



REZONING REVIEW RECORD OF DECISION

STRATEGIC PLANNING PANEL of the
SYDNEY EASTERN CITY PLANNING PANEL

DATE OF DETERMINATION	30 April 2024
DATE OF DECISION	16 April 2024
PANEL MEMBERS	Carl Scully (Chair), David Ryan, Graham Brown, Joe Awada and Paul Pappas
APOLOGIES	Michael Nagi
DECLARATIONS OF INTEREST	None

REZONING REVIEW

RR-2023-35 – Bayside LGA – PP-2023-1068

26 Tupia Street, Botany (As described in Schedule 1).

Reason for Review:

- ☒ The council has notified the proponent that the request to prepare a planning proposal has not been supported.
- ☐ The council has failed to indicate its support 115 days after the proponent submitted a request to prepare a planning proposal.
- ☐ The council has not submitted the planning proposal for a Gateway determination within 28 days of indicating its support for the proposal.

PANEL CONSIDERATION AND DECISION

The Panel considered the material listed at item 4 and the matters raised and/or observed at the site inspections and briefings listed at item 5 in Schedule 1.

Based on this review, the Panel recommends that the proposed instrument:

- ☒ **should** be submitted for a Gateway determination because the proposal has demonstrated strategic and site specific merit
- ☐ **should not** be submitted for a Gateway determination because the proposal has:
 - ☐ not demonstrated strategic merit
 - ☐ demonstrated strategic merit but not site specific merit

The decision was unanimous.

REASONS FOR THE DECISION

The Panel considered the documentation, was briefed by the Department of Planning, Housing and Infrastructure, and heard extensively from Bayside Council and the proponent, Ethos Urban and Archicorp Architects.

Strategic Merit

The Panel agreed that the planning proposal had Strategic Merit for increased residential development given that:

- The planning proposal is consistent with applicable strategic planning documents, particularly as they relate to the general objectives for housing. These include the Greater Sydney Region Plan, 2018, Eastern City District Plan, 2018, Bayside Local Strategic Planning Statement, 2020 (LSPS), and Bayside Local Housing Strategy 2020-2036, 2021.

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- Delivering housing supply is a priority issue for Sydney for all levels of Government.
- The provision of additional housing in this location has strategic merit due to its proximity to public transport, open space and local amenities.

Site Specific Merit

The Panel agreed that the planning proposal has Site Specific Merit noting that:

- the existing zoning allows for residential development and shop-top housing.
- the site is surrounded by open space.
- there is low, if any, impact on the nearby low density residential developments.

Panel recommendations

The Panel recommends that prior to submitting the Planning Proposal for a Gateway determination, the Planning Proposal is to address the following:

- The proponent is to update the flood study to address the flooding issues raised by Bayside Council and to ensure the study addresses contemporary flood criteria and any relevant State Government directions. This is to include whether the proposal is either consistent with or justifiably inconsistent with the 9.1 Ministerial Direction 4.1 Flooding.
- Pre-Gateway consultation is to be undertaken by the Department's Planning Proposal Authority Team with the State Emergency Services and Biodiversity and Conservation Group on the updated flood report and flooding advice and reports provided by Bayside Council to determine any further requirements for flooding information.
- Should it be required, following the consultation above, the proponent is to engage an independent peer review by an experienced and independent flood engineering company, at its own expense, to undertake a review of the proposed flood advice of Bayside Council's and the proponent's flood experts response to the flooding issue. This review is to be undertaken against contemporary flood criteria and any relevant State Government directions.
- The peer review of the flood reports, if required, is to include an opinion as to whether the proposal is either consistent with or justifiably inconsistent with the 9.1 Ministerial Direction 4.1 Flooding.

The Panel will receive a further briefing on the outcomes of the agency Pre-Gateway consultation if necessary.






Bayside Council has previously refused to progress the proposal. In accordance with Section 3.32(1) of the *Environmental Planning and Assessment Act 1979*, the Planning Panel as delegate of the Minister for Planning has determined to appoint itself as the Planning Proposal Authority (PPA) for this planning proposal.

The Panel requires confirmation from the proponent, within two weeks from the date of this determination, that they agree to update the flood report, work with the Department to undertake consultation with the relevant government agencies, undertake an independent flood peer review (if required by the Panel) and to pay the alternate PPA fee.

Should the proponent fail to pay the PPA fee by the designated date, then the Panel will no longer proceed with the planning proposal and the making of a local environmental plan amendment.

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 Carl Scully (Chair)	 David Ryan
 Graham Brown	 Joe Awada
 Paul Pappas	

SCHEDULE 1		
1	PANEL REF – LGA – DEPARTMENT REF - ADDRESS	RR-2023-35 – Bayside LGA – PP-2023-1068 – at 26 Tupia Street, Botany
2	LEP TO BE AMENDED	Bayside Local Environmental Plan (LEP) 2021
3	PROPOSED INSTRUMENT	<p>The proposal seeks to:</p> <ul style="list-style-type: none"> • Increase maximum height of building from 10m to RL 18.3m; • Increase FSR from 0.85:1 to 1.15:1; and • Permit residential flat buildings as an additional permitted use.
4	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> • Rezoning review request documentation • Department of Planning, Housing and Infrastructure, Rezoning Review Briefing report, 4 April 2024 • Slide presentations from DPHI 16 April 2024; and from Ethos Urban 16 April 2024
5	SITE INSPECTIONS AND BRIEFINGS BY THE PANEL	<ul style="list-style-type: none"> • Site inspection with Department of Planning, Housing and Infrastructure (DPHI): 10:29am – 11:05am, 16 April 2024 <ul style="list-style-type: none"> ○ Panel members in attendance: Carl Scully (Chair), David Ryan, Graham Brown, Joe Awada and Paul Pappas ○ DPHI staff in attendance: Kelly McKellar, Ashley Cook and Adam Williams ○ Key issues discussed: <ul style="list-style-type: none"> • Flooding issues affecting the site and the proponent's flood reports • The Gas Pipeline & SWSOOS Easement to the north of the site • Surrounding local character & built form outcomes • Heritage items • Strategic consistency • Briefing with Department of Planning, Housing and Infrastructure (DPHI): 1:02pm – 1.26pm, 16 April 2024 <ul style="list-style-type: none"> ○ Panel members in attendance: Carl Scully (Chair), David Ryan, Graham Brown, Joe Awada and Paul Pappas ○ DPHI staff in attendance: Kelly McKellar, Ashley Cook, Renee Ezzy, Lisa Kennedy and Adam Williams ○ Key issues discussed: <ul style="list-style-type: none"> • Site – context, location, historical use, adjoining heritage items • Proposed LEP amendments - history of R3 Medium Density Residential zoning; Additional Permit Use (APU) No. 34/35; • Consistency with strategic framework • Justification for intensification from R3 Medium Density Residential to a height and FSR equivalent to a R4 High Density Residential • Flood risks – proponent's flood modelling, need for further reports • Briefing with Bayside Council: 1:46pm – 2.23pm, 16 April 2024 <ul style="list-style-type: none"> ○ Panel members in attendance: Carl Scully (Chair), David Ryan, Graham Brown, Joe Awada and Paul Pappas ○ DPHI staff in attendance: Kelly McKellar, Ashley Cook, Renee Ezzy, Lisa Kennedy and Adam Williams

		<ul style="list-style-type: none"> ○ Bayside Council representatives in attendance: Peter Barber, David Smith, Josh Ford, Bianca Chiu & Maze Hammond ○ Key issues discussed: <ul style="list-style-type: none"> ● Council's consideration of the planning proposal – council officer assessment, Bayside Local Planning Panel advice, Council resolution ● Character of the locality is predominately low density residential with the nearby four storey building an anomaly ● Flooding – concern with amount of proposed fill, loss of flood storage and subsequent flooding impacts on land upstream; proposed flood evacuation - shelter in place; required updated flood studies; ● Proposed LEP amendments - confirmation Council's concern is increased HOB and FSR rather than addition of residential flat building as a permitted use in the zone ● Briefing with Ethos Urban & Archicorp Architects (Proponent) and Pilar Aberasturi (Landholder): 2.47pm – 3:58pm, 16 April 2024 <ul style="list-style-type: none"> ○ Panel members in attendance: Carl Scully (Chair), David Ryan, Graham Brown, Joe Awada and Paul Pappas ○ DPHI staff in attendance: Kelly McKellar, Ashley Cook, Renee Ezzy, Lisa Kennedy and Adam Williams ○ Proponent representatives in attendance: Matthew Di Maggio, Matthew Short, Kieran Smith, Nick Taylor, Michael Logan, Peter Zaverdinos and Pilar Aberasturi ○ Key issues discussed: <ul style="list-style-type: none"> ● Planning history of the site - previous permissibility of RFBs and HOB & FSR controls on the site under earlier planning schemes; earlier planning proposals; industrial use of site ● Flooding - characteristics of on-site flooding – volume, velocity & depth; flood modelling & reports – need for additional work which proponent would be open to do; risk to residents and proposed evacuation management; consistency or otherwise with 9.1 Ministerial Directions 4.1 Flooding ● Built form & setbacks - calculation & viability of alternative housing forms such as townhouses ● Traffic & car parking – on site car parking; traffic generation has been modelled ● Community benefit offer – not prepared yet; proponent offered to progress should a gateway determination be received ● Consideration of Council's DCP control is the proposed development – proponent only investigated car parking controls; need to consider others including flooding, stormwater and building form & setbacks ● Panel Discussion: 3:58pm – 4:52pm, 16 April 2024 <ul style="list-style-type: none"> ○ Panel members in attendance: Carl Scully (Chair), David Ryan, Graham Brown, Joe Awada and Paul Pappas ○ DPHI staff in attendance: Kelly McKellar, Ashley Cook, Louise McMahon, Doug Cunningham, Renee Ezzy, Lisa Kennedy, and Adam Williams
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