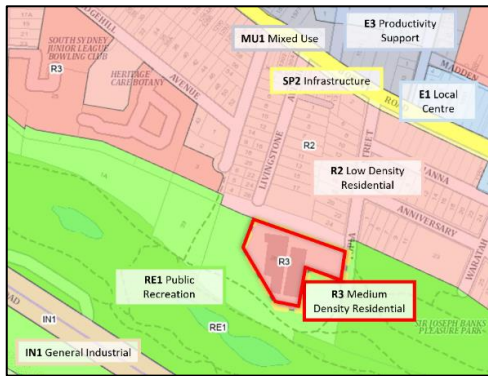
Bayside LEP 2021


Council at its Extraordinary Meeting on 24 June 2020, resolved to adopt the draft Bayside LEP 2021 as exhibited. Consideration of the proponent's submission for increased height and FSR development standards for the site were given at that time, however, the exhibited (current) zoning and development standards for the site were endorsed by Council for notification by DPE.

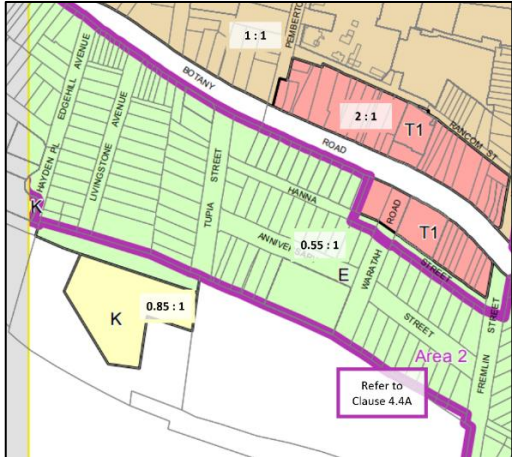
An assessment of the consistency of the PP with the Bayside LEP 2021 is provided in **Table 11** below.

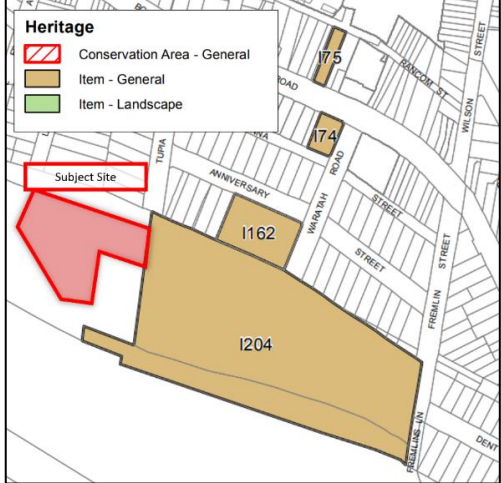
Table 11: An assessment of the PP against the relevant provisions of Bayside LEP 2021

Control	Objective	Consistency
R3 Medium Density Residential Zoning	<p>To provide for the housing needs of the community within a medium density residential environment.</p> <p>To provide a variety of housing types within a medium density residential environment.</p> <p>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</p> <p>To ensure land uses are carried out in a context and setting to minimise impact on the character and amenity of the area.</p> <p>To enable residential development in accessible locations to maximise public transport patronage and encourage walking and cycling.</p>	<p>The applicable land use zone for the subject site is R3 Medium Density Residential under Bayside LEP 2021. Residential Flat Buildings are prohibited under the R3 zone. Whilst the proposed PP does not seek to change the current zone, it does seek to permit RFBs by way of including the site under APU 35.</p> <p>The subject site is an isolated R3 Medium Density Residential zoned lot adjacent to R2 Low Density Residential zoned properties that are one-storey and two-storey detached dwellings. The current zoning for the subject site allows for medium density residential development such as multi dwelling housing which is already a denser built form that that which exists to the north of the site.</p> <p>The site was one of three sites identified as a 'Deferred Matter' site under the <i>Botany Bay Local Environmental Plan 2013</i> (Botany Bay LEP 2013), meaning that during the time that the Botany Bay LEP 2013 was in force, the site remained under the controls of the Botany LEP 1995.</p>

Control	Objective	Consistency
		<p>The zoning of R3 Medium Density Residential was allocated to the subject site in the current Bayside LEP as a direct translation from its former 2(b) Residential "B" zone of the Botany LEP 1995. RFBs were excluded from being permissible on R3 zoned land with or without consent in accordance with the LEP Practice Note PN 11-002 – <i>Preparing LEPs using the Standard Instrument: Standard Zones</i>, which states that RFBs are intended for where primarily high density housing is to be provided, such as in R4 High Density Residential zones.</p> <p>In the preparation of Bayside LEP for the amalgamated Council, the Gateway Determination conditions required RFBs to be retained as a permissible use, with consent, for all R3 zoned land in the Botany Bay LEP 2013. This requirement was included as Clause 35 in Schedule 1 of the Bayside LEP 2021. Importantly, this was not a requirement on the subject site as it was a Deferred Matter site excluded from the Botany Bay LEP 2013, to which the Botany LEP 1995 applied.</p> <p>The Bayside LEP 2021 mapping of the subject site and its surrounds is shown in Figure 14 below.</p>  <p>Figure 14: Extract from Bayside LEP 2021 with overlay of zoning names (Source: NSW Planning Portal Spatial Viewer)</p>
<p>Clause 2.5 Additional permitted uses for particular land</p>		<p>No additional permitted uses (APUs) are applicable to the subject site. In the assessment and preparation of Bayside LEP 2021, the applicant submitted a request for the site to be included with APU 35. Council resolved not to prescribe APU 35 to the subject site - which would have permitted the development for the purposes of an RFB - given the history of the site as a deferred matter site, and given the context of the site in the vicinity of generally low density development.</p> <p>PP to remove APU 34 and 35 Despite the above, a PP was exhibited by Council from 8 May to 30 June 2023 proposing to remove APU 34 and partial removal of APU 35 from Schedule 1 of the Bayside LEP 2021. The exhibited Planning Proposal aims to harmonise the residential land uses across the Bayside LGA and ensure that future development is compatible with the area. Following exhibition, the Council</p>

Control	Objective	Consistency
		<p>officer's recommendation for finalisation of that PP includes a reduction to the current extent of both APU 34 and 35.</p>
Clause 4.3 Height of Buildings	<p>(1) The objectives of this clause are as follows—</p> <p>(a) to ensure that building height is consistent with the desired future character of an area,</p> <p>(b) to minimise visual impact of new development, disruption of views, loss of privacy and loss of solar access to existing development,</p> <p>(c) to nominate heights that will provide an appropriate transition in built form and land use intensity.</p>	<p>The applicable height of buildings on the subject site is 10 metres as shown in the Height of Buildings Map (Figure 15) extract below.</p> <p>The current height limit under Bayside LEP was prescribed in the context of the former Botany LEP 1995 controls, which required the site to be compatible with the scale of existing residential development in the locality, in addition to the development standards given to similar R3 zoned land under the Botany Bay LEP 2013. The scale of development in the locality as discussed previously is characterised predominantly by one-storey and two-storey detached dwellings.</p>  <p><i>Figure 15: Bayside LEP 2021 - Extract of Height of Buildings Map 012 with overlay showing HOB of subject site and surrounds.</i></p> <p>The PP seeks a HOB development standard of RL18.30 which is inconsistent with Standard Instrument clauses requiring a maximum height not a maximum RL, which is not supported. The proposed four-storey built form is not in keeping with the existing character of the area being one and two storey residential development.</p> <p>The increased height on the subject site which visually is located within Sir Joseph Banks Park, would result in adverse visual impact and disruption of views to and from the park and surrounding development. The proposed increase in height is further likely to increase overshadowing of the public open space. It is noted that shadow diagrams of the proposed built form have been submitted as well as those of the existing development on site, but no comparison of overshadowing has been provided of a compliant built form as envisaged by the current controls for assessment.</p> <p>The proposed heights are not considered to provide appropriate transition between the one and two-storey low density development and the adjoining public open space by proposing increased heights which would allow up to four-storey development on the site.</p>

Control	Objective	Consistency
Clause 4.4 Floor Space Ratio	(1) The objectives of this clause are as follows—	<p>The applicable floor space ratio on the subject site is 0.85:1 as shown in the Floor Space Ratio Map (Figure 16), extract below.</p> <p>Similar to the height development standards above, the subject site was allocated the FSR control of 0.85:1 under Bayside LEP 2021, after consideration of the context of the controls for existing R3 zoned land under Botany LEP 1995 and Botany Bay LEP 2013.</p>  <p><i>Figure 16: Bayside LEP 2021 - Extract of Floor Space Ratio Map 012 with overlay showing FSR of subject site and surrounds</i></p>
	<p>(a) to establish standards for the maximum development density and intensity of land use,</p> <p>(b) to ensure buildings are compatible with the bulk and scale of the existing and desired future character of the locality,</p> <p>(c) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,</p> <p>(d) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing or likely to undergo a substantial transformation,</p>	<p>The PP seeks to increase the FSR from 0.85:1 to 1.15:1, a 35% increase.</p> <p>The bulk and scale of the proposal is inconsistent with the desired future character of low to medium density residential development in the locality. In the vicinity of the site, the development predominantly comprises one and two-storey dwellings.</p> <p>The bulk and scale of the proposal is not considered to provide an appropriate transition between low density built form and the adjoining Sir Joseph Banks Park public domain and instead creates a development that is a stark contrast with adverse impacts to the public open space within which it is sited. The proposed built form envisaged by the controls will adversely impact the visual landscape as viewed from adjoining properties and the public domain.</p> <p>The proposed four-storey built form is not in keeping with the existing character of the area and the built form potentiated by the PP is not considered to provide an appropriate visual relationship between the existing low density area to the north and the public park to the south. Furthermore, the subject site and surrounding area is not identified as an area that is undergoing or likely to undergo substantial transformation. Thus it is considered that increased density (FSR) as proposed is inappropriate for the subject site.</p>

Control	Objective	Consistency
	(e) to ensure buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks and community facilities.	The PP potentiates a four-storey built form adjacent to the Sir Joseph Banks Park. The height and density of development envisaged in the PP would adversely impact on the scenic quality and views from adjoining roads and Sir Joseph Banks Park heritage item and is excessive within the context of surrounding one and two-storey residential development.
Clause 5.10 Heritage Conservation	<p>(1) The objectives of this clause are as follows—</p> <p>(a) to conserve the environmental heritage of Bayside,</p> <p>(b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,</p> <p>(c) to conserve archaeological sites,</p> <p>(d) to conserve Aboriginal objects and Aboriginal places of heritage significance.</p>	<p>The subject site is located adjacent to, and in the vicinity of, properties listed in Schedule 5 – Environmental Heritage of the Bayside LEP 2021 as heritage items of local and State significance:</p> <ul style="list-style-type: none"> Sir Joseph Banks Hotel (former, circa 1840), 23 Anniversary Street, Botany – State significance – I162. Sir Joseph Banks Park, Fremlin Street, Botany: Local significance – I204. <p>An extract of the Bayside LEP 2021 heritage map is shown in Figure 18 below.</p>  <p>Figure 18: Bayside LEP 2021 - Extract of Heritage map 012 showing the subject site and surrounds.</p> <p>The height and density of development envisaged in the PP would adversely impact on the scenic quality and views from the Sir Joseph Banks Park and Sir Joseph Banks Hotel heritage item, and is excessive within the context of low density residential development in the vicinity of the site. See detailed discussion under 3.2 Heritage Conservation of the S9.1 Ministerial Directions.</p> <p>As such, the PP is not considered to conserve the significance of the surrounding heritage items.</p>

Bayside Development Control Plan 2022 (BDCP 2022)

The relevant section of the BDCP 2022 is Chapter 7.12 – Botany Precinct.

Under the heading '*Built Form: Building Heights and Density*', the desired future character seeks:

- To encourage new development or alterations and additions to existing development which complements the height and architectural style found in the immediate vicinity, particularly where there is an established character; and
- To ensure that the scale, design, materials and nature of the development contributes positively to the visual amenity of the area.

This has been implemented by ensuring that:

- Medium density residential development occurs in areas adjacent/adjoining existing medium density housing; and that
- Development maintains low density residential accommodation in the form of detached/attached dwellings with a maximum height of two-storeys in the remainder of the Precinct.

The PP seeks to increase building height to RL18.30 and FSR to 1.15:1. It also seeks to allow development for the purposes of a Residential Flat Building in an R3 Medium Density Residential zone adjacent to R2 Low Density Residential zoned land.

This is inconsistent with the desired future character for the Botany Precinct.

SITE SPECIFIC CONSIDERATIONS AND TECHNICAL STUDIES

Urban Design

The PP is supported by an Urban Design Report (**Attachment 4**) which includes an indicative massing diagram, shown in **Figure 19** below.



Figure 19: Indicative Massing Diagram (Source: Cottee Parker Architects)

The Urban Design Report was referred to Council's technical staff. Some key comments are provided below:

'Buildings are up to 70m in length with only minimal setbacks (6m) provided between buildings to mitigate the perceived bulk of the development. The resultant building form is significantly denser than the adjoining low density residential neighbourhood.'

'Given the unique location of the site and its siting within the park there appears to be little justification to increasing the density of the site.'

A contextually responsive design should seek to minimise (or eliminate) building bulk in the south portion of the site to assist in providing a positive connection to the park and its pedestrian network. To achieve this goal consideration could be given to providing the proposed increased height in the northern portion of the site to allow built form to be minimised / eliminated in the southern portion of the site.

The propose to increase the FSR of the site has no clear urban design rationale / benefits.

The proposal to allow the additional permitted use of residential flat building and increase the maximum height for the site to 18.3m adjacent to the sites northern boundary (only) may be justifiable if it can be demonstrated that it can result in an improved contextual response.'

Accordingly, the development facilitated by the proposed change to the controls is not considered to result in an acceptable urban design outcome and the PP is not recommended to be supported.

Hazard Analysis Report

The PP is supported by Hazard Analysis Report (**Attachment 5**), due to the proximity of the subject site to a high-pressure gas pipeline. This report remains largely the same as the Hazard Analysis Report submitted with the 2021 PP, with revisions made in relation to the details of the new proposed amendments to the LEP provisions.

Council staff referred the previous Hazard Analysis Report to the Department of Planning, Industry and Environment (DPIE, now DPE) Hazard and Risk Team by letter dated 23 April 2021 for comment. At the time, DPIE did not raise objection to the PP, however consultation with the pipeline operator was recommended, to obtain their requirements.

As the conditions have not changed and the Hazard Analysis Report remains largely the same, advice can be inferred to be of similar nature. Hence, if this PP was to be supported by the Panel to proceed, the pipeline operator will be consulted as part of the public exhibition of the PP.

Flood Risk Assessment & Flood Emergency Response Plan

The PP is supported by a Flood Risk Assessment & Flood Emergency Response Plan (Flooding Report) (**Attachment 9**) due to its location in a floodplain. Council's technical staff have advised that the issues identified in the previous 2021 Planning Proposal remain unresolved. Key comments are summarised below:

- There are a numerous inaccuracies in the modelling of existing and post development scenarios as well as in the calculation of flood planning levels for the development.
- The concept design plans show an intent to fill the entire site, which displaces an excessive volume of floodwaters, which is not permitted. If the PP were to be supported, future communal open space would need to be relocated from ground level to ensure it is not located in a high hazard flood affected area.

- The reduced building footprint results in significant increase in 1% AEP and PMF flood levels, which is not supported; and,

in addition to the above flooding issues, Council's technical staff also raised issues with the Emergency Response Plan as follows:

- Section 5.4 and Section 6 of the Flooding Report mention that increased intensity on site is acceptable due to the use of a 'shelter in place' emergency management strategy; however, this strategy is based on timeframes of 7.5 hours inundation of Tupia Street, which are unsupported by evidence. The subject site will lose access to essential emergency services due to high depth floodwaters for a significant period of time. Hence, a 'shelter in place' evacuation strategy is not supported to be used as the emergency response strategy to support intensifying the use of the site.
- The emergency response strategy in appears contradictory in different parts of the report and it is unclear as to how the emergency evacuation route (likely to be incorrectly labelled as overland flow path) and raised platform would work. The evacuation of people to Hayden Place does not appear feasible in a PMF flood event as Hayden Place appears to be inundated by flood waters in a PMF flood event.

Further, the proposal is considered as a significant increase in population density in a land which is affected by 1% AEP and PMF flooding, and has an access road which will be heavily affected by flood events. This will cause disruption for the SES and other emergency organisation in undertaking evacuation of the residents.

In light of the above, the subject site is not considered suitable to support further intensification given the hazards and risk arising from the subject site being located within a flood plain and the inadequate emergency response strategy.

Stormwater Management Report

A Stormwater Management Report (**Attachment 12**) has been submitted to support the PP. This was referred to Council's technical staff for review. It was advised that the report has incorrectly undertaken an assessment against the repealed Botany Bay Technical Specification instead of the relevant Bayside DCP (Bayside Technical Specification Stormwater Management). Should this PP proceed, an updated Stormwater Management Report will need to be prepared to properly meet the conditions of the Bayside Technical Specification Stormwater Management.

As discussed previously in the report, the proposed stormwater management which discharges directly into the Sir Joseph Banks ponds/lake is not supported. The Sir Joseph banks ponds/lake is mapped as wetlands in the LEP which needs to be protected. Furthermore, a sufficient riparian area needs to be provided adjacent to the wetlands which has not been addressed.

Transport, Traffic and Parking Assessment Report

The PP is supported by a Transport, Traffic and Parking Assessment Report (**Attachment 11**), which is largely the same as the Traffic and Parking Assessment Report submitted as

part of the 2021 Planning Proposal which was subject to an independent review and advice. Key comments are summarised below:

- The concept plans do not comply with the DCP parking requirements and has not accommodated for sufficient parking facilities such as accessible space, loading bays, bicycle storage, EV charging and manoeuvrability.
- Traffic generation potential of the proposed residential development references outdated traffic generation guidelines. In addition, the true impacts of traffic are difficult to gauge from the report as the data used falls within the Covid restricted period.

There is insufficient information to accurately assess the cumulative traffic impacts arising from the potential future development on the subject site. Should the PP be supported revised documentation will be required for further assessment. However, in regard to the insufficient parking and associated facilities shown on the concept plans, it is likely that any future development of the scale proposed is likely to require additional excavation to support a deeper or larger basement footprint which would have further adverse environmental impacts especially in light of the flood comments above. The PP is therefore not recommended to be supported.

Conclusion

The PP has been the subject of a detailed merit assessment against the strategic and statutory planning framework as established by the EP&A Act, relevant guidelines, Planning Circulars and Practice Notes. In considering whether or not to progress the PP to a Gateway determination, Council is required to consider if the proposed changes to the Bayside LEP 2021 have *both* strategic and site-specific merit.

Given the historical strategic planning considerations applying to this site, along with ongoing strategic and site-specific considerations, this PP proposes amendments to the development standards and provisions under the Bayside LEP 2021 to enable significant intensification of development which is inappropriate for the subject site.

The proponent was previously advised during the assessment and reporting of the 2021 Planning Proposal, and again at the pre-lodgement meeting for the Scoping Proposal, that Council considered controls prescribed to the subject site as implemented in the Bayside LEP 2021, as they were prescribed as appropriate in the context of the subject site and surrounding area.

The provisions and development standards that currently apply to the site – being an FSR of 0.85:1 and maximum building height of 10m – were included in the publicly exhibited draft Bayside LEP 2021, and remained unchanged when the draft LEP was submitted for finalisation by DPE. Furthermore, DPE did not recommend any changes to the proposed zoning and planning controls for the subject site through the Gateway process. The subsequent LSPS and LHS have supported the LEP planning controls adopted for the site as the locality was not identified as suitable for supporting an uplift in residential development.

In 2021, the proponent submitted a PP which is largely similar to the subject PP, with the exception being a minor reduction in the proposed Floor Space Ratio being sought. The PP submitted and assessed in 2021 was considered by both the Bayside Local Planning Panel and Council, and Council resolved not to support the PP proceeding to a Gateway Determination.

In summary, Council's assessment has identified that the PP does not establish strategic and site-specific merit to justify amending the current planning controls.

It is recommended that the Bayside Local Planning Panel recommend to Council that the Planning Proposal Request is not supported, and should not proceed to Gateway Determination, for the reasons set out in the report recommendation.

Planning Agreement

The proponent has not made any offer to enter into a Planning Agreement (VPA).

Attachments

- 1 Planning Proposal Report [↓](#)
- 2 Appendix A - Proposed LEP Maps [↓](#)
- 3 Appendix B - Concept Design [↓](#)
- 4 Appendix C - Urban Design Report [↓](#)
- 5 Appendix D - Hazard Analysis [↓](#)
- 6 Appendix E - Statement of Heritage Impact [↓](#)
- 7 Appendix F - Acid Sulfate Soils Assessment [↓](#)
- 8 Appendix G - Sydney Airport Corporation Limited Correspondence [↓](#)
- 9 Appendix H - Flood Risk Assessment & Flood Emergency Response Plan [↓](#)
- 10 Appendix I - Coastal Hazard and Risk Assessment [↓](#)
- 11 Appendix J - Transport, Traffic and Parking Assessment Report [↓](#)
- 12 Appendix K - Stormwater Management Report [↓](#)
- 13 Appendix L - Geotechnical Investigation [↓](#)