
City Planning & Environment Committee

8/11/2023

Item No	CPE23.032
Subject	Planning Proposal Request - 26 Tupia Street, Botany
Report by	Matthew Hammond, Urban Planner Bianca Chiu, Senior Urban Planner
File	SF23/3704

Summary

Council received a Planning Proposal Request (PP) to amend the planning controls for land at 26 Tupia Street, Botany ('the site') on 19 May 2023. The site is currently zoned R3 Medium Density Residential under the *Bayside Local Environmental Plan 2021* (BLEP 2021).

The PP seeks the following amendments to the BLEP 2021:

- Increase the height of buildings (HOB) development standard from 10m to RL 18.30;
- Increase the floor space ratio (FSR) development standard from 0.85:1 to 1.15:1; and
- Apply Additional Permitted Use (APU) '35' to the site to allow Residential Flat Buildings (RFBs).

The PP documentation is located within **Attachment 1**.

The proponent submitted a similar PP in 2021 (the '2021 PP'), which also sought amendments to the HOB and FSR development standards (to 15m and 1.37:1, respectively) and to apply APU 35 to the site to permit RFBs. The 2021 PP was considered by the Bayside Local Planning Panel (BLPP), and it was recommended that the proposal not be submitted for a Gateway determination due to lack of strategic merit and flooding issues. The PP was also inconsistent with several ministerial directions. Council endorsed the BLPP's position at its the meeting of 13 October 2021, and resolved not to support the PP.

This current PP has been the subject of a detailed strategic and site-specific merit assessment against the planning framework and is not recommended for support for similar reasons. It would result in a future built form that is inconsistent in scale with the adjacent open space and residential area, and a density that would pose a significant risk to life due to the site's vulnerability to floods and other hazards.

Bayside's Local Strategic Planning Statement 2020 (LSPS) and Local Housing Strategy 2021 (LHS) have not identified the site or the general area as an investigation area for consideration for development uplift. Given the site constraints, the location is not considered to be appropriate for further intensification.

The current PP was considered by the BLPP on 26 September 2023, where the Panel unanimously agreed that Council should not support the Planning Proposal Request.

Officer Recommendation

- 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.

Background

Owner: Mr I Aberasturi

Applicant: Mr Peter Zaverdinos on behalf of Archicorp Architects (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.

The site is located at the southern end of Tupia Street, has an area of approximately 8000 sqm and currently contains 3 separate warehouse buildings with 18 industrial units and associated car parking.

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 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. 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.



Figure 1: Aerial photo of the subject site and adjacent land

The subject site is an isolated R3 Medium Density Residential zoned lot adjacent to R2 Low Density Residential zoned properties that are primarily one and two-storey detached dwellings. The current zoning for the subject site (see **Figure 2** below) allows for medium density residential development such as Multi Dwelling Housing, which is already a more dense built form than generally exists to the north of the site. The site currently has an applicable HOB of 10m and FSR of 0.85:1 under BLEP 2021 and no APUs apply to the site.

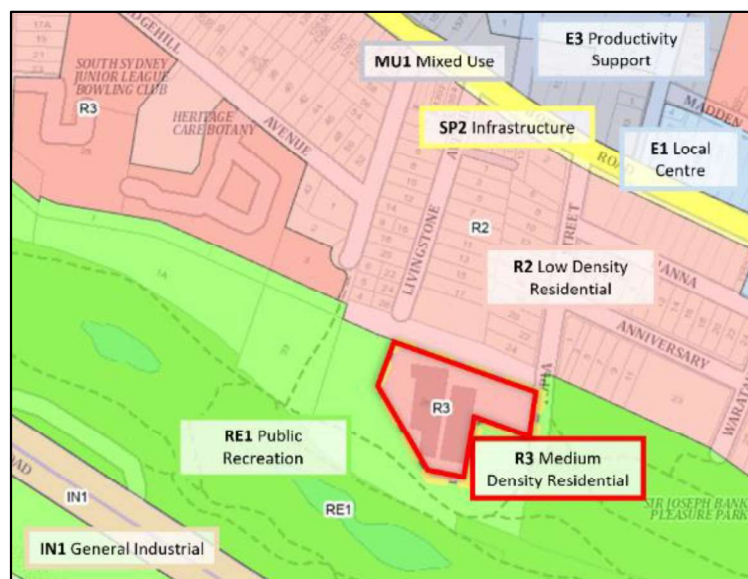


Figure 2: Extract from Bayside LEP 2021 with overlay of zoning names
(Source: NSW Planning Portal Spatial Viewer)

Contextually, the subject site reads as an extension of the low density residential development directly to the north, which is predominantly characterised by one and two-storey detached style residential dwellings, as shown in **Figure 3** below.



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

PLANNING PROPOSAL HISTORY

A history of the draft Planning Proposal is included below:

- 17 April 2020 - Submission to the draft Bayside LEP 2021**
 The proponent lodged a submission to the draft BLEP 2021, seeking a height of 15m, FSR of 1.35:1 and RFB as a permissible use. Council and the Department of Planning and Environment (DPE) had both considered the submission and declined to change the zoning and controls for the site from what had been exhibited, especially given that the main aim of the new LEP was to consolidate and harmonise the previous LEPs.

The site was one of three sites identified as a 'Deferred Matter' site under the *Botany Bay Local Environmental Plan 2013* (BBLEP 2013), meaning that the site remained under the controls of the *Botany Local Environmental Plan 1995* (Botany LEP 1995). The zoning of R3 Medium Density Residential was allocated to the subject site under the current Bayside LEP 2021 as a direct translation from its former 2(b) Residential "B" zone of the Botany LEP 1995. RFBs were prohibited on R3 zoned land in accordance with the LEP Practice Note PN 11-002.

- 25 January 2021 - Previous Planning Proposal submitted (2021 PP)**
 The proponent lodged a PP in 2021 which sought similar outcomes to the current PP, seeking to increase the maximum HOB to 15 metres and FSR to 1.37:1 and introduce an APU into Schedule 1 to allow development for the purposes of RFBs.
- 20 August 2021 - Bayside Local Planning Panel (2021 PP)**
 The BLPP were not supportive of the 2021 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."*

- **13 October 2021 - Council meeting (2021 PP)**
Council accepted the recommendation of planning staff and the BLPP, and did not support the 2021 PP.
- **11 May 2022 - Pre-Lodgement Advice to Proponent for current proposal**
The proponent was advised that, based on consideration of the Scoping Proposal for similar amendments to the 2021 PP, Council's previous reasons for not supporting the PP remained applicable to this proposal.

Details of the Planning Proposal

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

Table 1: Proposed Amendments to the Bayside LEP 2021

Control	Bayside LEP 2021	Draft Planning Proposal
Height of Buildings (HOB)	10 metres	14.27m to 16.61m
Floor Space Ratio (FSR)	0.85 : 1	1.15 : 1
Additional Permitted Use (APU)	N/A	Include as an Additional Permitted Use '35' Use of certain land in R3 Medium Density Residential zone for Residential Flat Building.

The current PP seeks a HOB development standard of RL18.30 for the site, which results in a varying maximum height of buildings above ground of 14.27m to 16.61m across the site due to the sloping topography. It is noted that this RL format is not consistent with Bayside's existing height format, which prescribes controls in the form of metres above the Australian Height Datum (AHD) and thus an RL format is not supported.

Assessment of the Planning Proposal Request

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

Council has undertaken an assessment of the PP including an assessment of urban design, hazards, heritage, flooding, stormwater and traffic and parking.

The PP is not supported as it does not provide sufficient justification to support the proposed changes to development standards, which includes increasing residential density on a flood prone site. The PP is also inconsistent with a number of directions in Greater Sydney Regional Plan (GSRP), planning priorities in Eastern City District Plan (ECDP) and Bayside Local Strategic Planning Statement (LSPS), as well as Section 9.1 Ministerial Directions, and lacks strategic and site-specific merit.

In summary, the assessment indicates that the excessive bulk and scale and density of the proposed development is not justified and results in adverse impacts to heritage, surrounding public open space and wetlands. The site is not well serviced by public transport nor appropriately situated for access to infrastructure and services.

The intensification of the subject site has not been identified in the Strategic Planning Framework for growth. The proposal is also inconsistent with Council's Local Housing Strategy (LHS), which 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.

Flood Risk

The site is flood prone and benefits from a medium density residential zoning, which is a more intense form of development than surrounding properties, due to legacy zoning. Further residential intensification on the site is inappropriate due to the risk created for new residents and the increased risk for existing residents.

Council's technical staff have advised that the proponent's flood modelling is inaccurate, and the emergency response/evacuation strategy is not satisfactory. The proposal is contrary to the s.9.1 Ministerial Direction 4.1 regarding intensification of a residential use on a high flood hazard site. The inconsistency with the Ministerial Direction has not been adequately justified, as the PP does not adequately address the Floodplain Development Manual or other policies mentioned in the Direction.

In addition, the PP is inconsistent with GSRP and ECDP objectives to reduce exposure to natural and urban hazards (Objective 37 and Planning Priority E20) and the related Strategy 37.1 / Action 75, which explicitly seeks to limit the intensification of development in existing urban areas most exposed to hazards.

Council's technical staff reviewed the submitted Flood Risk Assessment and Flood Emergency Response and have advised that:

- There are 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 and is not permitted.
- Future communal open space is located on the ground level in a high hazard flood affected area.
- The building footprint results in significant increase in 1% Annual Exceedance Probability (AEP) and Probable Maximum Flood (PMF) levels, which is not supported.
- The subject site will lose access to essential emergency services due to high depth floodwaters for a significant period of time. 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 is unclear as to how the emergency evacuation route 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.
- The proposal seeks a significant increase in population density on 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 for further residential intensification given the flood prone nature of the site and the inadequate emergency response strategy.

Bayside Local Planning Panel Advice

The Planning Proposal Request was considered by the Bayside Local Planning Panel at its meeting on 26 September 2023. The Panel advises Council that the Planning Proposal Request should not be supported, and their advice is outlined below and included in **Attachment 2**.

- 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*
 - *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.*

Conclusion

The PP has been subject to a detailed merit-based assessment against the strategic and statutory planning framework as required by the *Environmental Planning and Assessment Act 1979* (EP&A Act), relevant guidelines, Planning Circulars and Practice Notes (see **Attachment 1** for detail). In considering whether to progress a Planning Proposal to a Gateway determination, Council is required to consider if the proposed changes to the BLEP 2021 have both strategic and site-specific merit.

The PP has been assessed and reviewed by both Council staff and the BLPP and it is considered that insufficient justification has been provided to justify the substantially greater height and FSR sought for the site, which is located in a high hazard flood area.

It is important that Council effectively plans for its growing population and Council has recognised this through its LSPS and LHS and the endorsement of master planning for increased density and uplift in suitable locations.

Council is also working on measures to increase housing choice and diversity, as the majority of new dwellings in Bayside are apartments. This site is currently zoned to allow the type of medium density that Council seeks to encourage, so amending the zoning to allow residential flat buildings would work against delivering housing diversity.

Proceeding with a site-specific PP to intensify residential development in a high risk hazard location which is subject to flooding would set an undesirable precedent and result in unacceptable risk to life and property, both for new and existing nearby residents.

The BLPP's advice is considered appropriate, and therefore it is recommended that the PP should not be supported and should not be submitted to DPE for a Gateway Determination.

Financial Implications

- | | | |
|--------------------------------------|-------------------------------------|---|
| Not applicable | <input checked="" type="checkbox"/> | A fee has been paid by the proponent for the assessment of this planning proposal request |
| Included in existing approved budget | <input type="checkbox"/> | |
| Additional funds required | <input type="checkbox"/> | |

Community Strategic Plan

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

Risk Management – Risk Level Rating

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

There is a risk that the proponent will lodge a rezoning review with the Department of Planning and Environment and the Sydney Eastern City Planning Panel if Council does not support the planning proposal request.

Community Engagement

The Planning Proposal has not been subject to community consultation. If Council supports the Planning Proposal and a Gateway determination is issued, the Planning Proposal will be exhibited for the requirements outlined in the Gateway determination and relevant legislation.

Attachments

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